

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*
("OMVIC")

- AND -

HAMID FAQIRZAI & KARIM FAQIRZAI
o/a K-W USED CARS FOR SALE

- and -

MOHD FAQIRZAI
("Registrants")

Date of Hearing: Thursday, November 12, 2015

Date of Decision: December 16, 2015

Findings: Breach of Sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08

Order:

1. Hamid Faqirzai & Karim Faqirzai o/a K-W Used Cars for Sale, ("the Dealer") is ordered to pay a fine in the amount of \$5,250.00 within 90 days of the date of the Discipline Committee Order.
2. Mohd Hamid Faqirzai is ordered to successfully retake the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order. The Dealer will incur the costs associated with the course.
3. Mr. Mohd Hamid Faqirzai is currently the only registered sales staff at the dealership. The Dealer shall offer all future sales staff the opportunity to complete the OMVIC certification course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this.



Ontario Motor
Vehicle Industry
Council

Conseil ontarien
du commerce des
véhicules automobiles

Reasons for Decision

Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002.

OMVIC was represented by Shannell Leggard and Brian Osler. Ms. Andrea Korth, Business Standards Coordinator, attended on behalf of OMVIC. Mr. Mohd Hamid Faqirzai, salesperson registrant and dealership owner, appeared on behalf of both himself and his partner in the dealership, Mr. Karim Faqirzai, representing both at this discipline hearing. Mr. Faqirzai confirmed for the Panel that he was prepared to proceed with the hearing without legal counsel. The Panel notes that according to Mohd Hamid Faqirzai, he is known as both Hamid Faqirzai and Mohd Faqirzai. In other words, the salesperson registrant Mohd Faqirzai named in the Notice of Complaint is the same person as Hamid Faqirzai, the partner in the dealer registrant named in the Notice of Complaint.

Plea:

Although the Registrant, Mr. Faqirzai, did not dispute the facts as set out in the Notice of Complaint, he denied that he had not provided his customers with total disclosure and he indicated he wished to proceed with the hearing.

The hearing process was subsequently explained to Mr. Faqirzai prior to calling the first witness and the record will show the Chair made every effort to clarify the process throughout the hearing.

The Panel consisted of Debra Mattina (Chair) Larry Pringle (Vice-Chair), and Chris Pinelli (Vice-Chair). Mr. Aaron Dantowitz attended as Independent Legal Counsel to the Panel.

The Panel marked: the amended Notice of Complaint dated the 20th day of October, 2015 as Exhibit #1,
Excerpts of the Motor Vehicle Dealers Act, 2002 - Ontario Regulation 333/08 as Exhibit #2,
Excerpts of the Motor Vehicle Dealers Act, 2002 - Ontario Regulation 332/08, as Exhibit #3,
and the Applicant's Book of Documents as Exhibit 4.

Notice of Complaint:

The amended Notice of Complaint read as follows:

1. Hamid Faqirzai & Karim Faqirzai o/a K-W Used Cars for Sale (the "Dealer") was first registered as a motor vehicle dealer in or around July 2010. Mohd Faqirzai ("Faqirzai") was first registered as a motor vehicle salesperson in or around May 2010 (amended at hearing). At all material times, Faqirzai was the Person In Charge of the Dealer.

OMVIC publications:



2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealer Act, 2002* ("the Act") came into effect. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices in advertisements.
3. OMVIC issued the following Dealer Standard publications reminding dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident histories and previous out of province registrations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Fall 2013
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident histories and previous out of province registrations:
 - a. January 2010
 - b. September 2012
 - c. December 2013
 - d. December 2014

Previous Correspondence with Dealer:

5. On or about July 13, 2010, Faqirzai executed terms and conditions of registration on behalf of the Dealer, attached hereto as Schedule A. As per condition 6, the Dealer agreed to comply with the Code of Ethics. As per condition 22, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure, on the bill of sale, of all material facts about the vehicles it sells.
6. During an inspection on or about September 16, 2010, a representative of the Registrar reviewed with Faqirzai, on behalf of the Dealer, of the disclosure requirements outlined in section 42 of Regulation 333/08.
7. During an inspection of K-W Used Cars For Sale on or about April 7, 2015, the following non-compliance issues were discovered:

Retail Bill of Sale - Non-Disclosure:

8. On or about January 1, 2013 the Dealer purchased a 2004 Acura TL, VIN 19UUA66284A803005, which was disclosed as having an accident history of \$9,040.57. On or about June 3, 2013 the Dealer sold the vehicle without disclosing the dollar amount of the accident history on the retail bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.
9. On or about March 27, 2013 the Dealer purchased a 2006 Toyota Sienna, VIN 5TDZA23C36S448552, which was disclosed as having an accident history of \$8,861.19.



