

**DISCIPLINE TRIBUNAL OF THE  
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

Panel:	Sherry Darvish, Chair	Public Member
	Stuart Sherman	Registrant
	Paul Burroughs	Registrant

**DECISION AND REASONS**

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 :

Appearances<sup>1</sup>:

**REGISTRAR, MOTOR VEHICLE  
DEALERS ACT, 2002**

Rishi Nageshar  
Counsel, for the Registrar

- and -

**2410647 ONTARIO INC.  
O/A FOUR STAR MOTORS**

and

Self-Represented

**TAHIR CHAUDRY**

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**Dates of Hearing:** August 16, 2023, January 31, 2024, and February 28, 2024

**Date of Decision:** June 3, 2024

**Findings:**

- Breach of Section 9(1) of the Code of Ethics by 2410647 Ontario Inc. o/a Four Star Motors
- Breach of Sections 6(2) and 9(1) of the Code of Ethics by Tahir Chaudry

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<sup>1</sup> Independent legal counsel to the Panel is Ms. Karen Bernofsky.

## **Order**

1. Total fine of \$3,500, payable as follows:
  - i. \$1,500 payable by Four Star Motors no later than June 30, 2024; and
  - ii. \$1,000 payable by Four Star Motors no later than September 30, 2024.
  - iii. \$1,000 payable by Four Star Motors no later than November 30, 2024.
  
1. Mr. Chaudry shall successfully complete the MVDA Key Elements course, no later than July 31, 2024;
  
2. Four Star Motors shall 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 July 31, 2024. 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 the Course. 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; and
  
3. The Dealer and Mr. Chaudry shall comply with the *Motor Vehicle Dealers Act* and Standards of Business Practice, as may be amended from time to time.

## **Introduction**

1. This matter proceeded via videoconference before a Panel of the Discipline Committee (the “**Panel**”) of the Ontario Motor Vehicle Industry Council (“**OMVIC**”) pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002* (“**MVDA**”). The hearing took place over the course of three days beginning on August 16, 2023, and continuing January 31, 2024, and February 28, 2024.
  
2. The allegations were contained in a Notice of Complaint dated August 3, 2022, which was marked as Exhibit 1. The Notice of Complaint contains allegations against both 2410647 Ontario Inc., which operates as Four Star Motors, and Mr. Tahir Chaudry who was a

director of the business and the person in charge of its day to day activities (collectively the “**Respondents**”).

3. The evidence at the hearing was presented by way of an Agreed Statement of Facts (“**ASF**”) dated May 28, 2023, which was entered as Exhibit 2.
4. The facts contained in the ASF are as follows:

### **Background**

1. 2410647 Ontario Inc o/a Four Star Motors (the “**Dealer**”) has been registered as a motor vehicle dealer in or around January 2015. Tahir Chaudry (“**Chaudry**”) was first registered as a motor vehicle salesperson in or around November 2014. At all material times, Chaudry was a director, as well as the person in charge of the day to day activities, of the Dealer.
2. On or around September 18, 2014, Chaudry successfully completed the Automotive Certification course. Included in the Course syllabus is the requirement for dealers to submit the proceeds from the sale of extended warranties to the warranty provided within 7 days of the date of sale of the warranty (“**warranty obligations**”).

### ***Direct correspondence with Dealer***

3. During an inspection of the Dealer on or around July 5, 2017, a representative of the Registrar reminded Chaudry of the Dealer’s warranty obligations.

### ***Dealer’s current non-compliance***

4. During an inspection of the Dealer on or around April 12, 2022, the following non-compliance issues were found.

### ***Warranty non-submittal***

5. On or around January 22, 2021, Chaudry sold a 2010 Mazda 6 (VIN 1YVHZ8BH5A5XXXX) on behalf of the Dealer. The purchaser of this vehicle also purchased an extended warranty product for an additional \$1,200, plus HST. The Dealer failed to remit the proceeds of this warranty sale to the warranty provider

within 7 days from the date of sale. This is contrary to section 47(7) of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics. The proceeds were remitted to the warranty provider at a later date. The Registrar is not aware of any attempted warranty claims being made or rejected during the time period between sale of the warranty and the remittance of the proceeds to the warranty provider.

