

IN THE MATTER OF THE DISCIPLINE HEARING
held pursuant to Regulation 332/08 of the Motor Vehicle Dealers Act 2002 of the
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

DISCIPLINE DECISION

TIGER AUTO SALES LTD

AND

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

DATE OF HEARING THURSDAY MAY 19, 2011

Panel:	Murray Clark (Chair) Caroline Brett Stuart Sherman
Findings:	Breach of Sections 5, 7 and 9 of the Code of Ethics
Fine:	\$8,000.00
Other:	Educational Course to be taken
Date of Decision:	June 1, 2011

This matter came for a hearing before a panel of the Discipline Committee on May 19, 2011 at Toronto.

The Ontario Motor Vehicle Council (OMVIC) was represented by Yovonka McBean, and Tiger Auto Sales Ltd. was represented by Kahled Ismail who is the sole officer and director of the corporation. (Hereinafter will be collectively referred to as the "Dealer")

The allegations against the Dealer are set out in the Notice of Complaint, dated January 24, 2011. (Exhibit #1). In summary it is alleged the Dealer breached Sections 5 (Disclosure of Information), Section 7 (Compliance), and Section 9 (Professionalism) of the Code of Ethics, as set out in Ontario Regulation 332/08.

The Evidence

OMVIC called three witnesses to give evidence: Inspector G. Ethier, A. Korth, Business Standards Co-Coordinator, and L. Halbert, Director of Compliance.

Inspector Ethier testified that on, or about February 1, 2007 she attended at the premises of the Dealer for the purpose of an inspection. Approximately 30 deals were reviewed. It was noted during the inspection that the Dealer was acquiring vehicles to re-sell from dealers, as well as Impact Auto Auction. Impact Auto Auction is a dealer only auction that insurance companies use to dispose of vehicles that have been damaged.

During the inspection it was noted that several written disclosures were missing, including but not withstanding TMU (True Mileage Unknown) as well as accident repairs. These findings were noted in the written inspection, reviewed in detail with, and acknowledged by, the Dealer. A copy of the Standards of Business Practices and the Motor Vehicle Dealers Act were left with the Dealer, and he was reminded at the same time that he has had several warnings of a similar nature in the past.

The Dealer stated to the inspector that he would make things better, as noted in the report.

Inspector Ethier gave evidence regarding a second inspection made by her on, or about, October 21, 2010. During the inspection 22 files were reviewed.

During the inspection there were two transactions in particular that were not compliant with disclosure to the purchaser with regard to the vehicle's history, and this information was not clearly explained to the buyer or noted on the bills of sale.

Mr. Ismail testified that he accepted, and passed along from the selling dealer, vehicle history reports to his customers but did not keep copies in the Dealer's own records. The Dealer also stated this to Inspector Ethier during the October 21, 2011 inspection, as noted in her written report.

One transaction was wholesaled (Tabs 8 and 9, Exhibit #1) to an end user and exported out of the country. According to the Dealer he felt as such there was no need for further disclosure other than the following notation "As Is for Shipping". The Dealer believed this was sufficient since the end user was

not in the province. This vehicle had been purchased from a Chrysler dealer in London, and as of April 1, 2011 still remains registered to the Dealer (Tab 10, Exhibit #1).

Section 7.2 of the Code of Ethics requires that where a vehicle is sold on an "as is" basis, the bill of sale must read as follows: "The motor vehicle sold under this contract is being sold "as is" and is not represented as being in road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit to use as a means of transportation and may require substantial repairs at the purchaser's expense. It may not be possible to register the vehicle to be driven in its current condition."

Mr. Ismail testified that since the vehicle was "wholesaled" for exporting he did not feel it was necessary to disclose the history of the vehicle on the bill of sale, or to the purchaser. The only information provided on the bill of sale for this vehicle is "Sold As Is for Shipping" (Tab 9, Exhibit #1).

The second vehicle was purchased from a Volkswagen dealer in London, and on the wholesale bill of sale (Tab 11, Exhibit #1) it was clearly noted that the vehicle had previous damage, "unknown \$9000". The subsequent retail bill of sale, dated October 13, 2010 and provided by the Dealer to its customer had no disclosure of this previous damage.

Mr. Ismail stated that he had received a CarProof history report at time of purchase, and gave that to the retail purchaser but that he did not make a note of that fact on the retail bill of sale (Tab 12, Exhibit #1).

Mr. Ismail stated during the hearing that they were busy at the time of purchase, and did not note it on the bill of sale but gave the customer a copy of the CarProof report. He felt that by handing the purchaser the CarProof report he had disclosed the history of the vehicle in a compliant manner.

Subsequent to the inspection being completed and reviewed, the Notice of Complaint (Exhibit #1) was issued by OMVIC. At that time the Dealer was asked by Andrea Korth of OMVIC for the original bills of sale for both transactions. Upon receipt, the bill of sale for the second transaction (Tab 16, Exhibit 1), it showed added notations regarding disclosure.

When asked about the difference in the two copies, Mr. Ismail stated after receiving the Notice of Complaint (Exhibit #1), he asked the customer to come back in to the dealership with all of the original documents he was provided at the time of purchase. Mr. Ismail testified that in the customer's presence he proceeded to amend the original bill of sale to show the following words ""Carproof and Carfax given to customer and all disclosures received."

The salesperson, Ali Ismail, testified that he had sold the car and remembered handing the customer the CarProof report. The CarFax report supplied to OMVIC on or about March 22, 2011, was run after the date of sale, and since nothing was noted in the report he felt no need to disclose anything on the bill of sale. At the time of sale he testified he had told the customer about some "issues" with the car regarding the paint, but the customer wanted to purchase the car regardless.

The Decision:

Having considered all of the evidence presented, and the onus and standard of proof, the panel finds that the Dealer repeatedly committed acts in violation of the Code of Ethics as alleged in the Notice of Complaint (Exhibit #1). Specifically Sections 5, 7, and 9 of the Code of Ethics.

Under Section 5 of the Code of Ethics, Disclosure of Information in Contracts of Sale and Lease, evidence was presented by OMVIC Inspector Ethier that the Dealer repeatedly did not disclose the vehicle's accident history, despite previous written warnings from OMVIC.

Under Section 7: Compliance, it states the registrant shall ensure that all documents used by the registrant in the course of a trade in of a motor vehicle are current and comply with the law. Testimony given by salesman Ali Ismail stated that a report was run on a vehicle after the date of sale, as a result of receiving the Notice of Complain (Exhibit 1) from OMVIC. The Dealer also testified that he did not maintain copies of reports for his sale transactions.

In order to comply with disclosure to a customer, any history reports would have to be run before any retail transaction. Any reports of this manner would also be required to comply with disclosure under the Consumer Protection Act, 2002 and Sale of Goods Act. In order to help facilitate any inspection process, we would recommend that the Dealer to maintain copies of history reports, mechanical reconditioning etc. on file.

Under Section 9, Professionalism, it states that a registrant shall use his best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle. Evidence presented clearly showed that Section 9.9, which states that "Disclosure statements are expressed clearly and concisely ... in a manner that is likely to bring the information to the attention of the purchaser should be obtained by the Dealer in advance of any retail transaction.

Testimony given by the Dealer, in the matter of the trade of a 2000 Volkswagen Jetta, that he had the purchaser return to the dealership, approximately 3 months after the sale, to acknowledge receipt of a CarProof and CarFax report. The Dealer's actions to addend the original bill of sale were a result of receiving the Notice of Complaint (Tab 1, Exhibit #1), dated January 24, 2011 while the date of the original transaction was October 12, 2010.

Section 9.3 states "a registrant shall use its best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle. The Dealer testified that he relies on reports from other dealers, and is not being proactive in obtaining his own history reports prior to any retail sales.

Reasons for the Decision:

Despite receiving written warnings from OMVIC, the Dealer continued to violate disclosure, professionalism and compliance in his dealings with the public. These are noted, and acknowledged by the dealer, in inspections dated February 1, 2007 and again on October 21, 2010.

In a written report in 2007, the Dealer stated to OMVIC that "things would get better". Clearly this was not the case.

After 3 plus years from his initial warning, the Dealer continued to violate the same Sections of the Code of Ethics. Only after receiving a Notice of Complaint (Exhibit #1) from OMVIC, did the Dealer disclose to a purchaser the history of a vehicle. Under testimony the Dealer did acknowledge that the vehicle in question (2000 Volkswagen Jetta) was bought with the knowledge of a \$9000 accident history.

Penalty:

The Discipline committee hereby assess a fine of \$8,000 to the Dealer, to be paid to OMVIC within 90 days from the date of the decision of June 1, 2011. As well we set an order that the Dealer, and all active registered salesmen working for the Dealer, undergo a thorough re-training of the OMVIC Standards of Practice, 2010 and the MVDA 2002 regulations. This training will be at the expense of the Dealer, and must be completed within 120 days from the date of the decision of June 1, 2011. The training/education course will be completed through Georgian College in conjunction with The Canadian Automotive Institute. Their course is offered both in class, and through distance-education, and again all expenses (tuition etc.) are the responsibility of the Dealer. The course offered through Georgian College offers an updated version of automotive law and ethics, which has incorporated the changes brought about from the MVDA 2002. If for any reason the training cannot be completed within the 120 day time frame, the Dealer will coordinate this part of the penalty with OMVIC.

Reasons for Penalty:

The Dealer has repeatedly been warned about missing documentation, non-disclosure and registrant requirements under the MVDA 2002 as well as the Standards of Business Practice, 2010 as set out by OMVIC as stated from the Inspection Reports of February 1, 2007 (Tab 3, Exhibit #1) and again on October 21, 2010 (Tab4, Exhibit #1).

When asked by the Chair of the hearing if the Dealer, and his staff, had attended training sessions regarding the changes captioned under the MVDA 2002 act, the Dealer stated they had done so.

Given the continued complaints as reported during inspections on February 1, 2007 and again on October 21, 2010 the Panel recommends that the Dealer, and his registered sales staff, receive formal re-training on all aspects of the MVDA 2002 act as well as requirements of conducting business as stated in the Standards of Business Practice, 2010.

We therefore agree with the request of OMVIC and its counsel for a fine of \$8,000 and recommended re-training and education of the Dealer and his registered staff.



Murray Clark (Chair)
Caroline Brett
Stuart Sherman