

Findings:

Transcontinental Fine Cars Ltd o/a Audi Downtown Toronto has breached the following sections of the Code of Ethics, ON Regulation 332/08:

Accountability

6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

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.

DECISION AND REASONS

Introduction

This was a hearing 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*, S.O. 2002, c. 30, Schedule B (“MVDA” or the “Act”). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.

The hearing was convened on October 23, 2023 (the “Hearing”) and held in-person. The Hearing proceeded on the basis of an Agreed Statement of Facts and Joint Submission on Penalty.

The Allegations

The allegations against Transcontinental Fine Cars Ltd o/a Audi Downtown Toronto and Binyon Onqa (collectively the “Registrants”) were set out in the Notice of Complaint, dated June 8, 2021. The Notice of Complaint was entered as **Exhibit 1** at the Hearing

and is attached to these reasons as Appendix “A”. It was noted at the outset that the Registrar was withdrawing all the allegations and facts concerning Mr. Binyon Onqa contained in the Notice of Complaint. Specifically paragraphs 2, 3, 4, and 20. The remaining allegations set out in the Notice of Complaint, as amended, are summarized as follows:

Contravention of the Code of Ethics by the Dealer

The Dealer’s representative falsified Consumer B’s signature on various documents and furnished the false documents and information to the Ministry of Transportation.

A salesperson assisted in falsifying or induced or counselled another person to falsify or assist in falsifying information or documents relating to a vehicle trade. This conduct is contrary to section 26 of the Act.

A salesperson furnished, assisted in furnishing or induced or counselled another person to furnish or assist in furnishing false or deceptive information or documents relating to a vehicle trade. This conduct is contrary to section 27 of the Act.

As such, The Dealer has failed to ensure its sales staff carried out their duties in compliance with the law, contrary to sections 6 (1) and 9 (1) of the Code of Ethics.

At the outset of the Hearing, counsel for the Registrar, Mr. Jose Alvarez-de-Luga, advised that discussions with the responding parties had resulted in an agreement which they intended to present.

Plea of the Registrant

The Registrant did not attend the Hearing; however, he was represented by counsel. It was confirmed on the record that the Registrant was aware of the Hearing and Mr. Danson would represent him at the Hearing. Mr. Ali Sajadinia was present on behalf of Audi Downtown Toronto. He is the General Manager of the Dealer Registrant and also represented by Mr. Danson. The Dealer Registrant admitted all the remaining allegations contained in the Notice of Complaint through the Agreed Statement of Facts. A plea inquiry was conducted, through counsel, by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the admissions of the Dealer Registrant were voluntary, informed, and unequivocal.

Agreed Statement of Facts

The Agreed Statement of Facts (the “ASF”)² which had been signed by Mr. Sajadinia on August 26, 2022, and the Registrar on August 31, 2022, was entered as **Exhibit 2** at the Hearing. The ASF is attached to these reasons as Appendix “B”. Mr. Alvarez-de-Luga on behalf of OMVIC, and then Mr. Danson on behalf of the Registrant, took the Panel through the ASF.

The Panel then sought and received advice from its Independent Legal Counsel, Mr. Marrocco, before rising to deliberate on the merits portion of the Hearing.

Decision of the Panel

Upon reconvening, the Panel stated it was accepting the ASF and was satisfied that the facts admitted by the Registrant in the ASF were sufficient to make findings of breaches against the Registrant as alleged in the amended Notice of Complaint. In reaching its decision the Panel relied exclusively on the evidence as contained in the Agreed Statement of Facts. The Panel made findings against Audi Downtown Toronto.

² Prior to the beginning of the Hearing, the anticipated exhibits were delivered to the Panel members electronically in the interests of hearing economy and on consent of the parties.

The Panel found that the Dealer, Transcontinental Fine Cars Ltd o/a Audi Downtown Toronto has breached the following sections of the Code of Ethics, ON Regulation 332/08:

Accountability

6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

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.

Penalty

The Panel was presented with a Joint Submission on Penalty (the "JSP") which was entered as **Exhibit 3**. The terms of the JSP are that:

1. The Dealer agrees to pay a fine in the amount of \$6,000 no later than **December 31, 2022**.
2. 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 **December 31, 2022**. 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.
3. The Dealer agrees to comply with the Act and Code of Ethics, as may be amended from time to time.

In submissions, Mr. Alvarez-de-Luga, on behalf of the Registrar, among other things, drew the Panel's attention to the OMVIC Brief of Authorities. He identified two recent decisions³ of the Discipline Committee. They had similar facts and findings and the penalties in those matters gave the Panel a range that would be helpful. Mr. Alvarez-de-

³ OMVIC Brief of Authorities, tabs 7 and 8.

Luga then brought to the attention of the Panel three⁴ case in his Brief of Authorities he said assisted the Panel with what the test ought to be when considering an Agreed Statement of facts.

Mr. Danson in his submissions agreed with the submissions of OMVIC counsel, the authorities cited, and how the Panel could consider them.

Mr. Alvarez-de-Luga stated that in this case there were no aggravating factors other than those found in the ASF. He identified the mitigating factor that there is no discipline history for this Registrant.

Mr. Danson, on behalf of the Registrant, also noted no aggravating factors. He offered as mitigating factors, that the Registrant had responded and acted promptly to the issues raised in the Notice of Complaint, and had admitted to the mistake thereby avoiding a contested hearing.

Both parties agreed the proposed penalty contained orders that would serve as both a general and specific deterrent.

Having heard from both parties on penalty, the Panel sought and received advice from Mr. Marrocco on the record. Mr. Marrocco reminded the Panel that it should not depart from a joint submission unless it found the proposed penalty to be so unhinged from the circumstances of the offence 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.

⁴ OMVIC Brief of Authorities, tabs 3, 4, and 5.

Penalty Decision and Reasons

The Panel accepted the JSP and made an order consistent with its terms before the conclusion of the Hearing. The JSP does not pose any risk to the publicly perceived integrity of the Tribunal. The Panel had no grounds to consider rejecting it.

The parties had come to a resolution which contemplated the relevant objectives on penalty including public protection, remediation/rehabilitation, specific deterrence for the Registrants, and general deterrence to others in the profession. Additionally, the terms of the JSP are not inconsistent with other orders made by the Discipline Committee in similar circumstances. Although not binding on this Panel, we acknowledge the authorities cited by counsel for OMVIC, and we agree that it demonstrated that the proposed penalty was indeed consistent with comparable, prior, decisions of this Tribunal.

On the basis of the foregoing, the Panel made the following order:

1. The Dealer agrees to pay a fine in the amount of \$6,000 no later than 90 days after the date of this decision.
2. 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 90 days after the date of this decision. 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.
3. The Dealer agrees to comply with the Act and Code of Ethics, as may be amended from time to time.

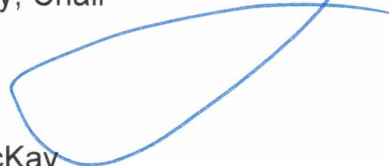
I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: November 9, 2023

Panel Members:



Mr. Robert MacKay
Mr. Wally Pietraszko
Mr. Christopher Pinelli

Appendix "A"
IN THE MATTER OF

THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Transcontinental Fine Cars Ltd o/a

Audi Downtown Toronto

328 Bayview Avenue

Toronto, ON M5A3R7

AND TO: Binyon Onqa

342 Waverley Road

Toronto, ON M4L3T6

NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar is issuing a Notice of Complaint against TRANSCONTINENTAL FINE CARS LTD. o/a AUDI DOWNTOWN TORONTO and BINYON ONQA for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the *Motor Vehicle Dealers Act, 2002*. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease.

TRANSCONTINENTAL FINE CARS LTD. o/a AUDI DOWNTOWN TORONTO and BINYON ONQA have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

Background:

1. Transcontinental Fine Cars Ltd o/a Audi Downtown Toronto (the “Dealer”) was first registered as a motor vehicle dealer in around May 2007.
2. Binyon “Binny” Onqa (“Onqa”) was first registered as a motor vehicle salesperson in around January 2017.
3. Since in or around January 2019, Onqa has been the person in charge of the day to day activities at the Dealer.
4. On or about January 11, 2016, Onqa successfully completed the Automotive Certification course (the “Course”). The Course’s syllabus includes reviewing the Code of Ethics.

Consumer Complaint:

5. On or about September 27, 2019, Consumer A purchased a 2019 Audi Q8 (VIN: WA1FVAF17KD042415) from the Dealer.
6. Consumer A purchased the vehicle for his then partner, Consumer B, as a birthday gift.
7. The vehicle was registered into Consumer B’s name.
8. On or about December 8, 2019, Consumer A and Consumer B ended their relationship.
9. Consumer B retained possession of the vehicle.
10. On or about December 18, 2019, a registered salesperson under the Act (the “Salesperson”), instructed a subordinate representative of the Dealer to illegally transfer the vehicle’s ownership out of Consumer B’s name, as sole owner, into the names of Consumer A and Consumer B, as joint owners.
11. To complete this transfer, the Dealer’s representative falsified Consumer B’s signature on various documents and furnished the false documents and information to the Ministry of Transportation.
12. Consumer B had no knowledge of, and did not provide consent for, the vehicle ownership transfer.
13. On or about January 2, 2020, Consumer A improperly took possession of the vehicle from Consumer B’s place of business.
14. Consumer A subsequently sold the vehicle to another consumer otherwise unrelated to this Notice of Complaint.
15. The Salesperson assisted in falsifying or induced or counseled another person to falsify or assist in falsifying information or documents relating to a vehicle trade. This conduct is contrary to section 26 of the Act.
16. The Salesperson furnished, assisted in furnishing or induced or counseled another person to furnish or assist in furnishing false or deceptive information or documents relating to a vehicle trade. This conduct is contrary to section 27 of the Act.

