

## 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 -

1496333 ONTARIO INC. o/a DONNELLY KIA / DONNELLY USED AUTOPLEX

- AND -

DAN MCKENNA

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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:** April 18, 2016

**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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. McKenna is ordered to successfully 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. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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. The Dealer and McKenna 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. 1496333 Ontario Inc. o/a Donnelly Kia/Donnelly Used Autoplex (the "Dealer") was first registered as a motor vehicle dealer in or around February 2002. Dan McKenna ("McKenna") was first registered as a motor vehicle salesperson in or around August 1990. At all material times, McKenna was the sole officer and director of the Dealer.

### **Advertising Compliance**

#### **OMVIC publications:**

2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the changes that would take place when the Motor Vehicle Dealers Act, 2002 (the "Act") came into effect, such as the requirement to disclose a vehicle's former daily rental history in advertising.
3. The following Dealer Standard publications also reminded dealers of their disclosure and/or advertising obligations:
  - a) Summer 2010
  - b) Spring 2011
  - c) Summer 2012
  - d) Fall 2013
4. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their disclosure and/or advertising obligations:
  - a) April 2010
  - b) September 2012

#### **Direct Correspondence with Dealer:**

5. During an inspection on or about June 4 2013, a representative of the Registrar reminded the Dealer of its obligation to disclose daily rentals in a clear, comprehensible and prominent manner in all advertisements.



### **Non-Disclosure – Advertising**

6. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Ford Escape (VIN 1FMCU9GX7FUA12412). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
7. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Chrysler Town & Country Touring (VIN 2C4RC1BG8FR503529). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
8. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Mitsubishi Outlander ES (VIN J4AZ2A30FZ600689). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
9. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Mitsubishi Outlander ES (VIN J4AZ2A38FZ600505). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
10. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Mitsubishi Outlander ES (VIN J4AZ2A38FZ600682). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
11. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Kia Rio LX (VIN KNADM5A31F6972916). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
12. On or before June 30, 2015, an advertisement was placed by or on behalf of the Dealer for a 2015 Kia Rio LX (VIN KNADM5A36F6968375). This advertisement failed to disclose the vehicle's previous daily rental history, contrary to sections 36 (5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

### **All-In Pricing**

13. On or before June 7, 2015, an advertisement was placed by or on behalf of the Dealer for a 2014 Kia Sorento, Stock #KUR1783 and VIN 5XYKTCA6XEG474463 with an advertised selling price of \$22,987. On or about June 9, 2015, representatives of the Registrar attended the Dealer while posing as members of the public. The Dealer then attempted to sell this vehicle for a total of \$749.00 above the advertised selling price, by adding an additional \$699.00 administration fee as well as a \$50.00 fuel fee. As such the advertised selling price was not all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.



By failing to comply with the following sections of the *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 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. O. Reg. 333/08, s. 36 (7).

36 (5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine. O. Reg. 333/08, s.36 (5).

It is thereby agreed that the Dealer 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.

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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. McKenna agrees to successfully 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. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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. The Dealer and McKenna agree 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 McKenna 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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. McKenna is ordered to successfully 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. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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. The Dealer and McKenna 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*

