



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 -

QUALITY USED CARS WHOLESALERS LTD.

-AND-

EDUARD LETICHEVER

Date of Hearing: November 28, 2013

Date of Decision: December 5, 2013

Findings: Breach of Sections 4 and 9 of the Code of Ethics Ontario Regulation 332/08
Breach of Section 28 of the Motor Vehicle Dealers Act 2002
Section 36 of Ontario Regulation 333/08

Order:

1. The Dealer is ordered to pay a fine in the amount of \$20,000. \$5,000 of this fine is due within 30 days of date of the Discipline Committee Order and the remaining balance is due within 90 days of date of the Discipline Committee Order.
2. Letichever is ordered to pay a fine in the amount of \$5,000, due within 30 days of the date of the Discipline Committee Order.
3. Letichever is ordered to successfully complete the OMVIC certification course (the "course") by April 1, 2014.
4. The Dealer is ordered to ensure that the individual[s] responsible for preparing and/or publishing the advertisements placed on behalf of Dealer successfully complete the OMVIC certification course by April 1, 2014. The Dealer will incur all costs associated with this.
5. The Dealer 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 the Dealer. The Dealer 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.

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 Laura Halbert, and the registrants were represented by Cindy Cohen and Eduard Letichever. The Panel consisted of Keith Cooper (Chair), John Kenny (Vice-Chair), and Jeff Donnelly (Vice-Chair). Luisa Ritacca attended as Independent Legal Counsel to the Panel.

The panel marked the Notice of Complaint as Exhibit #1, the three Book of Documents were marked as Exhibit #'s 2, 3, and 4.

The panel heard opening submissions from both parties. OMVIC then called Andrea Korth as its first witness. Before completing her testimony, the Panel called a brief recess. During this break the parties began discussions with a view to settlement.

Thereafter, the Panel was provided with an Agreed Statement of Facts (Exhibit #5), which provides as follows:

Facts:

1. Quality Used Car Wholesalers Limited (the "Dealer") was first registered as a motor vehicle dealer in or around July 2003. Eduardo Letichever ("Letichever") was first registered as a dealer since September 1995. At all material times, Letichever was the officer and director of the Dealer.
2. In the winter of 2008 OMVIC issued a Dealer Standard reminding dealers of various advertising requirements, including ensuring advertisements disclose all in advertised prices and the registered name and phone number of the selling dealer.
3. In or around January 2010 OMVIC issued a bulletin reminding dealers of all in pricing requirements.
4. In or around April 2010 OMVIC issued a bulletin advising dealers that 75 dealers have been charged with advertising offenses.
5. In or around April 2010 OMVIC issued a bulletin reminding dealers of the requirements when advertising "as is"/ "unfit" vehicles.



6. In the spring of 2010 OMVIC issued a Dealer Standard reminding dealers of common errors in vehicle advertising.
7. In or around June 2010 OMVIC issued a bulletin reminding dealers of credit and lease advertising disclosure requirements.
8. In the summer of 2010 OMVIC issued a Dealer Standard reminding dealers of their advertising obligations, including but not limited to, all in pricing requirements and dealer identification requirements.
9. In or around November 2010 OMVIC issued a bulletin reminding dealers that advertisements must contain their registered business name and contact number in a clear, comprehensible and prominent manner.
10. In the spring of 2011 OMVIC issued a Dealer Standard reminding dealers of their advertising obligations, including but not limited to, all in pricing requirements, prominence requirements of pricing, dealer identification requirements and credit and lease requirements.
11. In or around June 2011 OMVIC issued a second bulletin reminding dealers of the requirements when advertising "as is"/ "unfit" vehicles.
12. In or around February 2012 OMVIC issued a third bulletin reminding dealers of the requirements when advertising "as is"/ "unfit" vehicles.
13. In or around March 2012 OMVIC issued a bulletin reminding dealers of the requirement to advertise with the full dealership name and contact number.
14. In or around July 2012 OMVIC issued a second bulletin remind dealers that advertisements which do not include the dealer's name are illegal.
15. In or around August 2012 OMVIC issued a bulletin outlining problematic trends in dealer advertising including but not limited to; not advertising all in prices.
16. In the fall of 2012 OMVIC issued a Dealer Standard advising dealers that 88 dealers and individuals were to be charged for advertising related issues. Some dealers and individuals faced charges for failing to disclose a dealership name in their ads. This publication also reminded dealers that advertised prices must be all in.
17. On or about November 12, 2012 advertisements were published on the website "Kijiji", by or on behalf of the Dealer. The advertisements did not include the appropriate credit disclosure requirements or "unfit" statements in a clear, comprehensible and prominent manner and did not prominently disclose the registered Dealer name and contact information. As such, the advertisements failed to comply with section 28 of the Act, section 36(2) of regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
18. On or about February 2, 2013 advertisements were published on the website "Kijiji", by or on behalf of the Dealer. The advertisements did not include the appropriate credit disclosure requirements or "unfit" statements in a clear, comprehensible and prominent



