



Ontario's Vehicle Sales Regulator

Ontario Motor Vehicle Industry Council

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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 -

2178407 ONTARIO INC. o/a FAYAD AUTO SALES

- AND -

MOHOMAD FAYAD

- AND -

JAMAL FAYAD

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: February 23, 2015

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 \$6,000. \$1,000 will be within 30 days of the date of the date of the Discipline Committee Order and the remaining balance will be paid within 180 days of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Mohomad is ordered to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.

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. 2178407 Ontario Inc. o/a Fayad Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in or around December 2008. Mohomad Fayad ("Mohomad") was first registered as a motor vehicle salesperson in or around December 2008. Jamal Fayad ("Jamal") was first registered as a motor vehicle salesperson in or around December 2008. At all material times, both Mohomad and Jamal were directors of the Dealer.
2. On or about December 16, 2008, the Dealer executed terms and conditions of registration, a copy of which are attached hereto as schedule "A". As per condition 6, the Dealer agreed to comply with OMVIC's Code of Ethics and Standards of Business Practice as may be amended from time to time. As per condition 20, the Dealer agreed to disclose in writing on the bill of sale all material facts about the vehicles it sells to its customers, including but not limited to, accidented and repaired and insurance write-off.
3. 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 Dealers Act, 2002* (the "Act") came into effect, including enhanced vehicle disclosures to be in writing on the purchase agreement.
4. In or around December 2008, OMVIC issued a bulletin which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including enhanced vehicle disclosures to be in writing on the purchase agreement.
5. During an inspection dated September 8, 2010, disclosure was discussed in detail with the Dealer.
6. 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 repair history:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Fall 2013

7. 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 repair history:
 - a. January 2010
 - b. September 2012
 - c. December 2013

Material Fact Non-Disclosure:

8. On or about December 4, 2013, the Dealer purchased a 2006 Dodge Caravan (VIN 1D4GP24RX6B589640), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturers [sic] warranty has been cancelled
 - c. Repair Estimate \$6,362
 - d. Vehicle Ownership is branded: ON-Salvage

On or about December 24, 2013, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of all of A, B and C above. This is contrary sections 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. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

9. On or about December 4, 2013, the Dealer purchased a 2008 Hyundai Sonata (VIN 5NPET46C68H369000), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturers [sic] warranty has been cancelled
 - c. Repair Estimate \$8,627
 - d. Vehicle Ownership is branded: ON-Salvage

This vehicle also had an insurance claim in 2010 in the amount of \$4,548. On or about January, 2013, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of A, B and C above, as well as the insurance claim from 2010. This is contrary sections 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. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

10. On or about December 18, 2013, the Dealer purchased a 2006 Pontiac Torrent (VIN 2CKDL63F266188900). This vehicle had an accident repair history in the amount of \$8,509. On or about February 19, 2014, the Dealer sold this vehicle without disclosing its \$8,509 accident repair history. 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. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

11. On or about February 25, 2014, the Dealer purchased a 2003 Mazda Tribute (4F2CZ94183KM09608), declared with a Ministry of Transportation brand of salvage. This vehicle also had an accident repair history in the amount of \$4,007 and \$9,318. On or about March 17, 2014, the Dealer sold this vehicle without disclosing the accurate accident repair history dollar amount, as required by section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

12. On or about February 13, 2014, the Dealer purchased a 2009 Mazda B4000 (VIN 4F4ZR47E29PM01633), with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair Estimate \$12,323

On or about March 26, 2014, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of all of the above. This is contrary sections 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. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

13. On or about February 6, 2014, the Dealer purchased a 2008 Honda CR-V (VIN 5J6RE48718L815524), with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair Estimate \$11,005

On or about May 12, 2014, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of all of the above. This is contrary sections 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. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

14. On or about February 20, 2014, the Dealer purchased a 2008 Nissan Versa (VIN 3N1BC13E48L377901), with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair Estimate \$6,990
- d. Vehicle Ownership is branded: ON-Salvage

On or about May 16, 2014, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of A, B and C from above. This is contrary sections 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. The Dealer has subsequently provided OMVIC with confirmation that the purchaser is now fully aware of their vehicle's pertinent accident repair history.

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

42. Additional disclosure information in contracts

(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 cost, 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 vehicles that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle.

It is thereby agreed that the Dealer, Mohomad and Jamal 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 \$6,000. \$1,000 will be paid upfront (within 30 days of the date of the date of the Discipline Committee Order) and the remaining balance with (sic) be paid within 180 days of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Mohomad agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.

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, Mohomad and Jamal 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 \$6,000. \$1,000 will be within 30 days of the date of the date of the Discipline Committee Order and the remaining balance will be paid within 180 days of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
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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

A handwritten signature in cursive script, appearing to read 'C. Poultney', is written over a horizontal line.

Catherine Poultney, Chair