

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

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1681230 ONTARIO INC o/a WINDSOR CHRYSLER

- AND -

JOSEPH DIEMER

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: June 4, 2018

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$10,800 no later than **August 1, 2018**.
2. 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 no later than September 15, 2018. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **July 2, 2018**.
4. The Dealer agrees to 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. 1681230 Ontario Inc o/a Windsor Chrysler (the "Dealer") was first registered as a motor vehicle dealer in about May 2006. Joseph Diemer ("Diemer") was first registered as a motor vehicle salesperson in about February 1983. At all material times, Diemer was the sole officer of the Dealer.

OMVIC publications:

2. In or around December 2008, OMVIC issued a bulletin advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices ("all-in pricing") in advertisements. In addition to this, dealers were also advised of the requirements to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in all advertisements ("rentals") as well as on the bill of sale ("disclosure").
3. After the Act was proclaimed, OMVIC further issued the following publications reminding dealers of their advertising and disclosure obligations:

	<u>Dealer Standard: Publication Date</u>	<u>Subject matter: all-in pricing</u>	<u>Subject matter: daily rental disclosure in ads</u>	<u>Subject matter: daily rental disclosure on the bill of sale</u>
A.	Spring 2010	x	x	
B.	Summer 2010	x	x	
C.	Summer 2011	x	x	
D.	Summer 2012		x	
E.	Spring 2013	x		x
F.	Fall 2013	x	x	
G.	Winter 2014	x		
H.	Spring 2014	x		
I.	Issue #3 2014	x		
J.	Issue #3 2015	x		
K.	Issue #1 2016	x		
L.	Issue #2 2016	x		
M.	Issue #3 2016	x		



N.	Issue #4 2016	x		
	OMVIC bulletins: Publication Date			
O.	January 2010	x		
P.	January 2010	x		
Q.	April 2010	x		
R.	April 2010	x		
S.	February 2012	x		
T.	August 2012	x		
U.	September 2012			x
V.	April 2013	x		
W.	June 2014	x		

Direct correspondence with Dealer:

4. During an inspection on about December 5, 2012, the Dealer was reminded of its obligation to disclose former daily rental vehicles in advertisements. The Dealer's contract disclosure obligations were also discussed at this time.
5. By email dated December 28, 2012, the Dealer was reminded of its obligation to advertise all-inclusive vehicle prices.
6. During an inspection on about May 14, 2015, the Dealer was reminded of its obligation to advertise all-inclusive vehicle prices.

Previous Discipline Committee Orders:

7. On about December 17, 2015, the Registrar issued a Notice of Complaint against the Dealer. On about May 9, 2016, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the aforementioned Notice of Complaint.
8. As per condition 3 of the Order, the Dealer was required to offer all current and future sales staff the opportunity to complete the Automotive Certification course, at the Dealer's cost.
9. As per condition 4 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Current non-compliance:

10. During an inspection on or about November 9, 2017, it was revealed the Dealer had failed to comply with the all-inclusive pricing requirements, as well as the requirement to disclose former daily rental vehicles in advertisements, on the following vehicle trades. This is contrary to sections 36(5) and 36(7) of Regulation 333/08, as well as sections 4, 7, and 9 of the Code of Ethics:



	VEHICLE	STOCK #	DATE SOLD	DAILY RENTAL NON-DISCL. IN AD 36(5) Reg. 333/08	AMOUNT OVER AD PRICE 36(7) Reg. 333/08
A.	2016 Dodge Journey	P7058	2017/03/14	X	\$80
B.	2016 Dodge Journey	P7082	2017/03/25	X	\$190
C.	2015 Fiat 500	P7083	2017/04/11	X	\$80
D.	2016 Jeep Patriot	P7086	2017/04/18	X	
E.	2016 Chevrolet Malibu	P7066	2017/04/20	X	\$80
F.	2017 Chevrolet Cruze	P7080	2017/06/27	X	\$80
G.	2016 Dodge Durango	P7105	2017/07/21	X	
H.	2016 Dodge Durango	P7127	2017/10/13	X	
I.	2016 Chrysler 300	P7124	2017/10/18	X	

By failing to comply with the following sections of the Act:

Regulation 333/08

36. Advertising:

(5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine.

(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 has breached sections 4 and 9 of the Code of Ethics, as set out in regulation 332/08:

Disclosure and marketing

- 4. (1) 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.
- (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.