On or about April 12, 2014 the Dealer sold the vehicle without disclosing the dollar amount of the accident history on the retail bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.

10. On or about January 15, 2014 the Dealer purchased a 2006 Toyota Matrix, VIN 2T1KR32E36C608828, which was disclosed as having an accident history of \$6,519.20. On or about February 4, 2014 the Dealer sold the vehicle without disclosing the dollar amount of the accident history on the retail bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.
11. On or about February 19, 2014 the Dealer purchased a 2007 Honda Civic, VIN 2HGFA16517H015520, which was disclosed as having an accident history of \$15,034.71. On or about September 6, 2014 the Dealer sold the vehicle without disclosing the dollar amount of the accident history on the retail bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.
12. On or about August 12, 2014 the Dealer purchased a 2013 Toyota Corolla, VIN 2T1BU4EE2DC015488, which was disclosed as having an accident history of \$12,920.93. On or about April 12, 2014 the Dealer sold the vehicle without disclosing the dollar amount of the accident history on the retail bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.
13. On or about October 23, 2014 the Dealer purchased a 2007 Toyota Matrix, VIN 2T1KR32E77C642238, which was disclosed as having an accident history of \$10,594.42. On or about January 8, 2015 the Dealer sold the vehicle without disclosing the dollar amount of the accident history on the retail bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.
14. On or about February 20, 2015 the Dealer sold a 2009 Toyota Camry, VIN 4T1BE46KX9U901999, without disclosing the accident history of \$7,407.00. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer has also failed to meet the requirements of condition 22 of the Dealer's Terms and Conditions of registration. This is contrary to section 9 of the Code of Ethics.



Facts:

The facts as set out in the amended notice of hearing were not disputed by Mr. Faqirzai.

Evidence:

The Panel heard the testimony of four (4) witnesses: Mr. John Berezcki, and Andrea Korth for OMVIC, and Mr. Mohamed Nassim Amin and Mohd Hamid Faqirzai for the Registrant. Each witness was solemnly affirmed.

Mr. Berezcki is an inspector with OMVIC. He identified for the panel the terms and conditions attached to K-W Used Cars for Sale upon registration which was initialed, signed and dated by Mr. Faqirzai on July 13, 2010.

Mr. Berezcki performed a routine inspection at K-W Used Cars for Sale which he began on March 24, 2015 but due to a power failure was not able to complete until April 7, 2015. On March 24th Mr. Berezcki noted that the garage register was not up to date which hindered his inspection. He did not review any transaction records on March 24th. He requested Mr. Faqirzai have the material available for his return date. On April 7, 2015 Mr. Berezcki met with Mr. Faqirzai and left with him a list of deals he wanted to review. Of the eleven (11) vehicles reviewed seven (7) had issues of not being completed in full. The primary issue was that the insurance estimate amount or dollar value of the repairs to fix the damage to the vehicle were not disclosed in writing on the Bill of Sale for any of the transactions in question.

Mr. Berezcki reviewed for the Panel the bills of sale from Impact Auto Auction to K-W Used Cars For Sale when they acquired the vehicle and the retail bills of sale from K-W Used Cars For Sale to the individual consumers. Additionally Mr. Berezcki reviewed the insurance company repair estimate provided to K-W Used Cars For Sale by Impact Auto Sales for each of the vehicles at the time of sale. The specified documents were the subject of Mr. Berezcki's review as they related to the following vehicles:

- 2004 Acura TL, VIN 19UUA66284A803005, having a repair estimate in the amount of \$9,040.57.
 - 2006 Toyota Sienna, VIN 5TDZA23C36S448552, having a repair estimate in the amount of \$8,861.19.
 - 2006 Toyota Matrix, VIN 2T1KR32E36C608828, having a repair estimate in the amount of \$6,519.20.
 - 2007 Honda Civic, VIN 2HGFA16517H015520, having a repair estimate in the amount of \$15,034.71.
 - 2013 Toyota Corolla, VIN 2T1BU4EE2DC015488, having a repair estimate in the amount of \$12,920.93.
 - 2007 Toyota Matrix, VIN 2T1KR32E77C642238, having a repair estimate in the amount of \$10,594.42.
 - 2009 Toyota Camry, VIN 4T1BE46KX9U901999, having a repair estimate in the amount of \$7,407.00.
- (Exhibit 4, Tabs A, B, C, D, E, F, and G respectively)

In addition to the repair estimates previously identified above, Mr. Berezcki reported that according to a Carproof vehicle history search two of the vehicles had insurance claims somewhat



higher than the repair estimates; the insurance claims being \$11,994.00 for the 2006 Toyota Sienna, VIN 5TDZA23C36S448552, and \$15,251.00 for the 2013 Toyota Corolla.

