

DISCIPLINE DECISION

REVIEWING PANEL: Aviva Harari, Public Member
Joe Wade, Registrant
Paul Burroughs, Registrant

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-

JANEX AUTO SALES LTD

-AND-

SAVCHO ZAHARIEV

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing Panel has 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: April 19, 2024

Findings: Janex Auto Sales Ltd has breached the following:

Sections 4, 7, and 9 of the Code of Ethics, Regulation 332/08

Savcho Zahariev has breached the following:

Sections 6 and 9 of the Code of Ethics, Regulation 332/08

Order:

1. Janex Auto Sales (the "Dealer") shall pay a total fine in the amount of **\$14,000**, with \$5,000 being paid no later than **90 calendar days** from the date of the Discipline Committee's order and the remaining \$9,000 to be paid no later than **180 calendar days** from the date of the Discipline Committee's order.

2. Zahariev shall pay a fine in the amount of \$2,500 no later than **90 calendar days** from the date of the Discipline Committee's order.
3. Zahariev shall successfully complete the MVDA Key Elements course no later than **90 calendar days** from the date of the Discipline Committee's order.
4. The Dealer shall offer all current and future sales staff the opportunity to complete the OMVIC Certification Course (the "Course") and to fund the Course on their behalf. All current sales staff and any future sales staff (if applicable) will be offered the Course no later than **90 calendar days** from the date of the Discipline Committee's order.
5. The Dealer and Zahariev shall comply with the Act, its Regulations and the Code of Ethics therein, and Standards of Business Practice, as may be amended from time to time.

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.

Background:

1. Janex Auto Sales Ltd. (the "Dealer") has been registered as a motor vehicle dealer under the Act since on or about October 11, 2017. The Dealer operates as general dealer, in the used motor vehicles subclass.
2. Savcho Zahariev ("Zahariev") has been the sole director and person in charge of the Dealer's day-to-day activities, at all material times.
3. Zahariev is currently registered as a motor vehicle salesperson for the Dealer under the Act. Between approximately July 21, 1997, and November 5, 2017, he was registered as a motor vehicle dealer, during which time he operated as a sole proprietorship under the business name "Janex Auto Sales" (the "Sole Proprietorship"). Zahariev's registration as the Sole Proprietorship was terminated after Zahariev successfully applied for the Dealer's current registration, and he was registered to the Dealer as a salesperson.
4. On or about October 6, 2017, Zahariev executed conditions of registration on behalf of the Dealer.
5. Per condition 1, the Dealer agreed to comply with all requirements of the Act, Ontario Regulation 333/08 (the "Regulation"), the Code of Ethics and the OMVIC Standards of Business Practice.

6. Per condition 17, Dealer agreed that all trades in motor vehicles will be completed in accordance with section 30 of the Act and pursuant to sections 39, 40, 41, 42, and 43 of the Regulation, where applicable.
7. Per condition 18, the Dealer agreed to provided disclosure of all material facts about the vehicles it sells, in writing on the bill of sale.

OMVIC PUBLICATIONS:

All in pricing:

8. Since the Act was proclaimed, OMVIC has issued publications and webinars reminding dealers of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule A. Educational materials continue to be available on OMVIC's website.

OOP disclosure:

9. Since the Act was proclaimed, OMVIC has issued publications reminding dealers of their obligation to disclose a vehicle's previous out of province registration ("OOP disclosure"). Educational materials continue to be available on OMVIC's website.

Direct correspondence with Dealer:

10. During an inspection of the Sole Proprietorship's books and records, on or about September 18, 2013, the inspector reminded Zahariev about his obligations regarding the following:
 - a. Third-party warranty payment obligations
 - b. All in pricing
 - c. OOP disclosure
11. During another inspection of the Sole Proprietorship's books and records, on or about July 5, 2014, the inspector again reminded Zahariev about his obligations regarding the following:
 - a. Third party warranty payment obligations
 - b. OOP disclosure
12. During another inspection of the Sole Proprietorship's books and records, on or about February 6, 2017, the inspector again reminded Zahariev about his obligations regarding the following:
 - a. Third party warranty payment obligations
 - b. All in pricing
 - c. OOP disclosure

13. By letter dated March 27, 2017, the Registrar cautioned Zahariev about his failure to comply with his warranty payment obligations.

