

DISCIPLINE DECISION

REVIEWING PANEL: Caroline Brett, Public Member
Joe Wade, Registrant
Paul Burroughs, 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 -)
AUTO DISTRICT INC.)
- and -)
RAHUL SHARMA)
)
)
)

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal, a Reviewing Panel has reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: June 26, 2024

Findings: The Dealer has contravened the following:
Sections 4(2) and 9(3) of the Code of Ethics, Ontario Regulation 332/08
Rahul Sharma has contravened the following:
6(2) and 9(3) of the Code of Ethics, Regulation 332/08

Order:

1. Auto District Inc. (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. Sharma 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. This shall remain in effect for a period of one year from the date of the Discipline Tribunal's order.
4. The Dealer and Sharma 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.

Reasons for Decision**Amendment:**

The Reviewing Panel were notified that the Notice of Complaint ("NoC") dated March 6, 2024, was amended to reflect that the Ontario Motor Vehicle Industry Council ("OMVIC") replaces the *Registrar, MVDA 2002* as a party to this proceeding.

Background:

1. Auto District Inc. (the "Dealer") was first registered as a motor vehicle dealer on or around April 21, 2022.
2. Rahul Sharma ("Sharma") was first registered as a motor vehicle salesperson on or around November 2, 2021. At all material times, Sharma has been the Sales Manager and the Person in Charge of the day-to-day activities of the Dealer.

OMVIC Registrant Education re: All-in Pricing:

3. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars, and guidelines, reminding dealers 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.

Prior OMVIC Communications:

4. On or about July 12, 2022, a representative of the Registrar attended the Dealer's premises to make inquiries about purchasing a vehicle, while posing as a member of the public (also known as a 'mystery shop'). The salesperson, acting on behalf of the Dealer, indicated that there was a \$10 OMVIC fee in addition to the advertised price.

5. As a result, the Registrar issued a caution letter to the Dealer on or about February 7, 2023, advising the Dealer and its staff to adhere to the all-in-price advertising requirements outlined in Section 36 of Regulation 333/08.

Dealer's Non-Compliance:

6. On or before August 8, 2023, the Dealer published an advertisement for a black 2020 Honda Civic Sedan LX, stock# PI2023247 (VIN# ***026625) with an advertised price of \$27,999 plus taxes and licensing.
7. On or about August 8, 2023, a representative of OMVIC (the "Representative") attended the Dealer's premises to make inquiries about purchasing the vehicle, while posing as a member of the public (also known as a 'mystery shop').
8. The salesperson, acting on behalf of the Dealer, advised that there were other fees in addition to the advertised price. The Representative then requested a pricing breakdown for the vehicle.
9. The salesperson provided a pricing breakdown which indicated the following fees in addition to the advertised price:
 - a. \$2,499 GAP Protection fee;
 - b. \$499 Certification fee; and
 - c. \$999 Administrative fee
10. As a result, 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, as they relate to advertising only.

Sharma's Non-Compliance:

11. Sharma 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, as they relate to advertising only.

DISPOSITIONS

12. As particularized above, the Dealer has violated the following section of the Code of Ethics, as it relates to advertising only:

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.

13. As particularized above, the Dealer and Sharma have violated the following section of the Code of Ethics, as it relates to advertising only:

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.

14. As particularized above, Sharma has violated the following section of the Code of Ethics, as it relates to advertising only:

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, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics, and Sharma has breached subsections 6(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The Reviewing Panel is reluctant to accept this Joint Submission on Penalty given the egregious nature of the differential between the advertised price and the attempted selling price.

However, in keeping with the principles in R. Anthony-Cook, 2016 SCC 43, the Reviewing Panel found the penalty to be in keeping with the “public interest” test. The panel will accept this penalty.

Additionally, given the excessive non-compliance of almost \$4,000 the Reviewing Panel is hopeful that an extensive inspection will be forthcoming.

The Reviewing Panel examined all documents presented by the parties and found them complete. The written submissions were both relevant and helpful to the Reviewing Panel.

The Reviewing Panel also agrees with the Parties’ Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. Auto District Inc. (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. Sharma 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. This shall remain in effect for a period of one year from the date of the Discipline Tribunal’s order.

4. The Dealer and Sharma 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.

Dated: July 18th, 2024

Ontario Motor Vehicle Industry Council
Discipline Tribunal

A handwritten signature in black ink, appearing to read 'Joe Wade', written over a horizontal line.

Joe Wade, *Discipline Tribunal Chair*

On behalf of
Caroline Brett, *Public Member*
Paul Burroughs, *Member*