According to Mr. Berezcki, OMVIC ran CarProof Vehicle History Reports on several of the vehicles in question. He reviewed the histories for the Panel. The histories revealed a number of other details which in the interest of full disclosure of material facts, should have been written on the customers retail bill of sale at the time of purchase. Although Mr. Berezcki acknowledged that the dealer is not obligated to purchase a CarProof or any other vehicle history search available commercially, this is one way the dealer could have satisfied the obligation under section 9.3 of the Ontario Regulation 332/08 to use their "best efforts" to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicles. One of the issues revealed in the Carproof reports was that the 2007 Toyota Matrix, VIN 2T1KR32E77C642238 was previously an accident repair resulting in a collision claim of \$3,700 on December 9, 2009. On September 30, 2014 the records show the vehicle is branded salvage and rebuilt after being disposed of by the insurer as insurance loss on June 7, 2014. This vehicle was then purchased by K-W Used Car Sales on October 23, 2014 as salvage again, and repaired and sold by the dealer on January 8, 2015 without disclosing any of the previous salvage and rebuilt in the vehicles history. There were other details contained in the CarProof histories which might be considered material facts that would influence the purchasers' decision to buy but the primary focus of the notice of complaint is directed at the dealer's failure to disclose the dollar amount of the accident history in writing on the bill of sale.

Mr. Berezcki stated that he called the purchasers of the 7 vehicles in question and left messages for 6 of them asking what was disclosed to them by the Dealer when they purchased the cars. Only one called him back to report that he was happy with the 2006 Toyota Matrix, VIN 2T1KR32E36C608828, but stated that he no longer owned the car. The purchaser of the Toyota told Mr. Berezcki that he did receive the Impact Auto Auction damage document but he could not recall when he received it. Mr. Berezcki was also able to speak to one of the purchasers directly on the date he made the calls.

In cross examination Mr. Berezcki acknowledged that Mr. Mohamed Nassim Amin was the purchaser he spoke to when he made the initial calls. Mr. Amin would later testify at the hearing.

Also in cross examination Mr. Faqirzai had Mr. Berezcki confirm that the initial inspection was performed by Louise Cohn, an OMVIC inspector, in 2010. Mr. Berezcki also acknowledged that the role of the inspector is to inspect and advise.

Ms. Andrea Korth, Business Standards Coordinator, was OMVIC's second witness. Ms. Korth described her duties and the primary purpose of OMVIC is to administer the Motor Vehicle Dealers Act (MVDA) 2002, which is consumer protection legislation, and is also designed to provide a level playing field for all registrants.

Ms. Korth reviewed the documents in Exhibit 4 at Tab 3 regarding registration on June 1, 2010 of K-W Used Cars for Sale, as a general partnership, with Mr. Mohd Hamid Faqirzai and Mr. Karim Faqirzai as the partners, and Mr. Mohd Hamid Faqirzai as the only registered salesperson.

Ms. Korth also reviewed the information in the Book of Documents (Exhibit 4, tabs 5, 6, 7, 8, 9, and 10) regarding communications distributed to automotive dealers through the industry news letter (The Dealer Standard) and OMVIC issued industry bulletins (The Dealer Bulletin). Mr. Korth reviewed the subject matter of these communications all of which contained information in some manner or other about the Dealer's obligation to disclose collision/incident damage greater than



\$3000.00. One such bulletin actually set out that failure to make mandatory disclosures could result in significant penalties which are also listed in the bulletin. Ms. Korth advised the Panel that both the Dealer Standards and Dealer Bulletins are sent electronically to the registered email address on record for each dealer. She further advised that if there is no email on record these documents are sent by regular mail to the dealership address.

Ms. Korth noted that at Tab 4 (Exhibit 4) Mr. Mohd Hamid Faqirzai initialed each page and signed and dated the final page of the Dealership terms and conditions which all dealerships are required to agree to in order to become registered. Ms. Korth draws the Panel's attention to paragraph 22 of this document which reads; "The Registrant agrees that it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to its customers, whether or not the Registrant agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, previous limousines, emergency service vehicles, insurance write-off and any other material fact which, in the Registrar's opinion, may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Registrant further agrees to disclose as much detail as possible with respect to the nature and severity of the damage. The Registrant agrees to make reasonable efforts to research the history of all the Registrants vehicles prior to sale to ensure all material facts are disclosed."

