

## 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 -

AUTODROMO INC. o/a ALFA MOTORSPORTS

- AND -

VITO D'ANGELO

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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:** October 7, 2015

**Findings:** Breach of Sections 3, 4 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$6,000 within 90 days of the date of the Discipline Committee Order.
2. D'Angelo is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete 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 of be 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 is ordered 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. Autodromo Inc o/a Alfa Motorsports (the "Dealer") was first registered as a motor vehicle dealer in or around November 1995. Vito D'Angelo ("D'Angelo") was first registered as a motor vehicle salesperson in or around July 1988. At all material times, D'Angelo was an officer and the Person in Charge of the Dealer.

### **OMVIC publications:**

2. In or around November 2010, OMVIC issued a bulletin advised Dealers as to where they could obtain information with respect to their obligations when selling vehicles on consignment.

### **Direct correspondence with Dealer:**

3. During an inspection on or about May 3, 2011 a representative of the Registrar discussed with D'Angelo, on behalf of the Dealer, the requirement to use a trust account for all consignment sales. Material fact disclosure was also discussed at this time.

### **Dealer non-compliance:**

4. During an inspection on or about October 2, 2014, the following non-compliance issues were discovered:
5. On or about May 5, 2014, the Dealer sold a 2010 Lamborghini Gallardo (VIN ZHWGC5AUOALA09036) on consignment on behalf of a private individual. Prior to compensating said individual, the Dealer failed to remit the proceeds from the sale into a trust account. This is contrary to section 58(5) of Regulation 333/08, as well as sections 3 and 9 of the Code of Ethics.
6. On or about June 21, 2014, the Dealer sold a 2008 Lamborghini Gallardo (VIN ZHWGC22N68LA05766) on consignment on behalf of a private individual. Prior to compensating said individual, the Dealer failed to remit the proceeds from the sale into a trust account. This is contrary to section 58(5) of Regulation 333/08, as well as sections 3 and 9 of the Code of Ethics.
7. On or before October 30, 2014, advertisements were placed by or on behalf of the Dealer which failed to indicate the vehicles being promoted were being sold on



consignment. This is contrary to sections 45(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

8. Since the October 2, 2014 inspection, the Dealer has corrected the aforementioned compliance issues.

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

45. Consignment sales:

(7) When the motor vehicle is offered for sale, the registered motor vehicle dealer shall ensure it is clearly indicated, in a manner in which it is likely to be noticed, that the vehicle is being sold on a consignment basis.

58. Trust Accounts:

(5) For the purposes of clause 25 (b) of the Act, if a registered motor vehicle dealer receives amounts from a purchaser towards the purchase of a motor vehicle being sold on consignment and if subsection 45 (4) of this Regulation applies to the sale, the dealer shall hold the amounts in trust until the purchase is concluded.

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

3. A registrant shall be financially responsible in carrying on business.
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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. D'Angelo agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete 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 agrees 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 D'Angelo breached subsections 3, 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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. D'Angelo is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete 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 of be 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 is ordered 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



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Catherine Poultney, Chair

