



## ORDER

1. The Dealer is ordered to pay a fine in the amount of \$17,500 no later than **October 10, 2020**.
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 October 10, 2020. 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 comply with the Act and Standards of Business Practice, as may be amended from time to time.

### **Introduction**

This matter proceeded before a panel of the Discipline Committee (the "Panel") of the Ontario Motor Vehicle Industry Council ("OMVIC") pursuant to section 17 of the Motor Vehicle Dealers Act, 2002, S.O. 2002, c. 30, Schedule B ("MVDA").

A hearing took place on July 10, 2020. At that time, a Notice of Complaint dated March 19, 2019 was entered as Exhibit 1, a Notice of Further and Other Particulars dated May 30, 2019 was entered as Exhibit 2, an Agreed Statement of Facts and Joint Submission on Penalty dated October 31, 2019 and signed by the OMVIC Registrar was entered as Exhibit 3, and a copy of the same Agreed Statement of Facts and Joint Submission on Penalty dated November 1, 2019 signed by Mr. Diemer (the "Registrant") and Windsor Chrysler (the "Dealer") was entered as Exhibit 4. Exhibits 3 and 4 will be referred to collectively as the "Joint Submission".

### **Agreed Statement of Facts**

The Joint Submission contains the following agreed facts:

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.

### **Correspondence with Dealer - advertising vehicle prices not available to the general public:**

2. By email dated August 11, 2010, the Dealer was advised advertised vehicle prices must

be available to the general public, unless clearly indicated as otherwise.

3. The Dealer was subsequently reminded of this requirement again on the following dates:
  - a. June 16, 2011
  - b. July 25, 2011
  - c. June 27, 2012
  - d. January 29, 2013
  - e. August 15, 2013
  - f. August 29, 2013
  - g. April 1, 2015

**Prior Discipline Committee Orders:**

***December 2015:***

4. On about December 17, 2015, the Registrar issued a Notice of Complaint against the Dealer for, *inter alia*, failing to indicate in a clear, comprehensible and prominent manner that its advertised vehicle prices were not available to the general public.
5. On about May 9, 2016, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice.
6. As per condition 3 of the Order, the Dealer was obligated to offer all sales staff the opportunity to complete the Automotive Certification course (the "course"), at the Dealer's expense.
7. As per condition 4 of the Order, the Dealer was to comply with the Act and Standards of Business Practice, as may be amended from time to time.

***January 2018:***

8. On about January 30, 2018, the Registrar issued a Notice of Complaint against the Dealer, for unrelated non-compliance issues.
9. On about June 4, 2018, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice.
10. As per condition 2 of the Order, the Dealer was again obligated to offer all sales staff the opportunity to complete the course, at the Dealer's expense.
11. As per condition 2 of the Order, the Dealer was obligated to ensure all sales staff had reviewed the August 2017 OMVIC advertising webinar, no later than July 2, 2018. Topics covered in this webinar include the requirement for advertised vehicle prices to be available to everyone.
12. As per condition 4 of the Order, the Dealer was to comply with the Act and Standards of Business Practice, as may be amended from time to time.

**Current non-compliance:**

13. On or before January 29, 2019, the Dealer published website advertisements for the

following vehicle models which failed to indicate, in a clear, comprehensible and prominent manner, that the subject vehicle offers were not available to the general public:

- a. 2019 Ram 1500 Bighorn Crew
- b. 2019 Ram 1500 SXT

This is misleading, and contrary to sections 4 and 9 of the Code of Ethics, with respect to the advertising requirements.

14. On or about March 19, 2019, the Registrar issued a Notice of Complaint against the Dealer regarding the above referenced advertisements.
15. On or before May 28, 2019, the Dealer published further website advertisements which failed to indicate, in a clear, comprehensible and prominent manner, that the subject vehicle offers were not available to the general public. This is misleading, and contrary to sections 4 and 9 of the Code of Ethics, with respect to the advertising requirements.
16. The Dealer has since retained a an individual to review all the Dealer's advertising, prior to publication, to ensure compliance with all applicable laws. This same individual will be training staff to ensure they understand the Act and regulations.
17. In failing to ensure the Dealer's advertising is compliant with the law, Diemer has personally breached sections 6 and 9 of the Code of Ethics, with respect to the advertising requirements.

It is thereby agreed that the Dealer has breached section 4 of the Code of Ethics, with respect to the advertising requirements 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.

It is thereby agreed that Diemer has breached section 6 of the Code of Ethics, with respect to the advertising requirements, as set out in Regulation 332/08:

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 Diemer have breached section 9 of the Code of Ethics, with respect to the advertising requirements, 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.

### **Joint Submission on Penalty**

The Joint Submission contains the following with respect to the penalty proposed by all parties:

1. The Dealer agrees to pay a fine in the amount of \$17,500 no later than **October 10, 2020.**
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 October 10, 2020. 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 comply with the Act and Standards of Business Practice, as may be amended from time to time.

### **Decision of the Panel**

Having reviewed and considered Joint Submission along with the submissions of all counsel, the Panel held that the Dealer breached subsections 4, 6 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 Panel also accepted the portion of the Joint Submission pertaining to penalty and makes the following Order as set out above:

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### **Reasons for Decision**

In determining what penalty to impose, public protection is the ultimate consideration, but the



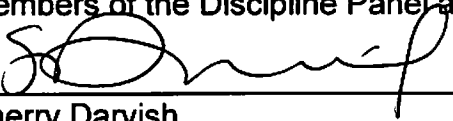
Panel also considered the following principles: general deterrence (deterring other members of the profession); specific deterrence (deterring the Dealer from similar conduct); and remediation (whether the Dealer's practice can be improved). The Panel also considered mitigating or aggravating factors.

The Panel also accepted the established law that a joint submission on penalty should not be rejected unless it is contrary to the public interest and it would bring the administration of justice into disrepute (*R. v Anthony-Cook*, [2016] 2 SCR 204).

In the Panel's view, the mitigating factors here were that the Dealer cooperated with the investigation and hearing and agreed to proceed by way of a Joint Submission thereby reducing the additional time, cost, and resources that would have been spent in further litigating this matter. The aggravating factors were that the Dealer's conduct placed the public at a risk of harm, the conduct was repeated on more than one occasion, and the conduct involved dishonesty.

In imposing a penalty, the Panel also reviewed previous cases of the Discipline Committee with similar facts as summarized by Ms. Mojica in her oral submissions. The Panel determined that the proposed penalty in the Joint Submission falls within the penalty range established in those cases and achieves the principles of public protection, general deterrence and specific deterrence. As such, the Panel accepted the Joint Submission of the parties with respect to the penalty.

I, Sherry Darvish, sign this decision and reasons for the penalty on behalf of the members of the Discipline Panel as set out below.

  
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 Sherry Darvish

Date: August 20, 2020

Panel Members:

Ms. Sherry Darvish, Chair  
 Mr. Nelson Caetano  
 Mr. Wally Pietraszko

