

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 -

2139842 ONTARIO INC. o/a AUTODEALS

- AND -

NEELAM BHARDWAJ

- AND -

RAVINDER BHARDWAJ

Date of Hearing: June 9, 2023

Date of Decision: July 24, 2023

Findings: Against the Dealer: Breach of Sections 7 and 9 of the Code of
Ethics
Against the Registrants: Breach of Sections 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$3,000. \$1,000 will be paid no later than **July 31, 2023**. The remaining balance (\$2,000) will be paid no later than **December 31, 2023**.
2. N. Bhardwaj is ordered to successfully complete the MVDA Key Elements course no later than **July 31, 2023**.
3. R. Bhardwaj is ordered to successfully complete the MVDA Key Elements course no later than **October 31, 2023**.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **July 31, 2023**. Future sales staff will be offered the

Course within 90 days of being 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.

5. The Dealer, N. Bhardwaj, and R. Bhardwaj agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Introduction

This hearing was held virtually via video conference. The Registrants, Neelam Bhardwaj and Ravinder Bhardwaj, were present and unrepresented by counsel. The Registrants' daughter, Archana Bhardwaj, was also present and assisted her parents throughout the hearing. Mr. Zach Kowalsky was present as OMVIC's counsel and Ms. Andrea Korth attended as a representative of the Registrar. Independent Legal Counsel (ILC) to the panel was Ms. Karen Bernofsky.

Prior to the hearing the parties reached consensus on an Agreed Statement of Facts (ASF) as well as a Joint Submission on Penalty (JSOP).

The Notice of Complaint (NOC) was submitted and marked as Exhibit 1. OMVIC advised that it was withdrawing the allegations set out in Paragraph 7 a, b, c, d, and f. The ASF was marked as Exhibit 2. An amended version of the JSOP was marked as Exhibit 3. The JSOP was amended by the parties in the course of the hearing.

The hearing began with the merits phase. The Panel conducted a plea inquiry and was satisfied that all admissions made by the respondents including the evidence contained in the ASF was voluntary, informed, and unequivocal. The Panel was also satisfied that the ASF contained sufficient evidence and particulars to substantiate all of the alleged breaches of O. Reg. 332/08 under the *Motor Vehicle Dealers Act*, 2002, S.O. 2002, c. 30, Sched. B – the OMVIC Code of Ethics – which remained in the NOC as amended.

The Panel also accepted the amended JSOP and made an order consistent with its terms before the conclusion of the hearing.

Notice of Complaint

The amended NOC, marked as Exhibit 1, provided as follows:

Background:

1. 2139842 Ontario Inc o/a Autodeals (the "Dealer") was first registered as a motor vehicle dealer in or around January 2008.
2. Neelam Bhardwaj ("N. Bhardwaj") was first registered as a motor vehicle salesperson in or around October 2000. At all material times, N. Bhardwaj was the sole Officer of the Dealer.
3. Ravinder Bhardwaj ("R. Bhardwaj") was first registered as a motor vehicle salesperson in or around October 2000. At all material times, R. Bhardwaj was the General Manager, as well as the person in charge of the day to day activities of the Dealer.

OMVIC publications re: material fact disclosure:

4. Since winter of 2008, OMVIC has issued the numerous publications and webinars reminding dealers of their disclosure obligations, including but not limited to, their obligation to disclose in writing on the bill of sale a vehicle's accident repair history. The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC's website.

Direct correspondence with Dealer:

5. During an inspection of the Dealer on about November 29, 2011, a representative of the Registrar reviewed with both N. Bhardwaj and R. Bhardwaj the Dealer's disclosure requirements, as per section 42 of Ontario Regulation 333/08.

6. During an inspection of the Dealer on about March 29, 2016, a representative of the Registrar reviewed with R. Bhardwaj the Dealer's disclosure requirements, as per section 42 of Ontario Regulation 333/08.

Dealer non-compliance:

7. During an inspection of the Dealer which commenced on or about December 10, 2021 and was completed on or about on or about December 22, 2021, the following noncompliant vehicle trades were found:

e. On or about November 6, 2020, the Dealer purchased a 2011 Hyundai Elantra (VIN KMHDB8AE1BU123530), disclosed as having a \$5,855 accident damage history and having been declared a total loss by an insurer. On or about May 25, 2021, R. Bhardwaj sold this vehicle on behalf of the Dealer to a consumer but failed to disclose that it had been declared a total loss by the insurer. This is failed to disclose that it had been declared a total loss by the insurer. This is contrary to sections 42(21) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

g. On or about January 27, 2021, R. Bhardwaj sold a 2015 Mitsubishi (VIN JA32U2FU0FU601153) on behalf of the Dealer to a consumer. At the time of sale, the vehicle had an accident damage history in the amount of \$12,959 and had been declared a total loss by an insurer. The Dealer failed to disclose that the vehicle had been declared a total loss by an insurer. This is contrary to sections 42(21), and 42(25) of On Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

h. On or about June 8, 2021, the Dealer purchased a 2015 Honda Civic (VIN 2HGFB2F77FH047732) declared as having \$10,232 in accident damage and having been declared a total loss by an insurer. On or about October 20, 2021, R. Bhardwaj sold this vehicle on behalf of the Dealer to a consumer but failed to disclose that it had been declared a total loss by the insurer. This is contrary to sections 42(21) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

