

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 -

CCBC INC. o/a PHILIPS AUTO

-and-

Rimon Philips

Date of Hearing: April 5, 2023

Date of Decision: May 19, 2023

Findings: Breach of Sections 4, 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer, Philips Auto, is ordered to pay a fine in the amount of \$8,000 to be paid as follows:
 - a. \$4,000 will be paid within 60 days from the date of this order;
 - b. \$2,000 will be paid within 120 days from the date of this order; and
 - c. \$2,000 will be paid within 180 days from the date of this order.
2. Rimon Philips is ordered to pay a fine in the amount of \$2,000, to be paid within 30 days of the date of this order.
3. Rimon Philips is ordered to successfully complete the OMVIC Automotive Certification Course within 90 days of this order to refresh his understanding of his obligations as both a dealer and a salesperson under the *Motor Vehicle Dealers Act (MVDA)*.

Introduction

This hearing was held virtually via video conference. The individual Registrant, Mr. Rimon Philips, was in attendance and self-represented. Counsel for the OMVIC Registrar was Mr. Vlad Bosis. Also in attendance was Ms. Andrea Korth as OMVIC's representative. Ms. Karen Bernofsky was Independent Legal Counsel (ILC) to the panel.

The Notice of Complaint, dated November 22, 2021, was marked as Exhibit 1. A Notice of Further and Other Particulars dated August 15, 2022 was submitted and marked as Exhibit 2. An Amended Agreed Statement of Facts (ASF) was submitted and marked as Exhibit 3. The parties were unable to reach a joint position with respect to penalty.

Allegations

The particulars of the Notice of Complaint, marked as Exhibit 1, are as follows:

Background

1. CCBC Inc. o/a Philips Auto (the "Dealer") is currently registered as a motor vehicle dealer under the Act. The Dealer was originally registered on or about April 19, 2012.
2. Rimon Philips ("Philips") is currently registered as a motor vehicle salesperson under the Act. Philips was also originally registered on or about April 19, 2012.
3. At all material times, Philips has been the Dealer's sole director and the person in charge of its day-to-day activities.

Prior Warning re Duty to Comply with Registrar's Requests

4. On or about October 19, 2020, the Registrar's office sent a letter to the Dealer in relation to a complaint received by the Registrar from one the Dealer's customers.
5. That letter was sent as a result of the Registrar's failed attempts to obtain from the Dealer complete documents or information in relation to that complaint. In that letter, the Registrar's office reminded the Dealer of its duty to comply with the Registrar's requests for documents or information in relation to complaints.
6. Pursuant to section 14(1) and 14(3) of the Act, if the Registrar receives a complaint about a registrant, the Registrar may request information in relation to that complaint, and the registrant must provide the requested information as soon as practicable.

Dealer's Violations of the Code of Ethics

7. On or about January 21, 2021, a consumer purchased a 2010 Dodge Ram 1500 (VIN: 1D7RV1CT9AS123893) from the Dealer.
8. Shortly after the purchase, the consumer began experiencing mechanical issues with the vehicle.
9. On or about February 11, 2021, a third-party facility inspected the vehicle at the consumer's request and found several issues with the vehicle.
10. On or about February 22, 2021, an MTO enforcement officer examined the vehicle at the consumer's request and found five defects with the vehicle that required repairs.
11. On or about March 4, 2021, the consumer made a complaint to the Registrar alleging that the Dealer delivered the vehicle in a poor condition and that it failed to disclose the correct distance that the vehicle had been driven.

12. On or about April 21 and 26, 2021, a representative of the Registrar contacted Philips via telephone and email in relation to the complaint and requested a response.

13. On or about April 30, 2021, the Registrar's representative sent an email to the Dealer and requested that it provide documents in relation to the consumer's complaint, including:

- a. wholesale bill of sale;
- b. repair and reconditioning records; and
- c. copy of advertisement(s), if any.

14. On or about May 7, May 10, May 11, May 19, June 2, June 3 and June 24, 2021, the Registrar's representative contacted Philips via telephone and/or email and requested the outstanding documents.

