

DISCIPLINE DECISION

REVIEWING PANEL: Aviva Harari, Public Member
Joe Wade, Registrant
Achillis Pelitis, Registrant

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 -)
2423415 ONTARIO INC.)
O/A WOODSTOCK NISSAN)
- and -)
DARRIN LESTER)
)
)

This decision arises from a Notice of Complaint issued on February 20, 2024 by the Registrar.

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal, a Reviewing Panel has 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: June 13, 2024

Findings:

2423415 Ontario Inc. o/a Woodstock Nissan, has breached the following:

Section 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Darrin Lester has breached the following:

Section 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. 2423415 ONTARIO INC. O/A WOODSTOCK NISSAN (“the Dealer”) shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Committee’s order.
2. Darrin Lester (“Lester”) shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from the date of the Discipline Committee’s order.
3. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the “Course”). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from the date of the Discipline Committee’s order. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from the date of the Discipline Committee’s order. The Dealer will incur all costs associated with this.
4. The Dealer and Lester agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

Reasons for Decision

Introduction

This matter proceeded based on 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 Tribunal and the Appeals Tribunal.

Background:

1. 2423415 Ontario Inc. o/a Woodstock Nissan (the “Dealer”) was first registered as a motor vehicle dealer in and around October 2014.
2. Darrin Lester (“Lester”) was first registered as a salesperson in and around February 1992. At all material times, Lester has been a General Manager, an Officer and the Person in Charge of the day-to-day activities of the Dealer.

OMVIC Registrant Education re: All-in Pricing:

3. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars, and guidelines, reminding dealers of their all-in pricing obligations.

Prior OMVIC Communications:

4. On or about January 22, 2015, a Dealer inspection was conducted by OMVIC. Lester was present during the inspection as a representative of the Dealer. The inspector reminded the Dealer of its obligation to advertise all-inclusive prices, as required pursuant to Section 36 of O. Reg. 333/08.
5. During an inspection on or about November 5, 2015, an inspector again reminded the Dealer of its obligation to advertise all-inclusive prices under Section 36 of O. Reg. 333/08.
6. During an inspection on or about December 14, 2022, an inspector reminded the Dealer of its obligation to advertise all-inclusive prices under Section 36 of O. Reg. 333/08.

Dealer's Contravention of the Code of Ethics:

7. On or about September 28, 2023, a representative of OMVIC (the "Representative") attended the Dealer's premises, while posing as a member of the public (also known as a 'mystery shop').
8. The Representative inquired about a 2019 Buick Encore Preferred, stock# 5674A (VIN# ***792599) on the premises. The window hanger indicated a sale price of \$26,995.
9. The Representative asked whether there were any other fees in addition to the advertised price other than taxes and was told that there was an additional Secure Ride fee of \$599 for a 2-year tire warranty and a 2-year key fob replacement, as well as an OMVIC fee of \$10. The Representative was advised that the OMVIC fee and Secure Ride fee were mandatory.
10. As a result of the additional fees referred to above, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

Lester's Contravention of the Code of Ethics

11. Lester failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

Based on the Agreed Statement of Facts, this panel finds that the Dealer has contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

Disclosure and Marketing

4. (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.

Based on the Agreed Statement of Facts, this panel finds that Lester has contravened the following section of the Code of Ethics, as set out in O. Reg. 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.

Based on the Agreed Statement of Facts, this panel further finds that the Dealer and Lester have contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

Professionalism

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.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that evidence as set out in the Agreed Statement of Facts demonstrate that the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics, and Lester has breached subsections 6(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The **Dealer**, and **Lester** ought to have been aware of the all-inclusive pricing requirements set forth by OMVIC, having been provided with this information through distribution of industry publication and specifically to the dealer. The Dealer was also reminded of its Section 36 of O. Reg. 333/08 requirements on three separate inspections from 2015 to 2022.

On or about September 28, 2023, the **Dealer** advised an OMVIC representative that fees totalling \$609 above the advertised price of a requested vehicle during a mystery shop were mandatory. The aggravating factor is that fees for OMVIC, Secure Ride ought to have been included in the all-in price.

The panel considers that both the **Dealer** and **Lester** have taken responsibility for their actions and have admitted to same in these proceedings.

The Reviewing Panel also agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. 2423415 ONTARIO INC. O/A WOODSTOCK NISSAN ("the Dealer") shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Committee's order.
2. Darrin Lester ("Lester") shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from the date of the Discipline Committee's order.
3. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from the date of the Discipline Committee's order. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from the date of the Discipline Committee's order. The Dealer will incur all costs associated with this.
4. The Dealer and Lester agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

Dated: July 5, 2024

Ontario Motor Vehicle Industry Council
Discipline Tribunal

A handwritten signature in black ink, appearing to read 'Joe Wade', written over a horizontal line.

Joe Wade, *Discipline Tribunal Chair*

On behalf of
Aviva Harari, *Public Member*
Achilles Pelitis, *Member*