1st Notice of Complaint

14. On or about January 21, 2014, the Registrar issued a Notice of Complaint against Zahariev as the Sole Proprietorship for reasons that included Zahariev's failure to remit the proceeds from the sale of various extended third-party warranties to their respective warranty providers within seven days of the date of sale.

15. On or about April 23, 2014, the Discipline Committee issued an Order pursuant to a negotiated resolution between the parties, attached hereto as Schedule "B". Among other things, Zahariev was ordered to:

- a. Complete the Automotive Certification course ("Course"); and
- b. Comply with the Act and Standards of Business Practice

16. In or around July 2014, Zahariev successfully completed the Course. The following was included in the Course materials:

- a. Third party warranty payment obligations
- b. All in pricing
- c. OOP disclosure

2nd Notice of Complaint

17. On or about February 14, 2020, the Registrar issued a Notice of Complaint against Zahariev and the Dealer for reasons that included the Dealer's failure to remit warranty payments, contrary to s. 47(7) of the Regulation, as well as s. 9 of the Code of Ethics.

18. On or about September 29, 2020, the Discipline Committee issued an Order pursuant to a negotiated resolution between the parties, attached hereto as Schedule "C". Among other things, Zahariev was ordered to:

- a. complete the MVDA Key Elements course; and
- b. Comply with the Act and Standards of Business Practice.

19. On or about November 25, 2020, Zahariev successfully completed the MVDA Key Elements course. Included in this course's materials are the following:

- a. All in pricing
- b. OOP disclosure

DEALER'S CURRENT NON-COMPLIANCE

20. During an inspection of the Dealer's books and records on or about May 17, 2022, the inspector discovered the following non-compliance issues:

All-in pricing violations

21. On or about May 6, 2022, the Dealer sold a 2014 Dodge Grand Caravan (VIN 2C4RDGBG1ER287635) to a consumer for \$16,487. This was \$499 above the advertised all-in price of \$15,988, and contravened s.36(7) of the Regulation, as well as s.4 and s.9 of the Code of Ethics. The Dealer has since refunded the purchaser the amount they were overcharged for their vehicle.

Failure to Disclose Out of Province Registration

22. On or about May 6, 2022, the Dealer sold a 2014 Dodge Grand Caravan (VIN 2C4RDGBG1ER287635). The vehicle was previously registered in the province of Quebec. The Dealer did not disclose the previous registration in another jurisdiction as required by s.42(22) of the Regulation, as well as s.7 and s.9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle's out of province history at the time of purchase.

23. On or about May 9, 2022, the Dealer sold a 2021 Hyundai Elantra (VIN KMHLM4AG5MU109505). The vehicle was previously registered in the province of Quebec. The Dealer did not disclose the previous registration in another jurisdiction as required by s.42(22) of the Regulation, as well as s.7 and s.9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that a vehicle history report was provided at the time of purchase.

24. A consumer complaint made to the Registrar on June 6, 2022, revealed that on or about February 12, 2022, the Dealer sold a 2012 Acura RDX (VIN 5J8TB1H58CA800428). The vehicle was previously registered in the province of Quebec. The Dealer did not disclose the previous registration in another jurisdiction as required by s.42(22) of the Regulation, as well as s.7 and s.9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that a vehicle history report was provided at the time of purchase.

Warranty non-submittal

25. In December 2021, the Dealer sold 18 third-party warranties on behalf of People's Choice Warranty Ltd. ("PCW"). However, the Dealer did not remit payment to PCW until February 1, 2022, contravening s.47(7) of O. Reg. 333/08, as well as s.9 of the Code of Ethics.

