

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 -

GEORGIAN CHEVROLET BUICK GMC INC. o/a GEORGIAN CHEVROLET

- AND -

MARK WILKEY

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: May 18, 2018

Findings: Breach of Section 4 and 6 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500.00 no later than July 1, 2018.
2. The Dealer is ordered to ensure that all current and future sales staff who are dealing with consumers and who have not completed the Automotive Certification Course (the "Course") since 2010 will complete the Course at the Dealer's expense. Current sales staff will complete the Course no later than August 31, 2018. 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.
3. The Dealer is ordered to appoint an internal auditor who will audit all advertising, offers and bills of sale each month to ensure ongoing compliance with its obligations under the Act.
4. The Dealer 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. Georgian Chevrolet Buick GMC o/a Georgian Chevrolet (the "Dealer") was first registered as a motor vehicle dealer in about January 1983. Mark Wilkey ("Wilkey") was first registered as a motor vehicle salesperson in about April 2003. Wilkey has been employed by the Dealer since about August 2009.

OMVIC publications:

1. In or around December 2008, OMVIC issued a Dealer Standards publication advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all-inclusive vehicle prices ("all-in pricing") in advertisements.
2. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their all-in pricing advertising obligations:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Spring 2013
 - e. Fall 2013
 - f. Issue #1
 - g. Issue #2
 - h. Issue #3 2014
 - i. Issue #4 2014
 - j. Issue #3 2015
 - k. Issue #1 2016
 - l. Issue #2 2016
 - m. Issue #3 2016
 - n. Issue #4 2016
3. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their all-in pricing advertising obligations:
 - a. January 2010 (2 publications)



- b. April 2010 (2 publications)
- c. February 2012
- d. August 2012
- e. April 2013
- f. June 2014 (2 publications)
- g. April 2015
- h. July 2017
- i. August 2017

Prior warnings regarding all-in price advertising:

- 4. The Dealer was directly reminded on the following dates of its obligation to advertise all-inclusive vehicle prices:
 - a. June 3, 2010
 - b. November 5, 2013

Prior Discipline Committee Orders:

- 5. On or about May 22, 2014, the Registrar issued a Notice of Complaint ("Notice") against the Dealer for, *inter alia*, failing to comply with the all-inclusive price advertising regulations.
- 6. On or about June 23, 2015, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above referenced Notice. As per condition 3 of the Order, the Dealer was to offer all salespeople the opportunity to complete the Course, at the Dealer's expense. As per condition 4, the Dealer was ordered to comply with the Act and Standards of Business Practice, as may be amended from time to time.
- 7. On or about July 15, 2015, Wilkey acknowledged having been offered the Course, at the Dealer's expense, pursuant to condition 3 of the above referenced Order.

Consumer Complaint:

- 8. On or before October 2, 2017, the Dealer advertised a 2017 Buick Encore with a selling price of \$28,977 plus HST and Licensing. On or about October 2, 2017, Wilkey attempted to induce the sale of this vehicle on behalf of the Dealer while adding an additional \$454 in fees. As such, the Dealer's advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as subsection 4(2) of the Code of Ethics as to vehicle pricing only.
- 9. Wilkey presented the aforementioned additional fees to the purchaser as standard additional fees, which was misleading and contrary to subsection 4(2) of the Code of Ethics with respect to vehicle pricing only. Moreover, Wilkey's conduct caused the Dealer to contravene the Regulations, and in doing so he also contravened section 6(2) of the Code of Ethics.



10. The Dealer failed to ensure that its sales staff conducted business in compliance with the Regulations. As such, the Dealer contravened section 6.1 of the Standards of Business Practice, as well as subsections 4(2) and 6(1) of the Code of Ethics as they relate to vehicle pricing only.

By failing to comply with the following:

Regulation 333/08

Section 36: Advertising

- (7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,
- (a) the amount that a buyer would be required to pay for the vehicle; and
 - (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer has contravened the following subsections of the Code of Ethics, as set out in Regulation 332/08:

- 4 (2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful. O. Reg. 332/08, s. 4 (2).
6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation. O. Reg. 332/08, s. 6 (1).

It is thereby agreed that Wilkey has contravened the following subsections of the Code of Ethics, as set out in Regulation 332/08:

4. (2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful. O. Reg. 332/08, s. 4 (2).
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. O. Reg. 332/08, s. 6 (2).

JOINT SUBMISSION ON PENALTY:

1. The Dealer agrees to pay a fine in the amount of \$2,500.00 no later than July 1, 2018.
2. The Dealer agrees that all current and future sales staff who are dealing with consumers and who have not completed the Automotive Certification Course (the "Course") since



2010 will complete the Course at the Dealer's expense. Current sales staff will complete the Course no later than August 31, 2018. 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.

3. The Dealer agrees to appoint an internal auditor who will audit all advertising, offers and bills of sale each month to ensure ongoing compliance with its obligations under 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 Discipline Committee hereby concludes that the Dealer breached subsection 4 and 6 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 \$2,500.00 no later than July 1, 2018.
2. The Dealer is ordered to ensure that all current and future sales staff who are dealing with consumers and who have not completed the Automotive Certification Course (the "Course") since 2010 will complete the Course at the Dealer's expense. Current sales staff will complete the Course no later than August 31, 2018. 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.
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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



Paul Burroughs, Chair



File # 3062730

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-

GEORGIAN CHEVROLET BUICK GMC INC. o/a GEORGIAN CHEVROLET

-and-

MARK WILKEY

AGREED STATEMENT OF FACTS AND PENALTY

Georgian Chevrolet Buick GMC Inc. o/a Georgian Chevrolet has contravened the following:

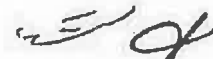
Subsection 4(2) of the Code of Ethics, Regulation 332/08 as it relates to vehicle pricing only; and

Subsection 6(1) of the Code of Ethics, Regulation 332/08 as it relates to vehicle pricing only.

Mark Wilkey has contravened the following:

Subsection 4(2) of the Code of Ethics, Regulation 332/08 as it relates to vehicle pricing only; and

Subsection 6(2) of the Code of Ethics, Regulation 332/08 as it relates to vehicle pricing only.



Registrant's Initials

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. Georgian Chevrolet Buick GMC o/a Georgian Chevrolet (the "Dealer") was first registered as a motor vehicle dealer in about January 1983. Mark Wilkey ("Wilkey") was first registered as a motor vehicle salesperson in about April 2003. Wilkey has been employed by the Dealer since about August 2009.

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Registrant's Initials

Prior warnings regarding all-in price advertising:

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6. On or about June 23, 2015, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above referenced Notice. As per condition 3 of the Order, the Dealer was to offer all salespeople the opportunity to complete the Course, at the Dealer's expense. As per condition 4, the Dealer was ordered to comply with the Act and Standards of Business Practice, as may be amended from time to time.
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10. The Dealer failed to ensure that its sales staff conducted business in compliance with the Regulations. As such, the Dealer contravened section 6.1 of the Standards of Business Practice, as well as subsections 4(2) and 6(1) of the Code of Ethics as they relate to vehicle pricing only.



Registrant's Initials

By failing to comply with the following:

Regulation 333/08

Section 36: Advertising

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- (a) the amount that a buyer would be required to pay for the vehicle; and
 - (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer has contravened the following subsections of the Code of Ethics, as set out in Regulation 332/08:

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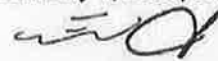
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JOINT SUBMISSION ON PENALTY:

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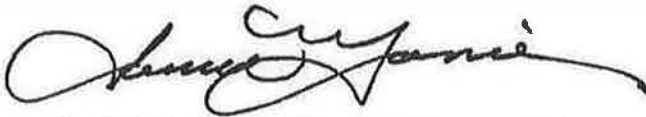
Registrant's Initials

3. The Dealer agrees to appoint an internal auditor who will audit all advertising, offers and bills of sale each month to ensure ongoing compliance with its obligations under the Act.
4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

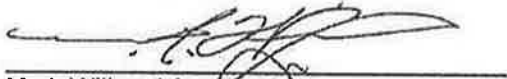
DATED AT Barrie, ON THIS 8th DAY OF May, 2018

James G. Massie, President
(please print)



Signature

"I have the authority to bind the corporation:
Georgian Chevrolet Buick GMC Inc. o/a Georgian Chevrolet"



Mark Wilkey (signature)

By signature below the Registrar agrees, acknowledges, understands and consents to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

DATED AT Toronto THIS 11th DAY OF May, 2018



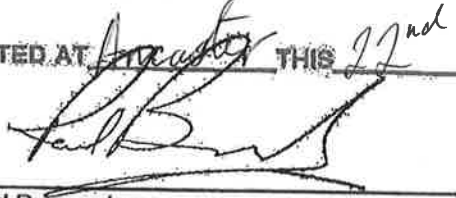
John Carmichael, Laura Halbert

Deputy Registrar, Motor Vehicle Dealers Act, 2002


Registrar's Initials

Pursuant to Rule 1.07, I accept this Agreed Statement of Facts and Penalty from the Parties Identified above:

DATED AT Agawam THIS 22nd DAY OF May, 2018



Paul Burroughs
Chair, Discipline Committee of the
Ontario Motor Vehicle Industry Council



Registrant's Initials

ORIGIN:YTHB (416) 226-3661
 DAVID DALLY
 DMV/C
 65 OVERLEA BLVD
 SUITE 300
 TORONTO, ON M4H1P1
 CANADA CA

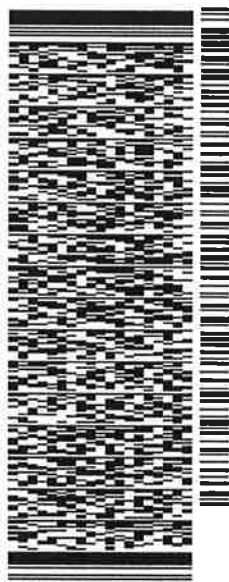
SHIP DATE: 22MAY18
 ACTWGT: 0.20 KG
 CAD: 1009/8087IN/E13990
 BILL SENDER