6. On or around March 22, 2021, Chaudry sold a 2005 Subaru Outback (VIN 4S4BP84C154XXXX) on behalf of the Dealer. The purchaser of this vehicle also purchased an extended warranty product for an additional \$400, plus HST. The Dealer failed to remit the proceeds of this warranty sale to the warranty provider within 7 days from the date of sale. This is contrary to section 47(7) of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics. The proceeds were remitted to the warranty provider at a later date. The Registrar is not aware of any attempted warranty claims being made or rejected during the time period between sale of the warranty and the remittance of the proceeds to the warranty provider.
7. Between approximately January 10, 2021, and approximately August 26, 2021, Chaudry sold the following vehicles on behalf of the Dealer. There were extended warranty products included with the sale, and in the purchase price, of the vehicles. The warranty coverage ranged between 3 and 6 months. The Dealer failed to remit the applications for these warranties to the warranty provider, thus leaving the purchasers without the warranty coverage which was to be included in their vehicle purchase.
  - a. January 10, 2021: 2005 Jaguar S (VIN SAJXA01T95FNXXXX); and
  - b. March 6, 2021: 2009 Ford Escape (VIN 1FMCU03G69KAXXX);
  - c. July 31, 2021: 2010 Mercedes Benz B200 (VIN WDDFH3D86AJXXXX); and
  - d. August 26, 2021: 2011 Kia Sorento(VIN 5XYKT3A13BGXXXX).

This is contrary to section 9 of the Code of Ethics. The Registrar is not aware of any attempted warranty claims being made or rejected for the above referenced four vehicles.

***Chaudry's non-compliance***

8. As a director and the person in charge of the day-to-day activities of the Dealer, Chaudry failed to ensure that the Dealer conducted its business in compliance with the law, and thus personally contravened sections 6 and 9 of the Code of Ethics.

9. It is thereby agreed the Dealer failed to comply with the following section of the Act:

(7) If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall,

- I within seven days after the parties enter into the contract for the warranty, provide the seller of the warranty with,
  - (i) all documents detailing the contract that the dealer has in its possession,
  - (ii) all payments that the dealer has received from the purchaser, and
  - (iii) a statement that accurately describes the condition of the motor vehicle and the distance the motor vehicle has been driven, if the dealer has such a statement in its possession.

10. It is thereby agreed that the Dealer and Chaudry have breached section 9(1) 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.

11. It is thereby agreed that Chaudry has breached section 6(2) 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.

**Liability Phase**

5. The Respondents admitted at the outset of hearing that they had each engaged in breaches of the Code of Ethics, O. Reg 332/08 (the “**Code of Ethics**”) consistent with the evidence and admissions contained in the ASF. An oral plea inquiry was conducted, and the Panel was satisfied that all the admissions contained in the ASF were voluntary, informed, and unequivocal.
6. The Panel deliberated and was satisfied that the facts contained in the ASF were sufficient to establish the admitted breaches of the Code of Ethics. By failing to remit the specified premiums for warranties to the provider on time, or at all, Mr. Chaudry had breached s. 47(7) of General, O Reg 333/08 and ss. 6(2) and 9(1) of the Code of Ethics and the Dealer had breached subsection 9(1) of the Code of Ethics.

**Penalty Phase**

7. The penalty phase of the proceedings began immediately on the first hearing day following the Panel’s findings on the merits. The parties submitted a Joint Submission on Penalty (“**JSOP**”) dated May 28, 2023, which was entered as Exhibit 3.
8. The JSOP read as follows:
  1. The Dealer agrees to pay a fine in the amount of \$3,500, to be paid on the following schedule:
    - (a) 1,500 due no later than July 31, 2023.
    - (b) \$1,000 due no later than October 31, 2023.
    - (c) \$1,000 due no later than December 31, 2023.
  2. Mr. Chaudry agrees to successfully complete the MVDA Key Elements course, no later than July 31, 2023.

