

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 -

1311465 ONTARIO INC. o/a G.B. AUTOS

- AND -

GOPAL BHARDWAJ

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: March 30, 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 \$8,000 within 12 months of the date of the Discipline Committee Order. \$1,500 will be paid upfront (within 10 days of the Discipline Hearing Order) and the remaining balance will be paid within 12 months of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Bhardwaj is ordered successfully complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
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 acceptance of this offer. 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 pursuant to the Act.
4. The Dealer shall comply with the Act and Standards of Business Practice, as they 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. 1311465 Ontario Inc. o/a G.B Autos the ("Dealer") was first registered as a motor vehicle dealer in or around April 2005. Gopal Bhardwaj ("Bhardwaj") was first registered as a motor vehicle salesperson in or around August 2002. At all material times, Bhardwaj was the Officer/ Director of the Dealer.
2. On or about April 27, 2005, the Dealer executed terms and conditions of registration, attached hereto as Schedule "A". Including but not limited to the following:
 - a. As per condition 4, the Dealer agreed that it will ensure that all personnel, agents, assignees or anyone acting on behalf of the Registrant are informed concerning the terms and conditions contained in this document to the extent necessary to ensure compliance with these terms and conditions.
 - b. As per condition 6, the Dealer agreed that it would comply with OMVIC's Code of Ethics and Standards of Business Practice as may be amended from time to time.
 - c. As per condition 8, the Dealer agreed to maintain a garage register in accordance with the *Highway Traffic Act* and will maintain all books and records as required by the Act at the Registrant's registered premises. The Dealer further agreed to provide free access to books and records to any authorized representative of the Registrar.
 - d. As per condition 13, the Dealer agreed that prior to the removal of any records from the registered premise of the Registrant, to obtain a receipt including the recipients name, address, phone number, description of records taken, time of return and signature of recipient. The Dealer further agreed to make the receipt available to any representative of the Registrar, upon request.
 - e. As per condition 14, the Dealer agreed to maintain books and records, which accurately record the nature of transactions involving the purchase, sale or lease of a motor vehicle. The Dealer agreed to not be involved in the creation of books and records, which are misleading as to the nature of a transaction involving the purchase, sale or lease of a motor vehicle.
 - f. As per condition 20, the Dealer agreed that it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicle it sells.



Material facts include but are not limited to disclosure of...accidented and repaired... and any other material fact, which in the Registrar's opinion may affect one's decision to purchase or lease the vehicle. In case of damaged vehicles, the Registrant further agrees to disclose as much detail as possible with respect to the nature and severity of the damage.

- g. As per condition 21, the Dealer agreed that, he/ she will not represent any charges or fees on a bill of sale as being required by the law, unless said charges or fees are legally required.
 - h. As per condition 22, the Dealer agreed that, should any information come to light, which the Registrar deems to be a material fact concerning a vehicle the Registrant has sold, it will comply with all reasonable requests made by the Registrar to provide compensation to the purchaser.
3. During an inspection on or about March 7, 2008, a representative of the Registrar reminded the Dealer of the following (not limited to): Obligations when issuing Safety Standards Certificates and disclosure requirements on contracts.
 4. During an inspection on or about January 14, 2009, a representative of the Registrar reminded the Dealer of the following (not limited to): Disclosure requirements, contract changes under the new Act, and advertising obligations.
 5. During an inspection on or about February 25, 2010, a representative of the Registrar reminded the Dealer of the following (not limited to): Obligations and changes under the new Act, disclosure requirements and the garage register must be up to date and must comply with the *Highway Traffic Act*.
 6. During an inspection on or about February 7, 2011, a representative of the Registrar reminded the Dealer of the following: disclosure obligations; it was suggested that the Dealer is in violation of Section 20 of Terms and Conditions, and the garage register must be up to date and comply with the *Highway Traffic Act*.

Material Fact disclosure:

7. In December of 2008, OMVIC issued a Bulletin 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 disclose if a vehicle was involved in an incident and suffered more than \$3,000 in damage.
8. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to provide full disclosure of a vehicle's past-use, in writing on contracts:
 - a. Fall 2012
 - b. Winter 2013
9. Furthermore, once the Act came into effect, OMVIC issued the following Bulletins which also reminded dealers of the requirement to provide full disclosure of a vehicle's past-use, in writing on contracts:
 - a. September 2012 (2 separate publications)
 - b. December 2013



