

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 -

1561604 ONTARIO INC. o/a CANADIAN AUTO SALES

- AND -

BRIAN SWAN

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 22, 2016

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2500 within 90 days of the date of the Discipline Committee Order.
2. Swan is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order. Swan has the option to complete the course in the city of Ottawa.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC certification course (the "course"). Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. 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. The Dealer and Swan shall agree to 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. 1561604 Ontario Inc o/a Canadian Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in or around October 2004. Brian Swan ("Swan") was first registered as a motor vehicle salesperson in or around October 2004. At all material times, Swan was the sole officer and director, as well as the Person in Charge, of the Dealer.
2. On or about August 24, 2004, the Registrar issued a Notice of Proposal to refuse the registrations of the Dealer and Swan.
3. On or about October 19, 2004, the aforementioned Proposal was settled on consent Order (the "Order"). Pursuant to condition 20 of said Order, the Dealer agreed it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells.

OMVIC publications:

4. 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 provide written disclosure, of a vehicle's history and condition, such accident repair histories, previous daily rental histories, and out of province registrations ("disclosure").
5. The following Dealer Standard publications also reminded dealers of their disclosure obligations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Summer 2013
 - e. Fall 2013
6. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their disclosure obligations:
 - a. January 2010
 - b. September 2012
 - c. December 2013



- d. December 2014 (disclosure webinar)
- 7. Moreover, in the summer of 2010 OMVIC issued a Dealer Standard publication as well as a bulletin reminding dealers of their credit and lease disclosure obligations.

Direct correspondence with Dealer:

- 8. During an inspection on or about February 6, 2009, a representative of the Registrar reminded Swan, on behalf of the Dealer, of the Dealer's obligation to ensure all lease agreements contain all required information as per section 74 of Regulation 17\05 of the *Consumer Protection Act, 2002* ("CPA").
- 9. During an inspection on or about August 18, 2011, a representative of the Registrar reminded Swan, on behalf of the Dealer, of the Dealer's obligation to ensure all credit agreements contain all required information as per section 63 of Regulation 17\05 of the CPA. Swan was also reminded of the Dealer's obligation to provide purchasers with written disclosure on the Bill of Sale of a vehicle's previous out of province registration, including the jurisdiction[s] in which the vehicle was registered.
- 10. By letter dated August 14, 2014, a representative of the Registrar reminded Swan, on behalf of the Dealer, of the Dealer's obligation to provide purchasers with written disclosure on the Bill of Sale of a vehicle's previous out of province registration, including the jurisdiction[s] in which the vehicle was registered.

Dealer non-compliance:

- 11. During an inspection on or about September 29, 2015, a representative of the Registrar found the following issues:
 - a. On or about July 5, 2015, Swan purchased a 2007 Dodge Ram 2500 (VIN 1D7KS28C97J546058). At the time of purchase, this vehicle was declared as having a \$7,991 accident history, as well as being previously registered in Quebec. On or about June 3, 2015, Swan sold this vehicle on behalf of the Dealer without providing the purchaser with written disclosure of the vehicle's previous out of province registration. This is contrary to sections 42(22), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, in failing to provide this disclosure in writing to the purchaser, the Dealer has breached condition 20 of the Order. This is contrary to section 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle's history.
 - b. On or about August 13, 2015, Swan sold a 2008 Ford Ranger (VIN 1FTZR45E98PB17426) on behalf of the Dealer. This vehicle has a \$3,185 accident history and the Dealer failed to provide the purchaser with written disclosure of this information. This is contrary to sections 42(19), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, in failing to provide this disclosure in writing to the purchaser, the Dealer has breached condition 20 of the Order. This is contrary to section 9 of the Code of Ethics. In addition to this, the Bill of Sale fails to indicate the terms of borrowing, despite this vehicle being financed. This is contrary to section 63 of Regulation



17/05 of the CPA, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle's history and terms of borrowing.