3. 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 July 31, 2023. 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.
4. The Dealer and Chaudry agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.
9. After hearing the submissions of the parties, the Panel had immediate concerns with the JSOP. Specifically, the information presented in the ASF left the Panel unable to assess whether the JSOP served any deterrent purpose – specific or general.
10. Specifically, no party was able to confirm to the Panel the amounts of the warranty payments received from customers and improperly withheld as described in paragraph 7 of the ASF. As such, it was impossible for the Panel to ascertain whether the fines being proposed in the JSOP had any connection to the admitted underlying misconduct. That is, in earlier parts of the ASF, the parties stipulate the amounts of other warranty payments which were withheld but ultimately paid. This caused the Panel to conclude that the amounts at issue were viewed by the parties as being relevant to the misconduct and, by extension, the JSOP. However, when the evidence turned to warranty payments which were not remitted, the ASF is silent on the amount withheld.
11. In an effort to highlight this inconsistency and the Panel’s resulting concern, the Panel put to counsel that if the withheld amounts were equal to or greater than the fine proposed in the JSOP, the penalty would fail to deter the same conduct from recurring. On the contrary, it could even be interpreted by a member of the public as rewarding the improper withholding of warranty payments.
12. The Panel gave the parties further opportunities to address this specific issue arising in the materials. The Panel cautioned the parties that without an adequate response, the Panel was concerned that accepting the JSOP could be contrary to the public interest and could undermine the publicly perceived integrity of the Tribunal.

13. Counsel for the Registrar took the position that the Panel was seeking information about how the parties negotiated the terms of the JSOP, which it was not entitled to do. The Registrar submitted that the Panel's inquiries were inconsistent with the principles contained in *R. v. Anthony-Cook* and *Timothy Edward Bradley v. Ontario College of Teachers*.
14. The Panel rejected the Registrar's submission. The Panel agreed that it was not entitled to inquire about the negotiating positions of the parties or the strengths and weaknesses of the parties' cases, however, the Panel relied on *R v. Anthony Cook* to assert that it was entitled to know how the proposed penalty connected with the admitted misconduct and, accordingly, why the proposed sentence would not bring the administration of justice into disrepute or otherwise be contrary to the public interest.
15. The Panel notes that the Supreme Court of Canada in *Anthony Cook* held as follows at paragraphs 54 and 55:

Counsel should [...] provide the court with a full account of the circumstances of the offender, the offence, and the joint submission without waiting for a specific request from the trial judge. As trial judges are obliged to depart only rarely from joint submissions, there is a “**corollary obligation upon counsel**” to ensure that they “**amply justify their position on the facts of the case** as presented in open court” (Martin Committee Report, at p. 329). Sentencing — including sentencing based on a joint submission — cannot be done in the dark. **[Counsel] must “provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence”, in order to give the judge “a proper basis upon which to determine whether [the joint submission] should be accepted.”**

...counsel must be able to inform the trial judge why the proposed sentence would not bring the administration of justice into disrepute or otherwise be contrary to the public interest. If they do not, they run the risk that the trial judge will reject the joint submission

[emphasis added]

16. Counsel for the Registrar advised that he did not have instructions on how to proceed in the circumstances. Counsel for the Registrar attempted to obtain instructions over a break,



but when he was unable to do so, the parties agreed to adjourn the hearing to a later date. The hearing was adjourned on consent to January 31, 2024.

17. In advance of the January 31 hearing date, the Registrar provided written submissions to the Panel. These submissions largely repeated the Registrar’s position in the hearing on August 16, 2023. The key paragraphs of the Registrar’s submissions are as follows:

“12. The law does not grant the Panel with the ability to demand that either party conduct further investigations or provide supplemental information to justify its position. Section 17(4) of the Act enumerates the orders that the panel can make upon a finding of a breach of the Code of Ethics and does not include the power to require further evidence”

13. Courts have confirmed that parties do not need to disclose the nature of their negotiating positions. The Discipline Committee has also found that “the considerations of the parties during negotiation are considered confidential to the mediation process. When a JSOP is submitted for approval, adjudicators generally have no knowledge of what transpired within the give and take of the negotiations.” The Panel may not demand that the parties explain why they have made concessions or taken positions in a joint submission.

14. While the Panel may ask counsel to elaborate, this is a fairness obligation to address the Panel’s concern if it believes the JSOP is “unhinged” and are “seriously considering rejecting it.” However, these fairness obligations are not triggered because the Panel confirmed that it would not make a determination without the further information sought.”

...

15.b. “A fortiori, inquiries by the sentencing judge that are calculated to dig up reasons to reject the joint submission are not licensed by Anthony-Cook (emphasis added).”

...

20. By requesting new facts from the parties, the Panel has removed the certainty of presenting a joint position before the Panel.

21. The legal threshold that applies before this Panel is to consider whether the penalty is unhinged and brings the administration of justice into disrepute, not whether it is a “bad deal” as referred to in the Belakziz decision.

22. By second guessing the Registrar's decision to accept a penalty, the Panel "effectively becomes a supervising prosecutor and risks losing its independence and impartiality."

