

IN THE MATTER OF THE DISCIPLINE HEARING  
Held pursuant to Regulation 332/08 of the Motor Vehicle Dealers Act 2002 of the  
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

DISCIPLINE DECISION

REGISTRAR, MVDA 2002

AND

2031113 ONTARIO LIMITED o/a YORKDALE VOLKSWAGEN

AND

JOHN LEEDER

DATE OF HEARING: MONDAY MARCH 25<sup>TH</sup> 2013

Panel:	Bruce Wilson (Chair) Wennie Lee Tom Kramer
Findings:	Breach of Section 9 of the Code of Ethics and Section 14 of the MVDA 2002
Fine:	\$6,000.00
Other:	Education Course to be taken
Date of Decision:	April 30 <sup>th</sup> 2013

This matter came for a hearing before a panel of the Discipline Committee on March 25<sup>th</sup> 2013 in Toronto. The Ontario Motor Vehicle Industry Council ("OMVIC") was represented by Ms. Samaroo, and John Leeder represented himself and 2031113 Ontario Limited o/a Yorkdale Volkswagen ("Yorkdale Volkswagen"). Mr. Leeder identified himself as the sole officer and director of the corporation. (Hereinafter collectively referred to as the 'Dealer')

The allegations against the Dealer are set out in the Notice of Complaint, dated September 17<sup>th</sup> 2012, which was marked Exhibit 1 at the hearing. The particulars of the allegations against the Dealer as set out in the Notice of Complaint are as follows:

### **Particulars**

The reasons for this notice are:

1. 2031113 Ontario Limited o/a Yorkdale Volkswagen (the Dealer) was first registered as a motor vehicle dealer in or around September 2003. John Leeder was first registered as a motor vehicle salesperson in or around February 1988. At all material times, Leeder was the sole officer and director of the Dealer.
2. On or about February 10<sup>th</sup> 2011, OMVIC received a complaint concerning the Dealer and a vehicle purchase contract, which was cancelled by a consumer. A representative of the Registrar made repeated attempts to resolve the complaint, which eventually resulted in this representative sending a written request to the Dealer for documentation to support the Dealer's liquidated damages claim. The Dealer failed to respond to this request, contrary to Section 14 of the Act, as well as Section 9 of both the Code of Ethics and the Standards of Business Practice.
3. During an inspection in August 17<sup>th</sup> 2011, a representative of the Registrar discussed with Leeder, on behalf of the Dealer, the Act and the Standards of Business Practice.
4. On or about October 21<sup>st</sup> 2011, OMVIC received a complaint concerning the Dealer and a vehicle purchase contract, which was cancelled by a consumer. A representative of the Registrar made repeated attempts to resolve the complaint, which eventually resulted in this representative sending a written request to Leeder, on behalf of the Dealer for documentation to support the Dealer's liquidated damages claim. The Dealer failed to respond to this request, contrary to Section 14 of the Act, as well as Section 9 of both the Code of Ethics and the Standards of Business Practice.
5. On behalf of the Dealer, Mr. Leeder admitted the allegations as set out in paragraphs 2 and 4 of the Notice of Complaint. The panel questioned Mr. Leeder, confirming the plea and was satisfied that the admission was voluntary. Informed and unequivocal.

## **The Decision:**

Having reviewed and considered the admission of liability and the evidence presented, this panel concludes that the Dealer breached Section 9 of the Code of Ethics and Section 14 of the *Motor Vehicle Dealers Act, 2002*, as more particularly set out at Paragraphs 2 and 4 of the Notice of Complaint.

## **Reasons for the decision:**

1. The failure by the Dealer to respond to OMVIC's repeated attempts of communication until OMVIC commenced discipline proceedings.
2. The panel felt it necessary to convey a message to all other registrants that responses to OMVIC inquiries and communications must be done in a timely fashion. It is important in the interest of public protection that licensees respond promptly to OMVIC's requests.
3. The Dealer presented no evidence that it has addressed the consumers concerns in any of these cases. The Dealer has yet to address the consumers concerns and provide a list of liquidated damages with backup invoices as requested by OMVIC in each case.
4. Section 14 of the MVDA and Section 9 of the Code of Ethics and the Standards of Business Practice, clearly sets out the duty and ethical obligations of registrants, which in this case, the Dealer admits he has failed to comply with. It is important to take note of these Sections:

### **Section 14 MVDA, 2002 :**

#### Complaints

14. (1) If the registrar receives a complaint about a registrant, the registrar may request information in relation to the complaint from any registrant. 2002, c. 30, Sched. B, s. 14 (1)

#### Request for information

(2) A request for information under subsection (1) shall indicate the nature of the complaint. 2002, c. 20, Sched. B, s. 14 (2)

#### Duty to comply with request

(3) A registrant who receives a written request for information shall provide the information as soon as practicable. 2002, c. 30, Sched. B, s. 14 (3)

