

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 -

1380878 ONTARIO INC. o/a KIA OF NORTH BAY

- AND -

ANTONIO AQUINO

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: May 31, 2015

Findings: Breach of Sections 3, 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete the OMVIC certification course (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. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Aquino shall comply with the Act and Standards of Business Practice, as 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. 1380878 Ontario Inc o/a Kia of North Bay (the "Dealer") was first registered as a motor vehicle dealer in or around March 2000. Antonio Aquino ("Aquino") was first registered as a motor vehicle salesperson in or around March 2000. At all material times, Aquino was the sole officer, and a director of the Dealer.
2. On or about January 19, 2012, the Registrar issued a Notice of Complaint ("Notice") against Aquino and the Dealer.
3. On or about April 20, 2012, the Discipline Committee issued a Discipline Decision and Order, pursuant to a negotiated resolution of the above mentioned Notice. As per condition 2 of the Order, Aquino agreed to complete the OMVIC certification course within 90 days of the date of the Order. As per condition 7 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.
4. Between in or around January 2014 and in or around March 2014, the Dealer sold extended warranty products and failed to remit the proceeds from the sale of these products to the warranty provider within seven days of the date of sale. This is contrary to sub-section 47(7) of Regulation 333/08, as well as sections 3 and 9 of the Code of Ethics.
5. On or before April 30, 2014, an advertisement was published by or on behalf of the Dealer for a 2012 Ford F-150, Stock #14-700P. This vehicle is a former daily rental unit and the advertisement failed to disclose this information, contrary to sub-section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Moreover, on or about May 5, 2014, the Dealer sold this vehicle for \$504 above the advertised price. As such, the advertisement did not promote an all-inclusive price, contrary to sub-section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since refunded the purchaser the additional charges.
6. On or before April 30, 2014, an advertisement was published by or on behalf of the Dealer for a 2012 Kia Forte, Stock #13-394A. On or about April 30, 2014, the Dealer sold this vehicle for \$504 above the advertised price. As such, the advertisement did not promote an all-inclusive price, contrary to sub-section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since refunded the purchaser the additional charges.



7. On or before April 30, 2014, an advertisement was published by or on behalf of the Dealer for a 2015 Kia Sorento, Stock #15-039. On or about April 30, 2014, the Dealer sold this vehicle for \$910 above the advertised price. As such, the advertisement did not promote an all-inclusive price, contrary to sub-section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since refunded the purchaser the additional charges.
8. The Dealer offered to ensure the General Manager of the Dealer complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.

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

Regulation 333/08:

36. Advertising:

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.

47. Sale of Extended Warranties:

(7) If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall,

(c) within seven days after the parties enter into the contract for the warranty, provide the seller of the warranty with,

- (i) all documents detailing the contract that the dealer has in its possession,
- (ii) all payments that the dealer has received from the purchaser, and
- (iii) a statement that accurately describes the condition of the motor vehicle and the distance the motor vehicle has been driven, if the dealer has such a statement in its possession.



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

3. A registrant shall be financially responsible in carrying on business.
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.
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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer agrees to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete the OMVIC certification course (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. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Aquino agree to comply with the Act and Standards of Business Practice, as 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 Aquino breached subsections 3, 4 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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete the OMVIC certification course (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. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Aquino shall comply with the Act and Standards of Business Practice, as may be amended from time to time.



Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair

