



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 -

421342 ONTARIO LTD. o/a KINGSTON NISSAN

-AND-

421342 ONTARIO LTD. o/a CARONE

-AND-

TREVOR COTTON

Date of Decision: September 26, 2013

Findings: Breach of Section 4, 7 and 9 of the Code of Ethics

Order:

1. Kingston Nissan is ordered to pay a fine in the amount of \$8,000. \$4,000 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
2. Carone is ordered to pay a fine in the amount of \$8,000. \$4,000 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
3. Cotton is ordered to pay a fine in the amount of \$9,000. \$4,500 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
4. Kingston Nissan, Carone, and Cotton jointly and severally shall pay the Registrar's costs in this matter in the amount of \$2,000, within 30 days of the date of the Discipline Committee Order.
5. Cotton is ordered 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.
6. Kingston Nissan 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 the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by Kingston Nissan. Kingston Nissan 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.

7. Carone 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 Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by Carone. Carone 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.
8. Kingston Nissan, Carone and Cotton 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 before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002.

The Registrar was represented by Elizabeth Maishlish, and Trevor Cotton appeared on behalf of the Respondents. The Panel consisted of Debra Mattina (Chair), Paul Burroughs (Vice-Chair), and Tom Kramer (Vice-Chair). Luisa Ritacca attended as Independent Legal Counsel to the Panel.

At the outset of the hearing we were advised that the parties reached an agreement in this matter. Mr. Cotton advised that he consented to the agreement. The panel questioned Mr. Cotton as to his decision to admit the violations and was satisfied that Mr. Cotton's admissions were voluntary, informed and unequivocal.

The Panel was provided with an Agreed Statement of Facts (Exhibit #2), which provides as follows:

Facts:

1. 421342 Ontario Ltd o/a Kingston Nissan ("Kingston Nissan") was first registered as a motor vehicle dealer in or around February 1983. 421342 Ontario Ltd o/a Carone ("Carone") was first registered as a branch of Kingston Nissan on or about December 2009. Trevor Cotton ("Cotton") was first registered as a motor vehicle salesperson in or around May 2006. At all material times, Cotton was an officer and director of Kingston Nissan and the Person in Charge of Carone.



Unregistered salespeople:

2. During an inspection on or about October 3, 2001, a representative of the Registrar reminded Kingston Nissan of their obligation to ensure all salespeople trading on behalf of Kingston Nissan are registered with OMVIC.
3. During an inspection on or about July 24, 2008, a representative of the Registrar reminded Kingston Nissan of their obligation to ensure all salespeople trading on behalf of Kingston Nissan are registered with OMVIC. In addition to this, Kingston Nissan was reminded of their obligation to ensure customers are provided with written disclosure of all material facts about the vehicles it sells, including but not limited to, a vehicle's former daily rental history.
4. On or about November 27, 2009, Cotton executed terms and conditions of registration on behalf of Kingston Nissan. As per condition 1, Kingston Nissan agreed it is under a positive obligation to ensure all individuals trading in motor vehicles on behalf of Kingston Nissan are registered with OMVIC. As per condition 6, Kingston Nissan agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.
5. In or around August 2012, the following individuals traded motor vehicles on behalf of Kingston Nissan without the benefit of OMVIC registration:
 - a. Edward Alves
 - b. Hassan Dar
6. Between in or around June 2012 and in or around November 2012, Kingston Nissan and Carone employed Affan Dar ("Dar") as a business manager, without the benefit of OMVIC registration.

Material fact disclosure on bills of sale:

7. In the winter of 2008, OMVIC issued a Dealer Standard publication which reminded dealers of their obligations to provide purchasers with written disclosure of all material facts about the vehicles they sell, including former daily rental histories. In addition to this, dealers were advised of upcoming changes to the advertising regulations, including but not limited to, the obligation to disclose former daily rental vehicles in advertisements and to ensure that advertised vehicle prices include all additional fees.
8. In or around December 2008, OMVIC issued a bulletin advising dealers of the upcoming changes to the disclosure requirements on a retail bill of sale. These included, but were not limited to, the obligation to provide written disclosure of vehicle's former daily rental history.
9. On or about November 27, 2009, Cotton executed terms and conditions of registration on behalf of Kingston Nissan. As per condition 6, Kingston Nissan agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 21, Kingston Nissan agreed it is under a positive obligation to disclose all material facts about the vehicles it sells.



10. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligations to provide purchasers with written disclosure of all material facts about the vehicles they sell, including but not limited to former daily rental histories.
11. In the summer of 2011, OMVIC issued a Dealer Standard Publication which reminded dealers of their obligation to ensure all material facts about a vehicle are disclosed in writing on the bill of sale.
12. In the summer of 2012, OMVIC issued a Dealer Standard publication which reminded dealers to of their obligation to ensure former daily rental vehicles are disclosed in writing on the bill of sale.
13. In or around September 2012, OMVIC issued a bulletin reminding dealers of their obligation to ensure former daily rental vehicles are disclosed in writing on the bill of sale.
14. On or about October 6, 2012, Dar sold a 2009 Audi A5 (VIN WAUD K68T19A042694) on behalf of Carone without disclosing the vehicle's previous out of province history. This is contrary to section 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
15. On or about November 13, 2012, Dar sold a 2012 Nissan Rogue (VIN JN8AS5MV7CW361376) on behalf of Carone without providing the purchaser with disclosure of the vehicle's former daily rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

Advertising:

16. In or around December 2008, OMVIC issued a bulletin advising dealers of the of upcoming changes to the advertising regulations, including but not limited to, the obligation to disclose former daily rental vehicles in advertisements and to ensure that advertised vehicle prices include all additional fees.
17. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure advertised vehicle prices include all additional fees.
18. In or around January 2010, OMVIC issued a second bulletin reminding dealers of their obligation to ensure advertised vehicle prices include all additional fees, as well as advising dealers how to appropriately advertise "as is" vehicles.
19. In the spring of 2010, OMVIC issued a Dealer Standard publication which reminded dealers to of their obligations to ensure that advertised vehicle prices include all additional fees.
20. In or around April 2010, OMVIC issued a bulletin advising that 75 dealers had recently been charged under the Act with various advertising offenses, including failure to prominently disclose a vehicle's former daily rental history and failure publish the all-inclusive prices of vehicles.



21. In or around April 2010, OMVIC issued a second bulletin. This bulletin reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as well as advising dealers how to appropriately advertise "as is" vehicles.
22. In the summer of 2010, OMVIC issued a Dealer Standard publication which reminded dealers to of their obligations to ensure that advertised vehicle prices include all additional fees.
23. In the spring of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their advertising obligations, including but not limited to, the obligation to disclose former daily rental vehicles in advertisements and to ensure that advertised vehicle prices include all additional fees.
24. In or around June 2011, OMVIC issued a bulletin reminding dealers how to appropriately advertise "as is" vehicles.
25. During an inspection on or about September 30, 2011, a representative of the Registrar reminded Cotton, on behalf of Kingston Nissan and Carone to ensure advertised vehicle prices include all additional fees.
26. On or about February 2012, OMVIC issued a bulletin reminding dealers of their obligation to ensure advertised vehicle prices include all additional fees, as well as advising dealers how to appropriately advertise "as is" vehicles.
27. In or around August 2012, OMVIC issued a bulletin reminding dealers of certain advertising obligations, including but not limited to, ensuring advertised vehicle prices include all additional fees.
28. During an inspection on or about December 19, 2012, a representative of the Registrar further reminded Kingston Nissan and Carone how to appropriately advertise "as is" and "unfit" vehicles.
29. On or about January 31, 2013, an advertisement was published by or on behalf of Carone for a 2003 Mercedes Benz C-Class. The advertisement failed to prominently indicate that the vehicle was being sold "as is", contrary to section 4 and 9 of the Code of Ethics.
30. On or about January 31, 2013, an advertisement was published by or on behalf of Carone for a 2002 Dodge Durango. The advertisement failed to prominently indicate that the vehicle was being sold "as is", contrary to section 4 and 9 of the Code of Ethics.
31. On or about February 1, 2013, an advertisement was published by or on behalf of Carone for a 2009 Jeep Patriot. The advertisement failed to prominently indicate that the vehicle was being sold "as is", contrary to section 4 and 9 of the Code of Ethics.
32. In or around April 2013, OMVIC issued a bulletin reminding dealers of their obligation to ensure advertised prices include all additional fees.



