

DISCIPLINE DECISION

REVIEWING PANEL: Sherry Darvish, Discipline Tribunal Chair, Public Member
Jon Lemaire, Registrant
Paul Eros, Registrant

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 :

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL)
)
- and -)
)
2430481 ONTARIO INC. o/a MILTON VOLKSWAGEN)
)
- and -)
)
MARK ANDREW HUGHES)
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)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: February 13, 2025

Findings: **2430481 Ontario Inc. o/a Milton Volkswagen has breached the following:**

- Sections 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Mark Andrew Hughes has breached the following:

- Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. 2430481 Ontario Inc. o/a Milton Volkswagen (the “Dealer”) shall pay a fine in the amount of **\$2,500** no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.
2. Mark Andrew Hughes (“Hughes”) shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.
3. The Dealer shall **offer** to all current and future salespersons, employed by the Dealer, to **fund** their completion of the Automotive Certification Course, no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.
4. The Dealer and Hughes shall comply with the *Motor Vehicle Dealers Act, 2002*, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated December 4, 2024, a jointly proposed disposition and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

The allegations against Luige Jim Garofalo contained in paragraphs 2 and 8 of the Notice of Complaint (“NOC”) dated January 8, 2024 are hereby withdrawn.

Amendment:

1. The NOC is amended to reflect that the Ontario Motor Vehicle Industry Council (“OMVIC”) replaces the Registrar, *Motor Vehicle Dealers Act, 2002* as a party to this proceeding.

Background:

2. 2430481 Ontario Inc. o/a Milton Volkswagen (the “Dealer”) was first registered as a motor vehicle dealer in and around May 2017.
3. Mark Andrew Hughes (“Hughes”) was first registered as a salesperson in and around August 1999. At all material times, Hughes has been a General Manager responsible for the day-to-day activities of the Dealer.

OMVIC Publications:

4. Since the *Motor Vehicle Dealers Act, 2002* (the “Act”) was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule “A”. Educational materials continue to be available on OMVIC’s website.

Dealer's Non-Compliance:

5. On or before February 22, 2023, the Dealer published an advertisement for an orange 2020 Volkswagen Tiguan, stock# U-M1260 (VIN# *074273) with an advertised price of \$35,888 plus taxes and licensing.
6. On or about the same date, an OMVIC Representative made inquiries about the vehicle, while posing as a member of the public.
7. A salesperson, acting on behalf of the Dealer, provided the OMVIC Representative with a worksheet for the vehicle. The following additional charges were added to the price of the vehicle.
 - a. Admin fee of \$499
 - b. Gas fee of \$100
 - c. OMVIC fee of \$10
8. As such, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

Hughes's Non-Compliance:

9. Hughes failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.
10. As particularized above, the Dealer has violated the following section of the Code of Ethics:

Disclosure and marketing

s. 4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

11. As particularized above, the Dealer and Hughes have violated the following section of the Code of Ethics:

Professionalism

s. 9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

12. As particularized above, Hughes has violated the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics; (2) Hughes has breached subsections 6(2) and 9(3) of the OMVIC Code of Ethics.

The Reviewing Panel accepted the parties' proposed resolution for the reasons below.

Reasons for Decision

The Reviewing Panel received and considered comprehensive written materials from the parties and was left satisfied that the proposed resolution has no risk of being contrary to the public interest. The outcome is clearly connected to the admitted breaches of the Code of Ethics and consistent with other outcomes ordered in this Tribunal in similar cases. In such circumstances, disposition under Rule 1.07 is appropriate and ordered accordingly.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: February 13, 2025

S. Darwish

Sherry Darwish, Discipline Tribunal Chair,
Public member
On behalf of:

Jon Lemaire, Registrant
Paul Eros, Registrant

