

## 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 -

1202894 ONTARIO INC. o/a EDWARDS MAZDA/POIRIER NISSAN

- AND -

EDWARD POIRIER

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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 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 \$5,500 within 90 days of the date of the Discipline Committee Order.
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 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.
3. The Dealer 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. 1202894 Ontario Inc. o/a Edwards Mazda/Poirier Nissan ("the Dealer") was first registered as a motor vehicle dealer in or around August 1997. Edward Poirier ("Poirier") was first registered as a motor vehicle dealer salesperson in or around April 1983. At all material times, Poirier was the officer and Person in Charge of the Dealer.
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 Dealer Act, 2002* ("the Act") came into effect, including the requirement for dealers to advertise all inclusive vehicle prices ("all in price").
3. The following Dealer Standard publications further reminded dealers of the all in price advertising requirements:
  - a. Summer 2010
  - b. Spring 2011
  - c. Winter 2013
  - d. Spring 2013
  - e. Summer 2013
  - f. Fall 2013
  - g. Winter 2014
  - h. Spring 2014
  - i. Summer 2014
  - j. Fall 2014
4. In addition to the above mentioned publications, OMVIC also issued the following dealer bulletins which further reminded dealers of the all in price advertising requirements:
  - a. January 2010 (2 bulletins)
  - b. April 2010 (2 bulletins)
  - c. February 2012
  - d. August 2012
  - e. April 2013



- f. April 2014 (2 bulletins)
  - g. June 2014 (2 bulletins)
5. On or about February 3, 2014, the Registrar issued a Notice of Complaint against the Dealer for failing to comply with the all in price advertising requirements.
  6. On or about May 9, 2014, the Discipline Committee issued an Order pursuant to a negotiated resolution of the above mentioned Notice of Complaint. As per condition 2 of the Order, Poirier was required to complete the OMVIC certification course. As per condition 4 of the Order, the Dealer was required to ensure all future advertising complies with the Act and Standards of Business Practice, as may be amended from time to time.
  7. On or about July 21, 2014, Poirier successfully completed the OMVIC certification course, as required by the above mentioned Order.
  8. During an inspection on or about March 6, 2015, the following Dealer advertisements were found to be non-compliant with the all in price advertising requirements:
    - a. On or before January 9, 2015, an advertisement was published by or on behalf of the Dealer for a 2014 Chrysler Town and Country, Stock #18048, with a selling price of \$25,988. On or about January 22, 2015, the Dealer sold this vehicle and charged an additional \$502.50 in administration and OMVIC fees. As such, the advertised price was not all inclusive, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Moreover, by failing to produce advertisements which are compliant with the Act, the Dealer has breached the Discipline Committee Order, dated May 9, 2014. This is contrary to section 9 of the Code of Ethics. The Dealer has since refunded the purchaser the amount they were charged over their vehicle's advertised price.
    - b. On or before January 9, 2015, an advertisement was published by or on behalf of the Dealer for a 2014 Chrysler Town and Country, Stock #17978, with a selling price of \$25,988. On or about February 19, 2015, the Dealer sold this vehicle and charged an additional \$502.50 in administration and OMVIC fees. As such, the advertised price was not all inclusive, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Moreover, by failing to produce advertisements which are compliant with the Act, the Dealer has breached the Discipline Committee Order, dated May 9, 2014. This is contrary to section 9 of the Code of Ethics. The Dealer has since refunded the purchaser the amount they were charged over their vehicle's advertised price.
  9. On or before June 9, 2015, the Dealer displayed vehicles on the Dealer's lot which solely promoted a bi-weekly payment. This is contrary to section 61 of Regulation 17/05 of the *Consumer Protection Act, 2002*, as well as sections 4 and 9 of the Code of Ethics.
  10. On or before July, 30, 2015, advertisements were placed by or on behalf of the Dealer which solely promoted a bi-weekly payment. This is contrary to section 61 of Regulation 17/05 of the *Consumer Protection Act, 2002*, as well as sections 4 and 9 of the Code of Ethics.



11. The Dealer has since offered to ensure the General Manager successfully completes the OMVIC certification course within 90 days of the date of Discipline Committee Order.

By failing to comply with the following sections of the *Consumer Protection Act, 2002*, and *Motor Vehicle Dealers Act, 2002*:

***Consumer Protection Act, 2002:***

Regulation 17/05

61. Credit Advertising:

Any person who makes representations in respect of a credit agreement, or causes representations to be made in respect of a credit agreement, in an advertisement shall do so in accordance with this section, regardless of whether the representations are made orally, in writing or in any other form.

(2) An advertisement that offers fixed credit and discloses the interest rate payable by the borrower under the credit agreement or the amount of a payment to be made by the borrower to the lender in connection with the credit agreement shall also disclose the following information:

1. The annual percentage rate for the credit agreement.
2. The length of the term of the credit agreement.
3. If the advertisement is for a supplier credit agreement and applies to a specifically identified good or service,
  - i. the cash price of the good or service, and
  - ii. the cost of borrowing, unless,
    - A. the only element of the cost of borrowing is interest, or
    - B. the advertisement is broadcast on radio or television, displayed on a billboard or bus board or made through any other medium with similar time or space limitations.

***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 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 Poirier have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

- 4. 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.
- 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 \$5,500 within 90 days of the date of the Discipline Committee Order.
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 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.
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 Chair**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Poirier 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 \$5,500 within 90 days of the date of the Discipline Committee Order.



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 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.
3. The Dealer 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



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*Paul Burroughs, Chair*