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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$10,800 no later than **August 1, 2018**.
2. 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 no later than September 15, 2017. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **July 2, 2018**.
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 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 \$10,800 no later than **August 1, 2018**.
2. 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 no later than September 15, 2017. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
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4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair



DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

**IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
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BETWEEN:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002

- and -

1681230 ONTARIO INC o/a WINDSOR CHRYSLER

- and -

JOSEPH DIEMER

AGREED STATEMENT OF FACTS AND PENALTY

1681230 Ontario Inc o/a Windsor Chrysler has breached the following:

Section 4 of the Code of Ethics, Regulation 332/08

Section 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. 1681230 Ontario Inc o/a Windsor Chrysler (the "Dealer") was first registered as a motor vehicle dealer in about May 2006. Joseph Diemer ("Diemer") was first registered as a motor vehicle salesperson in about February 1983. At all material times, Diemer was the sole officer of the Dealer.



initials

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2. In or around December 2008, OMVIC issued a bulletin advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices ("all-in pricing") in advertisements. In addition to this, dealers were also advised of the requirements to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in all advertisements ("rentals") as well as on the bill of sale ("disclosure").
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9. As per condition 4 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

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Handwritten initials in black ink, appearing to be 'PD'.

initials

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(b) used as a police cruiser or used to provide emergency services; or

(c) used as a taxi or limousine.

initials

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It is thereby agreed that the Dealer has breached sections 4 and 9 of the Code of Ethics, as set out in regulation 332/08:

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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.

JOINT SUBMISSION ON PENALTY:

1. The Dealer agrees to pay a fine in the amount of \$10,800 no later than **August 1, 2018**.
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initials

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT Windsor THIS 1st DAY OF May, 2018

Joseph Phillip Deimer

(please print)

Joseph Deimer

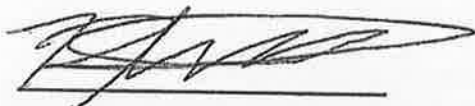

(signature)

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DATED AT Windsor THIS 1st DAY OF May, 2018

Joseph Phillip Deimer

(Please print)



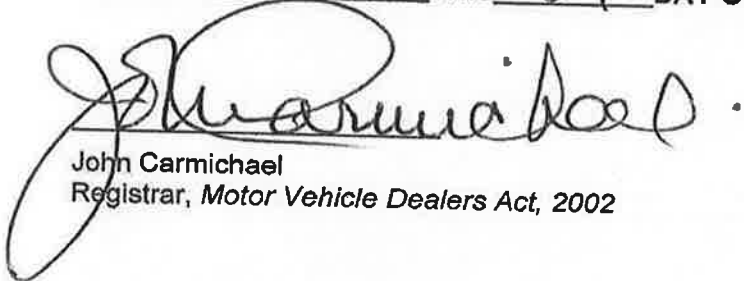
I have the authority to bind the corporation:
1681230 Ontario Inc o/a Windsor Chrysler



initials

By signature below the Registrar agrees, acknowledges, understands and consents to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

DATED AT Toronto THIS 24 DAY OF May, 2018



John Carmichael
Registrar, Motor Vehicle Dealers Act, 2002

Pursuant to Rule 1.07, I accept this Agreed Statement of Facts and Penalty from the Parties identified above:

DATED AT Ancaster THIS 4TH DAY OF June, 2018



Paul Burroughs
Chair, Discipline Committee of the
Ontario Motor Vehicle Industry Council



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ORIGIN ID:YFHB (416) 226-3661
 DAVID DALLTY
 OMAVIC
 66 OVERLEA BL VD
 SUITE 300
 TORONTO, ON M4H1P1
 CANADA CA

SHIP DATE: 04 JUN 18
 ACTWGT: 0.20 KG
 CAD: 100978087/NET3980

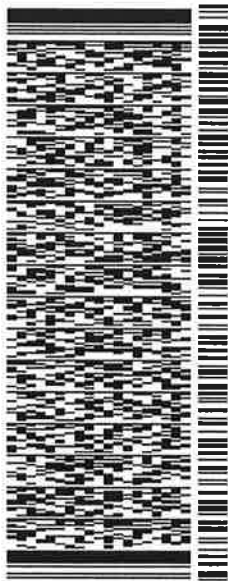
BILL SENDER

TO JOSEPH DIEMER
 WINDSOR CHRYSLER
 10380 TECUMSEH ROAD EAST

WINDSOR ON N8R1A7
 (519) 979-9900 REF:
 INV/ DEPT:
 PO/

(CA)

552J148E5/DCA5



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TRK# 7723 8166 0675
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TUE - 05 JUN AM
 PRIORITY OVERNIGHT

2B YQGA

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2. Place label in shipping pouch and affix it to your shipment.

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Any carriage of your shipment by road may be subject to Federal and Provincial laws, regulations, orders or requirements which may govern and serve to limit our liability for damage, loss, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with your shipment. LIMITATION OF LIABILITY. If not governed by Federal or Provincial laws, regulations, orders, or requirements as described above, FedEx's maximum liability for damage, loss, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with your shipment, even if caused by our negligence or gross negligence, is limited by this Agreement to the amount of actual damages or CDN \$100 per shipment, whichever is less, unless you declare in advance a higher value for carriage as described below, and pay any applicable supplementary charge. FedEx does not provide cargo liability or all-risk insurance, but you may pay an additional charge for each additional CDN \$100 of declared value for carriage. If a higher value for carriage is declared and the additional charge is paid, FedEx's maximum liability will be the lesser of the declared value for carriage or your actual damages. DECLARED VALUE LIMITS. Shipments containing items of extraordinary value are limited to a maximum declared value for carriage of CDN \$500. The maximum declared value we allow for carriage per air waybill for each FedEx® Letter or FedEx® Pak is CDN \$100. Please check the current Worldwide Service Guide and any applicable tariff for further explanation of the declared value limits. If you send more than one package on this Air Waybill, the declared value for carriage of each package will be determined by dividing the total declared value for carriage by the number of packages in the shipment. LIABILITIES NOT ASSUMED. IN ANY EVENT, FEDEX WON'T BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, IN EXCESS OF THE DECLARED VALUE FOR CARRIAGE (INCLUDING BUT NOT LIMITED TO LOSS OF INCOME OR PROFITS) OR THE ACTUAL VALUE OF THE SHIPMENT, IF LOWER, WHETHER OR NOT FEDEX HAD ANY KNOWLEDGE THAT SUCH DAMAGES MIGHT BE INCURRED. FedEx won't be liable for your acts or omissions, including but not limited to, incorrect declaration of the shipment, improper or insufficient packing, securing, marking or addressing of the shipment, or for the acts or omissions of the recipient or anyone else with an interest in the shipment. FedEx won't be liable for damage, loss, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with shipments of cash, currency or other prohibited items. Also, FedEx won't be liable if you or the recipient violate any of the terms of this Agreement. FedEx won't be liable for loss, damage, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with your shipment caused by events FedEx cannot control, including but not limited to, acts of God, perils of the air, weather conditions, acts of public enemies, war, strikes, civil commotions, or acts or omissions of public authorities (including customs and health officials) with actual or apparent authority. You should contact an insurance agent or broker if insurance coverage is desired. We do not provide insurance coverage of any kind. NO WARRANTIES. We make no warranties, express or implied. CLAIM FOR LOSS, DAMAGE OR DELAY. ALL CLAIMS MUST BE MADE IN WRITING AND WITHIN STRICT TIME LIMITS. SEE OUR CURRENT WORLDWIDE SERVICE GUIDE AND ANY APPLICABLE TARIFF FOR DETAILS. We must receive your written notice of a claim for damage or delay, including perishable and spoilage damage claims due to late or delayed delivery, within 21 days after we deliver your shipment and in the case of loss, shortage, mis-delivery, nondelivery, misinformation or failure to provide information, within 90 days after we accept the shipment for carriage. The right to claim damages against us shall be extinguished unless an action is brought within two years from the date of delivery of the shipment or from the date on which the shipment should have been delivered or from the date on which the carriage stopped. Within 90 days after you have notified us of your claim, it must be documented by sending us all relevant information regarding your claim. FedEx is not obligated to act on any claim until all transportation charges have been paid. The claim amount may not be deducted from these charges. If the recipient accepts the shipment without noting any damage on the delivery record, FedEx will assume the shipment was delivered in good condition. In order for us to consider a claim for damage, the contents, original shipping carton and packing must be made available to us for inspection at the delivery location and you must retain all such items until the claim is concluded. RESPONSIBILITY FOR PAYMENT. Even if you give us different payment instructions, you, the shipper, will always be primarily responsible for all charges, including transportation charges, and all duties, assessments, governmental penalties and fines, taxes, and FedEx's legal fees and costs related to shipments tendered under this Agreement. You also will be responsible for any costs FedEx may incur in returning your shipments to you or warehousing them pending disposition. MANDATORY LAW. Insofar as any provisions contained or referred to in this Agreement may be contrary to any applicable laws, government regulations, orders or requirements, such other provisions shall remain in effect as a part of this Agreement to the extent that they are not overridden. The invalidity or unenforceability of any provisions of this Agreement shall not affect any other part hereof. The parties expressly agree that this Agreement be drawn up in the English language. FEDERAL EXPRESS CANADA LTD., Head Office, 5965 Explorer Drive, Mississauga, ON L4W 5K6.