

**IN THE MATTER OF THE DISCIPLINE HEARING  
held pursuant to Regulation 332/08 of the Motor Vehicle Dealers Act 2002  
of the ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

**DISCIPLINE DECISION**

**ONTARIO MOTOR VEHICLE COUNCIL**

**-and-**

**MATKATH CORPORATION o/a MATKATH AUTO SALES (the “Dealer”)**

**-and-**

**CHRISTOPHER HADER (“Hader”)**

- Date of Decision:** April 12, 2013
- Panel:** Sherry Darvish (Chair)  
Joe Wade  
Murray Clark
- Findings:** Breach of Subsection 36(7) of Regulation 333/08 and Sections 4 and 9 of the Code of Ethics
- Order:**
1. \$15,000 total fine. This amount shall be paid as follows: \$3,000 within 30 days of this decision. \$1,000 per month consecutively for the next 12 months.
  2. Hader shall successfully complete OMVIC’s Automotive Certification Course (the “Course”) within 90 days of this decision.
  3. The Dealer shall offer and pay for all current and future sales staff to complete the Course. Current sales staff shall be offered the Course within 90 days of this decision. Future sales staff shall be offered the Course within 90 days of being retained in this capacity by the Dealer. The Dealer shall incur all costs associated with this Course for the sales staff.
  4. The Dealer shall comply with Regulations 332/08 and 333/08 of the Act and the Standards of Business Practice, as may be amended from time to time.

## REASONS

1. This hearing, held before a panel comprised of S. Darvish, J. Wade and M. Clark, on February 26, 2013, related to a Notice of Complaint, dated September 26, 2012, and a Notice of Complaint, dated January 23, 2013, issued by the Applicant, the Ontario Motor Vehicle Industry Council (“OMVIC”), which alleged that the Respondent, Matkath Corporation operating as Matkath Auto Sales (the “Dealer”) and Christopher Hader (“Hader”) breached subsection 36(7) of Regulation 333/08 and sections 4 and 9 of the Code of Ethics, as set out in Regulation 332/08. The hearing was conducted pursuant to Section 17 of the *Motor Vehicle Dealers Act, 2002*. Ms. Jane Samler represented OMVIC. Mr. Hader appeared on behalf of himself and the Dealer.

2. Subsection 36(7) of Regulation 333/08 provides:

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) subsection 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.

3. Sections 4 and 9 of the Code of Ethics, as set out in Regulation 332/08, provide:

4(1) A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicle in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

9(1) 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.

4. The Dealer was first registered as a motor vehicle dealer in or around September 1999. Hader was first registered as a motor vehicle salesperson in or around March 1999. At all material times, Hader was the person in charge of the Dealership.

5. The allegations against the Dealer and Hader related to the price advertising disclosure of certain vehicles. The relevant particulars as set out in the Notices of Complaint were as follows:

- 1. On or before March 19, 2012, the Dealer published an advertisement for a 1997 Pontiac Sunfire Coupe, with a selling price of \$1,850 plus an additional \$95 administration fee and a gas fee. This is contrary to

subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

2. On or before March 19, 2012, the Dealer published an advertisement for a 1998 Ford Windstar, with a selling price of \$2,795 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
3. On or before March 19, 2012, the Dealer published an advertisement for a 2005 Chevrolet Cobalt, with a selling price of \$6,995 plus an additional \$95 administration fee, \$5 OMVIC fee, and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
4. On or before March 19, 2012, the Dealer published an advertisement for a 1999 Cadillac Eldorado ETC, with a selling price of \$6,995 plus an additional \$95 administration fee, \$5 OMVIC fee, and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
5. On or before March 19, 2012, the Dealer published an advertisement for a 2002 Ford Explorer Eddie Bauer Edition, with a selling price of \$3,995 plus an additional \$95 administration fee, \$5 OMVIC fee, and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
6. On or before March 19, 2012, the Dealer published an advertisement for a 2003 Pontiac Sunfire 2 door, with a selling price of \$3,295 plus an additional \$95 administration fee, \$5 OMVIC fee, and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
7. On or before March 19, 2012, the Dealer published an advertisement for a 2000 Cadillac DTS, with a selling price of \$6,595 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
8. On or before March 19, 2012, the Dealer published an advertisement for a 2004 Pontiac Sunfire Sedan, with a selling price of \$2,895 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
9. On or before March 19, 2012, the Dealer published an advertisement for a 1999 Dodge Dakota Sport, with a selling price of \$3,995 plus an additional \$95 administration fee and a gas fee. This is contrary to

subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

10. On or before March 19, 2012, the Dealer published an advertisement for a 2001 Pontiac Grand Prix GT, with a selling price of \$3,795 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
11. On or before March 19, 2012, the Dealer published an advertisement for a 2001 Ford Windstar Sport, with a selling price of \$3,495 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
12. On or before March 19, 2012, the Dealer published an advertisement for a 2001 Chrysler Sebring LX, with a selling price of \$3,295 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
13. On or before March 19, 2012, the Dealer published an advertisement for a 2002 Mazda Protégé, with a selling price of \$2,995 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
14. On or before March 19, 2012, the Dealer published an advertisement for a 2002 Chevrolet Cavalier VL, with a selling price of \$2,995 plus an additional \$95 administration fee and a gas fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
15. On or before March 19, 2012, the Dealer published an advertisement for a 1994 GMC Sonoma Ext SLE, with a selling price of \$2,295 plus an additional \$95 administration fee and a \$5 OMVIC fee. This is contrary to subsection 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

6. The following documents were marked as Exhibits:

- Exhibit 1: Notice of Complaint, dated September 26, 2012
- Exhibit 2: Notice of Complaint and Notice of Further and Other Particulars, dated January 23, 2013
- Exhibit 3: OMVIC's Book of Documents, containing Tabs 1 to 19

Exhibit 4: A copy of an email from Hader to F. Mohammed at OMVIC, dated November 5, 2012

7. At the hearing, Hader provided testimony on his own behalf and on behalf of the Dealer. Mr. J. Flood provided testimony on behalf of Hader. The following individuals provided testimony on behalf of OMVIC: Ms. A. Korth, Ms. E. Morrison, Ms. J. Cameron, and Ms. M.J. South.
8. OMVIC is a not-for-profit corporation which enacted its By-Law No. 1 on November 8, 2000. The By-Law creates the Code of Ethics. As a result of the By-Law, all registered motor vehicle dealers in Ontario, who by virtue of their registration are members of OMVIC, are required to comply with the Code of Ethics.
9. The Code of Ethics was created by dealers to ensure a level playing field, clarity to consumers, and a degree of consistency by establishing minimum standards of business conduct required to be observed and complied with by members of OMVIC for the benefit of both the industry and the public.
10. The Code of Ethics applies to all registrants registered under the *Motor Vehicle Dealers Act, 2002*. The Code of Ethics requires that all registrants conduct business with integrity, accountability, compliance, respect and professionalism as well as ensuring that minimum requirements are met when it comes to disclosure in marketing and the disclosure of information in contracts of sale and lease.
11. The position of OMVIC is that the Dealer and Hader violated the all-in pricing regulation when publishing advertisements for the sale of its vehicles. As per the testimony of the OMVIC witnesses and the bulletins on file, the all-in pricing regulation came into effect on January 1, 2010. It came into effect for all Ontario registered dealers. It requires that if a dealer chooses to include a price in a vehicle advertisement, that price must include all charges that the customer is required to pay including, but not limited to, administration fees, safety certification, freight, pre-delivery inspection, fees, levies, and taxes. The advertised price must be the sum total of all non-optional charges. The only exception may be MTO licensing charges. PST and GST (now HST) can be excluded if it is indicated in a clear, comprehensive, and prominent manner that these taxes are not included the purchase price of a vehicle. The exception to the all-in pricing rule is when a vehicle is being offered for sale on an "as is" basis, in which case the advertisement must clearly and prominently display a particular disclosure. The vehicles in question were not being offered on an "as is" basis in this case. Therefore, price advertisements for these vehicles were subject to the all-in pricing rule.
12. The Dealer and Hader did not take issue with their particular advertisements in question. They accepted that the advertisements for the various vehicles in question were published in the manner outlined above in the Notices of Complaint. The issue was that Hader believed that even though the Dealer had published the said advertisements, these were

not violations of the Code of Ethics. Hader stated that he was not confused about the law, he knew about the advertising regulation, but he did not agree with its interpretation. He stated that he did not contravene the all-in advertising regulation because he interpreted the regulation in a different manner and he had always advertised in that manner since he opened the business over 20 years ago. He stated that the amounts in question were minimal, for example there was only a \$95 administration fee, a gas fee, and a \$5 OMVIC fee. Hader further stated that there were no complaints by his customers about the Dealer's advertising methods. Hader stated that he provided full disclosure because he disclosed all of the additional fees in the advertisement and full disclosure of the extra fees was sufficient compliance with the advertising regulation.

