

## 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 -

BARRIE FORD LTD.

- and -

PETER PANAGAKIS

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**Date of Panel's review:** January 11, 2021

**Date of Decision:** January 25, 2021

Pursuant to Rule 1.07(3) of the Rules of Practice before the Discipline Committee and the Appeals Committee this 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:

**Findings:** Breach of Sections 4, 6, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$14,000 no later than **April 15, 2021**.
2. Panagakis is ordered to pay a fine in the amount of \$2,500 no later than **April 15, 2021**.
3. Panagakis is ordered to complete the MVDA Key Elements Course no later than **May 15, 2021**.
4. The dealer is ordered to have all current and future staff to review the "August 2017 - Advertising Webinar" available on OMVIC's webpage. The Dealer also agrees to offer all

current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will view the Webinar and be offered the Course no later than **April 15, 2021**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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 Panagakis agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

## Introduction

Pursuant to Rule 1.07(3) of the Rules of Practice before the Discipline Committee and the Appeals Committee. The panel was provided with an Agreed Statement of Facts and Joint Submission on Penalty, along with written submissions from both Parties' for their consideration.

The panel thanks the Chair for the opportunity to review this matter and to provide reasons to the parties regarding the decision.

The purpose of this review by a panel of the Discipline Committee is to determine whether or not the proposed Joint Submission on Penalty (JSOP) as submitted by the parties is in the public interest.

## Reasons for Decision

The panel understands and shares the concerns of the Chair that JSOP's submitted by parties to such agreements may not fully achieve the desired goals of penalties. The panel also acknowledges that the objective of insuring penalties achieve the desired outcomes, is that they deter the offending dealer or salesperson from repeating breaches of the code of ethics.

In reviewing this matter, the panel also considered the need to recognize that all dealerships are not created equally, but the rules apply equally to all dealerships, whether small, medium or large. Understanding that the goal is not to force a dealer out of business, but rather to correct unethical behaviour could in point of fact mean different outcomes for different dealerships. For example: a fine of \$10,000 to a dealer who sells only a handful of cars a year is quite significant and may drive them out of business, or cause them to reduce staff. However, if that same fine is ordered on a dealership that sells a couple of thousand cars a year, the fine may merely represent the equivalent of the Dealers' annual coffee expenditure, and in all likelihood will not incentivise significant change in behaviour.

Another element considered in reviewing settlements, is whether or not the penalties fall within a range of penalties for similar breaches. While range is a significant factor in determining penalties, the panel is of the opinion that it may be one of the most misleading of measurements on which to rely when considering repeat offences. A number of factors get swept up in hearing orders and JSOP's that can, and should impact the parameters of the range. They may include but are not limited to the following:

- How old are the cases being referenced?
- Do the amounts scale upwards with time and inflation?
- Does the monetary impact of the fine still represent a significant deterrence?
- How many breaches were captured in the hearing ordered/agreed penalties being referenced?
- Do the circumstances addressed in those prior decisions demonstrate significant similar factors?
- Is the breach a first offence, or a second, third or fourth offence?
- Are the same owner/managers/salespersons involved in the breaches?

The panel is of the opinion that the range of penalties should broaden over time and with repeat offenders. A fine in range with orders from several years ago may not be realistic in today's economy. Similarly, a dealer or salesperson who is repeatedly in breach of their code of ethics should receive escalating penalties. The range of penalties does not always capture this. When a hearing has occurred, the panel can push that range out provided the panel makes obvious sufficient reasons in their order.

However, the Chair, or in this case the panel does not have the option to change the terms of the penalty. They must either accept or reject the proposed JSOP.

The case law is quite clear about the very high threshold for refusing to accept Agreed Statements of Fact and Joint Submissions on Penalty. The jurisprudence of the day sets out that unless an agreement does not support the public interest, or brings the administration of justice into disrepute the panel should not overturn or go behind an agreement. The Panel is of the opinion that if penalties continue to fail to embrace the ever changing economic dynamics with particular attention to repeat offenders a joint submission on penalty may soon reach that threshold. The panel is of the opinion that escalating penalties are an absolute requirement if we ever hope to significantly impact the frequency of repeat offences. If a penalty is ineffective, does it not bring the administration of justice into disrepute? Does it not also fail to uphold public interest or trust? When is that threshold crossed?

