

Findings:

Mr. Jason Van Schoonhoven has breached the following sections of the Code of Ethics, ON Regulation 332/08:

Accountability:

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.

Mr. Jason Van Schoonhoven and the Dealer have breached the following section of the Code of Ethics, ON 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 unbecoming of a registrant.

DECISION AND REASONS

Introduction

This was a hearing 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"). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.

The hearing was convened on August 23, 2023 (the "Hearing") and held virtually using video conferencing with the consent of the parties.

The Allegations

The allegations against Number 7 Sales Limited, and Mr. Van Schoonhoven (collectively the "Registrants") were set out in a Notice of Complaint, dated February 28, 2023. The Notice of Complaint was entered as Exhibit 1 at the Hearing and is attached to these reasons as Appendix "A". The allegations set out in the Notice of Complaint were as follows:

During an inspection of the Dealer on or about November 17, 2022, it was discovered that since around August 2020, the Dealer had been employing Mr. Nguyen as the Dealer's Finance Manager, without the benefit of registration. This is contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics.

As the person in charge of the day-to-day activities of the Dealer, Mr. Van Schoonhoven has failed to ensure the Dealer conducts its business in compliance with the Code of Ethics and has therefore personally contravened sections 6 and 9 of the Code of Ethics.

At the outset of the Hearing, counsel for the Registrar, Mr. Rishi Nageshar, advised that discussions with the responding parties had resulted in an agreement which they intended to present.

Plea of the Registrants

The Registrant attended the Hearing without counsel. It was confirmed on the record that Mr. Van Schoonhoven was aware of his right to be represented, nonetheless, he wished to proceed without representation. The Registrants admitted all the allegations contained in the Notice of Complaint through their admissions in the Agreed Statement of Facts. A plea inquiry was conducted by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the admissions of the Registrants were voluntary, informed, and unequivocal.

Agreed Statement of Facts

The Agreed Statement of Facts (the "ASF")² which had been signed by the Registrants on June 8, 2023 & June 20, 2023, and the Registrar on June 20, 2023, was entered as Exhibit 2 at the Hearing. The ASF is attached to these reasons as Appendix "B". Mr. Nageshar on behalf of OMVIC, and the Registrants, took the Panel through the ASF.

Overview:

During those submissions, Mr. Nageshar highlighted that Mr. Kenny Nguyen was hired and was employed as the Dealer's Finance Manager during the relevant time. The Registrants failed to ensure Mr. Nguyen was registered in that capacity. This despite multiple OMVIC publications that reminded dealers of the requirement for all salespeople trading in vehicles are required to be registered³.

The Panel then sought and received advice from its Independent Legal Counsel, Ms Bernofsky, before rising to deliberate on the merits portion of the Hearing.

Decision of the Panel

Upon reconvening, the Panel stated it was accepting the ASF and was satisfied that the admissions made by the Registrants were sufficient to make findings of breaches against the Registrants as alleged in the Notice of Complaint. The Panel made findings against Number 7 Sales and Mr. Jason Van Schoonhoven. In reaching its decision the Panel relied exclusively on the Agreed Statement of Facts at Exhibit 2.

² Prior to the beginning of the Hearing, the anticipated exhibits were delivered to the Panel members electronically in the interests of hearing economy and on consent of the parties.

³ Agreed Statement of Facts, Exhibit 2, Appendix "B".

The Panel made the following findings:

By failing to ensure that Mr. Nguyen was registered with the Dealer, Mr. Jason Van Schoonhoven caused the Dealer to breach s. 4(3) of the *Motor Vehicle Dealers Act*, 2002 SO 2002, c 30, Sch B. By his omission, Mr. Schoonhoven breached the following section of the Code of Ethics, ON Regulation 332/08:

Accountability:

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.

The Panel found that this omission by the Registrants was unbecoming of a registrant. As such, Mr. Jason Van Schoonhoven and the Dealer have breached the following section of the Code of Ethics, ON 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.

Penalty

The Panel was presented with a Joint Submission on Penalty (the "JSP") which was entered as Exhibit 3 and is attached to these reasons as Appendix "C". The terms of the JSP are that:

1. The Dealer agrees to pay a fine in the amount of \$3,000 no later than **September 30, 2023.**
2. Van Schoonhoven agrees to successfully complete the MVDA Key Elements course, no later than **September 30, 2023.**
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **September 30, 2023.** 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.

4. Van Schoonhoven and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

In submissions, Mr. Nageshar, on behalf of the Registrar, among other things, drew our attention to a recent decision⁴ of the Discipline Committee which had similar facts and findings and noted that the penalty in that matter was the same.

Mr. Van Schoonhoven in his submissions drew the Panel's attention to the date of the omission, which was during the period when COVID-19 caused dealers to need to operate remotely. He also emphasized portions of the agreed facts detailing the remedial steps the Dealer proactively took to prevent the issue from recurring.

