

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 -

DEROUARD MOTOR PRODUCTS LTD.

- AND -

WILFRED DEROUARD

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: December 18, 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 \$5,000 within 90 days of the date of the Discipline Committee Order.
2. Derouard 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Derouard shall comply with the Act, Code of Ethics, 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. Derouard Motor Products Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around August 1983. Wilfred Derouard ("Derouard") was first registered as motor vehicle salesperson in or around June 2002. At all material times, Derouard has been the officer and director of the Dealer.

OMVIC publications:

2. 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 all-inclusive vehicle prices.
3. In or around December 2008, issued a bulletin which highlighted some of the upcoming changes that would take place when the Act came into effect, including the requirement for dealers to advertise all-inclusive vehicle prices.
4. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the requirement for dealers to advertise all-inclusive vehicle prices:
 1. Spring 2010
 2. Summer 2010
 3. Spring 2011
 4. Summer 2011
 5. Winter 2013
 6. Spring 2013
 7. Fall 2013
 8. Winter 2014
 9. Spring 2014
 10. Summer 2014
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the requirement for dealers to advertise all-inclusive vehicle prices:
 1. January 2010 (2 publications)
 2. April 2010 (2 publications)
 3. February 2012
 4. August 2012



5. April 2013
6. April 2014
7. June 2014
8. April 2015

Direct correspondence with the Dealer:

6. During an inspection dated July 26, 2011, a representative of the Registrar reminded the Dealer of their requirements to ensure to advertise all-inclusive vehicle prices, as required by sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Dealer non-compliance:

7. Between on or before September 21, 2015 and on or before October 20, 2015, the Dealer published web based used vehicle advertisements which failed to disclose all-inclusive vehicle prices. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
8. On or about October 27, 2015, a representative of the Registrar contacted Derouard, on behalf of the Dealer, regarding the aforementioned advertisements. Derouard acknowledged the non-compliant price advertising was intentional. The issues were corrected shortly thereafter.
9. On or about December 1, 2015, a Notice of Complaint was issued regarding the advertisements referred to in paragraph 7 of this document.
10. On or about December 7, 2015, a representative of the Registrar discovered the Dealer's new vehicle advertisements did not promote all-inclusive vehicle prices. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. On this same date, said representative contacted Derouard, on behalf of the Dealer, regarding these advertisements. The issues were corrected shortly thereafter.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*, (the "Act"):

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 and Derouard 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.

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 \$5,000 within 90 days of the date of the Discipline Committee Order.
2. Derouard agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
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 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Derouard agree to comply with the Act, Code of Ethics, 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 Derouard 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 \$5,000 within 90 days of the date of the Discipline Committee Order.
2. Derouard 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.



4. The Dealer and Derouard shall comply with the Act, Code of Ethics, and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

