

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 -

NORTHSIDE AUTO LTD. o/a NORTHSIDE TOYOTA

- AND -

FRANK PALUMBO

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: February 21, 2020

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,000 no later than **May 15, 2020.**
2. The Dealer is ordered to ensure a person in charge of the day to day activities of the Dealer will successfully complete the MVDA Key Elements course no later than **May 15, 2020.**
3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 20, 2020.**
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **May 15, 2020.** Future sales staff will be offered the Course within 90 days 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 1, 2009, or who are otherwise required to do so pursuant to the Act.

- The Dealer and Palumbo 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:

- Northside Auto Ltd o/a Northside Toyota (the "Dealer") was registered as a motor vehicle dealer in around April 1995. Frank Palumbo ("Palumbo") was first registered as a motor vehicle salesperson in around June 1983. Palumbo is an Officer, as well as a person in charge of the day to day activities of the Dealer.

OMVIC registrant education re: all-in pricing

- Since the Act was proclaimed, OMVIC has issued the following publication and webinars reminding dealers of their all-in pricing obligations, all of which continue to be available on OMVIC's website:

	Dealer Standard		Bulletin		Webinar
A	Winter 2008	U	January 2010	BB	April 2015
B	Spring 2010	V	April 2010	CC	April 2017
C	Spring 2011	W	February 2012		
D	Winter 2013	X	August 2012		
E	Spring 2013	Y	April 2014		
F	Summer 2013	Z	June 2014		
G	2014: Issue 1	AA	April 2015		
H	2014: Issue 2				
I	2014: Issue 3				
J	2014: Issue 2				
K	2015: Issue 3				
L	2015: Issue 4				
M	2016: Issue 1				
N	2016: Issue 2				
O	2016: Issue 3				



P	2016: Issue 4				
Q	2017: Issue 2				
R	2017: Issue 3				
S	2018: Issue 2				
T	2019: Issue 2				

Direct correspondence with Dealer:

3. By email dated November 29, 2011, Palumbo was reminded of the Dealer's all-in pricing obligations.
4. By email dated May 24, 2012, Palumbo was again reminded of the Dealer's all-in pricing obligations.
5. By email dated June 26, 2012, Palumbo was again reminded of the Dealer's all-in pricing obligations.

Dealer's current non-compliance

6. On or before June 18, 2019, the Dealer published an advertisement for a 2019 Toyota Rav 4 (Stock #PRO19)) with a selling price of \$30,995.
7. On this same date, representatives of the Registrar made inquiries about the subject vehicle, while posing as members of the public. A representative of the Dealer advised the Registrar's representatives that the advertised vehicle price did not include an additional \$399 administration fee, as well as an additional \$149 "tire and rim fee". 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 sections 4 and 9 of the Code of Ethics.
8. After some discussion, the Dealer's representative agreed to remove the tire and rim fee and reduce the administration fee by \$200, which would still have resulted in the vehicle's selling price being \$199 over its advertised price.
9. As the person in charge of the Dealer, Palumbo has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus has personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following section of the Act:

Regulation 333/08:

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 breached section 4 of the Code of Ethics, as set out in regulation 332/08:

Disclosure and marketing:

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.

It is thereby agreed that Palumbo has breached section 6 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 and Palumbo have breached section 9 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 \$2,000 no later than **May 15, 2020**.
2. The Dealer agrees to ensure a person in charge of the day to day activities of the Dealer will successfully complete the MVDA Key Elements course no later than **May 15, 2020**.
3. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 20, 2020**.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **May 15, 2020**. Future sales staff will be offered the Course within 90 days 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 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Palumbo 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 breached subsections 4, 6 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:

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5. The Dealer and Palumbo 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

