

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 -

JANEX AUTO SALES LTD

- and -

SAVCHO ZAHARIEV

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 29, 2020

Findings: Breach of Sections 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$7,500 no later than **October 31, 2020.**
2. Zahariev is ordered to pay a fine in the amount of \$500 no later than **October 31, 2020.**
3. Zahariev is ordered to successfully complete the MVDA Key Elements course, no later than **October 31, 2020.** This date is subject to any pandemic disruptions Georgian College may encounter in delivering the course within the specified timeframe.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **October 31, 2020.** 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. 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.

5. The Dealer and Zahariev agree 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. Janex Auto Sales Ltd. (the "Dealer") has been registered as a motor vehicle dealer under the Act since approximately October 11, 2017. The Dealer operates as a general dealer, used motor vehicles subclass.
2. Savcho Zahariev ("Zahariev") has been the sole director and person in charge of the Dealer's day to day activities at all material times.
3. Zahariev is currently registered as a motor vehicle salesperson under the Act. He was previously registered as a motor vehicle dealer between approximately July 21, 1997 and November 5, 2017 during which time he operated as a sole proprietorship under the business name "Janex Auto Sales" (the "Sole Proprietorship"). The registration of the Sole Proprietorship was terminated after Zahariev successfully applied for the Dealer's current registration.
4. On or about October 6, 2017, Zahariev executed conditions of registration on behalf of the Dealer. As per condition 1, the Dealer agreed to comply with all requirements of the Act, Ontario Regulation 333/08, Code of Ethics and Standards of Business Practice.

OMVIC registrant education re lien removal

5. Since approximately December 2008, OMVIC issued the following publications reminding dealers of their obligation to ensure that all liens are removed immediately from vehicles taken in on trade ("lien removal obligations"):
 - a. Dealer Standard: Issue #1 2015
 - b. Dealer Standard: Issue #4 2016
 - c. Bulletin: June 2017

Direct correspondence with Dealer re warranty submittal

6. During an inspection on or about September 18, 2013, the inspector reminded Zahariev about his warranty payment obligations.
7. During an inspection on or about July 5, 2014, the inspector reminded Zahariev about his warranty payment obligations.
8. During an inspection on or about February 6, 2017, the inspector reminded Zahariev about his warranty payment obligations.
9. By letter dated March 27, 2017, the Registrar's office cautioned Zahariev about his continued failure to comply with his warranty payment obligations.

Notice of Complaint

10. On or about January 21, 2014, the Registrar issued a Notice of Complaint against the Sole proprietorship for reasons that included Zahariev's failure to remit the proceeds from the sale of various extended third-party warranties to their respective warranty providers within seven days of the date of sale.
11. On or about April 23, 2014, the Discipline Committee issued a Discipline Decision pursuant to a negotiated resolution between the parties. Among other things, Zahariev agreed to:
 - a. complete the Automotive Certification course ("Course"); and
 - b. comply with the Act and Standards of Business Practice.
12. In or around July 2014, Zahariev successfully completed the Course. The following is included in the Course materials:
 - a. Dealers' lien removal obligations; and
 - b. Dealers' obligation to ensure that all proceeds from the sale of any extended warranties are remitted to the warranty provider within seven days of the date of sale ("warranty payment obligations").

Dealer's current non-compliance

13. During an inspection on or about April 30, 2019 (the "Inspection"), the inspector discovered the following non-compliance issues:

Failure to Pay Out Liens

14. On or about December 14, 2018, the Dealer sold a motor vehicle to Consumer A. As a part of this transaction, Consumer A traded in a 2012 Audi A4 (VIN: WAUFFCFL5CN019367) to the Dealer. Consumer A still had an outstanding loan for approximately \$18,000 owing on the Audi A4, and the lender had registered a lien against it. As a part of Consumer A's purchase agreement, the Dealer agreed to immediately pay off the outstanding loan on the Audi A4 and have the lien

discharged. The Dealer did not remit payment for the outstanding loan to the lending institution until February 14, 2019. This is contrary to section 9 of the Code of Ethics.

15. On or about January 4, 2019, the Dealer sold a motor vehicle to Consumer D. At the time of the purchase Consumer D traded in a 2011 Toyota Matrix (VIN: 2T1KU4EE2BC644262) to the Dealer. Consumer D still had an outstanding loan for approximately \$8,414 owing on the Toyota Matrix, and the lender has registered a lien against it. As a part of Consumer D's purchase agreement, the Dealer agreed to immediately pay of the outstanding loan on the Toyota Matrix, and have the lien discharge. The Dealer did not remit payment for the outstanding loan to the lending institution until February 19, 2019. This is contrary to section 9 of the Code of Ethics.

Failure to Remit Warranty Payments

16. Between on or about March 4, 2019 and on or about April 18, 2019, the Dealer sold approximately 30 extended warranties, but failed to remit the proceeds of these sales, totalling approximately \$25,981, to the warranty provider until on or about April 29, 2019. The Dealer's failure to comply with its warranty payment obligations is contrary to section 47(7) of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics.

Generally:

17. As a director and/or person in charge of the day to day activities at the Dealer, Zahariev has failed to ensure that the Dealer conducts its business in compliance with the Regulations and Code of Ethics, and thus has personally contravened sections 6 and 9 of the Code of Ethics.

It is thereby agreed the Dealer failed to comply with the following section of the Act:

(7) If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall,

- (c) within seven days after the parties enter into the contract for the warranty, provide the seller of the warranty with,
 - (i) all documents detailing the contract that the dealer has in its possession,
 - (ii) all payments that the dealer has received from the purchaser, and
 - (iii) a statement that accurately describes the condition of the motor vehicle and the distance the motor vehicle has been driven, if the dealer has such a statement in its possession

It is thereby agreed that the Dealer and Zahariev have breached section 9(1) 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.

It is thereby agreed that Zahariev has breached section 6(2) 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$7,500 no later than **October 31, 2020.**
2. Zahariev agrees to pay a fine in the amount of \$500 no later than **October 31, 2020.**
3. Zahariev agrees to successfully complete the MVDA Key Elements course, no later than **October 31, 2020.** This date is subject to any pandemic disruptions Georgian College may encounter in delivering the course within the specified timeframe.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **October 31, 2020.** 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. 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.
5. The Dealer and Zahariev agree 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 and Zahariev breached subsections 6 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 \$7,500 no later than **October 31, 2020.**
2. Zahariev is ordered to pay a fine in the amount of \$500 no later than **October 31, 2020.**
3. Zahariev is ordered to successfully complete the MVDA Key Elements course, no later than **October 31, 2020.** This date is subject to any pandemic disruptions

Georgian College may encounter in delivering the course within the specified timeframe.

4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **October 31, 2020**. 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. 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.
5. The Dealer and Zahariev agree 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

A handwritten signature in black ink, appearing to read "Paul Burroughs", with a horizontal line underneath it.

Paul Burroughs, Chair