### **Section 9 of the Code of Ethics:**

#### 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. O. Reg. 332/08, s. 9 (1)

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness. O. Reg. 332/08, s. 9 (2)

(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. O. Reg. 332/08, s. 9 (3)

(4) A registrant shall provide conscientious service to the registrant's customers in the course of a trade in a motor vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services. O. Reg. 332/08, s. 9 (4)

### **Penalty Submissions:**

Counsel for OMVIC sought the following penalty:

1. The Dealer and Mr. Leeder are to pay a fine in the total amount of \$6,000.00 within 90 days of notice of the order, whereby the Yorkdale Volkswagen is responsible for \$2,000.00 for each violation (total of \$4,000.00) and Mr. Leeder is personally responsible for \$1,000.00 for each violation (for a total of \$2,000.00)
2. The Dealer and Mr. Leeder are to take the OMVIC certification course; as well as all current management in a position of authority, sales, or related activities, within 90 days of notice of the order; and at the Dealer's expense.
3. The Dealer is to offer his sales staff the opportunity to take the OMVIC certification course, at the Dealer's expense, within 90 days of notice of the order.
4. The Dealer is to respond to consumer complaints in a timely fashion.
5. The Dealer is to respond to OMVIC as soon as practicable.
6. The Dealer is to agree to comply with the Act and Standards of Practice, as amended from time to time.

OMVIC argued that in the circumstances the penalty being sought was appropriate. Counsel submitted that the hallmark of self-regulation is the ability to ensure that registrants are responsive to their governing body. It is important in the interest of public protection that licensees respond promptly to OMVIC's requests. Further, counsel argues that the penalty imposed must send a message to registrants that non-responsiveness in the face of consumer complaints and requests from OMVIC will not be tolerated.

Mr. Leeder, on behalf of the Dealer, argues that the penalty sought was too

severe. While he was prepared to agree to comply with the Act and Standards of Practice and to respond in a timely fashion to both consumer complaints and requests for information from OMVIC, Mr. Leeder argues that a fine in the range of \$1,000.00 to \$2,000.00 in total was appropriate in this circumstance.

Mr. Leeder argues that the instances of non-responsiveness to OMVIC that led to this proceeding were anomalies and that he now has a different system in place to ensure that this does not happen again. Mr. Leeder submitted that he and the Dealer have a long and successful history in the business and with OMVIC. Further, he submitted that the Dealer's failure to respond to OMVIC was not intentional. Finally, Mr. Leeder argued that the financial penalty being sought by OMVIC was more in line with penalties imposed on registrants who engage in false and misleading practices. He argued that this case was not as severe and in the circumstances the fine should reflect the difference.

### **Penalty Decision:**

Having considered the parties submissions, the panel makes the following order as to penalty:

1. The Dealer and Mr. Leeder are to pay a fine in the total amount of \$6,000.00 within 90 days of notice of the order. Yorkdale Volkswagen is responsible for \$2,000.00 for each violation (total \$4,000.00) and Mr. Leeder is personally responsible for \$1,000.00 for each violation (total \$2,000.00)
2. Mr. Leeder and his managers are to take the OMVIC Certification course within 90 days of notice of the order, at the Dealer's expense.
3. Sales staff are to be given the opportunity to take the OMVIC certification course, at the Dealer's expense, within 90 days of notice of the order.
4. The Dealer is to respond to consumer complaints in a timely fashion.
5. The Dealer is to respond to OMVIC as soon as practicable, as required by Section 14(3) of the Act.
6. The Dealer agrees to comply with the Act and Standards of Practice, as amended from time to time.

### **Reasons for Penalty Order:**

In determining the appropriate penalty for the breaches of the Code of Ethics and the Standards of Business Practice as noted above, this Panel considered the following:

1. The mandate of OMVIC to regulate the practices of dealers and salespersons in accordance with the Code of Ethics and the Act. The failure by the Dealer to respond to OMVIC's repeated communications is concerning to the panel as it frustrates OMVIC's ability to function and carry out its mandate. The panel agrees with the submission of OMVIC's counsel, that the hallmark of self-regulation is the ability of the regulator to ensure that registrants are responsive to their governing body, as ultimately, in the panel's view public confidence in the system cannot be maintained if registrants are unresponsive to its regulator.
2. The panel is of the view that registrants should respond to OMVIC in a timely fashion. Registrants ought to comply with Section 14(3) of the Act and provide information to OMVIC as soon as practicable.
3. The amount of penalty imposed reflects the importance to which registrants ought to respond to communications by its self-governing body, in order to ensure public confidence in the system and protection under the Act.

Dated April 30<sup>th</sup> 2013



---

Chair – Bruce Wilson  
Vice-Chair – Wennie Lee  
Vice-Chair – Tom Kramer