

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1680920 ONTARIO INC o/a REXDALE HYUNDAI

- AND -

NAVDEEP BHATIA

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: September 9, 2015

Findings: Breach of Sections 4, 5, 7 and 9 of the Code of Ethics

Order:

1. The Dealer shall pay a fine in the amount of \$16,000.00 within 90 days of the date of the Discipline Committee Order.
2. Bhatia is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer 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. 1680920 Ontario Inc. o/a Rexdale Hyundai (the "Dealer") was first registered as a motor vehicle dealer in or around January 2010. ("Bhatia") was first registered as a motor vehicle salesperson in or around February 1985. At all material times, Bhatia was the sole officer and director of the Dealer.
2. On or about May 11, 2010, Bhatia executed registration terms and conditions on behalf of the Dealer, attached hereto as Schedule A. As per condition 6, the Dealer agreed to comply with the Regulations, Code of Ethics, and Standards of Business Practice as may be amended from time to time. As per condition 22, the Dealer agreed it is under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles they sell.

OMVIC publications:

3. In the Winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, such as the requirement to provide written disclosure, including the vehicle's history and condition, such accident repair histories, previous daily rental histories, and out of province registrations ("disclosure"). In addition to this, the upcoming advertising regulations were reviewed, including the requirement to disclose former daily rental histories and the requirement to promote an all-inclusive vehicle price ("advertising").
4. The following Dealer Standard publications also reminded dealers of their disclosure and/or advertising obligations:
 - Summer 2011
 - Summer 2012
 - Winter 2013
 - Fall 2013
5. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their disclosure and/or advertising obligations:
 - January 2010 (2 advertising, 1 disclosure)
 - April 2010 (2 advertising)
 - June 2010 (advertising)
 - June 2011 (advertising)



- February 2012 (advertising)
- August 2012 (advertising)
- September 2012 (disclosure)
- December 2013 (disclosure)
- April 2014 (advertising)
- June 2014 (advertising)

Direct Correspondence with Dealer: inspections and letter

6. By email dated August 20th, 2011, the Dealer was reminded to include the cash price of vehicles in the body of the advertisement.
7. By email dated December 19th, 2011, the Dealer was reminded that former rental units must be disclosed in a clear, comprehensible and prominent manner, in the body of the advertisement.
8. During an inspection on or about May 11th, 2010, a representative of the Registrar reviewed the new dealer report, reviewed terms and conditions with Bhatia as well the Motor Vehicle Dealers Act 2002 and confirmed the Dealer was up to date with the new legislation.
9. During an inspection on or about March 12th, 2015, the following examples of non-compliance were found:

ADVERTISING

All In Pricing:

10. On or before January 28, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Hyundai Elantra, (Stock #0P754) with a selling price of \$15,995. On or about January 28, 2015 the Dealer sold this vehicle, and charged an additional \$1,243.06. As such, the advertisement did not promote an all-inclusive price, 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 consumer the amount charged over the advertised price.
11. On or before January 31, 2015, an advertisement was placed by or on behalf of the Dealer for a 2011 Hyundai Sante Fe, (Stock #0P784) with a selling price of \$12,995. On or about January 31, 2015 the Dealer sold this vehicle, and charged an additional \$508.00. As such, the advertisement did not promote an all-inclusive price, 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 consumer the amount charged over the advertised price.
12. On or before January 24, 2015, an advertisement was placed by or on behalf of the Dealer for a 2010 Hyundai Elantra, (Stock #0P675) with a selling price of \$11,499. On or about January 24, 2015 the Dealer sold this vehicle, and charged an additional \$235.81. As such, the advertisement did not promote an all-inclusive price, 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 consumer the amount charged over the advertised price.



Non-disclosure:

13. Between on or before September 10, 2014 and between on or before January 19, 2015, advertisements placed by or on behalf of the Dealer failed to include the previous daily rental history of the vehicles. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 & 9 of the Code of Ethics.

DISCLOSURE:**Non-disclosure on RBOS:**

14. On or about January 31, 2015, the Dealer wholesaled a 2006 Mazda 6 (VIN 1YVFP80C165M47862) without providing the purchaser with written disclosure of the vehicle's history, consisting of two accident claims in the amount of \$6,940.43 and \$1,329.90. This is contrary to sections 5, 7 and 9 of the Code of Ethics.

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. O. Reg. 333/08, s. 36 (7).

42. Non-Disclosure

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

- a) 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*.

It is thereby agreed that the Dealer and Bhatia have 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.
- 5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure that the following information is disclosed in the contract



16. If the total costs of repairs to fix the damage caused to the vehicle by an incident exceed \$3,000, a statement to that effect and if the dealer knew the total costs, a statement of the total costs.

17. If the manufacturer's warranty on the vehicle was cancelled, a statement to that effect.

18. If the vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect

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 \$16,000.00 within 90 days of the date of the Discipline Committee Order.
2. Bhatia agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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 or who are otherwise required to do so pursuant to the Act.
4. 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 and Bhatia breached subsections 4, 5, 7 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 shall pay a fine in the amount of \$16,000.00 within 90 days of the date of the Discipline Committee Order.
2. Bhatia is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the



date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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 or who are otherwise required to do so pursuant to the Act.

4. The Dealer 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

