



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 -

1694342 ONTARIO INC o/a MAC MOTOR SALES

- AND -

JEFFREY MCHARDY

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: September 19, 2012

Findings: Breach of Sections 5, 7 and 9 of the Code of Ethics

Order:

1. McHardy agrees to pay a fine in the amount of \$3,000. The fine is payable to the Ontario Motor Vehicle Industry Council. The amount of \$1,500 is due no later than one week from the date of the Order and the remainder is due no later than twelve months from the date of the Order.
2. McHardy agrees to enroll in, and successfully complete, within twelve months from the date of the Order, the 'Automotive Certification Course' offered by the Automotive Business School of Canada at Georgian College. McHardy will be solely responsible for the payment of any fees or other costs associated with completion of the course.
3. McHardy agrees to comply with the Act, regulations made thereunder, 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. MAC Motor Sales (the "Dealer") was first registered as a motor vehicle dealer in or around August 2010. Jeffrey McHardy ("McHardy") was first registered as a motor vehicle salesperson in or around October 1992. At all material times, McHardy was an officer and director of the corporation.
2. During an inspection on or about November 1, 2010, a representative of the Registrar discussed with McHardy, on behalf of the Dealer, the disclosure requirements for a wholesale dealer.
3. On or about March 10 2011, a registered salesperson, other than McHardy, purchased on behalf of the Dealer a 2000 Chrysler Neon (VIN C3ES46C6YD572644). This vehicle has an accident repair history. On or about March 17 2011, this vehicle was sold on behalf of the Dealer without providing the purchaser with written disclosure of the vehicle's accident history.
4. On or about November 8 2011, a registered salesperson, other than McHardy, purchased on behalf of the Dealer a 2005 Honda Element (VIN 5J6YH28685L801131) declared as "accident repair". This vehicle has an accident repair history. On or about November 9 2011, this vehicle was sold on behalf of the Dealer without providing the purchaser with written disclosure of the vehicle's accident history.
5. MAC Motor Sales undertook to surrender its registration as a motor vehicle dealer within thirty [30] days from the date of this Discipline Committee Order (the 'Order') and to not apply for registration as a motor vehicle dealer in the future; and,
6. McHardy undertook to not apply for registration as a motor vehicle dealer for a period of at least five [5] years from the date of this Order.



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

Regulation 333/08:

42. Additional information in contracts of sales and leases

19. If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicles dealer knew the total costs, a statement of the total costs.

It is thereby agreed that the Dealer and McHardy have breached the following sections of the Code of Ethics, as set out in Ontario Regulation 332/08:

5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure that the following information is disclosed in the contract:

16. If the total costs of repairs to fix the damage caused to the vehicle by an incident exceed \$3,000, a statement to that effect and if the dealer knew the total costs, a statement of the total costs.

7. A registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law.

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. McHardy agrees to pay a fine in the amount of \$3,000. The fine is payable to the Ontario Motor Vehicle Industry Council. The amount of \$1,500 is due no later than one week from the date of the Order and the remainder is due no later than twelve months from the date of the Order.



2. McHardy agrees to enroll in, and successfully complete, within twelve months from the date of the Order, the 'Automotive Certification Course offered by the Automotive Business School of Canada at Georgian College. McHardy will be solely responsible for the payment of any fees or other costs associated with completion of the course.
3. McHardy agrees to comply with the Act, regulations made thereunder, 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 McHardy breached subsections 5, 7 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:

4. McHardy agrees to pay a fine in the amount of \$3,000. The fine is payable to the Ontario Motor Vehicle Industry Council. The amount of \$1,500 is due no later than one week from the date of the Order and the remainder is due no later than twelve months from the date of the Order.
5. McHardy agrees to enroll in, and successfully complete, within twelve months from the date of the Order, the 'Automotive Certification Course offered by the Automotive Business School of Canada at Georgian College. McHardy will be solely responsible for the payment of any fees or other costs associated with completion of the course.
6. McHardy agrees to comply with the Act, regulations made thereunder, and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee

Catherine Poultney, Chair