

## 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

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

FACCHIN LUCIANO o/a CITY WIDE AUTO SALES

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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 6, 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 \$1,250. Due to extenuating circumstances, the Dealer has been allowed 18 months from the date of the Discipline Committee Order to pay the fine.
2. Facchin is ordered to successfully complete the OMVIC certification course (the "course") and has been allowed 6 months from the date of the Discipline Committee Order to complete it, due to extenuating circumstances.
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 be 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the Act 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. Facchin Luciano o/a City Wide Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in or around February 2005. Luciano Facchin is the sole proprietor 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, including the requirement for dealers to disclose previous accident history.
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:
  - 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:
  - a. January 2010
  - b. September 2012
  - c. December 2013
  - d. December 2014

### **Direct Correspondence with Dealer:**

5. During an inspection on or about November 1, 2012, a representative of the Registrar reminded the Dealer of its obligation to adhere to section 42 of Regulation 333/08.
6. During an inspection on or about November 16, 2012, a representative of the Registrar reminded the Dealer of its obligation to adhere to section 42 of Regulation 333/08 and provided copies of this section to the Dealer.



7. On or about March 18, 2013, a caution letter was sent to the Dealer, urging the Dealer to review disclosure requirements carefully to ensure compliance.
8. On or about April 22<sup>nd</sup>, 2015, the following examples of non-compliance were found:

**Dealer Non-Compliance:**

9. On or about November 4 2014, the Dealer purchased a 2001 Honda Civic (VIN 2HGES16611H916587) with an accident history of \$10,425 disclosed. On or about November 19, 2014, the Dealer sold the vehicle without disclosing the accident history in writing on the bill of sale. This is contrary to sections 42(19) and 42(25) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation that the consumer was aware of the accident history.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08

**Section 42:**

(19) If the total costs of repair 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

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

It is thereby agreed that the Dealer and Facchin 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 a 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 \$1,250. Due to extenuating circumstances, the Dealer has been allowed 18 months from the date of the Discipline Committee Order to pay the fine.
2. Facchin agrees to successfully complete the OMVIC certification course (the "course") and has been allowed 6 months from the date of the Discipline Committee Order to complete it, due to extenuating circumstances.




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 be 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees to comply with the Act 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 Facchin 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 \$1,250. Due to extenuating circumstances, the Dealer has been allowed 18 months from the date of the Discipline Committee Order to pay the fine.
2. Facchin is ordered to successfully complete the OMVIC certification course (the "course") and has been allowed 6 months from the date of the Discipline Committee Order to complete it, due to extenuating circumstances.
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 be 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



*Paul Burroughs, Chair*

