

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 -

1514831 ONTARIO LIMITED o/a PATHWAY HYUNDAI

- and -

GREGORY A. STEWART

-and-

ANDREW K. McGURN

-and-

MICHAEL P. McGURN

AGREED STATEMENT OF FACTS AND PENALTY

1514831 Ontario Limited o/a Pathway Hyundai and Gregory A. Stewart and Andrew K. McGurn and Michael P. McGurn have breached the following:

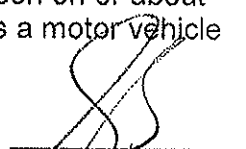
Section 7 of the Code of Ethics, Regulation 333/08

Section 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. 1514831 Ontario Limited o/a Pathway Hyundai (the "Dealer") was first registered as a motor vehicle dealer on or about August 2002. Gregory A. Stewart ("Stewart") was first registered as a motor vehicle salesperson on or about October 1983. Andrew K. McGurn ("A. McGurn") was first registered as a motor vehicle salesperson on or about August 1992. Michael P. McGurn ("M. McGurn") was first registered as a motor vehicle



Registrant's initial

salesperson on or about July 1994. At all material times Stewart, A. McGurn, and M. McGurn were officers and directors of the Dealer.

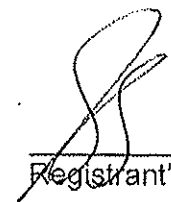
2. Dane Fellows ("Fellows") was first registered as a motor vehicle salesperson in or around June 2000. Fellows failed to renew his registration as a salesperson and was terminated in or around June 2010. On or about July 28, 2014, Fellows became registered under the Act as a motor vehicle salesperson.
3. Devon Anderson ("Anderson") was first registered as a motor vehicle salesperson on or about October 2, 2014.
4. During an inspection on or about October 8, 2008, a representative of the Registrar reminded the dealer of their obligation to provide purchasers with written disclosure of a vehicle's daily rental history.
5. During an inspection on or about July 8, 2014, a representative of the Registrar found the following concerns.

Non-Disclosure of Daily Rentals

6. On or about November 18, 2013, the Dealer purchased a 2013 Hyundai Elantra (VIN: KMHD25LE9DU041172), declared as a former daily rental. On or about January 9, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's daily rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently informed the purchaser of the vehicle's daily rental history.
7. On or about April 7, 2014, the Dealer purchased a 2014 Dodge Caravan (VIN: 2C4RDGDG2ER205022), declared as a former daily rental. On or about June 5, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's daily rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The dealer has subsequently informed the purchaser of the vehicle's daily rental history.
8. After the inspection of July 8, 2014, the Dealer self-audited its books and records. Purchasers of additional daily rental vehicles which were not disclosed in writing were informed of their vehicle histories.

Unregistered Salespersons

9. From on or about June 2010 to on or about July 2014, Fellows worked at the Dealer as a motor vehicle salesperson without the benefit of registration. As such, the Dealer retained the services of an unregistered salesperson. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.
10. From on or about April 2014 to on or about October 2014, Anderson worked at the Dealer as motor vehicle salesperson without the benefit of registration. As such, the Dealer retained the services of an unregistered salesperson. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.



Registrant's initial

11. After the inspection of July 8, 2014, the Dealer instituted a process to ensure that in the future, no other individual would work at the Dealer as a motor vehicle salesperson without the benefit of registration.

By failing to comply with section 4 of the *Motor Vehicle Dealers Act, 2002*:

Unregistered Salesperson

4(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity. 2002, c. 30, Sched. B, s. 4(3).

By failing to comply with the following regulation under the *Motor Vehicle Dealers Act, 2002*, 333/08:

Disclosure

42(7) If any of the following is true of the motor vehicle, a statement to that effect that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*,
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.

It is thereby agreed that the Dealer and Stewart and A. McGurn and M. McGurn have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart agrees to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer agrees to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of



Registrant's initial

this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay 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 *Motor Vehicle Dealers Act, 2002* 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 OTTAWA, ONT. THIS 23rd DAY OF MARCH, 2015

G. Stewart

(please print)
Gregory A. Stewart

[Signature]

(signature)
I have the authority to bind the dealership:
1514831 Ontario Limited
o/a Pathway Hyundai

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 27th DAY OF March, 2015

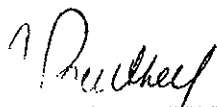
[Signature]

Mary Jane South,
Registrar, *Motor Vehicle Dealers Act, 2002*


[Signature]
Registrant's initial

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

DATED AT London THIS 31 DAY OF March, 2015



Catherine Poultney
Chair, Discipline Committee of the
Ontario Motor Vehicle Industry Council



Registrant's initial