Ms. Korth referred the Panel to documents at Tab 2 (Exhibit 4) which are a series of letters Mr. Mohd Hamid Faqirzai provided to each of the purchasers of the seven vehicles in question. He requested these letters from his clients after he received the Notice of Complaint. It is a form letter with vehicle make, model and VIN written in, as well as a final line which states the amount of the damage estimate. The letter states "I (name to be inserted) Confirm this vehicle which I purchased from kw used car for sale the dealer attached me the insurance damaged estimate to my bill of sale." He had them signed and returned them to OMVIC in an effort to prove he had complied with disclosure regulations. Ms. Korth stated there was nothing to indicate on the Bills of Sale that there was any additional disclosure attached to them.

In cross examination Ms. Korth acknowledged that it is not mandatory to purchase commercially available Vehicle History Reports but did make it clear that the dealer is required to use their "best efforts" to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle and that the dealer is obligated to disclose all material facts that come into his possession.

Mohamed Nassim Amin was the purchaser of two of the cars sold by Mr. Faqirzai, the 2006 Toyota Sienna and the 2013 Toyota Corolla. The two men know each other and came to Canada from the same country. He stated he trusted Mr. Faqirzai and the cars he buys from him are affordable.

Although Mr. Amin's statements were somewhat conflicting at times he put it down to issues regarding English as a second language. He stated that he knew about the damage to the vehicles because Mr. Faqirzai showed him the vehicles prior to fixing them. He stated that when Mr. Faqirzai showed him the vehicle Mr. Faqirzai suggested a price to fix which he agreed to. Mr. Faqirzai then repaired the respective vehicles and Mr. Amin purchased them.

Mr. Amin was quite certain that he had seen the Impact Auto Auction damage estimates but was unable to recall whether it was before or after he purchased the vehicles. At first he said that



maybe Mr. Faqirzai gave it to him with the bill of sale, but then added that he didn't see it properly. As OMVIC's representative probed the testimony of Mr. Amin he repeated a number of times that Mr. Faqirzai did not write the information on the bill of sale but rather told him verbally. When asked if he had seen the second of the two Impact Auto damage estimates at the time of purchase, Mr. Amin replied that he didn't look properly and said that maybe it was with it but he didn't see.

Mr. Amin acknowledged that the dollar amount of the damage to the respective vehicles was not written on either one of the bills of sale for the vehicles that he purchased.

Mr. Mohd Hamid Faqirzai was the last witness. He stated that he successfully completed the OMVIC registration course prior to being registered. Mr. Faqirzai stated that the only thing Ms. Cohn reviewed at the New Dealer Inspection she did on September 16, 2010 was the book (presumably the garage register) and the Dealerships' use of the Used Car Dealers Association (UCDA) bills of sale. The New Dealer Report filed by Ms. Cohn on September 16, 2010 indicates that all sixteen items listed on the report check list were discussed with Mr. Faqirzai except "Consignment/trust account" with a notation explaining why. The report does indicate that according to Ms. Cohn Section 42 disclosure (Reg 333/08) was discussed with Mr. Faqirzai.

Mr. Faqirzai spoke at length about disclosure requirements. It was clear that Mr. Faqirzai was aware of the items he was required to disclose as he commented that "I cannot give a book to my customers". Mr. Faqirzai expressed mistrust of Carfax and CarProof and stated most of the people who buy his cars don't care about CarProof or Carfax and they are unwilling to pay the extra money for him to purchase it.

With respect to the dealership inspection done by John Berezki on March 24, 2015 and completed on April 7, 2015 Mr. Faqirzai questioned why, when it is OMVIC's job to correct and guide dealers, it took so long for OMVIC to re-inspect following the new dealer inspection in 2010.

Mr. Faqirzai stated that he never fixes the cars he sells until after his customers have seen them. Then his customers ask "if you fix this car, how much will you sell it to me". He then tells them how much it will cost to fix and he will sell it at that price.

It is Mr. Faqirzai's opinion that the statement he makes on the bill of sale to the effect that "this car is insurance total loss (sic) and salvage brand" or any other such declaration which is present on each of his bills of sale meets disclosure requirements. He stated that he does disclose but he does it "differently".