15. On or about May 7 and June 2, 2021, a representative of the Dealer replied to the above referenced requests by stating, among other things, that those documents were with its accountant and the Registrar would be advised when the documents would be available for review. The representative of the Dealer also advised that the consumer had been provided a copy of their bill of sale.

16. To date, the Dealer has failed to comply with the Registrar's requests. This conduct is contrary to section 14(3) of the Act.

17. This is unprofessional and contrary to section 9 of the Code of Ethics.

The particulars of the Notice of Further and Other Particulars, marked as Exhibit 2, are as follows:

Consumer B:

19. On or about July 15, 2021, Consumer B left a \$1,000 deposit towards the purchase of a 2011 Chevrolet Malibu (VIN:1G1ZD5EU5BF253764) from the Dealer. Due to public health-imposed restrictions due to the ongoing COVID pandemic, Consumer B was willing to purchase the vehicle sight-unseen and the transaction occurred remotely. A bill of sale was drawn up by the Dealer on this date. It was emailed to Consumer B, who signed it shortly thereafter.

20. The bill of sale indicated that the vehicle's trim level was "Platinum" and included an addendum to the contract indicating that the purchase was subject to the vehicle being acceptable to Consumer B after being test driven and inspected by a mechanic.

21. On or about July 27, 2021 the vehicle was delivered to Consumer B.

22. On or about July 28, 2021, Consumer B discovered serious defects in the vehicle's overall condition and driveability. Consumer B also found that the vehicle's trim level had been misrepresented in the bill of sale. The vehicle actually had the less expensive "LT" trim level and lacked some of the features found in the Platinum trim level. Misrepresenting the vehicle's trim level in a bill of sale is contrary to section 42(16) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

27. On or about July 29, 2021, Consumer B contacted the Dealer to arrange for the return the vehicle, as per the addendum to the bill of sale.

28. The Dealer refused to take the vehicle back. The Dealer's refusal to comply with its contractual obligations and Ontario Regulation 333/08 is contrary to section 9 of the Code of Ethics.

Consumer C:

29. On or about August 10, 2021, Consumer C purchased a 2017 Chevrolet Cruze (VIN

3G1BE5SM6HS501950) from Phillips, who sold it on behalf of the Dealer.

30. The vehicle was previously registered in Quebec but the bill of sale failed to disclose this information, contrary to sections 42(22) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

31. Consumer C took delivery of the vehicle on or about August 25, 2021.

32. On or about August 26, 2021, Consumer C began experiencing problems with the vehicle. Specifically, the "check engine light" repeatedly illuminated, indicating some kind of engine issue.

33. The Dealer directed Consumer C to take the vehicle to a mechanic of the Dealer's choosing. Consumer C did so on five separate occasions over the following weeks, per the Dealer's directions. The Dealer's mechanic failed to repair or correct the issue.

34. As a result of the Dealer's mechanic failing to adequately resolve the issue, on or about October 14, 2021, Consumer C took the vehicle to a Chevrolet dealer, which informed her that the vehicle required approximately \$1140 in engine repairs.

35. Consumer C contacted the Dealer regarding the repair estimate but failed to receive a response.

36. On or about October 27, 2021, Consumer C contacted OMVIC for assistance with her complaint.

37. In the interim, on or about November 2, 2021, Consumer C had the vehicle repaired at an independent mechanic. The cost of the repair bill was approximately \$650.

38. Throughout the complaint handling process, the Registrar's representative made multiple requests to Phillips to provide the Dealer's documents, including but not limited to:

- a. The incoming wholesale bill of sale for this vehicle.
- b. The repair and reconditioning records for this vehicle.

39. On or about April 22, 2022, the Dealer provided the Registrar's representative with an only part of the wholesale bill of sale for this vehicle. Specifically, the copy of the wholesale bill of sale provided by the Dealer was missing the part of the form indicating whether or not the selling dealer had made any of the disclosures required by O. Reg 333/08.

40. On this same date, the Registrar's representative again requested the complete wholesale bill of sale for the vehicle, along with its repair and reconditioning records.