26. In April 2022, the Dealer sold 25 warranties on behalf of PCW. The Dealer has since provided OMVIC with confirmation that the Dealer remitted payment to PCW on June 7, 2022; however, this was more than 7 days. The Dealer thereby contravened s.47(7) of O. Reg. 333/08, as well as s. 9 of the Code of Ethics.

27. On or about April 23, 2022, until on or about April 29, 2022, the Dealer sold 4 Vehicle Service Contracts warranties. The Dealer has since provided OMVIC with confirmation

that the Dealer remitted payment to Premier Dealer Services on June 8, 2022; however, this was more than 7 days. The Dealer thereby contravened s.47(7) of O. Reg. 333/08, as well as s. 9 of the Code of Ethics.

28. On or about March 22, 2022, until on or about March 31, 2022, the Dealer sold 5 Canada General warranties. The Dealer has since provided OMVIC with confirmation that the Dealer remitted payment to Canada General on June 30, 2022; however, this was more than 7 days. The Dealer thereby contravened s.47(7) of O. Reg. 333/08, as well as s. 9 of the Code of Ethics.

ZAHARIEV'S CURRENT NON-COMPLIANCE

29. Zahariev failed to ensure that the Dealer conducted its business in compliance with the Regulation and Code of Ethics, and therefore personally contravened s.6 and s.9 of the Code of Ethics.

It is thereby agreed the Dealer failed to comply with the following sections of the Act, Regulation 333/08:

36(7) 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.

42(22). If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the Highway Traffic Act or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

47(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 has breached the following sections of the Code of Ethics, as set out in Regulation 332/08

Disclosure and marketing

4. (2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

Compliance

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 Zahariev has breached the following section of the Code of Ethics, as set out in Regulation 332/08;

Accountability

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 and Zahariev have breached the following section of the Code of Ethics, as set out in Regulation 332/08:

Professionalism

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

Decision of the Reviewing Panel

The Reviewing Panel met and reviewed the Notice of Complaint, the Agreed Statement of Facts, the Joint Submission on Penalty, and the written submissions from OMVIC. The Panel found that a number of allegations in the Notice of Complaint were not addressed in the Agreed Statement of Facts. The Panel reserved its decision until these issues were resolved.

Following up on the Panel's concerns OMVIC advised the Panel that any allegations not included in the Agreed Statement of Facts were being withdrawn. The Panel felt that the parties should be careful to ensure that in all cases in which allegations are withdrawn that the specifics should be included in the Agreed Statement of Facts.

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer has breached subsections 4(2), 7(1), and 9(1) of the OMVIC Code of Ethics, and Zahariev has breached subsections 6(2) and 9(1), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The Reviewing Panel also agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. Janex Auto Sales (the “Dealer”) shall pay a total fine in the amount of **\$14,000**, with \$5,000 being paid no later than **90 calendar days** from the date of the Discipline Committee’s order and the remaining \$9,000 to be paid no later than **180 calendar days** from the date of the Discipline Committee’s order.
2. Zahariev shall pay a fine in the amount of \$2,500 no later than **90 calendar days** from the date of the Discipline Committee’s order.
3. Zahariev shall successfully complete the MVDA Key Elements course no later than **90 calendar days** from the date of the Discipline Committee’s order.
4. The Dealer shall offer all current and future sales staff the opportunity to complete the OMVIC Certification Course (the “Course”) and to fund the Course on their behalf. All current sales staff and any future sales staff (if applicable) will be offered the Course no later than **90 calendar days** from the date of the Discipline Committee’s order.
5. The Dealer and Zahariev shall comply with the Act, its Regulations and the Code of Ethics therein, and Standards of Business Practice, as may be amended from time to time.

Dated: April 19, 2024

Ontario Motor Vehicle Industry Council
Discipline Committee

A handwritten signature in black ink, appearing to read 'Joe Wade', written over a horizontal line.

Joe Wade, *Discipline Committee Chair*

On behalf of
Aviva Harai, *Public Member*
Paul Burroughs, *Member*

