

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 -

BENTON FRY FORD SALES LTD.

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: January 25, 2018

Findings: Breach of Section 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$1,000.00 no later than April 20, 2018.
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than April 20, 2018. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to 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. Benton Fry Ford Sales Ltd (the "Dealer") was first registered as a motor vehicle dealer in or around January 1984. Benton Fry ("Fry") was first registered as a motor vehicle salesperson in or around January 1983. At all material times Fry was the Officer and Person in Charge at the Dealer.

OMVIC Publications:

2. In or around December 2008, OMVIC issued a bulletin advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices ("all-in pricing") in advertisements.
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure and all-in pricing advertising.
 - a. Spring 2010 (all-in pricing)
 - b. Summer 2010 (all-in pricing)
 - c. Spring 2011 (all-in pricing)
 - d. Spring 2013 (all-in pricing)
 - e. Fall 2013 (all-in pricing)
 - f. Winter 2014 (all-in pricing)
 - g. Spring 2014 (all-in pricing)
 - h. Issue #3 2014 (all-in pricing)
 - i. Issue #4 2014 (all-in pricing)
 - j. Issue #3 2015 (all-in pricing)
 - k. Issue #1 2016 (all-in pricing)
 - l. Issue #2 2016 (all-in pricing)
 - m. Issue #3 2016 (all-in pricing)
 - n. Issue #4 2016 (all-in pricing)
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of requirements to advertise all-in prices.
 - a. January 2010 (2 publications)
 - b. April 2010
 - c. February 2012
 - d. August 2012
 - e. April 2013
 - f. June 2014
 - g. April 2015

Dealer Inspection History:

5. During an inspection on or about March 5, 2012, a representative of the Registrar discussed with Fry, on behalf of the dealer, advertising regulations.
6. During an inspection on or about April 20, 2017, a representative of the Registrar discovered the following non-compliant issues:

Advertising

- a. On or before March 15, 2017 an advertisement was placed by or on behalf of the Dealer for a 2017 Ford Escape, (VIN 1FMCU0GD0HUC82697) with a selling price of \$25,398.00. On or about March 23, 2017 the Dealer sold this vehicle for \$26,558.00 and charged \$1280.76 in additional fees. As such, the advertisement did not promote an all-inclusive price. This is contrary to sections 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.

By failing to comply with the following sections of the Motor Vehicle Dealers Act, 2002:
Regulation 333/08

36. Advertising:

- (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
 - (b) 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.

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.
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 \$1,000.00 no later than April 20, 2018.
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than April 20, 2018. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees 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 breached section 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:

4. The Dealer is ordered to pay a fine in the amount of \$1,000.00 no later than April 20, 2018.
5. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than April 20, 2018. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
6. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair