

DISCIPLINE DECISION

REVIEWING PANEL: Joe Wade, Registrant
Greg Flude, Public Member
Nelson Caetano, Registrant

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-

1741177 ONTARIO INC. o/a CHATHAM MAZDA

-AND-

ADAM LALLY

-AND-

JOSHUA HINCH

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing Panel has 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: January 25, 2024

Findings:

1741177 Ontario Inc o/a Chatham Mazda has breached the following:

Sections 4(2) and 9(1) of the Code of Ethics, Ontario Regulation 332/08

Adam Lally and Joshua Hinch have breached the following:

Sections 6(2) and 9(1) of the Code of Ethics, Ontario Regulation 332/08

Reasons for Decision

Introduction

This matter proceeded before the Discipline Committee and the Appeals Committee 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.

Background:

1. 1741177 Ontario Inc o/a Chatham Mazda (the "Dealer") was first registered as a motor vehicle dealer in or around May 2009.
2. Adam Lally ("Lally") was first registered as a motor vehicle salesperson in or around May 2004. At all material times, Lally has been an Officer, as well as a person in charge of the day-to-day activities of the Dealer.
3. Joshua Hinch ("Hinch") was first registered as a motor vehicle salesperson in or around June 2017. Between in or around August 2020 and in or around November 2022, Hinch was employed in this capacity by the Dealer.
4. Lally successfully completed the Automotive Certification course (the "Course") on or about September 25, 2012.
5. Hinch successfully completed the Course on or about April 24, 2017.
6. Included in the Course materials are dealers' advertising obligations, including but not limited to, all-in advertised vehicle pricing ("all-in pricing").

OMVIC registrant education re: all-in pricing

7. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule A. Educational materials continue to be available on OMVIC's website.

Direct correspondence with Dealer:

8. By email dated November 19, 2020, Lally was reminded of the Dealer's all-in pricing obligations.

Dealer's Contravention of the Code of Ethics

9. On or before June 8, 2022, the Dealer advertised a 2021 Mazda CX-30 with a selling price of \$35,995 plus taxes and licensing fees.
10. On or about June 8, 2022, an OMVIC representative made inquiries about the subject vehicle, while posing as a member of the public.
11. Hinch, on behalf of the Dealer, advised the OMVIC representative that the above referenced advertised vehicle price was not inclusive of the following additional fees:
 - a. "OnRoads Protect" \$499
 - b. OMVIC fee \$10

12. Hinch did not indicate these additional fees were optional.

13. As such, the advertised price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4 and 9 of the Code of Ethics.

Lally's contraventions of the Code of Ethics

14. Lally failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics and thus personally contravened sections 6 and 9 of the Code of Ethics.

Hinch's contraventions of the Code of Ethics

15. Hinch failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics and thus personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002 O. Reg. 333/08*:

36. Advertising:

(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 has contravened the following section of the Code of Ethics:

Disclosure and marketing

4. (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.

It is thereby agreed that Lally and Hinch have contravened the following section of the Code of Ethics:

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 the Dealer, Lally and Hinch have contravened the following section of the Code of Ethics:

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.

Reasons for Decision

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer has breached subsections 4(2) and 9(1) of the OMVIC Code of Ethics, and Lally and Hinch have breached subsections 6(2) and 9(1), as set out in Ontario Regulation 332/08, made under the Motor Vehicle Dealers Act, 2002.

This Reviewing Panel therefore agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500 no later than **March 31, 2024.**
2. Adam Lally is ordered to successfully complete the MVDA Key Elements course no later than **March 31, 2024**
3. Joshua Hinch is ordered to successfully complete the MVDA KEY Elements course no later than **March 31, 2024.**
4. The Dealer is ordered 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 **March 31, 2024.** 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.
5. The Dealer, Adam Lally, and Joshua Hinch agree to comply with the Act and the Code of Ethics under O. Reg. 332/08.

Ontario Motor Vehicle Industry Council
Discipline Committee

Dated: February 16, 2024



Joe Wade, *Discipline Committee Chair*

On behalf of
D. Gregory Flude, *Public Member*
Nelson Caetano, *Member*