Mr. Faqirzai is equally of the opinion that OMVIC should have inspected his dealership earlier, advised him of his errors and then given him an opportunity to correct those issues rather than immediately issuing a Notice of Complaint. He commented that if OMVIC had corrected him and he continued to "do wrong" he would pay the fine. Mr. Faqirzai felt strongly he should have been given at least one chance to correct his errors. On this issue Mr. Faqirzai pointed out that OMVIC had erred in the first Notice of Complaint issued to him on June 15, 2015. One vehicle identified on this notice did not belong to K-W Used Cars for Sale but rather the information relating to another dealer had accidentally been included in the notice. A second error also occurred in the original Notice of Complaint where a 2007 Toyota Matrix had inadvertently been identified as a 2013 model. Mr. Faqirzai draws the inference that if OMVIC can commit such errors and be given an opportunity to correct them, then why shouldn't he be entitled to the equal opportunity.



In cross examination Mr. Faqirzai acknowledged he had previously completed the OMVIC certification course. He also acknowledged signing the Terms and Conditions of registration.

Mr. Faqirzai agreed that he purchases only damaged and salvaged vehicles and that he does not run a vehicle history on them. He noted that he offers his customers the Carfax but they have to pay for it. He stated that whatever Impact Auto Auctions discloses to him he discloses to his customers. He also declared that he is aware that vehicle history products are available but as they are not mandatory he does not provide them.

Mr. Faqirzai acknowledged that the dollar damage amounts were not written on any of the bills of sale.

Decision of the Panel:

The panel is satisfied that the facts as presented by OMVIC and essentially undisputed constitute failure by the Registrants to make full disclosure of all the material facts in accordance with section 42(19) and 42 (25) of Ontario Regulation 333/08. This failure constitutes a breach of Sections 7 and 9 of the Code of Ethics, Ontario Regulation 332/08.

Reasons for Decision:

The Panel rejects Mr. Faqirzai's argument that his blanket disclosure statement about the vehicle(s) being an insurance write off or carrying a salvage brand satisfies the full intent of the legislation. While the Panel believes Mr. Faqirzai does in fact show the damaged vehicles to the purchasers before fixing them, the Panel is less certain that he provides the insurance estimate information provided by Impact Auto Auction attached to the bill of sale. Mr. Amin's testimony on the subject was not convincing and the letters at Tab 2 (Exhibit 4) carry very little weight as they were all filled out after the Notice of Complaint was issued and none of the persons making the declarations were available, except the aforementioned Mr. Amin, for examination under affirmation.

Additionally, Mr. Faqirzai did not attempt to explain how the Impact Auto Auction documents remained in his files if he had attached them to the bills of sale as he claimed. The Panel is aware that it would be a simple matter to copy the documents but at no time did Mr. Faqirzai make that claim. Mr. Amin clearly had no idea what the document looked like and while he knew he was going to testify, he neither brought the document with him nor familiarized himself with it prior to the hearing. The Panel has, based on his testimony, legitimate doubts that Mr. Amin had ever seen the Impact Auto Auction repair estimate prior to the hearing. While it is possible that the purchasers were given a copy of the Impact Auto Auction repair estimate report at some point, the Panel does not accept that the reports were given to the purchasers at the time of purchase.

Even if the Panel were to accept that the Impact Auto Auction repair estimate report was attached to the retail bill of sale at the time of purchase, which as stated we have not, the Panel is not persuaded that providing it to the purchaser would satisfy the dealer's disclosure obligations pursuant to Section 42, O. Reg. 333/08. Section 42 sets out in 25 paragraphs very specific details of the items that must be disclosed on a bill of sale, 23 of which pertain to the sale of used vehicles in addition to new vehicles. Section 42(19) is most relevant to the circumstances in question in the notice of complaint and it states as follows: *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. It specifically sets out that if the motor vehicle dealer knew the total costs of the damages they must include a statement to that effect on the bill of sale.

As the MVDA, 2002 is a statute of consumer protection, Section 42(25) leaves little doubt as to the intention of the legislators who drafted it. It provides that the dealer must disclose on the bill of sale: *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.* The Panel strenuously endorses the directive of full disclosure. The Act is clear that all known facts about the vehicle including the dollar amount of the total cost estimate to fix damage in excess of \$3,000 must be revealed if they are known. The Act does not provide, as Mr. Faqirzai self determined, that a dealer's obligations can be fulfilled in a "different" way.

