

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 -

DANNY & SONS AUTO SALES LTD

- AND -

DOMENIC ITALIANO

- AND -

ANGELO ITALIANO

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: July 11, 2015

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer ordered to pay a fine in the amount of \$4,000 within 120 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Domenic is ordered to successfully complete the MVDA 2002 Key Elements course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered 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 pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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.

4. The Dealer shall 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 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. Danny & Sons Auto Sales Ltd (the "Dealer") was first registered as a motor vehicle dealer in or around January 1983. Domenic Italiano ("Domenic") was first registered as a motor vehicle sales person in or around March 1984. Angelo Italiano ("Angelo") was first registered as motor vehicle salesperson in or around March 1987. At all material times, Domenic and Angelo were officers and directors of the corporation.
2. During an inspection on or about June 5, 2001, a representative of the Registrar advised Domenic, on behalf of the Dealer, of his obligation to ensure the Dealer does not trade in motor vehicles from an unregistered location.
3. During an inspection on or about March 14, 2006, a representative of the Registrar advised Angelo, on behalf of the Dealer, of his obligation to ensure the Dealer does not trade in motor vehicles from an unregistered location.
4. During an inspection on or about April 21, 2009, a representative of the Registrar advised Angelo, on behalf of the Dealer, of his obligation to ensure the Dealer does not trade in motor vehicles from an unregistered location.
5. By letter dated July 10, 2009, a representative of the Registrar advised Angelo, on behalf of the Dealer, of their obligation to ensure the Dealer does not trade in motor vehicles from an unregistered location.
6. On or about May 25, 2012, OMVIC issued a Notice of Complaint ("Notice") against the Dealer, regarding non-compliance of section 7 and 9 of the Code of Ethics, along with other issues.
7. On or about August 21, 2012, the Discipline Committee issued an Order pursuant to a negotiated resolution of the above mentioned Notice. As per condition 6, the Dealer,



Domenic and Angelo agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

8. In or around June 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure that the proceeds from the sale of extended warranties are submitted to the warranty provider within 7 days of the date of sale.
9. During an inspection on or about November 12, 2014, a representative of the registrar found the following areas of non-compliance:
 10. From in or around June 2014 and in or around September 2014, the Dealer sold extended warranty products and failed to remit the warranty applications and/or the proceeds of these sales to the warranty provider within 7 days of the date of sale. This is contrary to sub section 47(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
 11. It was discovered that the Dealer has been trading in motor vehicles from an unregistered location, contrary to section 4 of the Act, as well as section 9 of the Code of Ethics. After the issuance of the Notice of Complaint by OMVIC, the Dealer has registered the location in question.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Name and place of business

4(2) A motor vehicle dealer shall no,

- (b) Invite the public to deal in a place other than the place that is authorized in the registration of the motor vehicle dealer.

Warranty

47. Sale of extended warranty products.

(7). If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall ensure,

- (c) Within 7 days after the parties enter into the contract for the warranty, provide the seller of the warranty with
 - (i) all documents detailing the contract that the dealer has in its possession,
 - (ii) all payments that the dealer has received from the purchaser.



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

7. A registrant shall ensure that all documents used by the registrant in the course of trade in a motor vehicle are current and comply with the law.

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 \$4,000 within 120 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Domenic agrees to successfully complete the MVDA 2002 Key Elements course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
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 pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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.
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.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer, Domenic and Angelo breached subsections 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 ordered to pay a fine in the amount of \$4,000 within 120 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Domenic is ordered to successfully complete the MVDA 2002 Key Elements course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.



3. The Dealer is ordered 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 pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair

