

**DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY  
COUNCIL**

**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 -**

**PERFORMANCE MOTORS (OTTAWA) INC. O/A PERFORMANCE MAZDA**

**- and -**

**ANDREW BERNARD**

**- and -**

**MARYANN BERNARD**

**AGREED STATEMENT OF FACTS AND PENALTY**

Performance Motors (Ottawa) Inc. o/a Performance Mazda and Andrew Bernard and Maryann Bernard have breached the following:

Section 4 of the Code of Ethics, Regulation 332/08

Section 9 of the Code of Ethics, Regulation 332/08


**SUMMARY OF AGREEMENT**



The parties to this proceeding agree that:

1. Performance Motors (Ottawa) Inc. o/a Performance Mazda, the ("Dealer") was first registered as a motor vehicle dealer in or around May 2011. Andrew Bernard ("A. Bernard") was first registered as a motor vehicle salesperson in or around May 2002. Maryann Bernard ("M. Bernard") was first registered as a motor vehicle salesperson in or January 2000. At all material times, A. Bernard and M. Bernard were officers and directors of the Dealer



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 Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to advertise an all-inclusive vehicle price.
3. On or about July 9, 2014, an inspection was carried out with the Dealer, at this time; the Inspector reviewed all advertising requirements, including all-in pricing requirements.
4. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to advertise an all-inclusive vehicle price:
  - a. Spring 2010
  - b. Summer 2010
  - c. Spring 2011
  - d. Winter 2013
  - e. Spring 2013
  - f. Fall 2013
  - g. Winter 2014
5. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price:
  - a. January 2010 (2 separate publications)
  - b. April 2010 (2 separate publications)
  - c. February 2012
  - d. August 2012
  - e. April 2013
  - f. June 2014 (2 separate publications)
6. On or before June 9, 2015, an advertisement was placed by or on behalf of the Dealer for a 2012 Mazda 3, Stock #P21356, VIN JM1BL1V76C1623195 with an advertised selling price of \$12,790. On or about June 9, 2015, representatives of the Registrar attended the Dealer while posing as members of the public. The same vehicle was listed on the Dealer's lot for a selling price of \$12,995. The Dealer then explained that he would need to add on an additional \$500.00 to the selling price of the vehicle as financing would not be needed. The selling price of the vehicle was now listed at \$13,945. The Dealer then attempted to sell this vehicle for a total of \$780.00 above the advertised selling price, by adding an additional \$280.00 for an administration fee. As such the advertised selling price was not all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

  
\_\_\_\_\_  
Registrant's Initials

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

Regulation 333/08:

36 (7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buyer would be required to pay for the vehicle; and
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes. O. Reg. 333/08. s. 36 (7).


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

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

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 90 days of the date of the Discipline Committee Order.
2. A. Bernard and M. Bernard agree 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 pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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 1, 2009, or who are otherwise required to do so pursuant to the Act.

  
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Registrant's Initials

AD

MB

4. The Dealer and A. Bernard and M. Bernard agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT OTTAWA, ON THIS 17<sup>th</sup> DAY OF NOVEMBER, 2015

Andrew Bernard  
(please print)  
Andrew Bernard

[Signature]  
(signature)

MARYANN BERNARD  
(please print)  
Maryann Bernard

[Signature]  
(signature)

DATED AT OTTAWA, ON THIS 17<sup>th</sup> DAY OF NOVEMBER, 2015

MARYANN BERNARD  
(please print)

[Signature]

I have the authority to bind the corporation:  
Performance Motors (Ottawa) Inc. o/a Performance Mazda

[Initials]  
Registrant's Initials

AB MB

By signature below the Registrar agrees, acknowledges, understands and consents to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

DATED AT Toronto THIS 20th DAY OF November, 2015



Mary Jane South,  
Registrar, Motor Vehicle Dealers Act, 2002

Pursuant to Rule 1.07, I accept this Agreed Statement of Facts and Penalty from the Parties identified above:

DATED AT Hanover THIS 4 DAY OF Dec, 2015



~~Gatherine Poultney~~ Paul Burroughs  
Chair, Discipline Committee of the  
Ontario Motor Vehicle Industry Council

  
\_\_\_\_\_  
Registrant's Initials

