

**DISCIPLINE COMMITTEE OF THE  
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Sherry Darvish, Chair	Public Member
	Achilles Pelitis	Registrant
	Chris Pinelli	Registrant

**DECISION AND REASONS**

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 :

Appearances<sup>1</sup>:

**REGISTRAR, MOTOR VEHICLE  
DEALERS ACT, 2002**

Jane Samler for the Registrar

- and -

**2551276 ONTARIO INC  
O/A KIA OF NEWMARKET**

Symon Zucker for the Registrants

and

**SAM AGHA**

and

**BRANDON AGHA**

Hearing Date: January 22, 2024

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**Date of Hearing:** January 22, 2024

**Date of Order:** March 1, 2024

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<sup>1</sup> Independent legal counsel to the Panel is Mr. Edward Marrocco.

**Order:**

1. The Dealer shall pay a fine in the amount of \$5,000 no later than April 30, 2024.
2. SA shall pay a fine in the amount of \$2,500 no later than April 30, 2024.
3. BA shall pay a fine in the amount of \$6,000 as follows:
  - a. \$2,000 no later than April 30, 2024;
  - b. \$2,000 no later than June 30, 2024; and
  - c. \$2,000 no later than September 30, 2024.
4. SA shall successfully complete the OMVIC Automotive Certification Course no later than April 30, 2024.
5. BA shall successfully complete the OMVIC Automotive Certification Course within 3-months prior to (or after) reapplying for registration under the MVDA.
6. The Dealer shall offer all current and future sales staff the opportunity to complete the MVDA Key Elements Course.
  - a. Current sales staff will be offered the course no later than April 30, 2024;
  - b. Future sales staff will be offered this course within 90 days of being hired;
  - c. The Dealer shall cover all costs associated with course completion; and
  - d. This requirement shall remain in effect for 12 months following the release of this order.
7. The Dealer, SA, and BA (when registered) shall comply with the *Motor Vehicle Dealers Act, 2002* and the Code of Ethics under O. Reg. 332/08 as may be amended.

**Introduction**

1. This matter proceeded as a contested discipline hearing over five days on March 9, 10, 11, November 15, 2022, and February 10, 2023, before this Panel of the Discipline Committee of the Ontario Motor Vehicle Industry Council.
2. By written decision dated July 28, 2023, the Panel found that each of the respondents had breached section 9(1) of the Code of Ethics (“Code of Ethics”) found in Ontario Regulation 332/08 made under the *Motor Vehicle Dealers Act, 2002* (the “MVDA”).

3. Kia of Newmarket (the “Dealer”) breached the Code of Ethics by failing to provide a detailed explanation of a clay detail fee charged to a consumer further to the sale of a 2019 Kia Sorrento.
4. Brandon Agha (“BA”) was found to have breached the Code of Ethics by making a false statement to the media which mischaracterized OMVIC’s involvement in an investigation stemming from a complaint made by that same consumer about the clay detail fee.
5. Brandon’s father, Sam Agha (“SA”), as a person in charge of the Dealer, breached the Code of Ethics by failing to ensure that the Dealer’s staff, namely BA, conducted himself with honesty and professionalism.
6. On January 22, 2024, the Panel received submissions from the parties with respect to penalty. This is the Panel’s order and reasons for decision in respect of the penalty in this matter.

#### **OMVIC Submissions on Penalty**

7. Counsel for OMVIC sought the following penalty:
  - that the Dealer pay a fine in the amount of \$11,000.00 with \$6,000 payable by April 30, 2024, and the remaining \$5,000 payable by July 31, 2024;
  - that SA pay a fine in the amount of \$5,000 by April 30, 2024; and
  - that BA to pay a fine in the amount of \$5,000 by April 30, 2024.
8. OMVIC counsel submitted that the following course completion requirements should also be ordered:

- that SA successfully complete the OMVIC Automotive Certification Course no later than April 30, 2024;
  - that BA, who is no longer a registrant, successfully complete the OMVIC Automotive Certification Course within 3-months prior to (or after) reapplying for registration under the MVDA; and
  - that the Dealer shall offer all current and future sales staff the opportunity to complete the MVDA Key Elements Course at the Dealer's expense. Current sales staff to be offered the course no later than April 30, 2024. Future sales staff to be offered the course within 90 days of being hired retained with this requirement remaining in effect for a period of one-year.
9. Lastly, OMVIC counsel requested that the order require the Dealer, SA, and BA (if re-registered) to comply with the MVDA and the Code of Ethics as may be amended going forward.
10. In support of OMVIC's position, counsel highlighted several aggravating factors:
- There was no evidence to suggest the conduct which has been found to contravene the Code of Ethics was undertaken inadvertently.
  - The misconduct involved a consumer (member of the public) and the respondents' behavior negatively impacted the publicly perceived integrity of the profession.
  - The respondents did not accept responsibility for what occurred or show any remorse for what the consumer went through.
  - There was no evidence that the respondents took any steps to proactively make changes at the Dealer to prevent recurrence.
  - BA was found to have engaged in conduct that contained an express element of moral failing which this Panel held would reasonably be regarded as dishonourable, unprofessional, and unbecoming of a registrant.