As Mr. Faqirzai's testimony focused on the reasons he did not write a fulsome disclosure on the retail bill of sale and his belief that he could satisfy his obligations in a "different way", he did not dispute the facts as presented by OMVIC with respect to the items requiring mandatory disclosure pursuant to Section 42. Therefore the evidence in support of the allegations is clear, cogent and unequivocal. OMVIC has satisfied its obligation to establish that the facts support the allegations, and the burden of proof on a balance of probabilities is met.

Submissions on Penalty

Ms. Leggard submitted that the regulator (OMVIC) is mandated to support the Act (MVDA). The Act clearly sets out the obligations of dealers and salespersons to disclose all material facts known to them and to use their best efforts to gather the vehicle history. These principles are mandatory to fulfill the public protection objective of the statute in order to protect the public from harm. Ms. Leggard also emphasized that intent on the part of the registrant is not integral to a finding that there is a breach of the Regulations.

Ms. Leggard reminded the Panel that Mr. Faqirzai had successfully completed the OMVIC certification course prior to being registered and signed the Terms and Conditions of registration at the time the dealership was registered. In reminding the Panel of these details Ms. Leggard clearly informed the Panel that if Mr. Faqirzai did not know his obligations that he ought to have known them. She stated that there was no excuse if he did not know his obligations even if it was possible he was unaware of the OMVIC Dealer Standard newsletters and the OMVIC Bulletins.

Ms. Leggard directed the Panel's attention to Section 7.1 of the Code of Ethics O.Reg. 332/08 which says : *A registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law.*

Ms. Leggard opined that Mr. Faqirzai further aggravated the situation when he failed to perform due diligence when he neglected to further research the vehicle histories. Ms. Leggard identifies this behaviour as a breach of Section 42(25) O. Reg. 333/08 which reads as follows: *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.* Ms. Leggard disagreed that consumers don't care what the history of the vehicle is as long as the price is right. While Ms. Leggard acknowledged that



obtaining a CarProof report was not mandatory, not taking any steps to find out the vehicle history in not "best efforts" on the dealers part to obtain the histories.

Ms. Leggard submitted three (3) recent OMVIC decisions:

- ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL -and- MATKATH COPORATION o/a MATKATH AUTO SALES (the "Dealer") -and- CHRISTOPER HADER ("Hader") This case involved breaches of Sections 4 and 9 of the Code of Ethics. The panel in this case assessed penalties on 15 violations at \$1,000.00 each for a total of \$15,000.00.
- REGISTRAR, MOTOR VEHICLE DEALERS, ACT, 2002 -and- MOHAMED EZZEDINE NAASANI o/a FIRST CLASSE AUTO - SERVICE CENTER AND CAR SALES (the "Dealer") This case involved breaches of Sections 7 and 9 of the Code of Ethics. The Panel in this case considered two previous similar cases and noted the range of penalty as being between \$750.00 to \$1,000.00 per count. Ultimately, the Panel settled on \$900.00 per count on 19 counts for a total of \$17,100.00 after examining all the relevant considerations.
- REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002 -and- MAPLE LEAF AUTO - and- MUSHTAQ KHAN This case involved breaches of Sections 7 and 9 of the Code of Ethics. In this case the Panel considered two previous decisions and noted the range of penalty being asked for was significantly higher than those demonstrated in the two decisions. The Panel determined in this case that the Penalty must be significant. Accordingly, they determined the penalty at \$1,500.00 per count on 3 counts for a total of \$4,500.00.

Ms. Leggard concluded her submissions with a reminder to the Panel that the dealers' repeated failure to disclose all the material facts on the bill of sale should be considered an aggravating factor. It is her opinion that the behaviour is egregious as the dealer has been registered since 2010, he completed the OMVIC registration course which covers the dealers obligation to disclose, he signed Terms and Conditions of registration and received numerous newsletters and bulletins as reminders of his obligations. It is her submission that Mr. Faqirzai had previous knowledge of the dollar amount of the damages in excess of \$3,000.00 to the seven (7) vehicles he sold. Accordingly she is seeking on behalf of the Registrar the following:

- A penalty of \$1,000.00 per vehicle for all 7 vehicles, totaling \$7,000.00.
- That Mr. Faqirzai within 90 days of the date of this order successfully retake the OMVIC certification course.
- That Mr. Faqirzai offer all future sales staff the opportunity to complete the OMVIC certification course at the Dealer's expense.

Mr. Faqirzai submitted that he was an honest man. It is his position that he made no attempt to hide the damage from his customers. He stated that his English was not so good and that he respects and honours OMVIC's rules and regulations in a "different way". It is Mr. Faqirzai's position that he was honest with his customers and disclosed everything "a different way".