18. The hearing resumed on January 31, 2024.
19. At the start of the hearing, the Panel again rejected the Registrar's submissions that the Panel was not entitled to ask the parties about the amount of the withheld premiums. The Panel once again relied on paragraphs 54 and 55 of *R v Anthony-Cook* and received no persuasive response from counsel. The Panel clarified that it was not seeking information about the parties' negotiating positions, but rather was giving the parties an opportunity to respond to the Panel's concerns because the Panel was considering rejecting the JSOP for being contrary to the public interest based on the evidence in the record at that time.
20. Counsel for the Registrar unfortunately once again advised that he did not have instructions to provide any further information to the Panel.
21. Mr. Chaudry, who was self-represented and also appearing on behalf of the Dealer advised the Panel that the amount of the four warranty premiums was less than the amount of the fine set out in the JSOP. Mr. Chaudry made this statement during his submissions but not under affirmation. He did not advise the Panel of the exact amount of the warranty premiums for the four relevant vehicles.
22. In response to Mr. Chaudry's statements, counsel for the Registrar advised that he did not have instructions to agree with Mr. Chaudry's submission that the amount of the premiums was less than the agreed upon fine.
23. The Panel was left with no clarity on the issue.
24. Upon confirmation from the parties that they had no further evidence or information to provide, the Panel rose to deliberate on the JSOP.

***Joint Submission Rejected***

25. Upon returning from deliberations, the Panel rejected the JSOP. It delivered its reasons for rejecting the JSOP orally before the conclusion of the January 31, 2024, hearing appearance.
26. The Panel explained that the JSOP, as presented, appeared to be entirely unhinged from the circumstances of the admitted misconduct such that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.
27. The imposition of a fine which has no demonstrable nexus to the underlying misconduct, and which may even financially reward that misconduct completely ignores the deterrence objective of a penalty order. An informed member of the public, familiar with the facts as laid out in this decision, would view the acceptance of the JSOP in such circumstances as a breakdown in the proper functioning of the justice system. Accepting this JSOP without any information to assess its deterrent value would undermine confidence in the regulatory scheme, and by extension may reduce public confidence in OMVIC, this tribunal, and even OMVIC's registrants.
28. The evidence and information before the Panel did not indicate how much money the Respondents had kept by failing to remit the warranty payments described in paragraph 7 of the ASF. Worse, after hearing the submissions of the parties on January 31, it was no longer even clear if the parties themselves were *ad idem* about the total quantum of the warranty premiums that had been withheld and whether the amount in issue was more, less, or the same as the amount of the fine proposed in the JSOP.
29. The Panel could not say whether there would be any deterrence value in the joint submission. The evidence did not show whether the Respondents – even after paying the proposed fines – would have been penalized in any substantive way. On the contrary, the Respondents would be financially ahead if the amount they withheld was more than the amount of the fine.

30. The Panel received no persuasive submissions on how it could be consistent with the public interest to issue a penalty that could leave the Respondents ostensibly benefitting or practically breaking even in matters where they had admitted that they did not comply with the Code of Ethics in their dealings with members of the public.
31. After delivering the above reasons orally, the Panel presented the parties with two options: (1) The Panel could rise to deliberate on penalty based on the record before it; or (2) the parties could prepare evidence and tender that evidence as part of the penalty phase of the hearing before a decision is made.

### ***Respondents' Request to Withdraw Guilty Plea***

32. After the Panel rejected the JSOP, counsel for the Registrar advised the Panel that Mr. Chaudry should be given an opportunity to withdraw the Respondents' guilty plea. The Panel became concerned that the suggestion of counsel for the Registrar was tantamount to counsel now conflating their role in the proceedings and acting on behalf of both the Registrar and the Respondents. The Panel noted its concern to the parties on the record. Counsel for the Registrar directed the panel to paragraph 59 of *R v Anthony-Cook* which relates to circumstances where counsel may have made a fundamental error by, for example, proposing a penalty that was not legally available. That was not the issue the Panel was struggling with.
33. Independent legal counsel referred the Panel to a more recent Supreme Court of Canada decision, *R. v. Nahanee* at paragraph 47, which states that decisionmakers "should only allow for the withdrawal of guilty pleas in exceptional circumstances, such as where counsel have made a fundamental error about the availability of the proposed sentence" [emphasis added]. The Panel understands that counsel for the Registrar accepted that *Nahanee* is binding on this Panel. When asked what the "exceptional circumstances" were in this case, counsel for the Registrar relied only on this Panel's rejection of the JSOP.
34. Considering these submissions, this Panel concluded that there are no exceptional circumstances in this matter that would allow the Respondents to withdraw their plea.