33. On or before May 16, 2013, an advertisement was published on behalf of Carone for a 2013 Toyota Corolla, Stock# PT13-61. The advertisement failed to disclose that this vehicle is a former daily rental unit, contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
34. On or before May 16, 2013, an advertisement was published on behalf of Carone for a 2012 Chrysler 200, Stock# PT13-65. The advertisement failed to disclose that this vehicle is a former daily rental unit, contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
35. On or before May 16, 2013, an advertisement was published on behalf of Carone for a 2012 Chrysler 200, Stock# PT13-64. The advertisement failed to disclose that this vehicle is a former daily rental unit, contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
36. On or before May 16, 2013, an advertisement was published on behalf of Kingston Nissan for 2012 Mitsubishi Eclipse, Stock# PT13-70. On that same date, a representative of the Registrar made inquiries about the vehicle, while posing as a member of the public. A representative of Kingston Nissan advised the representative of the Registrar that the vehicle was a former daily rental unit and the advertised vehicle price did not include an additional \$499 in fees. The advertisement did not disclose the vehicle's former rental history or an all-inclusive price, contrary to sections 36(5) and 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
37. The Dealer's advertising continues to violate Regulation 333/08 and the Code of Ethics.
38. On or about Sept. 5, 2013, a representative of the Registrar reviewed the Dealer's web based advertising. Continued violations, consistent with those set out in the Notice of Further and Other Particulars dated June 12, 2013, were found.

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

4. Prohibition:

Unregistered salesperson

3. A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

Regulation 333/08:

42. Additional information in contracts of sale and leases

7. If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,
 - i. leased on a daily basis, unless the vehicle was subsequently owned by a



- person who was not registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*,
- ii. used as a police cruiser or used to provide emergency services, or
 - iii. used as a taxi or limousine.

22. If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the Highway Traffic Act or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

36. Advertising:

5. If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,
 - (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
 - (b) used as a police cruiser or used to provide emergency services; or
 - (c) used as a taxi or limousine.

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.

It is thereby agreed that Cotton, Kingston Nissan and Carone have 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.

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, dishonourable, unprofessional or unbecoming of a registrant.

Decision of the Panel:

Having reviewed and considered the admissions of the Respondents to the allegations contained in the Notices of Complaint dated February 20, 2013, June 12, 2013, and September



6, 2013 and the Agreed Statement of Facts, the Panel of the Discipline Committee hereby concludes that Kingston Nissan, Carone and Cotton breached subsections 4, 7 and 9 of the Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Panel of the Discipline Committee also concludes that Kingston Nissan, Carone and Cotton, breached subsections 36(5), 42(7) and 42(22) of the Ontario Regulation 333/08, the *Motor Vehicle Dealers Act, 2002*.

