

## DISCIPLINE DECISION

REVIEWING PANEL: Aviva Harari, Public Member  
Joe Wade, Registrant  
Achillis Pelitis, Registrant

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

B E T W E E N :

<b>REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002</b>	)
	)
- and -	)
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<b>1000307557 ONTARIO INC. O/A SMITH FALLS HYUNDAI</b>	)
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- and -	)
	)
<b>JASON LOW</b>	)
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This decision arises from a Notice of Complaint issued on March 5, 2024 by the Registrar.

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal, a Reviewing Panel has 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 13, 2024

**Findings:**

1000307557 Ontario Inc. o/a Smith Falls Hyundai, has breached the following:

Section 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Jason Low has breached the following:

Section 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

The Panel was advised that the allegations against Matthew Greenidge were withdrawn.

**Order:**

1. 1000307557 ONTARIO INC. O/A SMITH FALLS HYUNDAI (“the Dealer”) shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Tribunal’s order.
2. Low shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from the date of the Discipline Tribunal’s order.
3. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the “Course”). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from the date of the Discipline Tribunal’s order. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from the date of the Discipline Tribunal’s order. The Dealer will incur all costs associated with this.
4. The Dealer and Low agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

**Reasons for Decision**

**Background:**

1. 1000307557 Ontario Inc. o/a Smith Falls Hyundai (the “Dealer”) was first registered as a motor vehicle dealer on or around September 29, 2022.
2. Jason Low (“Low”) was first registered as a salesperson on or around April 10, 2017. At all material times, Low has been a General Manager and Person in Charge of the day-to-day activities of the Dealer.

**OMVIC Registrant Education re: All-in Pricing:**

3. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars, and guidelines, reminding dealers of their all-in pricing

obligations. The dates of said publications are attached hereto as Schedule "A". Educational materials continue to be available on OMVIC's website.

Prior OMVIC Communications:

4. During an inspection on or about January 19, 2023, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices under Section 36 of O. Reg. 333/08.

Dealer's Contravention of the Code of Ethics:

5. On or before May 16, 2023, the Dealer published an advertisement for a grey 2017 Kia Sorento LX Turbo, stock# 10986A (VIN# \*\*\*269285) with an advertised cash price of \$29,991 plus taxes and licensing fees.
6. On or about May 16, 2023, a representative of OMVIC (the "Representative") attended the Dealer's premises to make inquiries about the vehicle, while posing as a member of the public (also known as a 'mystery shop').
7. A salesperson, acting on behalf of the Dealer, provided the Representative with a worksheet.
8. The worksheet showed that the following fees had been added above the advertised price of \$29,991:
  - a. Total Financed Aftermarket/ Carproof fee of \$45; and
  - b. Miscellaneous fees of \$1,128.70. No details were provided to this panel with respect to the particulars of the miscellaneous fees.
9. The salesperson advised that these additional fees were mandatory. As a result, the total pre-tax cost of the vehicle was \$31,164.70. The worksheet also indicated that a non-taxable fee of \$195 was added to the cost of the vehicle.
10. The worksheet indicated a discount of \$211.11 will be applied to the after-tax cost of the vehicle. Despite the discount provided, the total cost on the worksheet exceeded the advertised price.
11. As a result of the additional fees referred to above, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

Low's Contravention of the Code of Ethics

12. Low failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

It is thereby agreed that the Dealer has contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

*Disclosure and Marketing*

4. (2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

It is thereby agreed that Low has contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

*Accountability*

6. (2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

It is thereby agreed that the Dealer and Low have contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

*Professionalism*

9. (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

**Decision of the Reviewing Panel**

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence as set out in the Agreed Statement of Facts establish that the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics, and Low has breached subsections 6(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Both the Dealer and Low should have been aware of the requirements with respect to all-inclusive price advertising. Despite the information provided by OMVIC, both generally to the industry and specifically to the dealer, the dealer failed to act in compliance with its obligations. Low, given his position of authority as general manager and person in charge of the day to day activities at the dealership has a obligation to ensure compliance by the dealer with its obligations. He failed in his obligations.

The work sheet showed 3 fees added to the advertised price and then a discount. There was a \$45 carproof fee, miscellaneous fees of \$1,128.70, a non-taxable fee of \$195, It is an aggravating factor that these significant, additional fees were represented to the mystery shopper as being mandatory.

While the dealer is a relative recent registrant, Low is an experienced salesperson in a position of authority and responsibility at the dealership. This appears to be first time either the dealer or Low have been before this panel. The panel also gives consideration to the fact that the dealer and Low have taken responsibility for their actions and have admitted to same in these proceedings.

The Reviewing Panel also agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. 1000307557 ONTARIO INC. O/A SMITH FALLS HYUNDAI ("the Dealer") shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Tribunal's order.
2. Low shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from the date of the Discipline Tribunal's order.
3. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from the date of the Discipline Tribunal's order. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from the date of the Discipline Tribunal's order. The Dealer will incur all costs associated with this.
4. The Dealer and Low agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

Dated: June 28 2024

Ontario Motor Vehicle Industry Council  
Discipline Tribunal

Aviva Harari (signed electronically)

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Aviva Harari,  
Public Member  
*Discipline Tribunal*

On behalf of  
*Joe Wade - Member*  
*Achilles Pelitis, Member*

