

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 :

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002)
- and -)
BUPONT MOTORS INC. O/A TIMMINS NISSAN)
- and -)
RYAN GRAVEL)

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), 9(2) and 9(3) of the Code of Ethics, Ontario Regulation 332/08

Ryan Gravel has contravened the following:

6(2), 9(2) and 9(3) of the Code of Ethics, Regulation 332/08

Order:

1. Bupont Motors Inc. o/a Timmins Nissan (“the Dealer”) shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.
2. Ryan Gravel (“Gravel”) shall pay a fine in the amount of **\$500** no later than ninety (90) calendar days from the date of the Discipline Tribunal’s order.
3. Gravel shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from the date of the Discipline Tribunal’s order.
4. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the “Course”). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from the date of the Discipline Tribunal’s order. The Dealer will incur all costs associated with this.
5. The Dealer and Gravel agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

Reasons for Decision

1. Bupont Motors Inc. o/a Timmins Nissan (the “Dealer”) was first registered as a motor vehicle dealer on or around January 1, 1983.
2. Ryan Gravel (“Gravel”) was first registered as a salesperson on or around March 15, 1995. At all material times, Gravel has been an Officer and 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. During an inspection on or about October 12, 2023, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices under Section 36 of O. Reg. 333/08.

Dealer's Contravention of the Code of Ethics:

5. On or before February 1, 2024, the Dealer published an advertisement for a grey 2017 Nissan Frontier, stock# P643AA (VIN# ***758240) with an advertised cash price of \$26,604 plus taxes and licensing fees.
6. On or about February 1, 2024, a representative of the Registrar (the "Representative") attended the Dealer's premises to make inquiries about the vehicle, while posing as a member of the public (also known as a 'mystery shop').
7. The Representative was advised that the selling price was \$26,995, which was \$391 more than the advertised price. The Representative was also advised that there was an additional OMVIC fee of \$10 and a \$599 Administrative/ Tire Hazard fee.
8. In total, about \$1,000 was added to the advertised price. The Representative was advised that he could receive a discount of \$500. Regardless of the provision of the discount, the total price would remain \$500 higher than the advertised price.
9. 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), 9(2) and 9(3) of the Code of Ethics.

Gravel's Contravention of the Code of Ethics

10. Gravel 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), 9(2) and 9(3) of the Code of Ethics.

It is thereby agreed that the Dealer has contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

Disclosure and Marketing

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.

It is thereby agreed that Gravel has contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

Accountability

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.

It is thereby agreed that the Dealer and Gravel have contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

Professionalism

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

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.

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), 9(2) and 9(3) of the OMVIC Code of Ethics, and Gravel has breached subsections 6(2), 9(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

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.

The Reviewing Panel found the submissions were appropriate, complete, and helpful. They enabled the Reviewing Panel to come to a quick and efficient decision. The Reviewing Panel is also hopeful that an inspection of this dealership will be forthcoming.

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. Bupont Motors Inc. o/a Timmins Nissan ("the Dealer") shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Tribunal's order.
2. Ryan Gravel ("Gravel") shall pay a fine in the amount of **\$500** no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.
3. Gravel shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from the date of the Discipline Tribunal's order.
4. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from the date of the Discipline Tribunal's order. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from the date of the Discipline Tribunal's order. The Dealer will incur all costs associated with this.

5. The Dealer and Gravel agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

Dated: July 18, 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*

