

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 -

STEWART VEHICLE LEASING LTD. o/a KIA OF TIMMINS

- AND -

BRUCE STEWART

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have 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: December 15, 2015

Findings: Breach of Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. 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 of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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.
4. The Dealer 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 on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. Stewart Vehicle Leasing Ltd. o/a Kia of Timmins (the "Dealer") was first registered as a motor vehicle dealer in or around November 1986. Bruce Stewart ("Stewart") was first registered as a motor vehicle salesperson in or around November 1986. At all material times, Stewart was the sole officer and director of the Dealer.

Advertising Compliance

OMVIC publications:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the changes that would take place when the Motor Vehicle Dealers Act, 2002 (the "Act") came into effect, such as the requirement to disclose a vehicle's former daily rental history in advertising.
3. The following Dealer Standard publications also reminded dealers of their advertising obligations:
 - a) Summer 2010
 - b) Spring 2011
 - c) Summer 2012
 - d) Fall 2013
4. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their advertising obligations:
 - a) April 2010
 - b) September 2012

Direct Correspondence with Dealer:

5. On or about June 29, 2015, a representative of the Registrar found several advertisements, published by or on behalf of the dealer, which failed to disclose the vehicles' previous rental history. The dealer was asked to revise its advertisements to ensure compliance.



Non-Disclosure – Advertising

6. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Kia Cadenza (VIN KNALN4D79E5146627). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
7. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Kia Sorento (VIN 5XYKTCA62EG474280). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
8. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Chrysler Town and Country Touring (VIN 2C4RC1CG4FR504188). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
9. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Chrysler Town and Country Touring (VIN 2C4RC1BGER426691). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
10. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Chevrolet Silverado (VIN 1GCVKRECFZ148538). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
11. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Buick Verano (VIN 1G4PN5SK6F4114237). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
12. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Dodge Ram 1500 (VIN 1C6RR7TTXES365591). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
13. On or before August 4, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Dodge Ram 1500 (VIN 1C6RR7TT5ES367586). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

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

Regulation 333/08

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

It is thereby agreed that the Dealer and Stewart 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, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$4,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. 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 of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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.
4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Stewart breached subsections 4 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.



3. 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 of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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.
4. The Dealer shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