After calling on both parties to make submissions on penalty, the Panel sought and received advice from Ms Bernofsky. Ms Bernofsky advised that the Panel could consider whether the penalty orders would serve as a general and/or specific deterrent and whether they provided any opportunity for remediation or rehabilitation on the part of the Registrants. In addition, Ms. Bernofsky reminded the Panel that it should not depart from the Joint Submission on Penalty unless it found the proposed penalty to be uninged to the extent that it could bring the discipline process into disrepute.

Penalty Decision and Reasons

The Panel accepted the JSP and made an order consistent with its terms before the conclusion of the Hearing. The JSP does not pose any risk to the publicly perceived integrity of the Tribunal. The Panel had no grounds to consider rejecting it.

The Parties had come to a resolution which contemplated the relevant objectives on penalty including public protection, remediation/rehabilitation and specific deterrence for the Registrants, and general deterrence to others in the profession. Additionally, the JSP's terms are not inconsistent with other orders made by the Discipline Committee in similar circumstances. Although not binding on this Panel, we acknowledge that

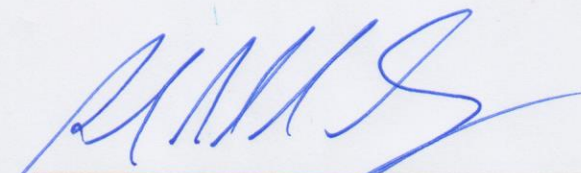
⁴ OMVIC v. Niagara Motors LTD and David Dick. February 25, 2022

authority cited by counsel for OMVIC, and we agree that it demonstrated that the proposed penalty was indeed consistent with a comparable, prior, decision of this Tribunal.

On the basis of the foregoing, the Panel made the following order:

1. The Dealer is to pay a fine in the amount of \$3,000 no later than **September 30, 2023**.
2. Van Schoonhoven is to successfully complete the MVDA Key Elements course, no later than **September 30, 2023**.
3. The Dealer is to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **September 30, 2023**. 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.
4. Van Schoonhoven and the Dealer are to comply with the Act and Standards of Business Practice, as may be amended from time to time.

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: August 30, 2023

Panel Members:

Mr. Robert MacKay
Mr. Wally Pietraszko
Mr. Joe Wade

Appendix "A"
IN THE MATTER OF
THE VIOLATION OF THE MOTOR VEHICLE DEALERS ACT, 2002 AND CODE OF
ETHICS

TO: Number 7 Sales Ltd o/a
Number 7 Honda
5555 Highway 7 West
Vaughan, ON L4L1T5

AND TO: Jason Van Schoonhoven
76 Woodroof Crescent
Aurora, ON L4G7H4

NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the Motor Vehicle Dealers Act, 2002, (the "Act"), the Registrar is issuing a Notice of Complaint against NUMBER 7 SALES LIMITED o/a NUMBER 7 HONDA and JASON VAN SCHOONHOVEN for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the Motor Vehicle Dealers Act, 2002. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease.

NUMBER 7 SALES LIMITED o/a NUMBER 7 HONDA and JASON VAN SCHOONHOVEN have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

Background:

1. Number 7 Sales Ltd o/a Number 7 Honda (the "Dealer") was first registered as a motor vehicle dealer in or around June 1983.
2. Jason Van Schoonhoven ("Van Schoonhoven") was first registered as a motor vehicle salesperson in or around January 1994. Since on or about December 22, 2020, Van Schoonhoven has been the person in charge of the day-to-day activities of the Dealer.
3. Kenny Nguyen ("Nguyen") was registered as a motor vehicle salesperson from on or about October 24, 2019, to on or about November 27, 2020. During this period Nguyen was never registered in this capacity at the Dealer.
4. On or about April 5, 2021, Van Schoonhoven successfully completed the Automotive Certification course (the "Course"). Included in the Course materials is dealers' requirement to ensure all sales staff employed by the dealer are registered as such under the Act.

OMVIC publications: unregistered salespeople:

5. Since the Act was proclaimed, OMVIC has issued the following publications reminding dealers of the requirement for all salespeople trading in vehicles on behalf of a dealer to be registered under the Act:
 - a. Dealer Standard: Spring 2010
 - b. Dealer bulletin: September 2013
 - c. Dealer Standard: Fall 2013
 - d. Dealer bulletin: May 2014
 - e. Dealer Standard: 2014: Issue 3
 - f. Dealer Standard: 2014: Issue 4
 - g. Dealer bulletin: March 2019

These publications continue to be available on OMVIC's website.

Retaining an unregistered salesperson:

6. During an inspection of the Dealer on or about November 17, 2022, it was discovered that since around August 2020, the Dealer had been employing Nguyen as the Dealer's Finance Manager, without the benefit of registration. This is contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics.
7. On or about November 24, 2022, Nguyen applied for registration as a salesperson at the Dealer.

8. On or about December 30, 2022, Nguyen was granted registration as a salesperson at the Dealer.

Van Schoonhoven's violations of the Code of Ethics

9. As the person in charge of the day-to-day activities of the Dealer, Van Schoonhoven has failed to ensure the Dealer conducts its business in compliance with the Code of Ethics and has therefore personally contravened sections 6 and 9 of the Code of Ethics.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act, R.S.O 1990 c.s.22*, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

The Rules of Practice of the Discipline Committee will apply, copy attached. A Notice of Hearing and Book of Disclosure will be provided in accordance with the Rules of Practice of the Discipline Committee.

Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE COMMITTEE

This is to serve notice that the Registrar shall make application for its cost pursuant to Rule 13 of the Rules of Practice

Appendix "B"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

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 -

NUMBER 7 SALES LIMITED o/a NUMBER 7 HONDA

- and -

JASON VAN SCHOONHOVEN

AGREED STATEMENT OF FACTS

Number 7 Sales Ltd o/a Number 7 Honda and Jason Van Schoonhoven have contravened the following:

Section 9(1) of the Code of Ethics, Ontario Regulation 332/08

Jason Van Schoonhoven has contravened the following:

6(2) of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

Background:

10. Number 7 Sales Ltd o/a Number 7 Honda (the "Dealer") was first registered as a motor vehicle dealer in or around June 1983.
11. Jason Van Schoonhoven ("Van Schoonhoven") was first registered as a motor vehicle salesperson in or around January 1994. Since on or about December 22, 2020, Van Schoonhoven has been the person in charge of the day-to-day activities of the Dealer.
12. Kenny Nguyen ("Nguyen") was registered as a motor vehicle salesperson from on or about October 24, 2019, to on or about November 27, 2020. During this period Nguyen was never registered in this capacity at the Dealer.

13. On or about April 5, 2021, Van Schoonhoven successfully completed the Automotive Certification course (the "Course"). Included in the Course materials is dealers' requirement to ensure all sales staff employed by the dealer are registered as such under the Act.

OMVIC publications: unregistered salespeople:

14. Since the Act was proclaimed, OMVIC has issued the following publications reminding dealers of the requirement for all salespeople trading in vehicles on behalf of a dealer to be registered under the Act:
 - h. Dealer Standard: Spring 2010
 - i. Dealer bulletin: September 2013
 - j. Dealer Standard: Fall 2013
 - k. Dealer bulletin: May 2014
 - l. Dealer Standard: 2014: Issue 3
 - m. Dealer Standard: 2014: Issue 4
 - n. Dealer bulletin: March 2019

These publications continue to be available on OMVIC's website.

Retaining an unregistered salesperson:

15. During an inspection of the Dealer on or about November 17, 2022, it was discovered that since around August 2020, the Dealer had been employing Nguyen as the Dealer's Finance Manager, without the benefit of registration. This is contrary to section 4(3) of the Act, as well as section 9(1) of the Code of Ethics.
16. On or about November 24, 2022, Nguyen applied for registration as a salesperson at the Dealer.
17. On or about December 30, 2022, Nguyen was granted registration as a salesperson at the Dealer.
18. The Dealer has since advised OMVIC, moving forward, a monthly verification process has been implemented to ensure all salespeople employed by the Dealer are registered to do so.

Van Schoonhoven's violations of the Code of Ethics

19. As the person in charge of the day-to-day activities of the Dealer, Van Schoonhoven has failed to ensure the Dealer conducts its business in compliance with the Code of Ethics and has therefore personally contravened sections 6(2) and 9(1) of the Code of Ethics.

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

Unregistered salesperson

4(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

It is thereby agreed that the Dealer and Van Schoonhoven have breached the following section of the Code of Ethics, ON Regulation 332/08

Accountability:

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 Van Schoonhoven and the Dealer have contravened the following section of the Code of Ethics, 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.

By signature below, I acknowledge that I have read, understand, and agree with the facts outlined herein and that I exercised my right to be represented by Counsel or agent in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2023

(Please print)

(signature)

I have the authority to bind:
NUMBER 7 SALES LIMITED o/a NUMBER 7 HONDA

By signature below, I acknowledge that I have read, understand, and agree with the facts outlined herein and that I exercised my right to be represented by Counsel or agent in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2023

JASON VAN SCHOONHOVEN (signature)

By signature below the Registrar agrees, acknowledges, and understands that the facts of this matter are as set out by this Agreed Statement of Facts.

DATED AT _____ THIS _____ DAY OF _____, 2023

Maureen Harquail
Registrar, *Motor Vehicle Dealers Act, 2002*

Appendix "C"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY
COUNCIL

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 -

NUMBER 7 SALES LIMITED o/a NUMBER 7 HONDA

- and -

JASON VAN SCHOONHOVEN

JOINT SUBMISSION ON PENALTY:

1. The Dealer agrees to pay a fine in the amount of \$3,000 no later than **September 30, 2023.**
2. Van Schoonhoven agrees to successfully complete the MVDA Key Elements course, no later than **September 30, 2023.**
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **September 30, 2023.** 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.
4. Van Schoonhoven and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

DATED AT _____ THIS _____ DAY OF _____, 2023

(signature)

I have the authority to bind the corporation:
NUMBER 7 SALES LIMITED o/a NUMBER 7 HONDA

DATED AT _____ THIS _____ DAY OF _____, 2023

JASON VAN SCHOONHOVEN (signature)

DATED AT _____ THIS _____ DAY OF _____, 2023

Maureen Harquail
Registrar, *Motor Vehicle Dealers Act, 2002*