13. We do not find Hader's testimony to be persuasive evidence that he and the Dealer complied with the all-in pricing advertising regulation. It appears that Hader does not make a distinction between full disclosure and all-in pricing. The issue here is whether the advertised price was the all-in price. The issue is not whether there was full disclosure of all the additional fees. As stated by Ms. South, the purpose of the all-in price advertising regulation is to provide clarity to buyers about the price they are paying for a vehicle, to establish a starting point for negotiation, and to produce a level playing field for all dealers. By stating that administration fees, OMVIC fees, and gas fees are in addition to the advertised price of a vehicle, the consumer is not provided with the total or all-in price. Disclosing that these charges are in addition to the advertised price is not sufficient to meet the requirement of the advertising regulation regarding all-in pricing.
14. Ms. Korth has worked with OMVIC for seven years. For the last five years, she has been a business standards coordinator in the business standards department. The business standards department reviews dealer advertising to ensure compliance with the law. Ms. Korth testified that OMVIC issues bulletins and dealer standards to educate dealers about any changes in the law. Ms. Korth indicated that the bulletins at Tabs 4 to 8 of the Book of Documents (Exhibit No. 3) were issued by OMVIC regarding the changes in the advertising rules that became effective on January 1, 2010.
15. Ms. Korth stated that when the advertising changes first came into effect in January 2010, dealers were given a grace period of a few months to comply with the new rules. If, during that grace period, a dealer was not in compliance with the advertising rules, and OMVIC was aware of that non-compliance, OMVIC would have sent the dealer a warning letter reminding it of the advertising regulations and mandatory compliance. However, by 2012, there was no longer a grace period since it was expected that by this time all dealers should be aware of the new advertising regulations and they should be in compliance.
16. In this case, between January 2010 and February 2012, OMVIC issued five bulletins regarding the all-in advertised price regulation. These bulletins were sent to dealers registered with OMVIC via email. The bulletins are also available on the OMVIC website. Those bulletins were as follows:

1. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure advertised vehicle prices include all additional fees, as per subsection 36(7) of Regulation 333/08.
2. In or around January 2010, OMVIC issued a second bulletin concerning advertising “As Is” vehicles. This bulletin also reminded dealers of their obligation to ensure that advertised vehicle prices include all additional fees, as per subsection 36(7) of Regulation 333/08.
3. In or around April 2010, OMVIC issued a bulletin advising that 75 dealers had recently been charged under the Act with various advertising offences, including failure to publish the all-inclusive prices of vehicles.
4. In or around April 2010 and February 2012 OMVIC issued bulletins reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices to include all additional fees, as per subsection 36(7) of Regulation 333/08.

17. The Dealer was registered with OMVIC since 1999 and his email address was on file with OMVIC, as evidenced by Exhibit No. 4, which was an email that Hader sent to an employee of OMVIC on November 5, 2012. Hader had also sent that email to his own personal email address and the Dealer’s email address. Ms. South, the Deputy Registrar for OMVIC, testified that the Dealer’s email address, which was the same email address as shown in Exhibit No. 4, was on file with OMVIC at least since January 13, 2009. Hader testified that the Dealer’s email address did not change since January 2009. Ms. Morrison, the inspector who performed the Dealer inspection on April 4, 2012, testified that she communicated with Hader, on behalf of the Dealer, to set up the inspection date and time using the Dealer’s email, which was the same email as that noted on the November 5, 2012 document and the same email that OMVIC had on file since at least 2009.

18. Given that the Dealer was registered with OMVIC since 1999, its email address was on file with OMVIC at least since January 2009, the email address had not changed, and that e-mail address was used by the inspector to communicate with Hader on behalf of the Dealer, we find that the Dealer and Hader more probably than not received the bulletins found at Tabs 4 to 8 of Exhibit No. 3, which explained the all-in pricing advertising regulation.

19. In addition to the bulletins, Ms. Cameron, a senior inspector with OMVIC, testified that both before and after the all-in pricing regulation came into effect, OMVIC held several

information sessions across the province to inform dealers about the new rules. In the Hamilton area, where the Dealer's business is located, OMVIC held information sessions in March 2009, November 2009, and June 2010. The 2009 information sessions provided information to dealers about the upcoming changes to the Act and the new regulations, including advertising regulations, that would be implemented. The June 2010 information session provided dealers with specific instances and examples of which regulations dealers in general were typically violating. The purpose of the June 2010 information session was to provide examples to dealers of where problems may arise with advertising in order to allow dealers to review their business practices and remedy any potential violations of the advertising rules. Hader testified that he did not attend these information sessions.

