

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

ROY FOSS MOTORS LTD.

- AND -

KAREN FOSS-RICCI

- AND -

JAMES RICCI

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: April 17, 2015

Findings: Breach of Sections 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. James is ordered to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
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 within 90 days the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do so pursuant to the Act.



4. The Dealer, Karen and James agree to 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. Roy Foss Motors Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around March 2007. Karen Foss-Ricci ("Karen") was first registered as a motor vehicle salesperson in or around May 1996. At all material times, Karen has identified herself as person in charge and or director of the Dealer. James Ricci ("James") was first registered in or around May 2011. At all material times, James has identified himself as the general manager of the Dealer.
2. During an inspection dated May 30, 2011, the Dealer was reminded of their obligation to ensure to provide consumers with written disclosure of a vehicle's prior daily rental use and out of province history.
3. On or about April 14, 2014, the Dealer purchased a 2013 Chevrolet Malibu (VIN 1G11E5SA6DF304504), declared as a former daily rental vehicle. On or about April 24, 2014, the Dealer sold this vehicle without providing the consumer with the required written disclosure of the vehicle's former daily rental use. This is contrary to sub section 42(7) of regulation 333/08, as well as section 7 and 9 of the Code of Ethics. After the issuance of the Notice of Complaint, the Dealer has provided OMVIC with confirmation that the consumer is now fully aware of their pertinent vehicle history.
4. On or about May 20, 2014, the Dealer purchased a 2013 Chevrolet Express (VIN 1GCWGFFA9D1160791), declared as a former daily rental vehicle. On or about July 22, 2014, the Dealer sold this vehicle without providing the consumer with the required written disclosure of the vehicle's former daily rental use. This is contrary to sub section 42(7) of regulation 333/08, as well as section 7 and 9 of the Code of Ethics. After the issuance of the Notice of Complaint, the Dealer has provided OMVIC with confirmation that the consumer is now fully aware of their pertinent vehicle history.
5. On or about April 14, 2014, the Dealer purchased a 2013 Chevrolet Cruze (VIN 1G1PC53B2E7178677), declared as a former daily rental vehicle, as well as having previously being registered in Quebec. On or about August 22, 2014, the Dealer sold this vehicle without providing the consumer with the required written disclosure of the



vehicle's former daily rental use and out of province registration. This is contrary to sub section 42(7) and 42(22) of regulation 333/08, as well as section 7 and 9 of the Code of Ethics. After the issuance of the Notice of Complaint, the Dealer has provided OMVIC with confirmation that the consumer is now fully aware of their pertinent vehicle history.

6. On or about June 24, 2014, the Dealer purchased a 2014 GMC Suburb (VIN 1GN3KJE72ER187864), declared as a former daily rental vehicle. On or about August 30, 2014, the Dealer sold this vehicle without providing the consumer with the required written disclosure of the vehicle's former daily rental use. This is contrary to sub section 42(7) of regulation 333/08, as well as section 7 and 9 of the Code of Ethics. After the issuance of the Notice of Complaint, the Dealer has provided OMVIC with confirmation that the consumer is now fully aware of their pertinent vehicle history.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Disclosure

42. Additional information in contracts of sale and leases.

(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* or the *Motor Vehicle Dealers Act, 2002*.

(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 the Act to cover at least the seven previous consecutive years.

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

7. A registrant shall ensure that all documents used by the registrant in the course of 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. James agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
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 within 90 days the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer, Karen and James agree 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, Karen and James breached subsections 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. James is ordered to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
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 within 90 days the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer, Karen and James agree to 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

