

**DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

**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 -**

**BAC AUTO BODY LIMITED**

**- and -**

**FRANCO CONGI**

**AGREED STATEMENT OF FACTS**

BAC Auto Body Limited has breached the following:

Sections 7 and 9 of the Code of Ethics, Regulation 332/08

Franco Congi has breached the following:

Sections 6 and 9 of the Code of Ethics, Regulation 332/08

***Background:***

1. Bac Auto Body Limited, the ("Dealer") was first registered as a motor vehicle dealer in around January 1983.
2. Franco Congi ("Congi") was first registered as a motor vehicle salesperson in around February 2007. Since around 2007, Congi was an officer, as well as the person in charge of the day to day activities of the Dealer.

***OMVIC publications re: material fact disclosure:***

3. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to provide

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Initial

purchasers with written disclosure of the dollar amount of a vehicle's accident damage history on the bill of sale ("disclosure requirements").

4. OMVIC further issued the following Dealer Standard publications reminding dealers of the disclosure requirements:
  - a. Spring 2009
  - b. Summer 2011
  - c. Summer 2012
  - d. Summer 2013
  - e. Issue #4 2014
  - f. Issue #4 2016
  - g. Issue #3 2017
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:
  - a. January 2010
  - b. September 2012
  - c. December 2013
6. In addition to the above referenced publications, in around December 2014 and June 2015, OMVIC hosted webinars to assist registrants in understanding their disclosure requirements. The contents of said webinars continue to be available on OMVIC's website.

***Direct correspondence with Dealer:***

7. During an inspection of the Dealer on or about June 15, 2012, a representative of the Registrar reminded Congi of the Dealer's disclosure requirements.
8. On or about October 10, 2013, OMVIC received a consumer complaint regarding a vehicle purchased with an undisclosed history of \$26,197.
9. By letter dated February 4, 2014, Congi was required by the Registrar to take further educational courses.
10. On Jun 18, 2014, Congi successfully completed the OMVIC Automotive Certification Course.

***Dealer non-compliance:***

11. During an inspection on about February 20, 2019, a representative of the Registrar found the following non-compliant trades:
  - a. On or about February 22, 2017, Congi sold a 2009 Mazda CX9 (VIN – JM3TB38AX90169999) on behalf of the Dealer. This vehicle had sustained an accident which resulted in damage in the amount of \$13,731. The Dealer failed to

  
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provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics.

- b. On or about July 9, 2017, Congi sold a 2014 Toyota Venza (VIN 4T3BKBB7EU09986) on behalf of the Dealer. This vehicle had sustained an accident or incident which resulted in damage in the amount of \$19,508. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics.
- c. On or about December 8, 2017, Congi sold a 2010 Suzuki SX4 (VIN JS2YB5A20A6300619) on behalf of the Dealer. This vehicle had sustained an accident or incident which resulted in damage in the amount of \$7,171. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics.
- d. On or about March 11, 2018, Congi sold a 2013 Ford Focus (VIN 1FADP3J25DL134186) on behalf of the Dealer. This vehicle had sustained an accident which resulted in damage in the amount of \$13,230. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics.

12. The Dealer has since provided OMVIC with confirmation that the above purchasers were made aware of their vehicle's history.

13. Congi has failed to ensure the Dealer conducts its business in compliance with the Regulations and Code of Ethics, and thus has personally contravened sections 6 and 9 of the Code of Ethics.

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

**42. Additional Information in Contracts of Sale and Leases**

(19) If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

  
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**Compliance:**

7. (1) 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.

**Professionalism:**

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.

It is thereby agreed that Congi has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

**Accountability:**

6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

(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.

**Professionalism:**

9. (1) 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.

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

**JOINT SUBMISSION ON PENALTY:**

1. The Dealer agrees to pay a total fine in the amount of \$4,000. The schedule of payments shall be as follows: the Dealer agrees to pay \$1,000 within 30 days of the date of the Discipline Committee Order. The Dealer agrees to pay the remaining \$3,000 in equal monthly instalments over the following 12 months from the date of the order. The Dealer agrees that these instalments will be paid with post-dated cheques dated the first of each month in the amount of \$250 per month. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Congi agrees to successfully complete the **MVDA Key Elements Course** no later than **April 30, 2020**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the **OMVIC Automotive Certification Course** ("Certification Course"). Current sales



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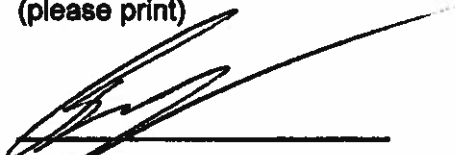
staff will be offered the Certification Course no later than **April 30, 2020**. Future sales staff will be offered the Certification Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Certification Course or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Congi agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

**By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.**

DATED AT Waterloo THIS 11 DAY OF February, 2020

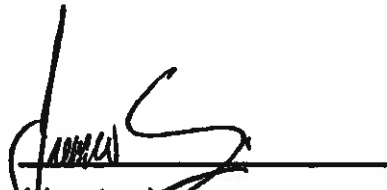
BATTISTA CONGI  
(please print)

  
(signature)

BAC Auto Body Limited

**By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.**

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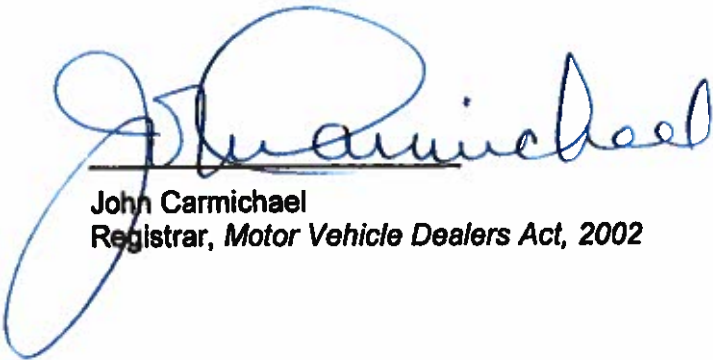
  
(signature)

Franco Congi

  
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By signature below the Registrar agrees, acknowledges, understands and consents to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

DATED AT Toronto THIS 14 DAY OF February, 2020



John Carmichael  
Registrar, *Motor Vehicle Dealers Act, 2002*

Pursuant to Rule 1.07, I accept this Agreed Statement of Facts and Penalty from the Parties Identified above:

DATED AT Ancaster THIS 19 DAY OF February, 2020



Paul Burroughs  
Chair, Discipline Committee of the  
Ontario Motor Vehicle Industry Council

  
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