20. We find that Hader and the Dealer were aware of the all-in pricing advertisement regulation. First, we note that Hader testified he was aware of the regulation, but he did not agree with its interpretation and he interpreted it differently to mean full disclosure. We find that OMVIC provided sufficient notice to the dealer community, including this Dealer, about the new all-in pricing regulation by way of written and oral communications. A grace period was also provided shortly after the all-in pricing regulation took effect. During this grace period, OMVIC provided warning letters to dealers that were found to be in violation of the advertising regulations. In February 2012, after two years since implementation of the price advertising regulations, OMVIC issued and sent a bulletin to dealers to inform them that enforcement action would be taken for dealers found to be in violation of the regulations.
21. Hader testified that he did not receive a warning letter. He stated that since he did not receive a warning letter about his violations, he was not in violation of the all-in price advertisement regulation. Whether or not a warning letter is sent is not determinative of whether or not there has been compliance with the advertising regulations. Warning letters would only be sent to dealers who came to OMVIC's knowledge, within the grace period, as having violated the advertising regulations. This does not mean that a dealer who did not receive a warning letter was therefore deemed to be in compliance with the advertising regulations. The onus was, and continues to be, on the Dealer and Hader to ensure compliance with the regulations at all times. The onus is not on OMVIC to send warning letters to everyone who may not be in compliance with the regulations. The warnings letters in this case were merely done as a courtesy by OMVIC during the first few months, or the grace period, after the advertising regulations came into effect. The fact that OMVIC did not send a warning letter to the Dealer or to Hader in 2010 does not mean that OMVIC determined that the Dealer and Hader were in compliance with the advertising regulations. What is more likely is that OMVIC was not aware in 2010 that the Dealer and Hader were in violation of the advertising regulations. This was not discovered until the inspection performed in April 2012.
22. The Dealer and Hader had over two years to comply with the all-in price advertising regulation: the Dealer advertisements in question were in March 2012; and the



inspection of the Dealer was carried out in April 2012, four months after OMVIC's February 2012 bulletin that enforcement action would be taken for those violating the advertising regulations. Hader testified that he was in the motor vehicle sales industry for over 20 years and that he was aware of his obligation to comply with the rules and regulations of the industry. The fact that Hader did not agree with the interpretation of the all-in pricing regulation and he had a different interpretation of it, is not sufficient to dispute non-compliance with the regulation.

23. On the basis of the above-noted reasons, we find that the Dealer and Hader failed to comply with subsection 36(7) of Regulation 333/08 and breached sections 4 and 9 of the Code of Ethics.
24. With respect to the penalty, Ms. Samler, counsel for OMVIC submitted that an appropriate fine in this circumstance should be between \$1,000 per violation. Since there were 15 violations in this case, the total fine would be \$15,000, to be paid within six months time. Ms. Samler also submitted that Hader should be required to take a certification course at his own cost to ensure that he understands his obligations under the Code of Ethics. Ms. Samler further requested that the Dealer offer and pay for the course for its sales staff. Ms. Samler did not seek costs for the hearing. Mr. Hader submitted that the fine should be a total of \$1,500 for all 15 violations, as he complied with the spirit of the law and he has small business.
25. We find that the purpose of the fine sought by the Registrar for OMVIC was appropriate in this case. The Dealer and Hader were aware of the all-in pricing regulation, they had been given sufficient notice of the regulation, but they failed to comply with the regulation with respect to the above noted vehicles. The legislative intent of the fine is to instill public confidence in the system, protect consumers, and ensure a level playing field for all registrants.
26. Mr. Hader further submitted that no consumer had ever filed a complaint with OMVIC against him or the Dealer with respect to such breaches of the Code of Ethics. While that may be the case, the Panel finds that consumers may not have been aware of the advertising regulation regarding all-in pricing. Whether or not a consumer complaint is filed with OMVIC does not absolve a person or a dealer of their obligations under the Code of Ethics.
27. In determining the appropriate penalty for the breaches of the Code of Conduct noted above, this Panel has considered, in addition to our reasons noted above, the following factors:
  - (a) the Code of Conduct regulates the conduct of dealers in their dealings with consumers and they were created to establish minimum standards of business conduct required to

be observed and complied with by dealers for the benefit of both the industry and the public;

- (b) the Dealer and Hader breached sections 4 and 9 of the Code of Ethics with respect to 15 vehicle transactions noted above in the Notices of Complaint; and
- (c) the Dealer and Hader were aware of their obligations under the Code of Ethics.

28. On the basis of the above reasons, the Panel orders the following penalty for the Dealer:

- (a) The Dealer and Hader shall pay a total fine of \$15,000. The first \$3,000 is payable within 30 days of this decision. The balance of \$12,000 shall be paid in consecutive monthly installments of \$1,000 over the course of 12 months. The fine is payable to the Ontario Motor Vehicle Industry Council.
- (b) Hader shall successfully complete OMVIC's Automotive Certification Course (the "Course") within 90 days of this decision.
- (c) The Dealer shall offer and pay for all current and future sales staff to complete the Course. Current sales staff shall be offered the Course within 90 days of this decision. Future sales staff shall be offered the Course within 90 days of being retained in this capacity by the Dealer. The Dealer shall incur all costs associated with this Course for the sales staff.
- (d) The Dealer shall comply with Regulations 332/08 and 333/08 of the Act and the Standards of Business Practice, as may be amended from time to time.

**April 12, 2013**

Signed on behalf of the Panel



Sherry Darvish (Chair)

Joe Wade

Murray Clark