11. As mitigating factors, counsel noted that the respondents had no prior discipline history, and that BA was no longer registered as a salesperson or working in the motor vehicle industry.
12. In support of the quantum of penalty requested, counsel presented the Panel with previous cases from this Discipline Committee and other judicial forums including the criminal courts. The cases highlight the role of the MVDA as a public protection statute designed to ensure that registrants perform their duties in a professional manner, and that proper penalties must act as a deterrent not only for the respondents but also for the broader industry. The case law provided a range of fines from \$10,000 to \$21,500.

### **Respondents' Submissions on Penalty**

13. Counsel for the respondents submitted that an appropriate penalty was \$8,500, apportioned as follows: \$5,000 to be paid by the Dealer, \$2,500 to be paid by SA, and \$1,000 to be paid by BA. The respondents had no objection to the course requirements proposed by OMVIC.
14. Counsel entered three exhibits on the penalty hearing: a Director's Certificate dated January 17, 2024 (Exhibit 1), a resume of SA (Exhibit 2), and a resume of BA (Exhibit 3).
15. BA testified at the penalty hearing regarding his financial circumstances. BA is currently in law school and not working. He is also supporting a young family. BA went on to testify about his concern that the findings made in this case may impact his ability to one day become a licensed lawyer in Ontario. Lastly, he advised that he has no intention of returning to the motor vehicle industry. BA's evidence on his financial circumstances were unchallenged in cross-examination however it was revealed that BA only became de-registered in January 2023, not 2021 as had been previously suggested to the Panel.

16. In response to OMVIC's position on penalty, respondents' counsel emphasized that the decision of a party to have a contested hearing is not an aggravating factor and that parties have a right to challenge allegations. Counsel urged the Panel not to accept that there is any evidence of a lack of remorse. Counsel also distinguished some of the cases relied upon by OMVIC which featured high penalty amounts. It was submitted that those cases involved registrants who were repeat offenders, which was not the case in this matter.
  
17. With respect to mitigating factors, counsel again noted that the respondents have no prior discipline matters and emphasized that their reputations in the community have already suffered because of negative media coverage attached to the case.
  
18. With respect to BA in particular, counsel noted that BA is young and argued that BA's actions can be explained as acting out of frustration. Counsel submitted that BA's comments should be viewed as less severe when compared to the broader universe of potential registrant misconduct/professionalism breaches. Counsel noted that although BA's comments were made publicly, they came from a place of irritation rather than malice. Lastly, the Panel was reminded that BA is no longer with the Dealer and indeed no longer a registrant at all.
  
19. With respect to SA, counsel submitted SA lives in California and is not involved in the day-to-day management of the Dealer anymore. He is no longer a person in charge of the Dealer and that SA accepts he failed to supervise BA. Counsel emphasized that SA had no direct contact with the consumer in this matter and otherwise has a history of positive community involvement and service.

### **Decision on Penalty**

After considering the submissions of both parties, the Panel makes the following order regarding penalty:

8. The Dealer shall pay a fine in the amount of \$5,000 no later than April 30, 2024.
9. SA shall pay a fine in the amount of \$2,500 no later than April 30, 2024.
10. BA shall pay a fine in the amount of \$6,000 as follows:
  - a. \$2,000 no later than April 30, 2024;
  - b. \$2,000 no later than June 30, 2024; and
  - c. \$2,000 no later than September 30, 2024.
11. SA shall successfully complete the OMVIC Automotive Certification Course no later than April 30, 2024.
12. BA shall successfully complete the OMVIC Automotive Certification Course within 3-months prior to (or after) reapplying for registration under the MVDA.
13. The Dealer shall offer all current and future sales staff the opportunity to complete the MVDA Key Elements Course.
  - a. Current sales staff will be offered the course no later than April 30, 2024;
  - b. Future sales staff will be offered this course within 90 days of being hired;
  - c. The Dealer shall cover all costs associated with course completion; and
  - d. This requirement shall remain in effect for 12 months following the release of this order.
14. The Dealer, SA, and BA (when registered) shall comply with the *Motor Vehicle Dealers Act, 2002* and the Code of Ethics under O. Reg. 332/08 as may be amended.