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

Consumer Protection Act, 2002 (Regulation 17/05):

63. (1) The initial disclosure statement for a credit agreement for fixed credit shall be in writing and, for the purpose of subsection 79 (2) of the Act, shall disclose the following information, in addition to the information required under subsection 78 (1) of the Act:

0.1 The outstanding principal balance as at the beginning of the term of the credit agreement.

1. The total of the advances to be made to the borrower.
2. If more than one advance is to be made to the borrower, the nature, timing and amount of each advance.
3. The length of the term of the credit agreement.
4. The cost of borrowing.
5. The length of the term of the amortization period, if different from the length of the term of the credit agreement.
6. The interest rate payable by the borrower under the credit agreement, if the rate will not change during the term of the credit agreement.
7. If the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement,
 - i. the initial interest rate payable by the borrower under the credit agreement,
 - ii. the manner of determining the annual interest rate at any time during the term of the credit agreement, and
 - iii. unless the amount of the scheduled payments is adjusted to account for changes in the interest rate, the lowest interest rate at which the scheduled payments would not cover the interest that would accrue between consecutive scheduled payments based on the outstanding principal balance as at the beginning of the term of the credit agreement.
8. The date on which interest begins to accrue under the credit agreement.
9. The circumstances under which interest is compounded under the credit agreement.
10. For each element of the cost of borrowing, other than interest, the nature of the element and amount payable by the borrower.
11. The details with respect to grace periods under the credit agreement.
12. The annual percentage rate for the credit agreement.



13. Subject to subsection (2), the optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate any optional service of a continuing nature and the manner of exercising that right.
14. The total of all payments the borrower is required to make in connection with the credit agreement and the timing and amount of each payment, including, without limitation, any down payment, trade-in allowance, balloon payment and final payment.
15. If the credit agreement does not require the borrower to make scheduled payments,
- i. the circumstances under which the outstanding balance or a portion of it is required to be paid by the borrower, or
 - ii. the provisions of the credit agreement that set out those circumstances.
16. The method used to apply each payment by the borrower against the accumulated cost of borrowing and against the outstanding principal balance.
17. The prepayment rights, charges and penalties that apply to the credit agreement.
18. The method of calculating the amount that the lender is required to refund or credit to the borrower under subsection 76 (2) of the Act and section 60 of this Regulation, if the borrower prepays the full outstanding balance under the credit agreement.
19. The default charges under the credit agreement.
20. If the borrower is giving a security interest in personal property to secure the borrower's indebtedness under the credit agreement, a description of the property that will be subject to the security interest.
21. If the credit agreement requires the borrower to purchase insurance,
- i. that the borrower may purchase the insurance from any insurer who may lawfully provide that type of insurance and may purchase the insurance directly from the insurer or through an agent of the borrower's choice, and
 - ii. if the credit agreement gives the lender the following right, that despite subparagraph i, the lender has the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

Motor Vehicle Dealers Act, 2002 (Regulation 333/08)

42. Additional information in contracts of sale 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 vehicle dealer knew the total costs, a statement of the total costs.
22. If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the Highway Traffic Act or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.



25. Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

Moreover, in failing to comply with the following condition of the Order, it is thereby agreed that the Dealer has breached section 9 of the Code of Ethics:

20. The Dealer and Salesperson agree that they are under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles he sells to his purchasers. Purchasers include both retail and wholesale buyers. Material facts such as, but not limited to salvage, previous salvage, accidented and repaired, theft recovery, previous taxi cab, previous police car, previous daily rental write off, unibody damage, frame damage and any other material fact that may affect one's decision whether or not to purchase said vehicle. The Dealer and Salesperson agree to make reasonable efforts to research the history of all the Dealer's vehicles prior to sale to ensure all material facts are disclosed. The Dealer and Salesperson agree that should any information come to light which the Registrar deems to be a material fact concerning a vehicle the Dealer has sold, the Dealer will comply with all reasonable requests made by the Registrar to provide compensation to the purchaser.

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

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. The Dealer agrees to pay a fine in the amount of \$2500 within 90 days of the date of the Discipline Committee Order.
2. Swan agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order. In Ottawa.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC certification course (the "course"). Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. 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. The Dealer and Swan 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 Longman 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 \$2500 within 90 days of the date of the Discipline Committee Order.
2. Swan is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order. Swan has the option to complete the course in the city of Ottawa.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC certification course (the "course"). Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. 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. The Dealer and Swan shall agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

