

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 -

CITY BUICK CHEVROLET CADILLAC GMC LTD

- AND -

MICHAEL CARMICHAEL

- AND -

JOHN ESPLEN

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: June 29, 2015

Findings: Breach of Sections 4, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$6,000 within 90 days of the date of the Discipline Committee Order.
2. 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 be 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 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer, Carmichael, and Esplen 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. City Buick Chevrolet Cadillac GMC Ltd (the "Dealer") was first registered as a motor vehicle dealer in or around July 2010. Michael Carmichael ("Carmichael") was first registered as a motor vehicle salesperson in or around May 2000. John Esplen ("Esplen") was first registered as a motor vehicle salesperson in or around March 1983. At all material times, Carmichael and Esplen were officers and directors of the Dealer.

Material fact disclosure on bills of sale:

2. In the summer of 2011, OMVIC issued a Dealer Standard publication which reminded dealers to provide written disclosure of all material facts about the vehicles they sell, including but not limited to, providing written disclosure on the bill of sale of a vehicle's accident repair and former daily rental history.
3. OMVIC also 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 repair histories, previous daily rental histories:
 - a. Summer 2012
 - b. 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 repair histories and previous daily rental histories:
 - a. September 2012
 - b. December 2013

Former daily rental vehicles in advertisements:

5. In the summer of 2010, OMVIC issued a Dealer Standard publication which reminded dealers of the requirement to disclose former daily rental vehicles in all advertisements, in a clear, comprehensible and prominent manner.
6. The following Dealer Standard publications also reminded dealers of this requirement:
 - a. Spring 2011



- b. Summer 2012
 - c. Fall 2013
7. In addition to the above mentioned publications, OMVIC also issued the following bulletins reminding dealers of these advertising requirements:
- a. April 2010
 - b. September 2012
8. During an inspection on or about October 29, 2014, a representative of the Registrar discovered the following compliance concerns:
9. On or about February 24, 2014, the Dealer, purchased a 2013 Chevrolet Cruze, (VIN 1G1PC5SB0D7323309) declared as being a previous daily rental vehicle. On or about June 18, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former daily rental history. This is contrary to sections 42(7) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they have been compensated to their satisfaction for the lack of disclosure about their vehicle history.
10. On or before October 20, 2014, advertisements were placed by or on behalf of the Dealer which failed to disclose vehicle's former daily rental history. This is contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
11. The Dealer has since offered to ensure the General Manager and/or individual[s] in a position of authority over sales staff at the Dealer, complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002* (the "Act"):

Regulation 333/08:

36. Advertising:

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.



42. Additional information in contracts of sale and leases:

7. If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,
 - i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the Motor Vehicle Dealers Act or the Motor Vehicle Dealers Act, 2002,
 - ii. used as a police cruiser or used to provide emergency services, or
 - iii. used as a taxi or limousine.

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, Carmichael, and Esplen have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

Disclosure and marketing:

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.

Compliance:

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.

Professionalism :

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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. 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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be 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 1, 2009, or who are otherwise required to do so pursuant to the Act.



3. The Dealer, Carmichael, and Esplen, 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, Carmichael and Esplen breached subsections 4, 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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. 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 be 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 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer, Carmichael, and Esplen 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

