

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 -

1754675 ALBERTA LTD.

o/a SCARBOROUGH TOYOTA/EAST TORONTO PAINT AND COLLISION CENTRE

- AND -

PAUL WALTERS

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: September 4, 2015

Findings: Breach of Sections 4, 7 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. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC certification 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 pay 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.
3. The Dealer shall ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* 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. 1754675 Alberta Ltd. o/a Scarborough Toyota/East Toronto Paint & Collision Centre (the "Dealer") was first registered as a motor vehicle dealer in or around October 2013. Paul Walters ("Walters") was first registered as a motor vehicle sales person in or around November 2013. At all material times, Walters was the officer of the Dealer.
2. In or around October 24, 2013, the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply with Ontario Regulation 332/08 under the *Motor Vehicle Dealers Act* and Code of Ethics. As per condition 23, the Dealer agreed to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to consumer, including but not limited to former daily rental history.

Dealer non-compliance:

3. During an inspection on or about December 27, 2014, a representative of the Registrar discovered the following non-compliant issues:

Advertising and disclosure:

4. On or before October 17, 2014, the Dealer purchased a 2013 Toyota Corolla (VIN 2T1BU4EE2DC103649) declared as being a previous daily rental vehicle from Quebec. On or about October 29, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of either the former daily rental or previous out of province registration. This is contrary to sections 42(7), 42(22) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. OMVIC has since followed up with the purchaser who confirmed they were aware of the vehicles former daily rental and out of province history at the time of sale.
5. On or about October 31, 2014, the Dealer purchased a 2013 Toyota Corolla (VIN 2T1BU4EE2DC089848). This vehicle was a former daily rental. On or about November 12, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicles former daily rental history. This is contrary to section 42(7) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. OMVIC has since followed up with the purchaser who confirmed they were aware of the vehicles former daily rental and out of province history at the time of sale.



6. On or about November 13, 2014, the Dealer purchased a 2013 Toyota Camry (VIN 4T1BF1FK4DU256108). This was a former daily rental vehicle. On or before November 27, 2014, an advertisement was placed by or on behalf of the Dealer for this vehicle with a selling price of \$19,500. On or about November 20, 2014, the Dealer sold this vehicle for \$477 over the advertised price. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Furthermore, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicles former daily rental history. This is contrary to section 42(7) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. OMVIC has since followed up with the purchaser who confirmed they were aware of the vehicles former daily rental history at the time of sale.
7. On or before June 5, 2015, the Dealer advertised numerous vehicles without disclosing their prior daily rental use. This is contrary to sub section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
8. The Dealer has since offered to ensure the General Manager successfully completes, in person, the OMVIC certification course within 90 days of the Discipline Committee Order.

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.

(5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

(a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer.

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

(a) the amount that a buyer would be required to pay for the vehicle; and

(b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

Disclosure

42. (7) If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,



(i) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the Motor Vehicle Dealers Act.

(22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having 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 jurisdiction, 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.

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

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.

(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

7. 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.

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. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC certification 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 pay 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.
3. The Dealer agrees to ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.



4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Walters breached subsections 4, 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 \$6,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC certification 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 pay 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.
3. The Dealer shall ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
4. The Dealer shall 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



Catherine Poultney, Chair

