

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 -

CHECK LIST AUTO SALES LTD.

- and -

KEVIN HENNINGHAM

- and -

FATIMA DIXON

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: October 14, 2020

Findings: Breach of Sections 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$6,500 no later than **December 31, 2020.**
2. Henningham is ordered to successfully complete the Automotive Certification On-Site Course (the "Course") no later than **December 31, 2020.**
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 no later than **December 31, 2020.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. As in all other areas of its business, the Dealer and Henningham agree to 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. Check List Auto Sales Ltd. (the "Dealer") was first registered as a motor vehicle dealer under the Act in and around July 2010. Kevin Henningham ("Henningham") was first registered as a motor vehicle salesperson under the Act in and around March 2010. At all material times, Henningham was sole officer and director of the Dealer and the person in charge of the day to day activities.
2. Fatima Dixon ("Dixon") was first registered as a motor vehicle salesperson under the Act in and around April 2013.
3. On or about March 1, 2010, Henningham successfully completed the Automotive Certification Course (the "Course").
4. On or about March 11, 2013, Dixon successfully completed the Course.
5. The following subject matter is included in the Course materials:
 - a. Retail disclosure requirements, including disclosing a motor vehicle's previous use, history and condition to a consumer in a manner that is clear, comprehensible and prominent on contracts.
 - b. Contract requirements for sale of a used vehicle, including listing a buyer's name and address.
6. On or about July 16, 2010, Henningham executed terms and conditions of registration on behalf of the Dealer.
7. As per condition 6, the Dealer agreed it will comply with Ontario Regulation 332/08 under the Act and Code of Ethics.
8. As per condition 22, the Dealer agreed it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to its customers, whether or not the Registrant agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation.

9. As per condition 25, the Dealer agreed it is under a positive obligation to disclose in writing on the bill of sale, the distance travelled of motor vehicles sold or leased in accordance with the *Motor Vehicle Dealers Act, 2002* and Regulations.

OMVIC publications re: Disclosure Requirements

10. Since the Dealer has been registered under the Act, OMVIC has issued the following Dealer Standard publications reminding dealers what information concerning a vehicle's accident repair history, prior use, condition, and true distance travelled must be disclosed in writing to purchasers ("disclosure requirements"):

- a. Summer 2011
- b. Winter 2012
- c. Summer 2012
- d. Winter 2013
- e. Summer 2013
- f. 2014: Issue #4
- g. 2016: Issue #3
- h. 2016: Issue #4
- i. 2017: Issue #3
- j. 2018: Issue #3
- k. 2019: Issue #1
- l. 2019: Issue #2

11. Furthermore, OMVIC issued the following dealer bulletins that also reminded dealers of these disclosure requirements:

- a. September 2012
- b. December 2013

12. In addition to the above referenced publications, in and around December 2014 and June 2015, OMVIC hosted webinars to assist registrants in understanding their disclosure requirements. The contents of said webinars continue to be available on OMVIC's website.

Direct correspondence with the Dealer

13. On or about August 16, 2010, a representative of the Registrar performed an inspection of the Dealer and discussed with Henningham the Dealer's disclosure obligations under s. 42 of Regulation 333/08 of the Act.
14. During an inspection of the Dealer on or about April 29, 2018, a representative of the Registrar reminded Henningham of the Dealer's disclosure obligations, under s. 42 of Regulation 333/08 of the Act.

Current Non-Compliance re: Disclosure Requirements

15. During an inspection of the Dealer on or about September 16, 2019, representatives of the Registrar found that the Dealer completed trades that were not compliant with the Act.
16. Between in and around October 2018 and in and around February 2019, Henningham sold 3 vehicles and Dixon sold 2 vehicles on behalf of the Dealer in which they failed to include the following required information, contrary to Regulation 333/08 of the Act:
- The vehicle's true distance travelled, contrary to s. 42(3).
 - That the vehicle had sustained structural damage, contrary to s. 42(10).
 - That 2 or more adjacent panels that are not bumper panels have been replaced, contrary to s. 42(15).
 - That the vehicle was involved in an accident or multiple accidents and the dollar amount of accident damage exceeding \$3,000 the vehicle had sustained, contrary to s. 42(19).
 - That the contract be signed by the parties, contrary to s. 40(9).
17. Based on the retail bills of sale provided by the Dealer for the inspection, the trade of the following vehicles was contrary to the Dealer's terms and conditions of registration, ss. 42(3), 42(10), 42(15), 42(19), and 40(9) of Regulation 333/08 of the Act, as well as ss. 6, 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation the purchasers have been made aware of their vehicle's history.