### **Reasons for Decision on Penalty**

20. The Panel does not accept the submission of OMVIC counsel that a respondent requiring a contested hearing is an aggravating factor. It is not. Parties are entitled to challenge allegations made against them and they are not penalized for doing so if they fail to succeed in that challenge. While contesting allegations may deprive a respondent

of a penalty term which may otherwise be available by agreement, this is not the same as an aggravating factor. Parties have the right to a hearing and to present a defence. The fact that the respondents in this case chose the path of a contested hearing will not be held against them.

21. At the penalty hearing, the issue between the parties was regarding the amount of any fine to be imposed. Course requirements were not put in issue and the Panel orders the course requirements proposed by OMVIC (which were not opposed) accordingly.
22. The Panel has two issues to consider in respect of fine: the total quantum and the amount of that total payable by each respondent.
23. With respect to quantum, OMVIC seeks a total fine of \$21,000. Counsel for the respondents seeks a total fine of \$8,500. OMVIC's position is at the high-end of the range in the case law while the respondents' position is below the lowest threshold of that range.
24. The Panel finds that a total penalty amount of \$13,500 is appropriate for the misconduct in this case. This amount is high enough to serve as both a general and specific deterrent and to ensure that the public can feel confident it is being protected. The Dealer in this matter is not a small operator but two of the payees are individuals. This fine amount is above the lowest range found in the case law and above the amount requested by counsel for the respondents.
25. The total penalty amount of \$13,500 is lower than the amount sought by OMVIC. The Panel agrees with the respondents' counsel that consideration be given to the fact that



these respondents have no history of disciplinary action. This is particularly important given that in some of the case law provided, the higher range of penalty was only applied to respondents with prior discipline histories. There was no dispute among counsel that the absence of any disciplinary history was a relevant mitigating factor in this case. The Panel agrees and orders the total fine accordingly.

26. We now turn to the portion of the fine payable by each individual respondent. While BA did not charge the clay detail fee that started this complaint, he made the situation considerably worse. BA made false statements to the media and, as the Panel has already found, there was a moral failing in this regard on BA's part. BA's age was not so young to be an excuse for his conduct in this matter. BA was an adult who was working in the industry at the time. The consumer's matter could have been dealt with easily by the Dealer simply explaining what the clay detail fee was in a transparent manner. That never happened and it is unfortunate. But this case is elevated to a whole different level when BA became involved. As noted in the Panel's decision on the merits, BA name-called and belittled the consumer while at the same time making false statements to the media about OMVIC's involvement in the consumer's complaint. This was totally unnecessary and it transformed a minor fee dispute into something that had the ability to negatively reflect on the entire industry – as well as BA himself.

27. While the Panel considered that BA may have some financial limitations, this does not change the fact that he was a principal antagonist in this whole unfortunate situation. His portion of the total fine shall reflect his role as a principal antagonist, but in recognition of his financial limitations, he shall be given more time to pay. BA shall therefore pay the \$6,000.00 per the timetable ordered.

28. The Dealer is also a key player in this unfortunate series of events. The clay detail fee was never explained. As we found in the merits decision, the explanations provided by staff were always changing. At one point it was suggested that the clay detail was a “disinfecting fee” and that the consumer could “thank covid” for it. It was then clarified by one of the Dealer’s witnesses that the clay detail fee was in fact related to cleaning the paint on the consumer’s car. The Dealer’s role requires it to make a significant contribution to the total fine. The Dealer shall accordingly pay \$5,000 no later than April 30, 2024.

29. Lastly, SA breached the Code of Ethics by failing to ensure that the Dealer acted professionally but also for failing to supervise BA and failing to keep BA from behaving in a manner befitting a registrant. The Panel notes that SA was still listed as a person in charge with OMVIC and the evidence confirmed that he was aware of what BA was doing. SA shall accordingly pay a fine in the amount of \$2,500 no later than April 30, 2024.

I, Sherry Darvish, sign this decision and reasons for the penalty on behalf of the members of the Panel as set out below.

Sherry Darvish

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Ms. Sherry Darvish

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Date: March 1, 2024

Panel Members:

Ms. Sherry Darvish, Chair  
Mr. Achilles Pelitis, Vice Chair  
Mr. Chris Pinelli, Vice Chair

Ontario Motor Vehicle Industry Council  
Discipline Committee