He submitted that if OMVIC required him to make certain specific details on the bill of sale that OMVIC should design and provide this to dealers. He commented that he would be willing to purchase them. It is his submission that because OMVIC does not provide a standard bill of sale, he must buy his somewhere else. He purchases UCDA bills of sale.



It is Mr. Faqirzai's submission that he hasn't done anything wrong and therefore should not have to pay a fine. He further made the point that it is OMVIC's responsibility to educate and correct him. The Panel understood that he was referring to his testimony on this matter when he questioned why there was no inspection done since the new dealer inspection done when he opened his business in June 2010 until Mr. Berezcki completed the next inspection in April 2015 almost 5 years later. Mr. Faqirzai stated that he is struggling financially and that he had no money to hire a lawyer.

It is Mr. Faqirzai's position that he has done nothing wrong.

Decision on Penalty

1. The Panel determined that the Dealer will be ordered to pay a fine in the amount of \$5,250.00 within 90 days of the date of the Discipline Committee Order. This amount represents a fine of \$750.00 per vehicle for each of the 7 vehicles.
2. The Panel determined that it is appropriate to order Mohd Hamid Faqirzai to successfully retake the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order for which he will incur the costs associated with the course.
3. Although Mr. Mohd Hamid Faqirzai is currently the only registered sales staff at the dealership the Panel determined it was appropriate to order that the Dealer shall offer all future sales staff, if any, the opportunity to complete the OMVIC certification course (the "course") within 90 days of being retained in this capacity. Again the Dealer will incur all costs associated with this.

Reasons for Penalty:

Mr. Faqirzai raised a couple of interesting arguments with respect to both his and OMVIC's actions.

The first of these issues the Panel wishes to address is the time between inspections. Mr. Faqirzai's position, as the Panel understood it, is that Mr. Faqirzai was attempting to imply that if OMVIC had identified sooner for him that his disclosure methods were insufficient to meet his obligations under the Regulations he would have corrected his errors immediately and there would have been no need for a discipline hearing. In short, Mr. Faqirzai would have complied voluntarily. That argument is predicated on his position that it is OMVIC's obligation to inform and educate. While the Panel does not agree that there was no educational component in the intervening years between 2010 and 2015, the Panel does have concerns about why it took so long for a second inspection to be performed. The Panel acknowledges that limited resources are available and that OMVIC is answerable for managing its resources prudently. That being said, the Panel questions the reasonableness of a near 5 year lapse of time between the new dealer inspection and the next. It would seem apparent to the Panel that new dealers would be at most risk of running afoul of the Act and its Regulations and therefore might warrant a follow-up inspection in the shorter term. The irony of Mr. Faqirzai's comment that he deserved a warning regarding his errant ways in light of the errors OMVIC made in the first Notice of Complaint were not lost on the Panel. It was his position that OMVIC was permitted to correct their mistakes and it would only be fair to permit him the opportunity to correct his errors without penalty.



Mr. Faqirzai's argument would have had more merit if he had acknowledged that he did in fact breach his obligations to disclose all material facts in writing on the bill of sale. Instead he insisted that he had provided full disclosure "in a different way". The Act, unfortunately for Mr. Faqirzai, permits only one method of disclosure of the material facts, and that is "in writing on the bill of sale". The Panel accepts that Mr. Faqirzai shows the damaged vehicles to the purchaser before he fixes them and sells them, but if that were acceptable under the regulation it would have been included as an alternate method of disclosure.

While the Panel is somewhat sympathetic to Mr. Faqirzai's argument that if OMVIC had inspected his dealership sooner and given him a warning he would have voluntarily come into compliance, the Panel cannot accept that Mr. Faqirzai was ignorant of his obligations. Mr. Faqirzai did successfully complete the OMVIC certification course. He did initial, sign and date the Terms and Conditions of registration and he did have access to all the educational resources at OMVIC's disposal including newsletters, bulletins, website and staff resources. If Mr. Faqirzai truly believed that he should be able to meet his disclosure obligations "in a different way", it would have been a simple matter to contact OMVIC to seek verification. Instead he chose to substitute his own interpretation for the Regulation at his own peril.

