



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 -

NEXCAR AUTO SALES AND LEASING INC.

-AND-

GITI NIMAPOO

-AND-

MOHAMMADMEHDI ASADIAN

Date of Decision: May 28, 2013

Findings: Breach of Section 4 of the Code of Ethics

Order:

1. Nexcar Auto Sales and Leasing Inc. (the "Dealer") agrees to pay a fine in the amount of \$3250.00 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Giti Nimapoo agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
4. The Dealer agrees 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 before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002.

The Registrar was represented by Michael Rusek, and the respondents were represented by Patrick Bakos. The Panel consisted of Debra Mattina (Chair), John Kenny (Vice-Chair), and Neil Joesse (Vice-Chair). Luisa Ritacca attended as Independent Legal Counsel to the Panel.

At the outset of the hearing we were advised that the parties reached an agreement in this matter. The respondents' Counsel advised the Panel that his clients consented to the agreement and were agreeable to the matter proceeding in their absence.

The Panel was provided with an Agreed Statement of Facts (Exhibit #3), which provides as follows:

Facts:

1. Nexcar Auto Sales and Leasing Inc (the "Dealer") was first registered as a motor vehicle dealer in or around February 2009. Giti Nimapoo ("Nimapoo") was first registered as a motor vehicle salesperson in or around February 2009. Mohammadmehdi Asadian ("Asadian") was first registered as a motor vehicle salesperson in or around May 2009. At all material times, Nimapoo was the sole officer and director of the Dealer and Asadian was a registered salesperson at the Dealer.
2. Good Fellow's Auto Wholesalers ("Good Fellows") is a registered motor vehicle dealer. The dealer principal of Good Fellows is related to Asadian.
3. On or about February 4, 2009, Nimapoo executed terms and conditions of registration on behalf of the Dealer, attached hereto as Schedule A. As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice.
4. On or about February 9, 2009, a representative of the Registrar reviewed with Asadian, on behalf of the Dealer, the Dealer's terms and conditions of registration as well as the Standards of Business Practice.
5. On or before April 12, 2012, the Dealer published an advertisement for a 2008 Honda Civic, (VIN 2HGFA16568H106428), with a selling a price of \$11,990. On or about April 12, 2012, the Dealer sold this vehicle to Good Fellows for \$2148 above the advertised retail price. On or about April 15, 2012, Good Fellows retailed this vehicle to a consumer for \$1508 above the original advertised price. It is not clear on the wholesale and retail contracts what these price increases represent, and as such the Dealer has violated section 4 of the Code of the Ethics.
6. On or before April 14, 2012, the Dealer published an advertisement for a 2008 Honda Civic, (VIN 2HGFA16568H103934), with a selling a price of \$11,990. On or about April 14, 2012, the Dealer sold this vehicle to Good Fellows for \$2497 above the advertised



14, 2012, the Dealer sold this vehicle to Good Fellows for \$2497 above the advertised retail price. On or about April 15, 2012, Good Fellows retailed this vehicle to a consumer for \$2007 above the original advertised price. It is not clear on the wholesale and retail contracts what these price increases represent, and as such the Dealer has violated section 4 of the Code of the Ethics.

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

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

Decision of the Panel:

Having reviewed and considered the guilty plea of the Respondents to the allegations contained in the Notice of Complaint dated September 18, 2012 and the Agreed Statement of Facts, the Panel of the Discipline Committee hereby concludes that the Dealer and Giti Nimapoo and Mohammadmehdi Asadian breached subsection 4 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Reasons for Decision:

Based on the Agreed Statement of Facts the panel is satisfied that the facts as they appear in the statement represent a violation of subsection 4 of the OMVIC Code of Ethics in that the advertisements are unclear in describing the features, benefits and prices connected with the motor vehicles represented in the advertisements. The panel is therefore satisfied that Nexcar Auto Sales and Leasing Inc., Giti Nimapoo and Mohammadmehdi Asadian violated the code of ethics.

Submissions on Penalty

The parties presented the Panel with a joint submission as to penalty (Exhibit #2), which provided as follows:

1. Nexcar Auto Sales and Leasing Inc. (the "Dealer") agrees to pay a fine in the amount of \$3250.00 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Giti Nimapoo agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.



Business Practice, as may be amended from time to time.

Counsel for both parties submitted that the proposed penalty was appropriate in the circumstances and well within the range of reasonable penalties.

Penalty Decision

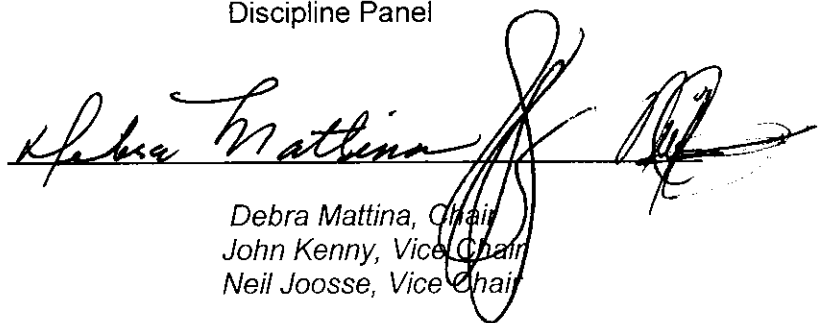
The Panel makes the following order on penalty:

1. Nexcar Auto Sales and Leasing Inc. (the "Dealer") agrees to pay a fine in the amount of \$3250.00 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Giti Nimapoo agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Reasons for Penalty

The panel having accepted the Agreed Statement of Facts and the submissions of both parties as to the appropriateness of the penalty is satisfied that the penalty is appropriate to the breach. The panel is also satisfied that the penalty is sufficient to deter the Registrant from similar acts while sending an appropriate message to other registrants about their obligations with respect to advertising. It also serves to protect the public from misleading advertising.

Ontario Motor Vehicle Industry Council
Discipline Panel



Debra Mattina, Chair
John Kenny, Vice Chair
Neil Joosse, Vice Chair