

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 -

11355414 CANADA INC. o/a INFOCAR AUTO SALES

- AND -

YUN QING DONG

Date of Hearing: August 29, 2023

Date of Decision: August 30, 2023

Findings: Breach of Sections 5(19), 6(2), 7(1) and 9(1) of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 no later than **October 31, 2023.**
2. Dong is ordered to successfully complete the MVDA Key Elements course, no later than **October 31, 2023.**
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). The Dealer will provide confirmation that current sales staff have been offered the Course no later than **October 31, 2023.** 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.
4. The Dealer and Dong agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Overview

This hearing was held virtually via video conference. The individual salesperson registrant, Yun Qing Dong, appeared in person and she was self-represented, Ms. Dong also appeared on behalf of the dealer registrant, 11355414 Canada Inc. (the “Dealer”). Ms. Dong and 11355414 are collectively referred to as the “Registrants”. Mr. Yao Qiang Lai, the spouse of Ms. Dong assisted Ms. Dong with interpretation, as needed, during the hearing. Mr. Rusek appeared as counsel for OMVIC. Independent Legal Counsel to the Panel was Ms. Karen Bernofsky.

This matter proceeded by way of an Agreed Statement of Facts (“ASF”) and an Amended Joint Submission on Penalty (“JSOP”).

The Notice of Complaint dated January 23, 2023 was marked as Exhibit 1. The ASF, executed by the Registrants on May 11, 2023 and the Registrar on May 15, 2023 was marked as Exhibit 2. The JSOP, executed by the Registrants on May 11, 2023 and by the Registrar on May 15, 2023, was marked as Exhibit 3. With leave of the Panel, the dates for payment of the fine and completion of the courses were changed from June 30, 2023 to October 31, 2023 and the last sentence of paragraph 3 was withdrawn by OMVIC’s request.

The Registrants admitted to all of the allegations as per the ASF. The Panel made inquiries of the Registrants and was satisfied that all admissions contained in the ASF made on behalf of the Registrants were voluntary, informed, and unequivocal.

After deliberation and review, the Panel was satisfied that the facts set out in the ASF constituted breaches of the Code of Ethics as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002* (the “Code”). Ms. Dong, the salesperson registrant, was found to have breached sections 6(2) and 9(1) of the Code and the Dealer registrant was found to have breached sections 5(16), 5(19), 7(1), and 9(1) of the Code. The Panel was satisfied that the admitted conduct would have been reasonably regarded by members of the profession as dishonourable, unprofessional, or unbecoming of a registrant.

The Panel was also satisfied, for the reasons set out below, that the Amended JSOP was commensurate with the seriousness of the above breaches and, if accepted, would not undermine the publicly perceived integrity of this Tribunal. An order was made on the record on August 29, 2023, consistent with the terms of the Amended JSOP before the conclusion of the hearing. These are the reasons for the Panel’s decision and order.

Agreed Statement of Facts

Background:

1. 11355414 Canada Inc. o/a Infocar Auto Sales (the “Dealer”) was first registered as a motor vehicle dealer in or around March 2020.
2. Yun Qing Dong (“Dong”) was first registered as a motor vehicle salesperson in or around January 2019. At all material times, Dong has been the person identified by the Dealer as being in charge of its day-to-day activities.
3. On or about March 12, 2020, Dong signed terms and conditions of registration on behalf of the Dealer. Per condition 19, the Dealer agreed to provide its customers with written disclosure on the bill of sale of all material facts concerning the vehicles it sells.

4. On or about January 19, 2019, Dong successfully completed the “Automotive Certification” course (the “Course”). Included in the Course materials are dealers’ wholesale disclosure requirements.

Dealer non-compliance:

5. During an inspection of the Dealer on or about July 13, 2022, the following non-compliant vehicle trades were found:
 - a. On or about July 19, 2021, Dong, on behalf of the Dealer, purchased a 2019 BMW 330 (VIN WBA5R7C56KAJ82941), declared as being previously registered in the province of Quebec. On or about July 30, 2021, Dong sold this vehicle on behalf of the Dealer to another registered motor vehicle dealer but failed to disclose on the bill of sale the out of province registration. This was contrary to condition 19 of the Dealer’s conditions of registration, as well as sections 5(19), 7(1), and 9(1) of the Code of Ethics in Ontario Reg. 332/08. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle history.
 - b. On or about June 13, 2022, Dong, on behalf of the Dealer, purchased a 2016 Honda Civic (VIN 2HGFC2F5GH021281). This vehicle had previously incurred accident damage for which repairs were valued at \$4,039. On or about June 15, 2022, Dong sold this vehicle on behalf of the Dealer to another registered motor vehicle dealer but failed to disclose on the bill of sale the value of the previous accident damage. This was contrary to condition 19 of the Dealer’s conditions of registration, as well as sections 5(16), 7(1), and 9(1) of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle history.
 - c. On or about June 16, 2022, Dong, on behalf of the Dealer, purchased a 2021 Jeep Wrangler (VIN 1C4JJXR65MW629533), declared as being previously registered in the province of Quebec. On or about June 20, 2022, Dong sold this vehicle on behalf of the Dealer but failed to disclose on the bill of sale the out of province registration. This was contrary to condition 19 of the Dealer’s conditions of registration, as well as sections 5(19), 7(1), and 9(1) of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle history.
 - d. On or about June 20, 2022, Dong sold a 2017 Mazda (VIN JM1GL1W52H1142998) on behalf of the Dealer. This vehicle had previously incurred accident damage for which repairs were valued at \$16,378. The Dealer failed to disclose on the bill of sale the value of the previous accident damage. This was contrary to condition 19 of the Dealer’s conditions of registration, as well as sections 5(16), 7(1), and 9(1) of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle history.

Dong’s contravention of the Code of Ethics:

6. In failing to ensure that the Dealer conducted its business in compliance with the Code of Ethics, Dong personally contravened sections 6(2) and 9(1) of the Code of Ethics.

It is thereby agreed that the Dealer has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

Disclosure of information in contracts of sale and lease

5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure that the following information is disclosed in the contract:

(19) If the 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

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.

It is thereby agreed that Dong has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

Accountability

6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

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

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.

Amended Joint Submission on Penalty:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 no later than **October 31, 2023.**
2. Dong is ordered to successfully complete the MVDA Key Elements course, no later than **October 31, 2023.**
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). The Dealer will provide confirmation that current sales staff have been offered the Course no later than **October**

31, 2023. 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.

4. The Dealer and Dong agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons for Decision

The Panel is satisfied that the admissions of the Registrants in the ASF are voluntary. The Panel finds that the facts set out in the ASF are sufficient to constitute breaches of the Code of Ethics by the Registrants as set out in the ASF. The Panel is also satisfied that the admitted conduct is reasonably regarded by members of the profession as dishonourable, unprofessional, or unbecoming of the Registrants.

With respect to the Amended JSOP, the Panel finds that it meets the necessary objectives of imposing a penalty and it is not disconnected from the facts of the matter such that it risks undermining the public's trust in this tribunal.

The Amended JSOP meets the principles of general and specific deterrence. The Panel finds that the penalty amount and time for payment is appropriate given that this is a small dealership. The Panel finds that the penalty does not bring the administration of justice into disrepute and as such, the Panel accepts the Amended JSOP.

Ontario Motor Vehicle Industry Council
Discipline Committee

S. Darvish

Sherry Darvish, Chair
Jon Lemaire, Vice Chair
Achilles Pelitis, Vice Chair