

## 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 -

1863836 ONTARIO INC o/a ARKONA AUTOMOTIVE

- AND -

PAUL PERCY

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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:** July 22, 2020

**Findings:** Breach of Sections 6, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$3,900. \$1,500 will be paid no later than **November 1, 2020** and the remaining balance (\$2,400) will be paid no later than **February 1, 2021**.
2. Percy is ordered to successfully complete the Automotive Certification course (the "Course") no later than **December 1, 2020**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **December 1, 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 or who are otherwise required to do so pursuant to the Act.

4. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the June 2015 OMVIC disclosure webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **September 1, 2020**.
5. 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. 1863836 Ontario Inc o/a Arkona Automotive (the "Dealer") was first registered as a motor vehicle dealer in around July 2016. Paul Percy ("Percy") was first registered as a motor vehicle salesperson in around July 2016. At all material times, Percy was the director, as well as the person in charge of the day to day activities at the Dealer.
2. On or about November 13, 2015, Percy successfully completed the Automotive Certification course (the "Course"). Included in the Course materials are dealers requirements to disclose all material facts, including but not limited to, accident damage histories, about the vehicles they sell ("disclosure requirements").
3. On or about July 8, 2016, Percy executed terms and conditions of registration on behalf of the Dealer.
4. As per condition 1, the Dealer agreed to comply with the Act and Code of Ethics.
5. As per condition 22, the Dealer agreed to disclose in writing, on the bill of sale, all material facts about the vehicles it sells.

#### ***OMVIC publications re: material fact disclosure:***

6. Since the Dealer has been registered, OMVIC has issued the following publications reminding dealers of their disclosure requirements:



| Dealer Standard | OMVIC bulletin | Webinar   |
|-----------------|----------------|-----------|
| Issue #3 2016   | January 2010   | Dec 2014  |
| Issue #4 2016   | September 2012 | June 2015 |
| Issue #3 2017   | December 2013  |           |
| Issue #3 2018   |                |           |
| Issue #1 2019   |                |           |
| Issue #2 2019   |                |           |

The contents of these publications continue to be available on OMVIC's website.

***Direct correspondence with Dealer:***

7. During an inspection of the Dealer on or about August 12, 2016, the Dealer was reminded of its disclosure requirements.

***Dealer non-compliance:***

8. During an inspection of the Dealer on about November 29, 2019, a representative of the Registrar found the following non-compliant trades:
9. On or about October 4, 2017, the Dealer purchased a 2015 Chevrolet Equinox, (VIN 2GNALBEK0F6410547) with the following declarations:
  - a. Ontario brand: Salvage
  - b. Vehicle declared a total loss by the insurer
  - c. The manufacturer's warranty has been cancelled
  - d. Repair estimate: \$15,532.76
  - e. Total distance vehicle has driven in unknown, but as of 9/3/2017 it was believed to be 106,970km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about June 14, 2018, Percy sold this vehicle on behalf of the Dealer but failed to provide the purchaser with written disclosure of any of the information outlined above. This is contrary to sections 42(4), 42(19), 42(20), 42(21), 42(23), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they were aware of their vehicle history at the time of purchase.

10. On or about, July 18, 2018, the Dealer purchased a 2012 Chevrolet Equinox (VIN 2GNALDEKXC6113714 ) with the following declarations:
  - a. Vehicle has been declared a total loss by the insurer
  - b. Repair estimate: \$12,804.92



- c. Total distance vehicle has driven is unknown, but as of 5/29/2018 it was believed to be 150,325. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about January 29, 2019, Percy sold this vehicle on behalf of the Dealer but failed to provide the purchaser with written disclosure of any of the information outlined above. This is contrary to sections 42(4), 42(19), 42(21), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they were aware of their vehicle history at the time of purchase.

11. On or about January 9, 2019, the Dealer purchased a 2007 Pontiac G5 (VIN 1G2AL55F577380478) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. Repair estimate: \$3,920.85
- c. Total distance vehicle has driven is unknown, but as of 12/12/2018 it was believed to be 173,287km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about April 5, 2019, Percy sold this vehicle on behalf of the Dealer but failed to provide the purchaser with written disclosure of any of the information outlined above. This is contrary to sections 42(4), 42(19), 42(21), and 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics. The subject vehicle has since been declared and insurance loss and is no longer in the purchaser's possession. The purchaser advised the Dealer they were not aware of the vehicle's history at the time of purchase and this information would have affected their purchasing decision. The Dealer offered to buy the vehicle back from the purchaser, but this is not possible given the current circumstances. The purchaser expressed appreciation for the Dealer's buy back offer.

12. In failing to ensure the Dealer conducts business in compliance with the Act and Code of Ethics, Percy has personally breached sections 6 and 9 of the Code of Ethics.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:  
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.

23. If the motor vehicle has been classified, under section 199.1 of the Highway Traffic Act, as irreparable, salvage or rebuilt, a statement as to how it was last classified.

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 the Dealer has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

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 Percy has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

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 Percy have breached the following section of the Code of Ethics, as set out in Regulation 332/08:

9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.



### **Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$3,900. \$1500 will be paid no later than **November 1, 2020** and the remaining balance (\$2400) will be paid no later than **February 1, 2021**.
2. Percy agrees to successfully complete the Automotive Certification course (the "Course") no later than **December 1, 2020**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **December 1, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the June 2015 OMVIC disclosure webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **September 1, 2020**.
5. 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 and Percy breached subsections 6, 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 \$3,900. \$1,500 will be paid no later than **November 1, 2020** and the remaining balance (\$2,400) will be paid no later than **February 1, 2021**.
2. Percy is ordered to successfully complete the Automotive Certification course (the "Course") no later than **December 1, 2020**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **December 1, 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 or who are otherwise required to do so pursuant to the Act.



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5. 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



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*Paul Burroughs, Chair*