41. To date, the Dealer has failed to provide the documents requested on April 22, 2022. This is contrary to section 14(3) of the Act, as well as section 9 of the Code of Ethics.

Consumer D:

42. On or before October 9, 2021, the Dealer advertised a 2011 Subaru Outback (VIN

4S4BRGKC1B3393647) with an advertised price of \$7,994. The advertisement stated that the selling price included a warranty on the vehicle.

43. On or about October 9, 2021, Consumer D signed a bill of sale for the vehicle and left a \$500 deposit ("first bill of sale") with the Dealer.

44. The first bill of sale indicated that the selling price of the vehicle was \$9,070, over \$1,000 more than the vehicle advertised price. There were no additional products or charges on the bill of sale which account for the increase. The price discrepancy indicates that the Dealer's advertisement for the vehicle did not include an accurate and/or all-inclusive price, contrary to sections 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

45. The first bill of sale also stated that the vehicle was being sold with a 12-month extended warranty (included in the selling price). However, it failed to provide any information about this warranty, contrary to sections 4 and 9 of the Code of Ethics.

46. On or about October 12, 2021, Consumer D contacted the Dealer and complained about the first bill of sale; specifically, that it did not reflect the advertised vehicle price and that he had paid more for the vehicle than the advertised amount. Consumer D requested a revised bill of sale based on the lower advertised price of the vehicle.

47. On or about October 13, 2022, the Dealer provided Consumer D a revised copy of the bill of sale for Consumer D to sign ("second bill of sale"). The second bill of sale indicated the vehicle selling price was \$8,000, with an additional \$1,070 cost for a 12-month extended warranty.

48. On or about October 14, 2022, Consumer D contacted the Dealer to complain about the second bill of sale, specifically that it again did not reflect the advertised vehicle price, as well as that it did not have sufficient information about the warranty product being purchased. Consumer D informed the Dealer that he did not want to proceed with the purchase and requested a refund of his deposit.

49. On this same date, the Dealer sent Consumer D a revised bill of sale ("third bill of sale") for Consumer D for his signature. The third bill of sale indicated that the vehicle selling price was \$7,500 and there was now an additional \$1,570 cost for a 24-month extended warranty.

50. On each of the bills of sale sent to Consumer D by the Dealer, the total sale price of the vehicle exceeded the advertised price, which was indicated in the advertisement as being inclusive of a warranty. This is contrary to sections 4 and 9 of the Code of Ethics.

51. By letter dated October 17, 2021, Consumer D complained to the Dealer about his purchasing experience, and again requested that his deposit be refunded.

52. The Dealer failed to respond to Consumer D's letter and failed to refund Consumer D's deposit. This was contrary to section 9 of the Code of Ethics.

53. On or about November 3, 2021, Consumer D contacted OMVIC to complain about his experience with the Dealer and the Dealer's failure to return the deposit.

54. After a representative of the Registrar contacted the Dealer on or about February 25, 2022, about this matter, Phillips, on behalf of the Dealer, refunded Consumer D's deposit.

Phillips - Generally:

55. Phillips failed to ensure that the Dealer conducted its business in compliance with the Code of Ethics. He has therefore personally contravened sections 6 and 9 of the Code of Ethics.

Evidence

The hearing proceeded by way of partial agreement. The Amended Agreed Statement of Facts, marked as Exhibit 3, provided as follows:

Background

1. CCBC Inc. o/a Philips Auto (the "Dealer") is currently registered as a motor vehicle dealer under the Act. The Dealer was originally registered on or about April 19, 2012.
2. Rimon Philips ("Philips") is currently registered as a motor vehicle salesperson under the Act. Philips was also originally registered on or about April 19, 2012.
3. At all material times, Philips has been the Dealer's sole director and the person in charge of its day-to-day activities.

Prior Warning re Duty to Comply with Registrar's Requests

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6. Pursuant to section 14(1) and 14(3) of the Act, if the Registrar receives a complaint about a registrant, the Registrar may request information in relation to that complaint, and the registrant must provide the requested information as soon as practicable.

