

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 -

THE CAR LOT ETC. INCORPORATED

- AND -

CARL PRESCOTT

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: August 14, 2014

Findings: Breach of Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Prescott is ordered to complete the OMVIC certification course (the "course") within 90 days of the Discipline Committee Order.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to salespeople who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Prescott shall 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. The Car Lot Etc. Incorporated (the "Dealer") was first registered as a motor vehicle dealer in or around July 2009. Carl Prescott ("Prescott") was first registered as a motor vehicle salesperson in or around October April 2001. At all material times, Prescott was the sole officer and director of the Dealer.
2. On or about July 7, 2009, Prescott executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.
3. In or around April 2010, OMVIC issued a bulletin advising that 75 dealers had recently been charged under the Act with various advertising offenses; including failure to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in advertisements.
4. In the summer of 2010, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in advertisements.
5. In the spring of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in advertisements.
6. In the summer of 2012, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in advertisements.
7. On or before October 25, 2013, advertisements were published by or on behalf of the Dealer which promoted former daily rental vehicles, without disclosing these vehicles as such. This is contrary to sub section 36(5) of Regulation 333/08, as well as sections 4 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:

36(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 the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine.

It is thereby agreed that the Dealer and Prescott have breached the following sections 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.

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 \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Prescott agrees to complete the OMVIC certification course (the "course") within 90 days of the Discipline Committee Order.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to salespeople who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Prescott 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 Dealer and Prescott breached subsections 4 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 \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Prescott is ordered to complete the OMVIC certification course (the "course") within 90 days of the Discipline Committee Order.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to salespeople who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Prescott shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair