

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 -

PARKROW AUTO SALES LTD.

- AND -

RANDOLPH BONNEY

Pursuant to Pre-Hearing Conference held on October 4 and pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Pre-Hearing Conference, 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 4, 2016

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

Order:

1. The Dealer and Bonney is ordered to pay a fine in the amount of \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Bonney is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 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 after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Bonney 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. In addition, a Pre-Hearing Conference was held to hear submissions from the parties with respect to the terms set out below.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. Parkrow Auto Sales Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around December 2001. Randolph Bonney ("Bonney") was first registered as a motor vehicle salesperson in or around May 1991. At all material times, Bonney was the sole officer and director of the Dealer as well as the Person in Charge.

OMVIC Publications:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealer Act, 2002* ("the Act") came into effect, including the requirement for dealers to disclose previous accident history.
3. OMVIC issued the following Dealer Standard publications reminding dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident histories:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Fall 2013
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident histories:
 - a. January 2010
 - b. September 2012
 - c. December 2013
 - d. December 2014
 - e. June 2015
 - f. October 2015
 - g. November 2015



Previous Correspondence with Dealer:

5. During an inspection on or about June 6, 2012, Bonney was reminded that the Dealer must comply with all written disclosure requirements, as per section 42 of the Act.
6. During an inspection on or about September 10, 2015, the following examples of non-compliance were found:

Retail Bill of Sale - Non-Disclosure:

7. On or about October 19, 2011 the Dealer purchased a 2009 Dodge Ram 2300 (VIN: 3D7KA28623G819754). This vehicle was previously registered in Michigan with a salvage title. On or about January 6, 2012, the Dealer sold the vehicle but failed to disclose its out of province history and salvage title in writing on the bill of sale. This is contrary to sections 42(22) and 42(23) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
8. On or about May 19, 2015, the Dealer purchased a 2003 Pontiac Grand Am (VIN: 1G2NF52F23C200159) which was disclosed as having an accident history of \$8,967. On or about June 12, 2015 the Dealer sold the vehicle but failed to disclose the accident history in writing on the bill of sale. This is contrary to section 42(19) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The Dealer has provided confirmation he attempted to advise the consumer of the vehicle's accident history.
9. On or before May 27, 2015, the Dealer purchased a 2006 Dodge Charger (VIN: 2B3KA43G76H244739) which was disclosed as having two accident histories of \$7,967 and \$9,845. On or about May 27, 2015 the Dealer sold the vehicle but failed to disclose its accident histories in writing on the bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has provided confirmation he attempted to advise the consumer of the vehicle's accident history.
10. On or about June 22, 2015, the Dealer purchased a 2007 Dodge Grand Caravan (VIN: 2D4GP44L47R169883). This vehicle has an accident history of \$3,397. On or about June 25, 2015, the Dealer sold the vehicle but failed to disclose the accident history in writing on the bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has provided confirmation he attempted to advise the consumer of the vehicle's accident history.
11. On or about June 22, 2015, the Dealer purchased a 2006 Chrysler 300 (VIN: 2C3KA53G06H238175). This vehicle has an accident history of \$3,771. On or about June 25, 2015, the Dealer sold the vehicle but failed to disclose the accident history in writing on the bill of sale. This is contrary to section 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has provided confirmation he attempted to advise the consumer of the vehicle's accident history.
12. On or about June 22, 2015, the Dealer purchased a 2004 Chevrolet Sebring (VIN: 1C3EL46R94N134013). This vehicle has an accident history of \$8,221.52. On or about July 8, 2015, the Dealer sold the vehicle but failed to disclose its accident history in writing on the bill of sale. This is contrary to section 42(19) and 42(25) of Regulation



333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has provided confirmation he attempted to advise the consumer of the vehicle's accident history.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002* Regulation 333/08:

42. (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.

42. (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.

42. (23) If the motor vehicle has been classified, under section 199.1 of the Highway Traffic Act as irreparable, salvage or rebuilt, a statement as to how it was last classified.

42. (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 that the Dealer and Bonney 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 a 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.

Amendment on Consent

1. Paragraph 7 of the Notice of Complaint dated March 1, 2015 indicated a breach of 42(21) of Regulation 333/08. This was amended on consent at the Pre-Hearing Conference to remove 42(21) and replace it with 42(23) of Regulation 333/08.

Joint Submission on Penalty

1. The Dealer and Bonney agree to pay a fine in the amount of \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Bonney agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.



3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 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 after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees 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 Pre-Hearing Conference hereby concludes that the Dealer and Bonney 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 Pre-Hearing Conference also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer and Bonney are ordered to pay a fine in the amount of \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Bonney is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 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 after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer 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

C. Brett

