



## 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 -

ABDUL POPAL o/a THE BEST FINE USED CAR

-AND-

ALI POPAL

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### Reasons for Decision

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002.

The Registrar was represented by Jane Samler, and the respondents, Abdul Popal o/a The Best Fine Used Car, and Ali Popal, represented their own interests. The Panel consisted of Keith Cooper (Chair), Paul Burroughs (Vice-Chair), and Stuart Sherman (Vice-Chair). Luisa Ritacca attended as Independent Legal Counsel to the Panel.

The hearing commenced with opening statements from the Registrar, who then proceeded to introduce the Complaint initiating the proceedings herein, as well as the accompanying Book of Documents which contained the particulars of the Registrar's case. Ms. Samler called and examined four witnesses, which the Respondents had the opportunity to cross-examine although they declined to do so.

Upon completion of the noted testimony, the Respondents indicated to the Panel that they did not believe they had been properly served, and therefore required more time to make their case. The Respondents then requested an adjournment for two weeks. The Panel invited submissions from both parties on the adjournment motion and retired to consider same. Following review of the submissions, the Panel indicated to the parties that we had accepted that service of the Complaint and Book of Documents was properly effected upon the Respondents. The Panel also indicated that due to an abundance of caution we were prepared to grant the adjournment so as not to potentially prejudice the Respondent's case. The Panel invited submissions from Ms. Samler on this matter, who requested costs be awarded to the Registrar in the event of an adjournment. The Respondents then requested additional time to consider their adjournment motion.



During a break both parties met to consider the matter and, upon recommencing the proceedings, indicated to the Panel that they had reached a mutually satisfactory agreement. The agreement is set out as follows:

Facts:

1. Abdul Popal o/a The Best Fine Used Car (the “Dealer”) was first registered as a motor vehicle dealer in or around October 2006. At all material times Abdul Popal has been the controlling mind and sole proprietor of the Dealer. Ali Popal (“Ali”) was first registered as a motor vehicle salesperson in or around March 2008 and has been registered as a salesperson at The Best Fine Used Car since this date. Mohammad Rahimi was first registered as a motor vehicle salesperson in or around March 2011 and at all material times has been registered as a salesperson at The Best Fine Used Cars
2. On or around September 2006 the Dealer executed terms and conditions of registration, a copy of which are attached hereto as schedule “A”.
3. During an inspection on or about November 11, 2006, a representative of the registrar reviewed the Dealer’s terms and conditions of registration and gave the Dealer a copy of the Standards of Business Practice that outlines various advertising obligations.
4. In January 2009, OMVIC issued a Dealer Standard reminding dealers of various advertising requirements, including ensuring advertisements contain registered name and phone number of selling dealer.
5. In June 2010 OMVIC issued a Dealer Standard that displayed recent charges, one of which included a dealer who was fined regarding their failure to identify themselves as dealer in an advertisement.
6. In July 2010 OMVIC issued a Dealer Standard reminding dealers of various advertising requirements, including ensuring advertisements contain the registered name and phone number of selling dealer.
7. In February 2011 OMVIC issued a Dealer Standard reminding dealers of various advertising requirements, including ensuring advertisements contain the registered name and phone number of selling dealer.
8. In January 2012 OMVIC issued a Dealer Standard reminding dealers of various advertising requirements, including ensuring advertisements contain the registered name and phone number of selling dealer.
9. In May of 2012 OMVIC issued a Dealer Standard reminding dealers of various advertising requirements, including ensuring advertisements contain the registered name and phone number of selling dealer.
10. In or around March 2012 OMVIC issued a bulletin reminding dealers to ensure that all advertisements must contain the dealer’s registered name and business telephone number.
11. During an inspection on or about May 15, 2012 a representative of the registrar reminded



Abdul, on behalf of the Dealer to ensure that all advertisements placed by a dealer must include the dealer's registered name and business telephone number. During the inspection the dealer stated that his brother "Ali" was caught by Kijiji advertising the Dealer's motor vehicles as private individual on "Kijiji", consequently Abdul and the Dealer were banned from advertising on "Kijiji"

12. Between January 4, 2012 to June 23, 2012, thirty one [31] individual vehicle advertisements were published on the website "Kijiji", by or on behalf of the Dealer. The advertisements stated the vehicles were for sale "by owner" and listed the seller's telephone number as (647) 389-9164, which is not the Dealer's registered business telephone number. As such, the advertisements failed to comply with section 36(2) of regulation 333/08, as well as sections 4 and 9 of the Code of Ethics
13. Between March 20, 2012 to June 18, 2012, ten [10] individual vehicle advertisements were published on the website "Kijiji", by or on behalf of the Dealer. The advertisements stated the vehicles were for sale "by owner" and listed the seller's telephone number as (647) 522-9164, which is not the Dealer's registered business telephone number. As such, the advertisements failed to comply with section 36(2) of regulation 333/08, as well as sections 4 and 9 of the Code of Ethics
14. On or before May 14, 2012, three [3] individual vehicle advertisements were published on the website "Carsified.com", by or on behalf of the Dealer. The advertisements stated the vehicles were for sale "by owner". As such, the advertisements failed to comply with section 36(2) of regulation 333/08, as well as Sections 4 and 9 of the Code of Ethics
15. Between March 12, 2012 to July 19, 2012, eleven [11] individual vehicle advertisements were published on the website "Kijiji", by or on behalf of the Dealer. The advertisements stated the vehicles were for sale "by owner" and included the telephone number (416) 454-4329 is Mohammad Rahimi's phone number. As such, the advertisements failed to comply with section 36(2) of regulation 333/08, as well as Sections 4 and 9 of the Code of Ethics

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

### **Advertising**

**36. (1)** A registered motor vehicle dealer to whom this section applies shall ensure that any advertisement placed by the dealer complies with this section.

**(2)** Subject to subsection (3), an advertisement that attempts to induce a trade in a motor vehicle shall include, in a clear, comprehensible and prominent manner, a registered name and the business telephone number of the motor vehicle dealer.

### **Decision of the Panel:**

Having reviewed and considered the guilty plea of the Respondents to the allegations contained in the Notice of Complaint dated August 1, 2012 and the parties' joint submission on penalty, the Panel of the Discipline Committee hereby concludes that the Dealer and Ali Popal 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 Panel of the Discipline Committee also agrees with the parties' joint submission on penalty and, accordingly, makes the following Order:



1. The Dealer agrees to pay a fine in the amount of \$15,000.00. The first installment of \$3,000.00 shall be paid by January 10, 2013. The remaining balance shall be paid by post-dated cheques payable to OMVIC each month for six months. The full balance is required to be paid by July 31, 2013.
2. The Dealer and Ali Popal agree to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Order.
3. The Dealer and Ali Popal agree to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee

*Keith Cooper*

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Dated December 3, 2012

*Keith Cooper, Chair  
Paul Burroughs, Vice Chair  
Stuart Sherman, Vice Chair*