These are questions that are repeatedly being asked. Without significant change this panel expects the threshold for refusing to accept a JSOP will be crossed in the not too distant future. Penalties must be commensurate to the circumstances, and repeat offences demonstrate the ineffectiveness of the previous penalty. Therefore, in our opinion a similar penalty will in all likelihood have a similar outcome and if that is the case, then in our opinion a case could be made to refuse to accept a joint submission on penalty because it does not support public interest and it renders the administration of justice ineffective, or in other words brings it into disrepute.

While the panel does have concerns that the fine in particular appears not significant enough to affect real change in behaviour, our opinion was tempered somewhat by the actions that the dealer took to change the environment in which the breaches occurred. The details which the panel will acknowledge below helped tip the balance in favour of accepting the JSOP. Otherwise this may well have been the case that would challenge the sanctity of such agreements.

The panel recognizes the accepted principles for consideration in determining penalties in disciplinary action as listed below. The panel also addressed which penalties of the proposed JSOP relate to each of the specific goals of penalty.

**Public Protections/Public Interest** - *Fine, all current and future staff Reviewing the "August 2017" Advertising Webinar, offering the OMVIC Automotive Certification course to all current and future staff, current sales staff to be offered the course within 90 days of this order, future sales staff to be offered the course within 90 days of being retained, the costs of such measures to be incurred by the dealer.*

**Specific Deterrence** - *Fines to both the dealer and the manager, and costs of providing OMVIC training, damage to reputation finding on the website*

**General Deterrence** - *Fines to both the dealer and the manager, costs of providing OMVIC training, damage to reputation finding on the website*

**Remediation** - *Courses provided to educate sales staff on rules and regulations*

As referenced previously, the panel recognizes actions the dealer has taken outside of the proposed agreement to eliminate or significantly reduce the likelihood of similar breaches arising in the future. The panel is gratified to see the dealer's initiatives and views those changes in policies and procedures as evidence that the dealer is receiving the message. The panel in particular acknowledges the development of a novel and creative system that identifies disclosure obligations to all staff regard each and every vehicle in the dealer's stock. The panel reminds the dealer however that a system is only as good as the people who administer it and monitor the outcomes.

The panel also "heard" the dealer's explanation that the failure to disclose "the previous daily rental" information in writing on the bill of sale was the result of a computer system glitch. The panel reminds the dealer that it is their responsibility to oversee the process. While the panel appreciates that errors do occur, the panel is also mindful that there are almost always consequences to the people who are affected by them. While an error may seem innocent enough, the impact of the error on the purchaser may be of significant consequence. Whether the information was purposely withheld or accidentally omitted the outcome does not change.

The panel would be remiss if we did not address the amount of the penalty agreed to in the JSOP before us.

The panel took note that the previous penalty decision dated June 19, 2014, issued as a result of a JSOP that was accepted by the Chair of the Discipline Committee ordered the dealer to pay \$6,500.00. The decision is found at page 20 of Exhibit C. In this case only the Dealer was ordered to pay a penalty. This appears to be the first discipline matter with regard to this Dealer.

In the current case before the panel, the JSOP requires the dealer to pay a penalty of \$14,000.00. While the panel has concerns about the adequacy of the amount for the penalty, considering it is a second breach of the Code and the previous infraction was six years ago, the panel is mindful that this amount is 215% of the 2014 amount. In principle it does support the concept of increasing penalty amounts with regard to repeated offences.

The biggest question is whether or not this amount is a significant deterrent to a dealership of this size. That outcome remains to be seen. The panel would expect a further breach would

result in an exponentially higher penalty or risk that the agreement would successfully be rejected on the basis that it is not in the public interest. If the evidence supporting this is that a penalty has been ineffective two or more times in altering behaviour, then doesn't it stand to reason that the outcome is not in the public interest and therefore also brings the administration of justice into disrepute, having failed to meet the objectives of penalty?

In this panels opinion range of penalty should be given less weight in repeat offences than the amount of the penalty. The amount should be significant enough to drive a change in behaviour.

