

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

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

GLOBAL FINE IMPORTS AND RAWAD ABDEL SAMAD

Date of Hearing on Penalty: June 23, 2014

Date of Decision: July 21, 2014

Findings: Breach of Sections 4 and 9 of the Code of Ethics Ontario Regulation 332/08

Order:

1. The Dealer (collectively, Global Fine Imports and Rawad Abdel Samad) is ordered to pay a fine in the amount of \$ 6,000.00. Of that amount, \$2000.00 of this fine is due within thirty (30) days of date of the Discipline Committee Order. The remaining amount is due within ninety (90) days of the date of the Discipline Committee Order.
2. Mr. Rawad Abdel Samad is ordered to successfully complete the OMVIC certification course within 180 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to ensure its current Sales Manager successfully complete the OMVIC certification course within 180 days of the date of the Discipline Committee Order.
4. The Dealer is ordered to offer all registered salesperson the opportunity to complete the OMVIC certification course. The Dealer will pay all costs associated with this.
5. The Dealer shall ensure that all future advertising is in compliance with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons for Decision

Introduction

This matter originally proceeded before the Panel of the Discipline Committee on April 4, 2014 on the issue of whether the Dealer breached Section 4 and 9 of the Code of Ethics Ontario Regulation 332/08. The Panel concluded that the Dealer breached the Code of Ethics and

rendered its decision on April 22, 2014. On June 23, 2014, the Panel reconvened to address the issue of penalty which was contested by both parties. This is the decision of the Panel on the issue of Penalty, which must be read in conjunction with the decision of April 22, 2014.

Facts:

The facts are set out in the Panel's decision dated April 22, 2014 and will not be repeated here. The same parties were present for the penalty hearing. In addition to the evidence relied upon at the original hearing, the Panel was provided with the unaudited, Financial Statements (as at January 31, 2014) of Global Fine Imports Inc. which were entered as Exhibit 2.

Penalty Decision and Reasons

Counsel for OMVIC sought the following penalty:

1. The Dealer to pay a monetary fine of \$7,000.00, \$500.00 for each of the 14 instances of non-compliance (total of \$7,000.00);
2. The Dealer principal must complete the OMVIC certification course within 180 days;
3. The Dealer's Sales Manager must complete the OMVIC certification course within 180 days;
4. The Dealer is to offer the OMVIC certification course to all of its registered salespersons at the Dealer's expense.

OMVIC argued that in the circumstances the penalty being sought was appropriate. Counsel submitted the protection of the public is important, and as a Regulator dealing with situations where registrants have failed to comply with the regulations and the public interest is at stake, the principal means of enforcement is through the imposition of a fine. The fine imposed should not be harsh, but substantial enough to deter the Dealer and other members of the business.¹

Counsel further argued that Dealer principal showed no remorse for the non-compliance and there was no evidence presented of real efforts to ensure future compliance. The failure to comply with the advertising requirements harms not just the public but other industry registrants as it creates an unfair, and unlevel playing field. Lastly, counsel argued that the "all in pricing" rules are no longer new but have been in place for sometime, which was acknowledged by the Dealer principal. Counsel characterized Mr. Samad's attitude as "hands-off" when it came to the violations of the Code of Conduct, as he attempted to shift responsibility for the non-compliance onto the Dealer's Sales Manager.

Mr. Samad, on behalf of the Dealer, argued that no fine should be imposed as the company was a small company that simply could not afford to pay any fine. He argued that it was sufficient only for the Sales Manager to take the OMVIC certification course, but there was no need for him to do so. He was prepared to offer the OMVIC certification course to the Dealer's other employees who wish to take the course at the Dealer's expense.

In this proceeding, Mr. Samad stressed that OMVIC did not give any prior warnings in the form

¹ R. v. Cotton Felts Ltd. [1982] O.J. No. 178, 2 C.C.C. (3d) 287, Martin, Zuber and Blair J.J.A.

of emails, site visits, or direct communication, to discuss the misleading advertisements before issuing the Notice of Complaint. He argued that if OMVIC had made contact, it would have allowed the Dealer to correct the infraction. But no such opportunity was afforded in this case. In essence, he argued that he should have been given a second chance by OMVIC. He also submitted there were no consumer complaints to OMVIC arising from the 14 advertisements, and there was no evidence of harm to the consumers.

Having considered the evidence and submissions of the parties, the Panel orders as follows:

1. The Dealer (collectively, Global Fine Imports and Rawad Abdel Samad) is ordered to pay a fine in the amount of \$ 6,000.00. Of that amount, \$2000.00 of this fine is due within thirty (30) days of date of the Discipline Committee Order. The remaining amount is due within ninety (90) days of the date of the Discipline Committee Order.
2. Mr. Rawad Abdel Samad is ordered to successfully complete the OMVIC certification course within 180 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to ensure its current Sales Manager successfully complete the OMVIC certification course within 180 days of the date of the Discipline Committee Order.
4. The Dealer is ordered to offer all registered salesperson the opportunity to complete the OMVIC certification course. The Dealer will pay all costs associated with this.
5. The Dealer shall ensure that all future advertising is in compliance with the Act and Standards of Business Practice, as may be amended from time to time.

In determining the appropriate penalty in the circumstances, the Panel reached the following conclusions:

1. The Panel is satisfied that the penalty imposed is appropriate under the circumstances, as it will act as a deterrent for the Dealer and send a message to other registrants about their obligations with respect to advertising.
2. While the Panel notes that this was a first complaint made against the Dealer and that there was no evidence of any other complaints, the Panel was struck by the lack of remorse shown by the Dealer principal and his attempt to place all of the blame for the violations onto his Sales Manager. This lack of remorse and failure to accept responsibility is troubling. In the Panel's view, the "hands-off" attitude of the Dealer principal when it comes to complying with the advertising requirements does not absolve the Dealer from its obligations to advertise in a manner that is clear and comprehensible.

In considering the Dealer's submissions that no prior warnings were given by OMVIC unlike some disciplinary cases in the past, the Panel notes that those cases arose in the early days of the legislation, where registrants were still not familiar with the rules. OMVIC is certainly entitled

to exercise discretion to issue warnings before commencing disciplinary action. However, there is no requirement in the Act or Regulations or the Code of Ethics that OMVIC must issue warnings before serving a Notice of Complaint. The Panel notes that no direct warning was given to the Dealer with respect to the 14 advertisements in question, however, OMVIC did issue a number of bulletins reminding dealers of their advertising obligations, and the Dealer admitted that he was aware of the advertising disclosure rules, yet the rules were violated. The difficulty the Panel has with this line of argument is that it would allow other registrants to engage in similar activity, to wait until they are contacted by OMVIC if they are in breach, and to expect a warning in the first instance instead of disciplinary action. The Panel recognizes that issuing a warning before issuing a Notice of Complaint may be desirable and appropriate in some cases in the interests of fairness. However, the Panel would be remiss if it were to send a message to registrants that they are entitled to a warning before disciplinary action may be commenced by OMVIC. Again, the facts at bar do not present a compelling case for the Panel not to impose a monetary fine and to require the Dealer principal and the Sales Manager to take the OMVIC certification course, as it can only benefit the Dealer going forward.

Ontario Motor Vehicle Industry Council
Discipline Panel



*Wennie Lee, Chair
Tom Kramer, Vice Chair
Charles Pope, Vice Chair*