TO **MARK WIKKEY**
GEORGIAN CHEVROLET
65 BARRIE VIEW DRIVE

BARRIE ON LAN8V4
 REF: (705) 733-2222
 INV:
 PO:

(CA)

552J27782B/DCA5



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TRK# 7722 9023 2334
 0451

WED - 23 MAY A4
 PRIORITY OVERNIGHT

1B YBNA

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Any carriage of your shipment by road may be subject to Federal and Provincial laws, regulations, orders or requirements which may govern and serve to limit our liability for damage, loss, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with your shipment. LIMITATION OF LIABILITY. If not governed by Federal or Provincial laws, regulations, orders, or requirements as described above, FedEx's maximum liability for damage, loss, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with your shipment, even if caused by our negligence or gross negligence, is limited by this Agreement to the amount of actual damages or CDN \$100 per shipment, whichever is less, unless you declare in advance a higher value for carriage as described below, and pay any applicable supplementary charge. FedEx does not provide cargo liability or all-risk insurance, but you may pay an additional charge for each additional CDN \$100 of declared value for carriage. If a higher value for carriage is declared and the additional charge is paid, FedEx's maximum liability will be the lesser of the declared value for carriage or your actual damages. DECLARED VALUE LIMITS. Shipments containing items of extraordinary value are limited to a maximum declared value for carriage of CDN \$500. The maximum declared value we allow for carriage per air waybill for each FedEx® Letter or FedEx® Pak is CDN \$100. Please check the current Worldwide Service Guide and any applicable tariff for further explanation of the declared value limits. If you send more than one package on this Air Waybill, the declared value for carriage of each package will be determined by dividing the total declared value for carriage by the number of packages in the shipment. LIABILITIES NOT ASSUMED. IN ANY EVENT, FEDEX WON'T BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, IN EXCESS OF THE DECLARED VALUE FOR CARRIAGE (INCLUDING BUT NOT LIMITED TO LOSS OF INCOME OR PROFITS) OR THE ACTUAL VALUE OF THE SHIPMENT, IF LOWER, WHETHER OR NOT FEDEX HAD ANY KNOWLEDGE THAT SUCH DAMAGES MIGHT BE INCURRED. FedEx won't be liable for your acts or omissions, including but not limited to, incorrect declaration of the shipment, improper or insufficient packing, securing, marking or addressing of the shipment, or for the acts or omissions of the recipient or anyone else with an interest in the shipment. FedEx won't be liable for damage, loss, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with shipments of cash, currency or other prohibited items. Also, FedEx won't be liable if you or the recipient violate any of the terms of this Agreement. FedEx won't be liable for loss, damage, delay, shortage, mis-delivery, nondelivery, misinformation or failure to provide information in connection with your shipment caused by events FedEx cannot control, including but not limited to, acts of God, perils of the air, weather conditions, acts of public enemies, war, strikes, civil commotions, or acts or omissions of public authorities (including customs and health officials) with actual or apparent authority. You should contact an insurance agent or broker if insurance coverage is desired. We do not provide insurance coverage of any kind. NO WARRANTIES. We make no warranties, express or implied. CLAIM FOR LOSS, DAMAGE OR DELAY. ALL CLAIMS MUST BE MADE IN WRITING AND WITHIN STRICT TIME LIMITS. SEE OUR CURRENT WORLDWIDE SERVICE GUIDE AND ANY APPLICABLE TARIFF FOR DETAILS. We must receive your written notice of a claim for damage or delay, including perishable and spoilage damage claims due to late or delayed delivery, within 21 days after we deliver your shipment and in the case of loss, shortage, mis-delivery, nondelivery, misinformation or failure to provide information, within 90 days after we accept the shipment for carriage. The right to claim damages against us shall be extinguished unless an action is brought within two years from the date of delivery of the shipment or from the date on which the shipment should have been delivered or from the date on which the carriage stopped. Within 90 days after you have notified us of your claim, it must be documented by sending us all relevant information regarding your claim. FedEx is not obligated to act on any claim until all transportation charges have been paid. The claim amount may not be deducted from these charges. If the recipient accepts the shipment without noting any damage on the delivery record, FedEx will assume the shipment was delivered in good condition. In order for us to consider a claim for damage, the contents, original shipping carton and packing must be made available to us for inspection at the delivery location and you must retain all such items until the claim is concluded. RESPONSIBILITY FOR PAYMENT. Even if you give us different payment instructions, you, the shipper, will always be primarily responsible for all charges, including transportation charges, and all duties, assessments, governmental penalties and fines, taxes, and FedEx's legal fees and costs related to shipments tendered under this Agreement. You also will be responsible for any costs FedEx may incur in returning your shipments to you or warehousing them pending disposition. MANDATORY LAW. Insofar as any provisions contained or referred to in this Agreement may be contrary to any applicable laws, government regulations, orders or requirements, such other provisions shall remain in effect as a part of this Agreement to the extent that they are not overridden. The invalidity or unenforceability of any provisions of this Agreement shall not affect any other part hereof. The parties expressly agree that this Agreement be drawn up in the English language. FEDERAL EXPRESS CANADA LTD., Head Office, 5985 Explorer Drive, Mississauga, ON L4W 5K6.