The panel also noted that in the case before us, in addition to the dealer, the manager was fined, unlike the previous decision. This also influenced the panel in our decision to accept the JSOP. While the penalty to the manager is just \$2,500.00, it comes out of the pocket of an individual who is in a position to affect change and based on the policy and procedural changes being implemented in the dealership, appears to be doing exactly that. Again, the future will tell us how effective this change is. Mathematically speaking the dealer penalty combined with the manager penalty represents 253% of the 2014 penalty. We reiterate this does support the principle of escalating penalties with repeat offences. The question is, Is it enough?

During its review of this matter the panel considered:

#### **Schedule A. Exhibits**

1. **Exhibit A** - Registrar, Motor Vehicle Dealer Act 2002 and Barrie Ford Ltd and Peter Panagakis - ASF and JSOP
2. **Exhibit B** - Email dated November 3, 2020 from David Dailly to Aneesa Mohammed, copied to Andrea Korth
3. **Exhibit C** - Registrar, Motor Vehicle Dealers Act. 2002 and 1270880 Ontario Inc and 1270831 Ontario Inc. o/a Barrie Ford and Michael Stollery

#### **Schedule B - Authorities**

1. **R. V Anthony-Cook [2016] S.C.J. No.43**
2. **Law Society of Upper Canada v. Henderson [2014] L.S.D.D. No. 249**
3. **Ontario College of Teacher v. Seymour, 2014 LNONCTD 61**
4. **Registrar, Motor Vehicle Dealers Act, 2002 and 2343654 Ontario Inc o/a 401 Dixie Nissan/401 Dixie Infinity and Ali Faheem**
5. **Registrar, Motor Vehicle Dealers Act, 2002 and 1681230 Ontario o/a Windsor Chrysler and Joseph Diemer**
6. **Registrar, Motor Vehicle Dealers Act, 2002 and Leading Edge Motor Cars Inc and Darryn Wilbur**

The panel was guided by the Authorities, and while not specifically referenced in the order, they were nonetheless utilized during the panels' decision making process.

**Agreed Statement of Facts**

The parties to this proceeding agree that:

1. Barrie Ford LTD. (The “Dealer”) was first registered as a motor vehicle dealer in or around February 1998. Peter Panagakis (“Panagakis”) was first registered as a motor vehicle salesperson in or around February 1984. Since around February 2012, Panagakis has been the Person in Charge of the Dealer.

**OMVIC publication re: non-disclosure**

2. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement to disclose former daily rental vehicles in both advertisements and on the bill of sale (“disclosure obligations”).
3. After the Act was proclaimed, OMVIC further issued the following publications reminding dealers of advertising and disclosure obligations:

	<b><u>Dealer Standard:</u></b> <b>Publication Date</b>	<b>Subject Matter: Daily Rental Disclosures in Advertisements</b>	<b>Subject Matter: Daily Rental Disclosures on the Bill of Sale</b>	<b>Subject Matter: All-In Price Advertising</b>
1.	Winter 2008	X	X	X
2.	Spring 2010	X		X
3.	Spring 2011	X		X
4.	Summer 2012	X	X	
5.	Spring 2013		X	X
6.	Summer 2013		X	X
7.	Winter 2013			X
8.	Fall 2013	X	X	
9.	2014 Issue: 1			X
10.	2014 Issue: 2	X		X
11.	2014 Issue: 3	X		X
12.	2014 Issue: 4		X	X

13.	2015 Issue: 3			X
14.	2015 Issue: 4			X
15.	2016 Issue: 1			X
16.	2016 Issue: 2			X
17.	2016 Issue: 3			X
18.	2016 Issue: 4			X
19.	2017 Issue: 2			X
20.	2017 Issue: 3			X
21.	2018 Issue: 2			X
	<b><u>OMVIC Bulletins: Publication Date</u></b>			
22.	January 2010			X
23.	April 2010	X		X
24.	February 2012			X
25.	August 2012			X
26.	September 2012		X	
27.	December 2013		X	
28.	April 2014			X
29.	June 2014			X
30.	April 2015			X

**Prior correspondence with Dealer**

4. During an inspection on about September 26, 2013, a representative of the Registrar reminded the Dealer and Panagakis of their all-in pricing requirements and requirements towards daily rental disclosure.