Dealer's Violations of the Code of Ethics

Consumer A:

7. On or about January 21, 2021, a consumer purchased a 2010 Dodge Ram 1500 (VIN: 1D7R-V1CT9AS123893) from the Dealer.
8. Shortly after the purchase, the consumer began experiencing mechanical issues with the vehicle.

9. On or about February 11, 2021, a third-party facility inspected the vehicle at the consumer's request and found several issues with the vehicle.
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16. To date, the Dealer has failed to comply with the Registrar's requests. This conduct is contrary to section 14(3) of the Act.
17. This is unprofessional and contrary to section 9 of the Code of Ethics.
18. (Intentionally left blank)

Consumer B:

19. On or about July 15, 2021, Consumer B left a \$1,000 deposit towards the purchase of a 2011 Chevrolet Malibu (VIN:1G1ZD5EU5BF253764) from the Dealer. Due to public health-imposed restrictions due to the ongoing COVID pandemic, Consumer B was willing to purchase the vehicle sight-unseen and the transaction occurred remotely. A bill of sale was drawn up by the Dealer on this date. It was emailed to Consumer B, who signed it shortly thereafter.
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33. The Dealer directed Consumer C to take the vehicle to a mechanic of the Dealer's choosing. Consumer C did so on five separate occasions over the following weeks, per the Dealer's directions. The Dealer's mechanic failed to repair or correct the issue.
34. As a result of the Dealer's mechanic failing to adequately resolve the issue, on or about October 14, 2021, Consumer C took the vehicle to a Chevrolet dealer, which informed her that the vehicle required approximately \$1140 in engine repairs.
35. Consumer C contacted the Dealer regarding the repair estimate but failed to receive a response.
36. On or about October 27, 2021, Consumer C contacted OMVIC for assistance with her complaint.
37. In the interim, on or about November 2, 2021, Consumer C had the vehicle repaired at an independent mechanic. The cost of the repair bill was approximately \$650.
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40. On this same date, the Registrar's representative again requested the complete wholesale bill of sale for the vehicle, along with its repair and reconditioning records.
41. To date, the Dealer has failed to provide the documents requested on April 22, 2022. This is contrary to section 14(3) of the Act, as well as section 9 of the Code of Ethics.

Consumer D:

42. On or before October 9, 2021, the Dealer advertised a 2011 Subaru Outback (VIN 4S4BRGKC1B3393647) with an advertised price of \$7,994. The advertisement stated that the selling price included a warranty on the vehicle.

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49. On this same date, the Dealer sent Consumer D a revised bill of sale ("third bill of sale") for Consumer D for his signature. The third bill of sale indicated that the vehicle selling price was \$7,500 and there was now an additional \$1,570 cost for a 24-month extended warranty.
50. On each of the bills of sale sent to Consumer D by the Dealer, the total sale price of the vehicle exceeded the advertised price, which was indicated in the advertisement as being inclusive of a warranty. This is contrary to sections 4 and 9 of the Code of Ethics.
51. By letter dated October 17, 2021, Consumer D complained to the Dealer about his purchasing experience, and again requested that his deposit be refunded.
52. The Dealer failed to respond to Consumer D's letter and failed to refund Consumer D's deposit. This was contrary to section 9 of the Code of Ethics.
53. On or about November 3, 2021, Consumer D contacted OMVIC to complain about his experience with the Dealer and the Dealer's failure to return the deposit.
54. After a representative of the Registrar contacted the Dealer on or about February 25, 2022, about this matter, Phillips, on behalf of the Dealer, refunded Consumer D's deposit.

Phillips's Violations of the Code of Ethics

Phillips failed to ensure that the Dealer conducted its business in compliance with the Code of Ethics. He has therefore personally contravened sections 6 and 9 of the Code of Ethics.

Party Submissions on Penalty

As noted above, the parties were unable to agree on a joint submission with respect to penalty so the Panel proceeded to hear arguments from each side on the sole issue of terms for an appropriate order as to penalty based on the findings of misconduct.