35. This tribunal is not a “rubber-stamp” office. The purpose of this hearing was to ensure that the JSOP was consistent with the public interest. The rejection of a JSOP is not an exceptional circumstance because it is the potential outcome of any unopposed penalty hearing. This outcome was particularly foreseeable after the concerns raised by the Panel on the first hearing date went wholly unanswered.

***Further Adjournment Request***

36. When the Panel rejected the request to withdraw the plea, Mr. Chaudry advised that he wanted to put in further evidence regarding the warranty premiums for the four vehicles in question. He requested a few weeks to be able to gather the necessary evidence.
37. On consent, the Panel adjourned the hearing to February 28, 2024, to hear Mr. Chaudry’s evidence.

***Hearing Resumes February 28, 2024***

38. On February 28, 2024, the Registrar advised that it did not intend to call any witnesses for the penalty phase of this hearing.
39. Mr. Chaudry was the sole witness for the Respondents. He was sworn in as a witness. He gave evidence that, in total, the warranty premiums for the four vehicles listed in paragraph 7 of the ASF was \$886.00, broken down as follows:

Vehicle	Premium
2005 Jaguar S	\$289
2009 Ford Escape	\$224
2010 Merc Benz	\$149
2011 Kia Sorrento	\$224

40. Mr. Chaudry tendered no documentary evidence on this issue. He further explained that his failure to remit these amounts was an oversight that he does not expect to happen again. He testified that these incidents occurred in early 2021, when his movement was restricted due to the COVID-19 pandemic and lockdowns.

41. On cross-examination, the counsel for the Registrar did not challenge the amount of money that Mr. Chaudry failed to remit to the warranty providers on the four vehicles listed in paragraph 7 of the ASF.
42. The parties were each invited to make further closing submissions on the issue of penalty. The parties urged the Panel to order the terms set out in the JSOP.

### **Reasons for Decision on Penalty**

43. The rejection of the JSOP leaves this Panel to decide and order an appropriate penalty based on the information and evidence received.
44. This case deals with very serious misconduct. The Respondents contractually agreed to provide warranties to consumers, but remitted premiums late in some cases and not at all in others. Specifically, in the four cases noted at paragraph 7 of the ASF, the Respondents did not remit the premiums or register the warranties at all. Whatever the reason for their failure to remit, the Respondents broke the trust of their customers.
45. While the Panel has not made findings of fraud in this case, facts such as this in other hearings could be construed as a breach of subsections 9(2) or 9(3) of the Code of Ethics which deal with matters involving dishonesty, misrepresentation and even fraud.
46. The Panel notes that there was no evidence in the ASF indicating whether any of the four consumers referenced in paragraph 7 did or did not have any warranty claims. On February 8, 2024, Mr. Chaudry testified that they did not and there was no cross-examination on the issue, so the Panel is comfortable concluding that there were none in this case. However, going forward, counsel needs to be more mindful of the inconsistency which arises when an ASF confirms in one section that there were no warranty claims at issue to the Registrar's knowledge, but then proceeds to be silent on the same issue in subsequent paragraphs dealing with other allegations of similar misconduct. This leaves the Panel in a difficult position. We are compelled to view the issue as relevant when it arises in respect of one set of allegations, and we may need to make inquiries when subsequent sections of the same ASF do not advert to the issue at all.