N. Bhardwaj contravention of the Code of Ethics:

8. N. Bhardwaj failed to ensure that the Dealer conducted its business in compliance with the Regulations and Code of Ethics, and therefore personally contravened sections 6 and 9 of the Code of Ethics.

R. Bhardwaj contravention of the Code of Ethics:

9. R. Bhardwaj failed to ensure that the Dealer conducted its business in compliance with the Regulations and Code of Ethics, and therefore personally contravened sections 6 and 9 of the Code of Ethics.

Agreed Statement of Facts

The ASF, marked as Exhibit 2, provided as follows:

Background

1. 2139842 Ontario Inc o/a Autodeals (the "Dealer") was first registered as a motor vehicle dealer in or around January 2008.
2. Neelam Bhardwaj ("N. Bhardwaj") was first registered as a motor vehicle salesperson in or around October 2000. At all material times, N. Bhardwaj was the sole Officer of the Dealer.
3. Ravinder Bhardwaj ("R. Bhardwaj") was first registered as a motor vehicle salesperson in or around October 2000. At all material times, R. Bhardwaj was the General Manager, as well as the person in charge of the day-to-day activities of the Dealer.

OMVIC publications re: material fact disclosure:

4. Since the winter of 2008, OMVIC has issued the numerous publications and webinars reminding dealers of their disclosure obligations, including but not limited to, their obligation to disclose in writing on the bill of sale a vehicle's accident repair history. The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC's website.

Direct correspondence with Dealer:

5. During an inspection of the Dealer on about November 29, 2011, a representative of the Registrar reviewed with both N. Bhardwaj and R. Bhardwaj the Dealer's disclosure requirements, as per section 42 of Ontario Regulation 333/08.
6. During an inspection of the Dealer on about March 29, 2016, a representative of the Registrar reviewed with R. Bhardwaj the Dealer's disclosure requirements, as per section 42 of Ontario Regulation 333/08.

Dealer non-compliance:

7. During an inspection of the Dealer which commenced on or about December 10, 2021, and was completed on or about on or about December 22, 2021, the following non-compliant vehicle trades were found:
 - a. On or about November 6, 2020, the Dealer purchased a 2011 Hyundai Elantra (VIN KMHDB8AE1BU [REDACTED]), disclosed as having a \$5,855 accident damage history and having been declared a total loss by an insurer. On or about May 25, 2021, R. Bhardwaj sold this vehicle on behalf of the Dealer to a consumer but failed to disclose that it had been declared a total loss by the insurer. This is contrary to sections 42(21) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The vehicle's accident damage amount was disclosed to the purchaser, in writing, on the bill of sale. The Dealer has unsuccessfully attempted to reach out to the

purchaser of this vehicle to advise them their vehicle was declared a total loss by the insurer. OMVIC was also unsuccessful in its attempts to reach out to the purchaser.

- b. On or about January 27, 2021, R. Bhardwaj sold a 2015 Mitsubishi (VIN JA32U2FU0FU [REDACTED]) on behalf of the Dealer to a consumer. At the time of sale, the vehicle had an accident damage history in the amount of \$12,959 and had been declared a total loss by an insurer. The Dealer failed to disclose that the vehicle had been declared a total loss by an insurer. This is contrary to sections 42(21), and 42(25) of On Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The vehicle's accident damage amount was disclosed to the purchaser, in writing, on the bill of sale. The Dealer has since provided confirmation from the purchaser that they are aware their vehicle has been declared a total loss by the insurer.
 - c. On or about June 8, 2021, the Dealer purchased a 2015 Honda Civic (VIN 2HGFB2F77FH [REDACTED]) declared as having \$10,232 in accident damage and having been declared a total loss by an insurer. On or about October 20, 2021, R. Bhardwaj sold this vehicle on behalf of the Dealer to a consumer but failed to disclose that it had been declared a total loss by the insurer. This is contrary to sections 42(21) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The vehicle's accident damage amount was disclosed to the purchaser, in writing, on the bill of sale. The vehicle's accident damage amount was disclosed to the purchaser, in writing, on the bill of sale. The Dealer has unsuccessfully attempted to reach out to the purchaser of this vehicle to advise them their vehicle was declared a total loss by the insurer. OMVIC was also unsuccessful in its attempts to reach out to the purchaser.
8. The Dealer has since advised it has implemented procedures, including providing each purchaser with a vehicle history report and reviewing with sales staff the disclosure requirements pursuant to section 42 of Ontario Regulation 333/08.