	VEHICLE MAKE/MODEL	DATE SOLD	N/D of TOTAL DISTANCE DRIVEN: 42(3)	N/D of STRUCT. DAMAGE: 42(10)	2 OR MORE ADJACENT PANELS REPLACED: 42(15)	N/D of ACCIDENT REPAIR & AMOUNT: 42(19)	BOS NOT SIGNED: 40(9)
a.	2013 Honda Civic (VIN: 2HGFB2F71DH110515)	2018-10-05			Adjacent Panels Replaced Not Disclosed	03/16/2017:\$ 7,898	
b.	2015 Acura RDX (VIN: 5J8TB4H57FL804187)	2018-12-08			Adjacent Panels Replaced Not Disclosed	09/29/2017: \$6,471; 07/13/2018: \$5,971	
c.	2013 Nissan Sentra (VIN: 3N1AB7AP4DL721369)	2018-01-05		Structural Damage Not Disclosed			
d.	2014 Honda Civic (VIN: 2HGFB2F58EH003638)	2019-02-19	Odometer Reading Not Disclosed		Adjacent Panels Replaced Not Disclosed	07/22/2015: \$3,606	Contract Not Signed by Purchaser
e.	2015 Honda Civic (VIN: 2HGFB2F50FH030186)	2019-02-21				12/16/2015:\$ 9,910	

18. Dixon traded vehicles contrary to the Regulations to the Act and Code of Ethics, and thus has personally contravened section 6 of the Code of Ethics.
19. Henningham traded vehicles contrary to the Regulations to the Act and Code of Ethics and failed to ensure the Dealer conducted its business in compliance with the Regulations to the Act and Code of Ethics, and thus has personally contravened section 6 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:

40. Contracts for sales of used motor vehicles

(9) For each contract mentioned in subsection (2) into which the registered motor vehicle dealer enters, the dealer shall ensure that,

(a) the contract is signed by the parties;

42. Additional information in contracts of sale and leases:

(3) If the motor vehicle is a used motor vehicle, the total distance that it has been driven if the registered motor vehicle dealer can determine the distance.

(10) If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.

(15) If the motor vehicle has two or more adjacent panels that are not bumper panels and that have been replaced, a statement to that effect.

(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.

53. Records relating to trades

(1) A registered motor vehicle dealer shall maintain records of,

(e) each sale by the dealer of a motor vehicle to a purchaser, including sales made through a motor vehicle dealer registered as a general dealer;

(h) each purchase of a motor vehicle by the dealer, including as a trade-in;

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

Compliance:

7. (1) 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.

It is thereby agreed that Henningham and Dixon has breached the following section of the Code of Ethics, as set out in 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, Henningham and Dixon have breached the following section of the Code of Ethics, as set out in Regulation 332/08:

Professionalism:

9. (1) 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 \$6,500 no later than **December 31, 2020.**
2. Henningham agrees to successfully complete the Automotive Certification On-Site Course (the "Course") no later than **December 31, 2020.**
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the course no later than **December 31, 2020.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. As in all other areas of its business, the Dealer and Henningham 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 the Dealer, Henningham and Dixon have breached subsections 6, 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 is ordered to pay a fine in the amount of \$6,500 no later than **December 31, 2020.**
2. Henningham is ordered to successfully complete the Automotive Certification On-Site Course (the "Course") no later than **December 31, 2020.**
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 no later than **December 31, 2020.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. As in all other areas of its business, the Dealer and Henningham agree to 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