47. While it is not material in this particular case given the evidence received on February 8, the Panel can easily imagine the financial harm a consumer would suffer if they in fact had needed to rely on a warranty which had not been registered. It is important that counsel be aware of these gaps when they prepare evidence and submissions on an uncontested hearing. A Panel must be given the information and evidence necessary to accept a joint position. The fact that the parties happen to agree is not a response to gaps arising in inadequately prepared materials.
48. The Panel has considered the mitigating factors raised by the parties in their oral submissions, including Mr. Chaudry's explanation for why these amounts were not remitted and the fact that Mr. Chaudry agreed to an ASF which saved the time and expense of a contested hearing. The Panel has also considered that the COVID-19 pandemic would have impacted all registrants at that time and not all registrants had these types of issues.
49. Based on Mr. Chaudry's evidence, and the absence of contradictory evidence from the Registrar, the Panel finds that the total amount at issue in respect of the unregistered warranties at paragraph 7 of the ASF was \$886.
50. The Panel is concerned that if the fine is too low in this matter, it could encourage other dealers to pursue the same activity, which could create consumer harm on a large scale. In order to act as a deterrent, a fine should be commensurate with the financial situation of the registrants. However, in this case, there was no information in the record before us as to the financial circumstances of either registrant.
51. To establish a connection to admitted misconduct, a proposed fine should have an articulable nexus to the admitted misconduct and potentially also be proportionate to a respondent's financial circumstances. This is not to say that a smaller dealer can only receive small fines or that a larger dealer must always receive large fines. Rather, counsel may need to be able to help a panel understand, even in a joint submission scenario, how it is that a proposed penalty is consistent with what members of the public expect from this Tribunal. The Panel did not receive any evidence on this issue from the parties in this case. In other matters, this could prove problematic, and counsel should consider it going forward.

52. While the Panel is not bound by other OMVIC decisions, the Panel has considered the two prior OMVIC decisions that the Registrar referenced in oral submissions on August 16, 2024: *Danny and Sons Auto Sales Ltd.* and *1380878 Ontario Inc. o/a Kia of North Bay*. These were listed at Tabs 2 and 3 of the Registrar's Book of Authorities.
53. In the *Danny and Sons* decision, the fine was set at \$4,000. This decision was dated 2015 which is 9 years ago. The registrant was the subject of a previous order, although there is nothing in the decision that allows the Panel to evaluate whether the previous behavior was repeated or of a different nature. The breaches involved non-submittal of multiple warranty premiums within seven days. There is no indication that they were never submitted, only that they were not done so within the prescribed time frame. There was an additional breach in that the dealer operated from an unregistered location. There was no indication in the decision as to the amounts of money withheld or whether any consumer harm was found. While late submission of warranty premiums is a serious breach, non-submittal and failing to register a warranty altogether is a distinguishing factor which makes the within matter arguably more serious.
54. The *Kia of North Bay* decision provides some parallels to the *Danny* decision. The fine in that case was \$4,500 and it was from 2015. Once again, the registrant was the subject of a previous order, although there is nothing in the decision that allows the Panel to evaluate whether the previous behavior was repeated or of a different nature. The breaches in the *Kia* case involved the failure to submit warranty premiums within the prescribed seven days. There is no indication that they were not submitted, only that the registrant did not meet the time deadline. In addition, there was a breach of the requirement to disclose a previous rental vehicle and three breaches involving charging over the advertised price. The three affected consumers were refunded the difference, mitigating any consumer harm.
55. Although it took two extra (and in our view, unnecessary) appearances, the Panel now has the uncontradicted and affirmed evidence of Mr. Chaudry about the amount of money he kept and which ought to have been remitted to warranty providers. Although the terms of the JSOP are significantly lower than this Panel may have ordered on an opposed hearing, the Panel is satisfied that the terms of the JSOP are not so unhinged from the circumstances



of the misconduct that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

56. When equipped with comprehensive materials, a Panel will rarely, if ever, need to heavily question a joint submission, let alone reject it. This case is an example of the risks of tendering evidence and submissions on an unopposed hearing without considering the need to satisfy the Tribunal of the propriety of what is being requested. In the end, this Panel is now satisfied on the terms of the JSOP, but it should not have taken multiple appearances to get there.
57. For the above reasons, it is the decision of the Panel that the following penalty be imposed, consistent with the JSOP:
  - a. Total fine of \$3,500, payable as follows:
    - iv. \$1,500 payable by Four Star Motors no later than June 30, 2024; and
    - v. \$1,000 payable by Four Star Motors no later than September 30, 2024.
    - vi. \$1,000 payable by Four Star Motors no later than November 30, 2024.
  - b. Chaudry shall successfully complete the MVDA Key Elements course, no later than July 31, 2024;
  - c. Four Star Motors shall 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 July 31, 2024. 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.

- d. The Dealer and Chaudry shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

I, SHERRY DARVISH, sign this decision and reasons on behalf of the members of the Discipline Panel as set out below.

*S. Darvish*

Electronically signed

June 3, 2024

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SHERRY DARVISH

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Date:

Panel Members:

Sherry Darvish, Chair  
Stuart Sherman  
Paul Burroughs