Pending Criminal Charge

17. The above-noted conduct resulted in the Salesperson being charged, on or about February 2, 2021, with fraud over \$5,000, contrary to the Criminal Code of Canada.
18. This charge is currently before the courts.

Generally:

19. The Dealer has failed to ensure its sales staff carried out their duties in compliance with the law, contrary to section 6 and 9 of the Code of Ethics.
20. As person in charge of the Dealer, Onqa's failure to ensure the Dealer conducted its business in compliance with the law, has caused him to personally breach sections 6 and 9 of the Code of Ethics.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act*, R.S.O 1990 c.s.22, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

The Rules of Practice of the Discipline Committee will apply, copy attached. A Notice of Hearing and Book of Disclosure will be provided in accordance with the Rules of Practice of the Discipline Committee.

Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE COMMITTEE

This is to serve notice that the Registrar shall make application for its cost pursuant to Rule 13 of the Rules of Practice

FURTHER PARTICULARS/SUPPLEMENTAL NOTICE

The Registrar may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further particulars of violations of the Code of Ethics, Standards of Business Practice.

DATED at Toronto, this day of , 2020

John Carmichael

Registrar,

Motor Vehicle Dealers Act, 2002

Appendix "B"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE
MOTOR VEHICLE DEALERS ACT, 2002, S.O. 2002, c.30, Sch. B

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- and -

TRANSCONTINENTAL FINE CARS LTD. o/a AUDI DOWNTOWN TORONTO

AGREED STATEMENT OF FACTS AND PENALTY

Transcontinental Fine Cars Ltd o/a Audi Downtown Toronto has breached the following:

Sections 6 and 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

Background

1. Transcontinental Fine Cars Ltd o/a Audi Downtown Toronto (the "Dealer") was first registered as a motor vehicle dealer in around May 2007.

Consumer Complaint:

2. On or about September 27, 2019, Consumer A purchased a 2019 Audi Q8 (VIN: WA1FVAF17K[REDACTED]) from the Dealer.
3. Consumer A purchased the vehicle for his then partner, Consumer B, as a birthday gift.
4. Consumer A required the Bill of Sale to be in his name and the name of his girlfriend, Consumer B and instructed the Dealer to register the vehicle in the name of both Consumer A and Consumer B.
5. Consumer A required the Bill of Sale to be in his name and the name of his girlfriend, Consumer B.
6. Consumer A instructed the Dealer's salesperson to register the vehicle in the name of both Consumer A and Consumer B.

7. The sales representative at the Dealership confirmed in a text to Consumer A that he would do so.
8. Notwithstanding, the vehicle's ownership was registered to Consumer B's name as sole owner.
9. On or about December 8, 2019, Consumer A and Consumer B ended their relationship.
10. Consumer B retained possession of the vehicle.
11. On or about December 18, 2019, consumer A instructed a member of the Dealer's registered sales staff (Salesperson) to transfer the vehicle's ownership registration out of Consumer B's name, as sole owner, into the names of Consumer A and Consumer B, as joint owners, as per his original instructions.
12. On or about December 18, 2019, a Salesperson instructed a member of the Dealer's registration staff to correct what he perceived to be a mistake and transfer the vehicle's ownership registration out of Consumer B's name, as sole owner, into the names of Consumer A and Consumer B, as joint owners.
13. To complete this transfer, the member of the Dealer's registration staff wrongly and without authority signed Consumer B's signature on various documents and furnished the said documents and information to the Ministry of Transportation and transferred the vehicle's ownership registration into the names of Consumer A and Consumer B, as joint owners.
14. Consumer B had no knowledge of, and did not provide consent for, the vehicle ownership transfer.
15. On or about January 2, 2020, unbeknownst to the Dealer, Consumer A took possession of the vehicle from Consumer B's place of business.
16. Unbeknownst to the Dealer, Consumer A subsequently sold the vehicle to another consumer otherwise unrelated to this Notice of Complaint.
17. In signing Consumer B's signature without her authority, the Dealer falsified documents relating to a vehicle trade. This conduct is contrary to section 26 of the Act.
18. In signing Consumer B's signature without her authority, the Dealer furnished false or deceptive information or documents relating to a vehicle trade. This conduct is contrary to section 27 of the Act.
19. A Salesperson involved in the aforesaid was subject to a proceeding before the License Appeal Tribunal ("LAT"), which resulted in a LAT consent order to impose terms and conditions on the registration of the Salesperson
20. The person in charge of the day-to-day activities of the Dealer failed to ensure the Dealer's staff conducted themselves in compliance with the law. Said individual has since left the motor vehicle sales industry in Ontario and is not currently registered

under the Act.

21. The Dealer has since implemented a written policy confirming its unwritten policy, to ensure staff always obtain the vehicle owner's signature or a signing authorization in writing on any documents relating to the transfer of said vehicle. All staff at the Dealer have acknowledged this policy.

GENERALLY:

22. The Dealer failed to ensure that a member of its staff carried out their duties in compliance with the law, contrary to section 6 and 9 of the Code of Ethics.

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

Accountability

6. (1) *A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.*

Professionalism

10. (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.*