

## 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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1604549 ONTARIO LTD. o/a WEST TORONTO KIA

- AND -

GABRIEL DA SILVA

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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:** November 20, 2014

**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 \$4,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Da Silva is ordered to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this.
4. The Dealer shall ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

5. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* 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. 1604549 Ontario LTD. o/a West Toronto Kia ("the "Dealer") was first registered as a motor vehicle dealer in or around February 2004. Gabriel Da Silva ("Da Silva") was first registered as a motor vehicle salesperson in or around January 1989. At all material times, Da Silva was an officer and director 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 Dealers Act, 2002* ("the Act") came into effect. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices in advertisements, and the requirement to disclose former daily rental vehicles in advertisements.
3. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
4. In or around January 2010, OMVIC issued a second bulletin concerning advertising "As Is" vehicles. This bulletin also reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
5. By email dated January 27, 2010, a representative of the Registrar reminded the Dealer of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08, as well as section 4 and 9 of the Code of Ethics.
6. By letter dated April 9, 2010, OMVIC reminded the Dealer of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08, as well as section 4 and 9 of the Code of Ethics.

7. In or around April 2010, OMVIC issued a bulletin advising that 75 dealers had recently been charged with various advertising offences under the ACT. The charges included failure to publish the all-inclusive prices of vehicles, as required by sub section 36(7) of Regulation 333/08.
8. In or around April 2010, OMVIC issued a second bulletin reminding dealer of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
9. In the summer of 2010, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08,
10. In the spring of 2011, OMVIC issued a Dealer Standard publication which reminded dealer of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
11. By email dated January 19, 2011, a representative of the Registrar reminded the Dealer of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08, as well as section 4 and 9 of the Code of Ethics.
12. In the spring of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
13. By email dated December 5, 2011, a representative of the Registrar reminded the Dealer of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08, as well as section 4 and 9 of the Code of Ethics.
14. In or around February of 2012, OMVIC issued a bulletin reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 3333/08.
15. In or around August 2012, OMVIC issued a bulletin reminding dealers of various advertising obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
16. In the winter of 2013, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
17. In the spring of 2013, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.

18. In or around April 2013, OMVIC issued a bulletin reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
19. In the summer of 2013, OMVIC issued a Dealer Standard publication, advising dealers of recent discipline decisions, including a decision for failure to publish the all-inclusive prices of vehicles, as required by sub section 36(7) of Regulation 333/08.
20. On or before November 22, 2013, the Dealer advertised a 2013 Kia Optima (KNAGM4A7XD5343376) with a selling price of \$25,795. On or about November 22, 2013, the Dealer sold this vehicle with \$733 in additional fees. As such, this advertisement did not feature an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently provided the consumer with a refund for the amount paid in additional fees.
21. On or before November 29, 2013, the Dealer advertised a 2009 Kia Sedona (VIN KNDMB233096289064). This vehicle has a \$7,450 accident repair history. In the advertisement, the Dealer declared this vehicle as "accident free". This is misleading, contrary to section 4 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with confirmation that the consumer was provided disclosure at the time of sale.
22. On or before December 2, 2013, the dealer advertised a 2013 Kia Sorento (VIN 5XYKUCA6XDG389442) with a selling price of \$27,795. On or about December 2, 2013, the Dealer sold this vehicle with \$443 in additional fees. As such, this advertisement did not feature an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently provided the consumer with a refund for the amount paid in additional fees.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

### Advertising

**36. (1)** A registered motor vehicle dealer to whom this section applies shall ensure that any advertisement placed by the dealer complies with this section.

**(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 Da Silva has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. 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.

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 \$4,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Da Silva agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this.
4. The Dealer agrees to ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Da Silva 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 \$4,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.

2. Da Silva is ordered to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
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Ontario Motor Vehicle Industry Council  
Discipline Committee



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Catherine Poultney, Chair