The Panel recognizes the errors in the first Notice of Complaint which compelled OMVIC to rely on a second or Amended Notice of Complaint. As the process rests in OMVIC's bailiwick, they managed the calendar to permit themselves sufficient time to re-serve a new and Amended Notice of Complaint. The Panel anticipates that Notices of Complaint will be complete and accurate when served upon the Registrant so that the Registrant will know exactly what they must respond to. The Panel expects the same modicum of due diligence that is applied to the registrant in the carrying out of their business would also extend to OMVIC's practices and procedures in the carrying out of theirs.

The Panel recognized that the registrant had no confidence in the Carfax/Carproof process but the Panel was left without understanding of why he mistrusted the process. Mr. Faqirzai's entire defence is predicated on the idea that he disclosed all the damage when he showed the car to his customers prior to fixing them. While the Panel agrees with Mr. Faqirzai that it is not mandatory for a dealer to run a commercially available vehicle history, the dealer must still use his best efforts to obtain as much history as he reasonably can. The CarProofs that OMVIC performed easily obtained information regarding previous estimated accident damage over \$3,000 on two of the seven vehicles, information which was not reported on the Impact Auto Auction reports and therefore not disclosed to Mr. Faqirzai's customers. It is fair to say that Mr. Faqirzai could not disclose what he did not know, but is also fair to say that Mr. Faqirzai had an obligation to inform himself in order to satisfy the intent of the legislation to provide disclosure of all material facts which might influence a customer's decision to purchase. Mr. Faqirzai's attitude with respect to these types of resources impaired his ability to exercise his best efforts. Additionally the Impact Auto Auction bill of sale had significant information regarding the estimated accident damage in the vehicle histories which could have been disclosed to the purchasers at no additional cost to the dealership simply by writing that information on the bill of sale. The Panel does not accept that there was any excuse for Mr. Faqirzai not doing just that.

The Panel does however recognize that Mr. Faqirzai did show his customers the cars in their unrepaired state. Even though for reasons already stated the Panel does not accept that this constitutes full disclosure, the Panel does accept that it was Mr. Faqirzai's attempt to be honest with his customers. The Panel is also cognizant of the fact that he did write on the bills of sale the information that the cars were "salvage" or "insurance total loss" etc. While these actions



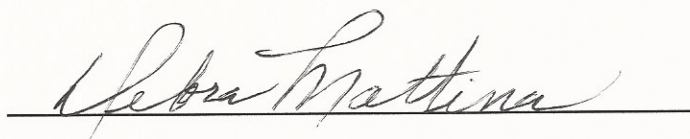
certainly do not meet his obligations under the Act, the Panel is of the view that these are mitigating circumstances.

The Panel noted that the penalties assessed in the recent OMVIC decisions in matters of a similar nature range from \$750.00 per count to \$1,500.00 per count. While the Panel took note of the three decisions submitted, the Panel also recognizes that they are under no obligation to adhere to those decisions on penalty. Rather, the Panel viewed those decisions as a guide to the range of penalties currently being imposed under similar circumstances. In consideration of all the facts before the Panel and the well argued submissions of both parties, the Panel was persuaded to take into consideration the mitigating circumstances noted and assess a penalty of \$5,250.00. This represents a penalty in the amount of \$750.00 per count on each of the 7 counts before the Panel. The aggravating factor of Mr. Faqirzai carrying on "non disclosure" for so long is somewhat overshadowed by the extended period of time between inspections.

While the Panel noted Mr. Faqirzai's stated economic status, it was solely Mr. Faqirzai's practice of showing prospective purchasers the damaged vehicles prior to negotiating the deal and then writing on the Bill of Sale that the vehicle was "salvage" or "insurance write off", that the Panel found persuasive in handing down a penalty in the lower range of normal. The Panel determined that Mr. Faqirzai while not complying with the Act, did not appear to be trying to deceive his customers.

The Panel is satisfied that the penalty is consistent with a range of penalties in recent decisions containing similar facts. In addition the Panel was also satisfied that the amount of the penalty serves as a specific deterrent to the Registrant and a general deterrent to other members of the industry. The goals of public protection, specific and general deterrence are served in that the Registrant is required to participate in retaking the OMVIC certification course in order to remedy the Registrant's knowledge deficits, while the fine serves to remind the Registrants that not complying with their obligations has consequences. Public Protection is also served in the industry wide message contained in this order that there is no flexibility in the interpretation of the regulations and failure to comply with the Act will not be tolerated. Registrants cannot kind of, sort of, or in a different way meet their disclosure obligations. The Act is specific on the matter.

Ontario Motor Vehicle Industry Council
Discipline Panel



Debra Mattina, Chair
Larry Pringle, Vice Chair
Chris Pinelli, Vice Chair