N. Bhardwaj contravention of the Code of Ethics:

- 9. N. Bhardwaj failed to ensure that the Dealer conducted its business in compliance with the Regulations and Code of Ethics, and therefore personally contravened sections 6 and 9 of the Code of Ethics.

R. Bhardwaj contravention of the Code of Ethics:

- 10. R. Bhardwaj failed to ensure that the Dealer conducted its business in compliance with the Regulations and Code of Ethics, and therefore personally contravened sections 6 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:

42. Additional information in contracts of sale and leases:

(21) If the motor 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

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

7. (1) 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.

It is thereby agreed that N. Bhardwaj and R. Bhardwaj breached the following section of the Code of Ethics, as set out in Regulation 332/08:

6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

It is thereby agreed that the Dealer, N. Bhardwaj, and R. Bhardwaj have breached the following section of the Code of Ethics, as set out in Regulation 332/08:

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.

Joint Submission on Penalty

The amended JSOP, marked as Exhibit 3, provided as follows:

1. The Dealer agrees to pay a fine in the amount of \$3,000. \$1,000 will be paid no later than July 31, 2023. The remaining balance (\$2,000) will be paid no later than December 31, 2023.
2. N. Bhardwaj agrees to successfully complete the MVDA Key Elements course no later than July 31, 2023.
3. R. Bhardwaj agrees to successfully complete the MVDA Key Elements course no later than ~~July~~ October 31, 2023.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than July 31, 2023. Future sales staff will be offered the Course within 90 days of being 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.
5. The Dealer, N. Bhardwaj, and R. Bhardwaj agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons for Decision

Breaches of the Code

The Panel was satisfied that the ASF substantiated that the Dealer Registrant breached s. 7(1) and s. 9(1) of the Code of Ethics and the Individual Registrants breached s. 6(2) and 9(1) of the Code of Ethics.

As detailed in the ASF, on three occasions the Registrants failed to disclose to buyers, in writing, that the specified vehicles were previously declared a total loss by their insurers. Failure to disclose this information in writing is contrary to s. 42 of the *Motor Vehicle Dealers Act, 2002: Regulation 333/08*.

Penalty

As noted in the introduction of these reasons, the Panel accepted the amended JSOP and made an order consistent with its terms before the conclusion of the hearing.

The Panel agreed with the parties that the JSOP met the objectives of specific and general deterrence, potential rehabilitation, and public protection.

The Panel also accepted that there were several mitigating factors present. First, the Registrants were cooperative and worked with OMVIC to resolve the matter, as demonstrated in the ASF and amended JSOP. Second, although the Registrants did not disclose the total loss declarations, they did include accurate dollar damage disclosures in writing on the relevant Bills of Sale. Third, the Panel accepted the submission that the Dealer in this matter is quite small and the terms of the amended JSOP were accordingly in line with other matters that featured similar facts. The Panel also understands that the individual Registrants are nearing retirement and have never had any other alleged breaches of the Code in over 15 years of doing business.

With respect to the size of the Dealer, the Panel notes that the Respondents confirmed that the Dealer is small, selling one to two vehicles per month. The Panel understands that financial statements had been provided to the Registrar to substantiate this representation.

A joint submission on penalty must not be rejected unless it is so unhinged from the circumstances of the offence and offenders that its acceptance would lead a reasonable and informed person, aware of all the circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. A joint submission must be treated as an all or nothing "total package" considering mitigating and aggravating factors while also being mindful of the range of penalties found in other similar matters.

The Panel is satisfied that the amended JSOP meets the objectives of penalty. The fine imposed is significant relative to the size of the business. The resulting order sends a message to the industry that even an unintentional breach can trigger a disciplinary process resulting in a fine that is consequential to the Dealer's financial status. There is a component of remediation in that the Registrants shall successfully complete the MVDA Key Elements course. The course serves a dual purpose of protecting the consumer by refreshing the Registrants' knowledge and also reminding the Registrants of their obligations under the legislation and the Code of Ethics.

In its totality, the amended JSOP is a reasonable and appropriate outcome given the facts of this matter. The Panel thanks the parties and counsel for their helpful materials and submissions.

Ontario Motor Vehicle Industry Council
Discipline Committee

A handwritten signature in blue ink, reading "Deb Mattina", is written over a horizontal line.

Deb Mattina, Chair
Jon Lemaire, Vice Chair
Chris Pinelli Vice Chair