

DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

2228175 ONTARIO INC. o/a A4 MOTORS

- AND -

ABDOL NAJIBI

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: June 21, 2016

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$1,500 within 120 days of the date of the Discipline Committee Order.
2. Najibi is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.



Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. 2228175 Ontario Inc. o/a A4 Motors (the "Dealer") was first registered as a motor vehicle dealer in or around May 2010. Abdol Najibi ("Najibi") was first registered as motor vehicle salesperson in or around April 2006. At all material times, Najibi was the officer of the Dealer.
2. On or about May 4, 2010, the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply with Ontario Regulation 332/08 under the Act, and Code of Ethics. As per condition 22, the Dealer agreed to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to its customers, including but not limited to accident and repaired and insurance write-off.

Direct correspondence with the Dealer:

3. During an inspection on or about February 16, 2011, a representative of the Registrar reminded the Dealer of their obligation to disclose all material facts, in writing on the bill of sale about the vehicles it sells.

Dealer non-compliance:

4. During an inspection on or about August 4, 2015, and August 27, 2015, a representative of the registrar found the following areas of non-compliance:
 - a. On or about August 12, 2014, the Dealer purchased a 2004 Toyota Sienna (VIN 5TDZA29C24S182980), declared with an accident history for the amount of \$5,201 and as an insurance total loss. On or about March 7, 2015, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of the vehicle's accident and insurance total loss history. This is contrary to section 42(19), 42(21) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the issuance of the Notice, the dealer provided OMVIC with a copy of a letter to the purchaser detailing the required disclosures, but receipt of same was unconfirmed. As a result, a representative of the Registrar contacted the purchaser, who confirmed that they were shown pictures of the damage to the vehicle prior to purchase.
 - b. On or about March 10, 2015, the Dealer purchased a 2010 Mercedes Benz (VIN WDDGF8B9AF466695), declared with an accident history for the amount of \$17,805, manufacturer's warranty having been cancelled, and as an insurance



total loss. On or about June 21, 2015 the Dealer sold this vehicle without providing the purchaser with the required written disclosure of the vehicle's accident and insurance total loss history. This is contrary to section 42(19), 42(20), 42(21) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the issuance of the Notice, the dealer provided OMVIC with a copy of a letter to the purchaser detailing the required disclosures, but receipt of same was unconfirmed. As a result, a representative of the Registrar contacted the purchaser, who confirmed that they were shown pictures of the damage to the vehicle prior to purchase.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Disclosure

42. Additional information in contracts of sale and leases.

(19). If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

(20). If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

(21). If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the Highway Traffic Act, a statement to that effect.

(25). Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer and Najibi have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

7. A registrant shall ensure that all documents used by the registrant in the course of trade in a motor vehicle are current and comply with the law.

9. In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$1,500 within 120 days of the date of the Discipline Committee Order.



2. Najibi agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Najibi breached subsections 7 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$1,500 within 120 days of the date of the Discipline Committee Order.
2. Najibi is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

