

## 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 -

1019554 ONTARIO LIMITED o/a CARDINAL KIA

- and -

GIUSEPPE BUTERA

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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:** November 18, 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 \$6,000. \$3,000 will be paid no later than **January 30, 2021** and the remaining balance (\$3,000) will be paid no later than **April 30, 2021**.
2. The Dealer is ordered to ensure an individual, as agreed upon between the parties, and who exercises control over staff at the Dealer, will successfully complete the Georgian College Automotive Certification course (the "Course") no later than **January 30, 2021**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Course. Current sales staff will be offered the Course no later than **January 30, 2021**. 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 and Butera 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. 1019554 Ontario limited o/a Cardinal Kia (The "Dealer") was first registered as a motor vehicle dealer in or around March 1999. Giuseppe Butera ("Butera") was first registered as a motor vehicle salesperson in or around June 1993. At all material times, Butera was the person in charge of the Dealer.

#### **OMVIC publication re: 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 advertisements and on bills of sale.
3. After the Act was proclaimed, OMVIC further issued the following publications reminding dealers of their various disclosure obligations:

	<b><u>Dealer Standard: Publication Date</u></b>	<b><u>Subject matter: Daily rental disclosure on the bill of sale</u></b>	<b><u>Subject matter: Out of Province disclosure on the Bill of Sale</u></b>	<b><u>Subject Matter: Accident Repair non-disclosure</u></b>
A.	Summer 2011			X
B.	Winter 2012			X
C.	Summer 2012	X		X
D.	Winter 2013		X	X
E.	Summer 2013	X		X
F.	Fall 2013	X		
G.	2014 Issue #4	X	X	X
H.	2016 Issue #3			X
I.	2016 Issue #4		X	X

J.	2017 Issue #3			x
K.	2018 Issue #3			x
L.	2019 Issue #1			x
M.	2019 Issue #2			x
	<b>OMVIC bulletins:</b> <i>Publication Date</i>			
N.	January 2010			x
O.	September 2012	x		x
P.	December 2013	x		x
	<b>Webinars:</b> <i>Publication Date</i>			
Q.	December 2014	x		x
R.	June 2015	x		x

### **Prior correspondence with Dealer**

4. During an inspection on or about January 24, 2011, a representative of the Registrar reminded the Dealer of the requirement to provide purchasers with written disclosure of a vehicle's former daily rental history on the bill of sale.
5. During a meeting on or about June 3, 2011, a representative of the Registrar reminded Butera of the Dealer's disclosure and advertising requirements. A copy of Regulation 42 was left for the Dealer to review.
6. During an inspection on or about October 24, 2011, a representative of the Registrar reminded Butera of the Dealer's disclosure requirements, as per Regulation 42.

### **Current non-compliance:**

7. During an inspection on or about June 13, 2019, a representative of the Registrar found the following non-compliant vehicle trades:

### **Non-disclosures:**

- a. On or about October 9, 2018, the Dealer purchased a 2018 Chevrolet Cruze (VIN 1G1BE5SM7J7154147) with the following declarations:
  - i. Former daily rental
  - ii. Vehicle has been declared a total loss by the insurer
  - iii. Manufacturer's warranty has been cancelled
  - iiii. Repair estimate: 16,848.39
  - iv. Total distance the vehicle has been driven is unknown, but as of 9/17/2018, it was believed to be 23083km. The total distance driven is believed to be higher than the distance indicated. \*Odometer is: Good.

On or about March 12, 2019, the Dealer sold this vehicle without providing the purchaser with written disclosure of any of the above referenced information. This is contrary to

sections 42(4), 42(7), 42(19), 42(20), 42(21), and 42(25) of Regulation 333/08, as well sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle's history.

- b. On or about December 11, 2018, the Dealer purchased a 2017 GMC Savana Cargo (VIN 1GTW7AFF3H1283071) declared as being a former daily rental as well as having been previously registered in Arizona. On or about May 3, 2019, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's previous former daily rental history and out of province registration. This is contrary to sections 42(7), 42(22), and 42(25) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle's history
- c. On or about April 26, 2019, the Dealer purchased a 2019 Kia Sedona (VIN KNDMB5C15K6457383) declared as being a former daily rental as well as having been previously registered in Alberta. On or about May 4, 2019, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's previous former daily rental history and out of province registration. This is contrary to sections 42(7), 42(22), and 42(25) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle's history
- d. On or about April 2, 2019, the Dealer purchased a 2016 Dodge Ram (VIN 1C6RR7WM9GS249189) declared as having sustained \$4,877.00 in accident damage. On or about April 20, 2019, the Dealer sold this vehicle, but failed to provide the purchaser with written disclosure of this information. This is contrary to sections 42(19) and 42(25) of Regulation 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 are aware of their vehicle's history

**Butera:**

- 10. In failing to ensure the Dealer is conducting business in compliance with the law, Butera 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.

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*,
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.

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.

22. If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had 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 jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

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 Butera 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 Butera 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 \$6,000. \$3,000 will be paid no later than **January 30, 2021** and the remaining balance (\$3,000) will be paid no later than **April 30, 2021**.
2. The Dealer agrees to ensure an individual, as agreed upon between the parties, and who exercises control over staff at the Dealer, will successfully complete the Georgian College Automotive Certification course (the "Course") no later than **January 30, 2021**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete Course. Current sales staff will be offered the Course no later than **January 30, 2021**. 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 and Butera 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 Butera have 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 \$6,000. \$3,000 will be paid no later than **January 30, 2021** and the remaining balance (\$3,000) will be paid no later than **April 30, 2021**.
2. The Dealer is ordered to ensure an individual, as agreed upon between the parties, and who exercises control over staff at the Dealer, will successfully complete the Georgian College Automotive Certification course (the "Course") no later than **January 30, 2021**.
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4. The Dealer and Butera 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.

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*Paul Burroughs, Chair*