

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 -

RACEWAY CHRYSLER DODGE JEEP LTD.
o/a RACEWAY FIAT/RACEWAY CHRYSLER DODGE JEEP

- AND -

REG NIMECK

- AND -

GORDON NIMECK

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: March 7, 2015

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$7,000.00 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure the General Manager and the General Sales Manager in a position of authority over sales or related activities at the Dealer will complete the current OMVIC certification course within 90 days of the Discipline Committee Order. It is understood between the parties this clause does not apply to managers who have completed the course or who are otherwise required to do so pursuant to the Act.
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 acceptance of this offer. 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 or who are otherwise required to do pursuant to the Act.

4. The Dealer and R. Nimeck and G. Nimeck 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. Raceway Chrysler Dodge Jeep Ltd. o/a Raceway Fiat/Raceway Chrysler Dodge Jeep, the ("Dealer") was first registered as a motor vehicle dealer in or around June 1982. Reg Nimeck ("R. Nimeck") was first registered as a motor vehicle salesperson in or around March 1983. Gordon Nimeck ("G. Nimeck") was first registered as a motor vehicle salesperson in or around July 1984. At all material times, R. Nimeck and G. Nimeck were officers and directors of the Dealer.
2. On or about April 13, 2005, G. Nimeck, on behalf of the Dealer, executed a negotiated resolution of a Notice of Complaint. As per term 4 the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice.
3. On or about April 3, 2006, the Registrar issued a Notice of Complaint ("Notice") against the Dealer.
4. On or about November 3, 2006, G. Nimeck, on behalf of the Dealer, executed a negotiated resolution of the above mentioned Notice. As per term 4 the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice.
5. On or about July 25, 2011, the Registrar issued a Notice of Order to Cease False Advertising issued against the Dealer for publishing advertising that contained false, misleading or deceptive statements.
6. On or about October 21, 2011, the License Appeal Tribunal issued a Consent Order ("Order") pursuant to a negotiated resolution of the above mentioned matter. As per conditions 8 and 9 of the Order, R. Nimeck on behalf of the Dealer, agreed to comply with the Standards of Business Practice, Ontario Regulations 333/08 and the Code of Ethics.



All Inclusive Pricing:

7. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to advertise an all-inclusive vehicle price.
8. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to advertise an all-inclusive vehicle price:
 - a. Winter 2008
 - b. Spring 2010
 - c. Summer 2010
 - d. Spring 2011
 - e. Winter 2013
 - f. Spring 2013
 - g. Fall 2013
 - h. Winter 2014
9. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price:
 - a. January 2010 (2 separate publications)
 - b. April 2010 (2 separate publications)
 - c. February 2012
 - d. August 2012
 - e. April 2013
 - f. June 2014 (2 separate publications)
10. On or before July 31, 2014, two advertisements were placed by or on behalf of the Dealer for two 2014 Dodge Caravans SE/SXT Stock #21241 and Stock# 21206 with an advertised selling price of \$ 18,025 each. On or about August 1, 2014, representatives of the Registrar attended the Dealer while posing as members of the public. The Dealer then attempted to sell the vehicle with Stock# 21241 for a selling price of \$30,055, however would offer discounts totaling \$8,100.00 resulting in a selling price of \$18,220. In addition to the selling price of the vehicle a \$195.00 Paint Charge fee and a \$40.00 Gas Fee would be added. For a total of \$235.00 above the advertised selling price. As such the advertised selling price was not all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
11. On or before July 23, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Dodge Ram 1500 SXT Stock #20984 with an advertised selling price of \$16,940. On or about July 24, 2014, a consumer attended the Dealer; the Dealer then sold a lower trim model to the consumer without his knowledge. The vehicle had a sales price of \$17,378.11. In addition to the selling price of the vehicle the following fees were added; a \$1,665.00 Freight fee, a \$100.00 Air Tax fee, a \$299.00 Platinum Protection fee, a \$399.00 Administration fee and a \$40.00 gas fee. The Consumer was aware and agreed to a \$620.00 Protection Package. For a total of \$2503.00 above the advertised selling price. As such the advertised selling price was not all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.



Selling Off Premise:

12. On or about July 31, 2014 two advertisements were placed by or on behalf of the Dealer for a 2014 Dodge Caravan SE/SXT Stock# 21241 and for a 2014 Dodge Caravan SE/SXT Stock# 21206 which indicated these vehicles were located at the dealers registered address of 150 Rexdale Boulevard, Toronto, ON. M9W 1P6. On or about August 1, 2014 representatives of the Registrar attended this location while posing as members of the public in order to view these vehicles. The Dealer then reported that these vehicles were located nearby at a compound with the address of 30 Bethridge Road, Toronto, ON. The Registrar's representatives accompanied the Salesperson to this compound. As such the Dealer traded at a place other than that authorized by the Dealer's registration. This is contrary to sub section 28(4) of regulation 333/08, as well as section 4 and section 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 (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 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).

28(4) Except for advertising, a registered motor vehicle dealer other than a motor vehicle dealer registered only as a broker shall not trade except from a place authorized by the dealer's registration. O. Reg. 333/08, s. 28 (4)

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 \$7,000.00 within 90 days of the date of the Discipline Committee Order.
2. The Dealer agrees that the General Manager and the General Sales Manager in a position of authority over sales or related activities at the Dealer will complete the current OMVIC certification course designated by the Registrar (the "course"), within 90 days of the Discipline Committee Order. It is understood between the parties this clause does not apply to managers who have completed the course or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees 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 acceptance of this offer. 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and R. Nimeck and G. Nimeck 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, R. Nimeck and G. Nimeck breached subsections 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 \$7,000.00 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure the General Manager and the General Sales Manager in a position of authority over sales or related activities at the Dealer will complete the current OMVIC certification course within 90 days of the Discipline Committee Order. It is understood between the parties this clause does not apply to managers who have completed the course or who are otherwise required to do so pursuant to the Act.
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4. The Dealer and R. Nimeck and G. Nimeck 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