10. On or about April 15, 2013, the Dealer sold a 2005 Chrysler 300 Touring (VIN2C3JA53G55H626691). This vehicle was previously registered in Quebec and the Dealer failed to disclose this information in writing, on the Bill of Sale. This is contrary to sub section 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer subsequently contacted the purchaser to inform them of the vehicles out of province status.
11. On or about October 17, 2013, the Dealer sold a 2010 Hyundai Accent (VIN KMHCN4BC7AU476328). This vehicle was previously registered in Quebec and the Dealer failed to disclose this information in writing, on the Bill of Sale. Additionally, the Dealer failed to disclose, in writing, that this vehicle has sustained structural damage. This is contrary to sub sections 42(22) and 42(10) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The Dealer subsequently contacted the purchaser to inform them of the vehicles out of province status and that the vehicle has a history of structural damage.
12. On or about December 5, 2013, the Dealer sold a 2004 Volkswagen Jetta (VIN 3VWSK29M34M030792). This vehicle has a \$5,929 and a \$3,063 accident repair history that the Dealer did not disclose, in writing, on the bill of sale. This is contrary to sub section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer subsequently contacted the purchaser to inform them of the vehicles accident repair history.

All inclusive price advertising:

13. In December of 2008, OMVIC issued a Bulletin 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 advertise an all-inclusive vehicle price.
14. 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 advertise an all-inclusive vehicle price.
15. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to advertise an all-inclusive vehicle price:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Fall 2012
 - e. Winter 2013
 - f. Spring 2013
 - g. Summer 2013
16. Furthermore, once the Act came into effect, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price:
 - a. January 2010 (2 separate publications)
 - b. March 2010
 - c. April 2010 (2 separate publications)
 - d. December 2010
 - e. February 2012
 - f. August 2012



- g. September 2012
- h. April 2013

17. On or before February 2, 2014, an advertisement was placed by or on behalf of the Dealer for a 2010 Toyota Corolla, with a selling price of \$9,999 plus "admin fees". This is contrary to sub section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
18. On or before February 2, 2014, an advertisement was placed by or on behalf of the Dealer for a 2010 Toyota Corolla, (VIN 2T1BU4EEXAC423930), with a selling price of \$10,999, plus "admin fees". This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
19. On or before February 2, 2014, and advertisement was placed by or on behalf of the Dealer for a 2010 Ford Escape, (VIN 1FMCU9D73AKC97943), with a selling price of \$11,999, plus "admin fees". This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Record Keeping:

20. In the spring of 2009, 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 a dealer to keep a record of safety standard certificates.
21. During an inspection dated January 16, 2014, it was found that the Dealer was not maintaining copies of safety standards certificates, or a proper garage register. Additionally, it was found that the dealer was not storing records a facility approved by the Registrar. This is contrary to sub section 52 and 56 of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics.

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

Section 28:

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 (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

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.

42 (10) If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.



42 (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.

42 (22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

52 (1) A registered motor vehicle dealer shall maintain a record of every motor vehicle that comes into the dealer's possession for the purpose of a trade in the motor vehicle.

52 (2,b) A copy of any safety standards certificate under the *Highway Traffic Act* provided to the registered motor vehicle dealer for the vehicle...

56 (1) A registered motor vehicle dealer shall retain a record required under section 52,53 or 54 for at least six years...

56 (3) The registrar may approve a place...if the person in charge of the place agrees in writing to provide the registrar or a person designated in writing by the registrar with access to the place for the purposes of conducting an inspection under section 15 of the Act during normal business hours for the place.

56 (4) A registered motor vehicle dealer who keeps the records...at a place described in subclause (2) (b) (i) shall notify the registrar,

(a) within six months after the day this Regulation comes into force, of the place or places at which the dealer keeps the records, if the dealer is registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* immediately before the day section 12 of Schedule E to the *Consumer Protection Statute Law Amendment Act, 2002* comes into force;

(b) of the place or places at which the dealer will keep the records, before keeping the records at any such place, if the dealer is not a registered motor vehicle dealer as described in clause (a); and

(c) which records are kept at which place.



It is thereby agreed that the Dealer has 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.

7. 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.

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 \$8,000 within 12 months of the date of the Discipline Committee Order. \$1,500 will be paid upfront (within 10 days of the Discipline Hearing Order) and the remaining balance will be paid within 12 months of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.

2. Bhardwaj agrees to successfully complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.

3. 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 of acceptance of this offer. 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 pursuant to the Act.

4. The Dealer agrees to comply with the Act and Standards of Business Practice, as they 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 Bhardwaj breached subsections 4, 7 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 \$8,000 within 12 months of the date of the Discipline Committee Order. \$1,500 will be paid upfront (within 10 days of the Discipline Hearing Order) and the remaining balance will be paid within 12 months of the



date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.

2. Bhardwaj is ordered successfully complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
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4. The Dealer shall comply with the Act and Standards of Business Practice, as they may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair

