

DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

PANEL:	Mr. Robert MacKay, Chair	Public Member
	Mr. Wally Pietraszko	Registrant
	Mr. Stuart Sherman	Registrant

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 :

Appearances¹:

REGISTRAR, MOTOR VEHICLE
DEALERS ACT, 2002

Mr. Jose Alvarez-de-Lugo
for the Registrar

- and -

LEON'S FINE CARS Inc.

Mr. Adam Varro
for the Registrants

and

LEV BABEKOV

Date of Hearing: March 17, 2023

¹ Also present at the hearing were independent legal counsel Mr. Edward Marrocco, Ms. Andrea Korth for OMVIC, and Hearing Administrator Mr. David Dailly, who recorded the hearing.

Findings:

Mr. Lev Babekov has breached the following sections of the Code of Ethics, ON Regulation 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.*

Professionalism

9. (2) *In carrying on a business, a registrant shall act with honesty, integrity and fairness.*

Leon's Fine Cars Inc has breached the following section of the Code of Ethics, ON Regulation 332/08

Professionalism

9. (2) *In carrying on a business, a registrant shall act with honesty, integrity and fairness.*

DECISION AND REASONS

Introduction

This was a hearing before a panel of the Discipline Committee (the "Panel") of the Ontario Motor Vehicle Industry Council ("OMVIC") pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B ("MVDA"). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.

The hearing was convened March 17, 2023 (the "Hearing"). The Hearing was held virtually using video conferencing with the consent of the parties.

The Allegations

The allegations against Leon's Fine Cars Inc., and Mr. Lev Babekov (collectively the "Registrants") were set out in a Notice of Complaint, dated June 29, 2023. The Notice of Complaint was entered as Exhibit 1 at the Hearing. The Notice of Complaint is attached to these reasons as Appendix "A".

At the outset of the Hearing, counsel for the Registrar, Mr. Jose Alvarez-de-Lugo, advised that discussions with the responding parties had resulted in an agreement which they intended to present.

Plea of the Registrants

The Registrants did not attend the Hearing, however their counsel, Mr. Adam Varro did. Mr. Varro confirmed that both the Dealer and Mr. Babekov admit all the allegations contained in the Notice of Complaint through their admissions in the Agreed statement of Facts. A plea inquiry was conducted by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the admissions of the Registrants were voluntary, informed, and unequivocal.

Agreed Statement of Facts

The Agreed Statement of Facts (the "ASF")² which had been signed by the Registrants on March 7, 2023, and the Registrar on March 16, 2023, was entered as Exhibit 2 at the Hearing. The ASF is attached to these reasons as Appendix "B". Mr. Alvarez-de-Lugo on behalf of OMVIC, and Mr. Varro on behalf of the Registrants, took the Panel through the ASF. The Panel then sought and received advice from its Independent Legal Counsel, Mr. Marrocco, before rising to deliberate on the merits portion of the Hearing.

² Prior to the beginning of the Hearing, the exhibits were delivered to the Panel members electronically in the interests of hearing economy and on consent of the parties.

Decision of the Panel

Upon reconvening, the Panel stated it was accepting the ASF and was satisfied that the admissions made by the Registrants were sufficient to make findings of breaches against the Registrants as alleged in the Notice of Complaint. The Panel made findings against Leon's Fine Cars Inc. and Mr. Babekov accordingly. In reaching its decision the Panel relied exclusively on the evidence presented at the Hearing as contained in the Agreed Statement of Facts at Exhibit 2.

The Panel made the following findings:

Mr. Lev Babekov breached two sections of the Code of Ethics, ON Regulation 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.*

Professionalism

9. (2) *In carrying on a business, a registrant shall act with honesty, integrity and fairness.*

Leon's Fine Cars Inc breached the following section of the Code of Ethics, ON Regulation 332/08

Professionalism

9. (2) *In carrying on a business, a registrant shall act with honesty, integrity and fairness.*

Penalty

The Panel was presented with a Joint Submission on Penalty (the "JSP") which was entered as Exhibit 3 and is attached to these reasons as Appendix "C". The terms of the JSP are that:

1. The Dealer agrees to pay a fine in the amount of \$1,500 no later than **June 30, 2023,**

2. Babekov agrees to successfully complete the MVDA Key Elements course no later than **June 30, 2023**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **June 30, 2023**. 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 Babrkov (sic) agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Mr. Alvarez-de-Lugo, on behalf of the Registrar, stated that the proposed penalty contained orders that would serve as both a general and specific deterrent while providing an opportunity for remediation on the part of the Registrants. Among other things, he noted that the consumer had been repaid the deposit funds and there were no aggravating factors or no previous discipline findings against these Registrants. Mr. Varro, on behalf of the Registrants reiterated that this was a first offence for the Registrants and that the proposed 4 sanctions served as general and specific deterrents.

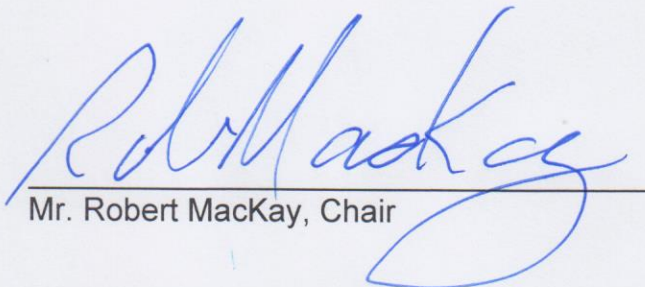
Penalty Decision and Reasons

The Panel was satisfied that the parties had come to an appropriate resolution which contemplated the relevant objective on penalty including public protection, remediation/rehabilitation and deterrence for the Registrants, and general deterrence to others in the profession. The Panel noted that the Registrants saved all the parties the delay and expense that would have otherwise been incurred in deciding the allegations at a contested hearing.

The Panel therefore made the following orders, consistent with the JSP, before the conclusion of the hearing:

1. The Dealer is to pay a fine in the amount of \$1,500 no later than June 30, 2023;
2. Mr. Babekov is to successfully complete the MVDA Key Elements course no later than June 30, 2023;
3. The Dealer is to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than June 30, 2023. 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; and
4. The Dealer and Mr. Babekov are to comply with the Act and Standards of Business Practice, as may be amended from time to time.

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: March 18, 2023

Panel Members:

Mr. Robert MacKay
Mr. Wally Pietraszko
Mr. Stuart Sherman

Appendix "A"
IN THE MATTER OF

THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Leon's Fine Cars Inc
1057 Martin Grove Road
Toronto, ON M9W4W6

AND TO: Lev Babekov
30 Jacobi Court
Thornhill, ON L4J9H8

NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar is issuing a Notice of Complaint against LEON'S FINE CARS INC and LEV BABEKOV for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the *Motor Vehicle Dealers Act, 2002*. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease.

LEON'S FINE CARS INC and LEV BABEKOV have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

Background:

1. Leon's Fine Cars (the "Dealer") was first registered as a motor vehicle dealer in around April 2002.
2. Levon Babekov ("Babekov") was first registered as a motor vehicle salesperson in around April 2002. At all material times, Babekov was the sole Officer as well as the person in charge of the day to day activities at the Dealer.

Consumer complaint:

3. On or about September 23, 2021, Consumer A visited the Dealer and expressed an interest in purchasing a 2013 Hyundai Genesis (VIN KMHGC4DD5DU244151)) from the Dealer. Consumer A gave the Dealer a \$1,000 deposit for this vehicle. No bill of sale was executed. Shortly thereafter, Consumer A determined that they did not want to purchase the vehicle and requested a refund of their deposit.
4. Babekov, on behalf of the Dealer, refused to refund Consumer A's deposit, This is contrary to section 38 of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics.
5. On or about September 29, 2021, Consumer A contacted OMVIC to complain about the Dealer refusing to return their deposit.
6. After OMVIC became involved in Consumer A's complaint, Babekov agreed to return the deposit on behalf of the Dealer.

Babekov's non-compliance:

7. In failing to ensure that the Dealer conducted its business in compliance with the law, Babekov personally contravened sections 6 and 9 of the Code of Ethics.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act, R.S.O 1990 c.s.22*, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

Appendix "B"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

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 -

LEON'S FINE CARS INC

- and -

LEV BABEKOV

AGREED STATEMENT OF FACTS

Leon's Fine Cars Inc and Lev Babekov have breached the following:

Sections 6 and 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

Background

1. Lev Babekov ("Babekov") was first registered as a motor vehicle salesperson in around April 2002. At all material times, Babekov was the sole Officer as well as the person in charge of the day-to-day activities at the Dealer.

Consumer complaint:

2. On or before September 23, 2021, Consumer A reviewed an advertisement for a 2013 Hyundai Genesis (VIN KMHGC4DD5DU244151) for sale by the Dealer.
3. On or about September 23, 2021, Consumer A visited the Dealer and expressed an interest in purchasing a 2013 Hyundai Genesis (VIN KMHGC4DD4DU239197) from the Dealer. Consumer A gave the Dealer a \$1,000 deposit for this vehicle. No bill of sale was executed. Shortly thereafter, Consumer A determined that they did not want to purchase the vehicle and requested a refund of their deposit.

4. Babekov, on behalf of the Dealer, refused to refund Consumer A's deposit, this is contrary to section 38 of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics.
5. On or about September 29, 2021, Consumer A contacted OMVIC to complain about the Dealer refusing to return their deposit.
6. After OMVIC became involved in Consumer A's complaint, Babekov agreed to return the deposit on behalf of the Dealer.
7. Consumer A was ultimately refunded the deposit funds as a result of a "Cardholder Dispute Chargeback" issued by the credit card institution.

Babekov's non-compliance:

8. In failing to ensure the Dealer conducted its business in compliance with the law as it relates to the refunding of deposits pursuant to section 38 of Ontario Regulation 333/08, Babekov contravened sections 6 and 9 of the Code of Ethics

It is thereby agreed that Babekov has breached the following section of the Code of Ethics, ON Regulation 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.

It is thereby agreed that the Dealer and Babekov have breached the following section of the Code of Ethics, ON Regulation 332/08

Professionalism

9. (2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

By signature below, I acknowledge that I have read, understand, and agree with the facts outlined herein and that I exercised my right to be represented by Counsel or agent in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2023

(Please print)

(signature)

I have the authority to bind:
LEON'S FINE CARS INC

By signature below, I acknowledge that I have read, understand, and agree with the facts outlined herein and that I exercised my right to be represented by Counsel or agent in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2023

LEV BABEKOV (signature)

By signature below the Registrar agrees, acknowledges, and understands that the facts of this matter are as set out by this Agreed Statement of Facts.

DATED AT _____ THIS _____ DAY OF _____, 2023

Maureen Harquail
Registrar, *Motor Vehicle Dealers Act, 2002*

Appendix "C"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

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 -

LEON'S FINE CARS INC

- and -

LEV BABEKOV

JOINT SUBMISSION ON PENALTY:

5. The Dealer agrees to pay a fine in the amount of \$1,500 no later than June 30, 2023.
6. Babekov agrees to successfully complete the MVDA Key Elements course no later than June 30, 2023.
7. The Dealer agrees to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than June 30, 2023. 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.
8. The Dealer and Babrkov (sic) agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

(signature)

I have authority to bind the corporation:
LEON'S FINE CARS INC

(signature)
LEV BABEKOV

Maureen Harquail
Registrar, *Motor Vehicle Dealers Act, 2002*