Reasons for Decision:

Based on the Agreed Statement of Facts, the panel is satisfied the facts as they appear in the statement represent a violation of subsection 4, 7 and 9 of the Code of Ethics in that Kingston Nissan, Carone and Cotton failed to disclose in their marketing of the vehicles the "all in" price as confirmed in paragraph 36 of the Agreed Statement of Facts. Kingston Nissan, Carone and Cotton failed to prominently indicate in the advertising that vehicles were being sold "as is" as confirmed in paragraphs 29, 30 and 31. Cotton, Kingston Nissan, Carone failed to disclose on the bill of sale the vehicles' previous use as a daily rental as confirmed in paragraph 15. The three Registrants failed to disclose in their advertising the vehicles' status as former daily rentals as confirmed in paragraphs 33, 34, 35, and 36. Kingston Nissan, Carone and Cotton failed to disclose previous out of province registration on the vehicles' bill of sale as confirmed in paragraph 14 of the Agreed Statement of Facts. The panel is also satisfied that Kingston Nissan, Carone and Cotton employed individuals to trade in motor vehicles without the benefit of OMVIC registration as confirmed in paragraphs 5 and 6 of the Agreed Statement of Facts.

The Panel of the Discipline Committee received a signed Agreed Statement of Facts. As set out above, the panel also performed an oral plea inquiry. The Panel of the Discipline Committee is satisfied that the admissions contained in the Agreed Statement of Fact were voluntary, informed and unequivocal.

The panel is therefore satisfied that Kingston Nissan, Carone and Cotton violated the code of ethics.

Submissions on Penalty

The parties presented the Panel with a joint submission as to penalty (Exhibit #4), which provided as follows:

1. Kingston Nissan agrees to pay a fine in the amount of \$8,000. \$4,000 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
2. Carone agrees to pay a fine in the amount of \$8,000. \$4,000 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
3. Cotton agrees to pay a fine in the amount of \$9,000. \$4,500 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.



4. Kingston Nissan, Carone, and Cotton jointly and severally agree to pay the Registrar's costs in this matter in the amount of \$2,000, within 30 days of the date of the Discipline Committee Order.
5. Cotton is ordered to complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
6. Kingston Nissan 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 the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by Kingston Nissan. Kingston Nissan 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.
7. Carone 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 Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by Carone. Carone 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.
8. Kingston Nissan, Carone and Cotton agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Counsel for OMVIC submitted that the proposed penalty was appropriate in the circumstances, within the range of reasonable penalties and that in total the fine represented a third of the maximum under the legislation.

Penalty Decision

The Panel makes the following order on penalty:

1. Kingston Nissan is ordered to pay a fine in the amount of \$8,000. \$4,000 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
2. Carone is ordered to pay a fine in the amount of \$8,000. \$4,000 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
3. Cotton is ordered to pay a fine in the amount of \$9,000. \$4,500 is due within 30 days of the date of the Discipline Committee Order, and the remaining balance is due within 90 days of the date of the Discipline Committee Order.
4. Kingston Nissan, Carone, and Cotton jointly and severally shall pay the Registrar's costs in this matter in the amount of \$2,000, within 30 days of the date of the Discipline Committee Order.
5. Cotton is ordered 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.

6. Kingston Nissan 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 the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by Kingston Nissan. Kingston Nissan 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.
7. Carone 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 Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by Carone. Carone 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.
8. Kingston Nissan, Carone and Cotton shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons for Penalty

The panel having accepted the Agreed Statement of Facts is satisfied the penalty is appropriate to the circumstances. The panel is also satisfied that the penalty is sufficient to deter the Registrants from similar acts, while also sending an appropriate message to other registrants about their obligations with respect to advertising and disclosure of material facts in writing. It also serves to protect the public from misleading advertising. The panel considered the aggravating factors of the duration and number of code violations as well as the mitigating factors that Mr. Cotton, representing himself, Kingston Nissan and Carone took responsibility for these actions and entered into an agreement to resolve the Notices of Complaint. Mr. Cotton expressed the intention to set compliance as his goal. The panel accepts that Mr. Cotton was sincere in his statements. Having weighed all the relevant facts and submissions the panel is satisfied the penalty set out in the joint submission on penalty is reasonable to the circumstances and within the normal range for similar offences.

Ontario Motor Vehicle Industry Council
Discipline Panel

*Debra Mattina, Chair
Paul Burroughs, Vice Chair
Tom Kramer, Vice Chair*