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- manner and did not prominently disclose the registered Dealer name and contact information. As such, the advertisements failed to comply with section 28 of the Act, section 36(2) of regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
19. On or about February 12, 2013 OMVIC received a consumer complaint regarding an advertisement that was published by or on behalf of the Dealer, which did not disclose the registered dealer name and contact number in a clear, comprehensible and prominent manner.
 20. On or about March 13, 2013, a representative of the registrar reminded the Dealer that 123drive.ca is not the dealership's registered business name. As such 123drive.ca requires registration or use of this name should be ceased in advertisements. The Dealer was also cautioned with regards to advertising appropriate credit disclosures and all in prices.
 21. On or about March 19, 2013, OMVIC issued the winter 2013 Dealer Standard advising dealers that 85 dealers and salespersons were charged for failing to disclose a dealership name in advertisements. The Dealer Standard also reminded dealers that advertising must meet the requirements outlined in the MVDA.
 22. On or about April 18, 2013 OMVIC received a consumer complaint for 123drive.ca which is not a registered dealer.
 23. In or around April 2013 OMVIC issued a bulletin reminding dealers of all in pricing requirements when advertising.
 24. On or about April 30, 2013, advertisements were published on the website "Kijiji", by or on behalf of the Dealer. The advertisements did not include the all in advertised price of the vehicle, did not disclose the appropriate credit disclosure requirements or "unfit" statements in a clear, comprehensible and prominent manner and did not prominently disclose the registered Dealer name and contact information. As such, the advertisements failed to comply with section 28 of the Act, sections 36(2) and 36(7) of regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
 25. As at October 18, 2013, the Dealer's advertising continued to violate Regulation 333/08 of the Code of Ethics, in particular:
 - a. In or around September of 2013, a representative of the Registrar viewed advertisements that were published on the website "Kijiji", by or on behalf of the Dealer. Continued violations, consistent with those set out in the Notice of Compliant, were found.
 - b. On or about October 17, 2013, a representative of the Registrar viewed advertisements that were published on the website "Kijiji", by or on behalf of the Dealer. Continued violations, consistent with those set out in the Notice of Compliant, were found.



By failing to comply with the following sections of the Act:

28. False advertising

No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in motor vehicles.

Regulation 333/08:

36. Advertising:

2. Subject to subsection (3), an advertisement that attempts to induce a trade in a motor vehicle shall include, in a clear, comprehensible and prominent manner, a registered name and the business telephone number of the motor vehicle dealer.

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.

26. It is thereby agreed that the Dealer and Letichever 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.

9. In carrying on business, a registrant shall not engage in any act or omission that is dishonourable, unprofessional or unbecoming of a registrant.

27. It is understood between the parties, that the Dealer may submit advertisements to OMVIC for pre-approval. The submissions on penalty were reached with the understanding that the Dealer and Letichever will avail themselves of this service as needed.

Decision of the Panel:

Having reviewed and considered the admission of the Respondents to the allegations contained in the Notice of Complaint dated May 9, 2013, and further and other particulars dated October 18, 2013, the Panel of the Discipline Committee hereby concludes that the Dealer and



Mr. Letichever breached Sections 4 and 9 of the Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The registrants further breached Section(s) 36(2) and 36(7) of Ontario Regulation 333/08.

Reasons for Decision:

Based on the Agreed Statement of Facts the panel is satisfied that the facts as they appear in the statement represent a violation of Sections 4 and 9 of the Code of Ethics.

Submissions on Penalty

The parties then presented the Panel with a joint submission as to penalty (Exhibit #6), which provided as follows:

1. The Dealer agrees to pay a fine in the amount of \$20,000. \$5,000 of this fine is due within 30 days of date of the Discipline Committee Order and the remaining balance is due within 90 days of date of the Discipline Committee Order.
2. Letichever agrees to pay a fine in the amount of \$5,000, due within 30 days of the date of the Discipline Committee Order.
3. Letichever is ordered to successfully complete the OMVIC certification course (the "course") by April 1, 2014.
4. The Dealer is ordered to ensure that the individual[s] responsible for preparing and/or publishing the advertisements placed on behalf of Dealer successfully complete the OMVIC certification course by April 1, 2014. The Dealer will incur all costs associated with this.
5. The Dealer agrees 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 the Dealer. The Dealer 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.

Penalty Decision

The Panel makes the following order on penalty:

1. The Dealer is ordered to pay a fine in the amount of \$20,000. \$5,000 of this fine is due within 30 days of date of the Discipline Committee Order and the remaining balance is due within 90 days of date of the Discipline Committee Order.
2. Letichever is ordered to pay a fine in the amount of \$5,000, due within 30 days of the date of the Discipline Committee Order.
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Reasons for Penalty

The Panel, having accepted the Agreed Statement of Facts, and the submissions of both parties as to the appropriateness of the penalty is satisfied that the penalty is appropriate for the breach as set out. The Panel is also satisfied that the penalty is sufficient to deter the registrant from similar acts while sending an appropriate message to other registrants about their obligations with respect to advertising. It also serves to protect the public from misleading advertising.

Ontario Motor Vehicle Industry Council
Discipline Panel

*Keith Cooper, Chair
John Kenny, Vice Chair
Jeff Donnelly, Vice Chair*