

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

BETWEEN:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002

- AND -

CHAUDHRY, BABAR o/a CARS DOME

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: March 18, 2019

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 \$3,000. The amount of \$1,500 will be paid no later than July 15, 2019 and the amount of \$1,500 will be paid no later than December 16, 2019.
2. Chaudhry is ordered to successfully complete the Automotive Certification Course, (the "course"), in person, no later than July 15, 2019.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete 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.



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. Chaudhry, Babar o/a Cars Dome (the "Dealer") was first registered as a motor vehicle dealer in or around November 2008. Babar Chaudhry is the sole proprietor of the Dealer.
2. On about November 11, 2008, the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 20, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure on the bill of sale of all material facts about the vehicles it sells.

OMVIC Publications:

3. In the summer of 2011, reminding dealers of their requirement to disclose to purchasers all material facts about the vehicles they sell ("disclosure obligations").
4. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:
 - a. Summer2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their disclosure obligations:
 - a. January 2010
 - b. December 2013

Direct correspondence with Dealer:

6. During an inspection on about August 7, 2009, a representative of the Registrar reviewed with the Dealer its terms and conditions of registration, including but not limited to the Dealer's disclosure obligations.
7. During an inspection on about May 31, 2012, a representative of the Registrar reviewed with the Dealer its disclosure obligations.



8. During an inspection of the Dealer on about March 7, 2018, the following non-compliance issues were revealed:

Non-compliant vehicle trades:

9. On about June 12, 2017, the Dealer purchased a 2008 Honda Civic, (VIN 2HGFA16258H113585). This vehicle had sustained \$11,573 in accident damage, had been declared a total loss by an insurer, and was branded rebuilt by the Ministry of Transportation ("MTO"). On about August 18, 2017, the Dealer sold this vehicle without declaring any of the aforementioned information. This is contrary to sections 42(19), 42(21), 42(23), and 42(25) of Regulation 333/08, sections 7 and 9 of the Code of Ethics, as well as the Dealer's terms and conditions of registration. The Dealer was also unable to provide the Registrar's representative with complete repair and/or reconditioning records for this vehicle, despite having purchased it in its damaged state. This is contrary to section 52(2) of Regulation 333/08, as well as section 9 of the Code of Ethics. The Dealer has since attempted to contact the consumer and advise him of the vehicle's history.
10. On about September 1, 2017, the Dealer purchased a 2008 Honda Civic, (VIN 2HGFA16258H113540). This vehicle has a \$6,077 accident damage history and has been declared a total loss by an insurance company. On about September 23, 2017, the Dealer sold this vehicle without declaring any of the aforementioned information. This is contrary to sections 42(19), 42(21), and 42(25) of Regulation 333/08, sections 7 and 9 of the Code of Ethics, as well as the Dealer's terms and conditions of registration. The Dealer was also unable to provide the Registrar's representative with complete repair and/or reconditioning records for this vehicle, despite having purchased it in its damaged state. This is contrary to section 52(2) of Regulation 333/08, as well as section 9 of the Code of Ethics. The Dealer has since attempted to contact the consumer and advise him of the vehicle's history.
11. On about January 16, 2018, the Dealer purchased a 2006 Honda CRV, (VIN JHLRD78846C813365) with the following declarations:
- a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$7,760.79
 - d. Total distance driven is unknown, but as of 1/10/2018 it was believed to be 115755km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good
 - e. MTO brand: Salvage

On about February 8, 2018, the Dealer sold this vehicle without disclosing a, c, or d, above. This is contrary to sections 42(4), 42(19), 42(21), and 42(25) of Regulation 333/08, sections 7 and 9 of the Code of Ethics, as well as the Dealer's terms and conditions of registration. The Dealer was also unable to provide the Registrar's representative with complete repair and/or reconditioning records for this vehicle, despite having purchased it in its damaged state. This is contrary to section 52(2) of Regulation 333/08, as well as section 9 of the Code of Ethics. The Dealer has since attempted to contact the consumer and advise him of the vehicle's history.



By failing to comply with the Dealer's terms and conditions of registration, as well as the following sections of the Act:

Regulation 333/08:

42. Additional information in contracts of sale and leases:

4. If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

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.

20. If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

21. If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the Highway Traffic Act, a statement to that effect.

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.

It is thereby agreed that the Dealer has breached sections 7 and 9 of the Code of Ethics, as set out in regulation 332/08:

Compliance

7. (1) 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.

Professionalism

9. (1) 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 \$3,000. The amount of \$1,500 will be paid no later than **July 15, 2019** and the amount of \$1,500 will be paid no later than **December 16, 2019**.
2. Chaudhry agrees to successfully complete the Automotive Certification Course, (the "course"), **in person**, no later than **July 15, 2019**.



- 3 The Dealer agrees to offer all future sales staff the opportunity to complete 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 breached subsections 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:

1. The Dealer is ordered to pay a fine in the amount of \$3,000. The amount of \$1,500 will be paid no later than **July 15, 2019** and the amount of \$1,500 will be paid no later than **December 16, 2019**.
2. Chaudhry is ordered to successfully complete the Automotive Certification Course, (the "course"), **in person**, no later than **July 15, 2019**.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete 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.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