OMVIC argued that the Dealer violated subsections 4(1), 7(1), and 9(1) of the Code of Ethics and the Registrant violated subsections 6(2) and 9(1) of the Code of Ethics. Accordingly, OMVIC submitted that the appropriate penalty was a fine of \$12,000 for the Dealer and a fine of \$2,000 Mr. Philips personally. Further, OMVIC sought an order that Mr. Philips retake the OMVIC Certification Course.

Mr. Philips' responding submission was that he was not unprofessional and that he tried to help each of the consumers resolve their problems. He sought no monetary penalty arguing that the issues were inadvertent errors. He submitted that the Dealer is a small dealership which could not afford the penalty being requested by OMVIC.

The Panel reserved its decision on the issue of penalty.

Reasons for Decision - Liability

The facts in this case were agreed to by the parties in Exhibit 3. The Panel was satisfied that the evidence contained in the Amended Agreed Statement of Facts was sufficient to establish the alleged misconduct and found accordingly during the video conference.

The Panel was satisfied that OMVIC had proven that the Dealer and Registrant breached of the Code of Conduct as follows:

Dealer:

With respect to the Consumer A transaction, the Panel is satisfied that the facts as set out in the ASF support that OMVIC's allegation that the Dealer failed to comply with the Registrar's request for specified documentation. The facts agreed to in the ASF support OMVIC's allegation that the Dealer failed to reply to the Registrar's requests in violation of section 14(3) of the Act. As of the date of the hearing, the Dealer has still not fully complied with the Registrars' request for documents. This is unprofessional and contrary to section 9(1) of the Code of Ethics.

With respect to the Consumer B transaction, the facts as agreed to in the ASF satisfied the Panel of the Dealer's failure to abide by their contractual obligations and Ontario Regulation 333/08 contrary to section 9(1) of the Code of Ethics. The Dealer's refused to take the vehicle back despite the contractual obligations to do so. The trim level was inaccurately advertised as "Platinum" along with the misleading "addendum" that the purchase was subject to being acceptable after the consumer had test driven the vehicle and had it mechanically inspected. In fact, the vehicle did not have platinum trim. When the consumer tried to rely on the contractual term that allowed him to return the vehicle, the Dealer refused to honour that term. These facts support a finding under section 4(1) of the Code of Ethics: *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.

With respect to the Consumer C transaction, the Salesperson, Mr. Philips failed to disclose on the Bill of Sale that the vehicle had been previously registered out of province. The day after the consumer received the vehicle, the consumer experienced mechanical issues. Following multiple unsuccessful attempts to identify and correct the issues, the consumer paid for the repairs themselves and filed a complaint with OMVIC. OMVIC requested specific documentation from the Dealer. The Dealer provided partial documentation but as of the date of the hearing has failed to provide the requested documentation in its entirety. The failure of the Dealer to provide all the information required on the Bill of Sale is contrary to S. 7(1) of the Code of Ethics, which reads as follows: *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.*

With respect to the Consumer D transaction, none of the Bills of Sale provided by the Dealer reflected the advertised price of \$7,994, which was supposed to include a warranty. Each of the Bills of Sale presented to the consumer totalled \$9,070, which is \$1,076 higher than the advertised price. When the Consumer objected and requested their deposit back the Dealer refused to do so. It was not until the Registrar's office contacted the Dealer that Mr. Philips returned the deposit on behalf of the Dealer. Although the Dealer did ultimately refund the deposit, the behaviour of the Dealer in this transaction supports a finding under section 4(1) of the Code of Ethics, which reads: *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.*

Mr. Philips:

Mr. Philips failure to disclose the out of province registration of the Chevrolet Cruz sold to Consumer C is a violation of the Code of Ethics 6(2), which reads: *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.* The failure to disclose this information caused the Dealership to be in violation of the MVDA (Motor Vehicle Dealers Act)

At all materials times, Mr. Philips was the Dealer's sole director and the person in charge of its day to day activities, the facts as set out in the NOC with respect to the sales of the vehicles to Consumers A, B, C and D support a finding with respect to 9(1) of the Code of Ethics, which reads: *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.*

The Panel understands the Registrant's submissions that these issues were inadvertent and that the Dealer and Registrant attempted to resolve these issues. However, the Agreed Statement of Facts indicates that they only did so after the consumers made the complaints. Even if these issues were not intentional, these actions and omissions are unprofessional and contrary to s. 9(2) of the Code of Ethics.

Reasons for Decision - Penalty

The Panel considered the aggravating factors in this case. Among those factors are 1) the prior notifications by the Registrar, 2) the number of violations that occurred in less than one year, and 3) the failure to respond to the Registrars' requests for documentation. Further, the Panel is not satisfied that the Dealer and Registrant have taken any remedial steps to prevent similar complaints from occurring in future.

The Panel also considered the mitigating factors. Among these factors are: 1) the registrants have no prior disciplinary history with OMVIC; 2) the Dealer attempted to resolve the consumers' complaints, by referring Consumer C to a lower cost mechanic and returning the deposit to Consumer D; and 3), the Dealer entered into an Agreed Statement of Facts, assuming responsibility for the issues and avoiding a full hearing.

In the Panel's view, the ordered penalty, set out above, will act as a specific deterrent to the Respondents, who operate a small dealership, and a general deterrent to the industry. As such this penalty promotes the goal of public protection. In the Panel's view, a total fine of \$10,000, consisting of a \$8,000 fine to the Dealer and a \$2,000 fine to Mr. Philips personally is likely sufficient incentive to motivate change in how Mr. Philips operates his Dealership. This fine takes into account the mitigating factor that the dealer and salesperson have no prior disciplinary history with OMVIC. The Panel has also provided Mr. Philips with a payment plan to facilitate the timely submission of the fines.

Further, the ordered penalty will serve the purpose of remediation, by requiring Mr. Philips to refresh his understanding of his obligations as both a dealer and a salesperson under the *Motor Vehicle Dealers Act*.

Although this Panel is not bound by prior OMVIC decisions, this penalty is also consistent with this tribunal's decision in Raymond Aplin o/a R.A.E.S. Auto Sales.

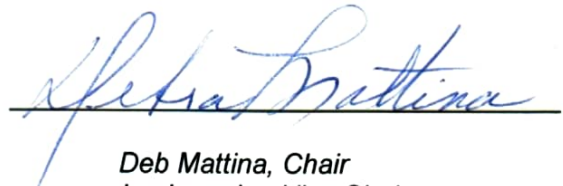
Having reviewed and considered the Agreed Statement of Facts and the submissions of each of the parties the Panel hereby concludes that the Dealer has breached subsections 4(1), 7(1) and 9(1) of the OMVIC Code of Ethics as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Panel further concludes that Mr. Philips as the Salesperson for the Consumer B transaction has breached subsection 6(1) of the OMVIC Code of Ethics as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. Additionally, as the sole director and the person in charge of its day-to-day activities, he is answerable for the unprofessional conduct demonstrated in each of the sales transactions contained within the NOC. Therefore, Mr. Philips is himself in breach of subsection 9(1) of the OMVIC Code of Ethics.

Penalty Ordered

1. The Dealer, Philips Auto, is ordered to pay a fine in the amount of \$8,000 to be paid as follows:
 - d. \$4,000 will be paid within 60 days from the date of this order;
 - e. \$2,000 will be paid within four 120 days from the date of this order; and
 - f. \$2,000 will be paid within 180 days from the date of this order.
2. Rimon Philips is ordered to pay a fine in the amount of \$2,000, to be paid within 30 days of the date of this order.

3. Rimon Philips is ordered to successfully complete the OMVIC Automotive Certification Course within 90 days of this order to refresh his understanding of his obligations as both a dealer and a salesperson under the *Motor Vehicle Dealers Act (MVDA)*.

Ontario Motor Vehicle Industry Council
Discipline Committee



Deb Mattina, Chair
Jon Lemaire, Vice Chair
Joe Wade, Vice Chair