**Previous Discipline Committee Order:**

5. On or about January 21, 2014, the Registrar issued a Notice of Complaint against the Dealer for failure to comply with former daily rental disclosure in advertisements and on bills of sale.
6. On or about June 13, 2014, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice. As per condition 4 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time. Panagakis also agreed to successfully complete the Automotive Certification course (the "Course").
7. On or about August 28, 2014, Panagakis successfully completed the Course. Included in the Course materials are dealers' disclosure obligations.

**Current non-compliance:**

8. During an inspection on about March 1, 2019, a representative of the Registrar found the following non-compliant issues not being disclosed:

***Daily Rental Non-Disclosure: Advertisements***

- a. On or before February 6, 2019 the Dealer published the following advertisements which failed to indicate that the subject vehicles were former daily rental units. This is contrary to section 36(5) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

	Vehicle	VIN
I.	2017 Ford Expedition	1FMJU1JT2HEA22289
II.	2018 Kia Optima LX	5XXGT4L37JG183142
III.	2018 Nissan Frontier SL	1N6AD0FV7JN726404
IV.	2017 Ford Ecoline 450	1FDXE4FS7HDC38508
V.	2017 Dodge Grand Caravan	2C4RDGEG2HR883577
VI.	2017 Ford Escape Titanium	1FMCU9J92HUD87833
VII.	2017 Dodge Grand Caravan	2C4RDGDG5HR845570
VIII.	2018 Ford Transit-150	1FMZK1CG1JKA81978

9. The Dealer has since provided OMVIC with confirmation that the above purchasers were made aware of their vehicle's history, at the time of purchase, in writing on their bills of sale.



**Daily Rental Non-Disclosure: Bill of Sale**

- a. During this same inspection, the representative of the Registrar found the following non-compliant trades regarding daily rental disclosure not being disclosed on the Dealer's bills of sale. This is contrary to section 42(7) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics.

	Vehicle	VIN	Date Sold
I.	2018 Ford Transit Truck	1FTYR3XGXJKA824 18	12/27/2018
II.	2017 Ford Ecoline	1FDXE4FS6HDC384 21	01/12/2018
III.	2017 Volkswagen Beetle	3VWJ17AT4HM6237 58	12/19/2018
IV.	2017 Volkswagen Beetle	3VWJ17ATXHM6242 83	11/21/2018

10. The Dealer has since provided confirmation that the above purchasers were made aware of their vehicle's history and have signed a document acknowledging such.

11. In failing to ensure the Dealer is conducting business in compliance with the law, Panagakis has personally breached sections 6 and 9 of the Code of Ethics.

By failing to comply with the following:

Regulation 333/08

36. Advertising

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 subsequently owned by a person who was not a registered motor vehicle dealer.

42. Additional information in contracts and leases

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

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

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 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

#### Compliance

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.

#### 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.

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

#### Accountability

6 (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

It is thereby agreed that the Dealer and Panagakis have breached the following section of the Code of Ethics, as set out in Regulation 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.

#### Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$14,000 no later than **April 15, 2021**.
2. Panagakis agrees to pay a fine in the amount of \$2,500 no later than **April 15, 2021**.
3. Panagakis agrees to complete the MVDA Key Elements Course no later than **May 15, 2021**.
4. The dealer agrees to have all current and future staff to review the "August 2017 - Advertising Webinar" available on OMVIC's webpage. The Dealer also agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will view the Webinar and be offered the Course no later than **April 15, 2021**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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.

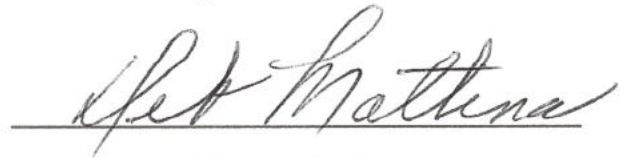
5. The Dealer and Panagakis agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

### Decision of the Panel

Having reviewed and considered the Agreed Statement of Facts and submissions from the parties', the panel hereby concludes that the Dealer and Panagakis have breached subsections 4, 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 Panel 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 \$14,000 no later than **April 15, 2021**.
2. Panagakis is ordered to pay a fine in the amount of \$2,500 no later than **April 15, 2021**.
3. Panagakis is ordered to complete the MVDA Key Elements Course no later than **May 15, 2021**.
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5. The Dealer and Panagakis 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



*Deb Mattina, Chair  
Nelson Caetano, Vice Chair  
Wally Pietraszko Vice Chair*

