

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

PANEL:	Sherry Darvish, Chair	Public Member
	Wally Pietraszko	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 :

Appearances¹:

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

Andrea Korth and Zach Kowalsky
for the Registrar

- and -

BAC AUTO BODY LIMITED

Justin Jakubiak
for the Registrants

and

FRANCO CONGI

Hearing Date: February 16, 2023

Date of Decision: February 16, 2023

¹ Independent legal counsel to the Panel is Mr. Edward Marrocco.

ORDER

1. Franco Congi shall pay a fine in the amount of \$500 and it will be paid no later than **July 31, 2023**.
2. The Dealer shall pay a fine in the amount of \$3,500. \$200 shall be paid no later than **June 30, 2023**, and the remaining balance (\$3,300) may be paid in \$200 per month instalments, or in full no later than **December 31, 2024**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Congi agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Overview

This hearing was held virtually via video conference. The individual Registrant, Mr. Franco Congi, was not present but was represented by counsel, Justin Jakubiak. Mr. Jakubiak also appeared on behalf of the Dealer respondent. Ms. Andrea Korth was present on behalf of the OMVIC Registrar and joined by OMVIC's counsel, Mr. Zach Kowalsky. Independent Legal Counsel to the Panel was Mr. Edward (Ted) Marrocco.

This matter proceeded by way of an Agreed Statement of Facts (ASF), and a Joint Submission on Penalty (JSOP).

The Notice of Complaint dated March 29, 2022 was marked as Exhibit 1A on the hearing and a Notice of Further and Other Particulars, dated May 18, 2022, was marked as Exhibit 1B. By consent of all parties, the Registrants' two written responses to the allegations on April 2022 and September 2022 were marked as Exhibits 1C and 1D respectively. The ASF which contains both a Schedule A and Schedule B was marked as Exhibit 2. The signed JSOP was entered as Exhibit 3. With leave of the Panel, paragraph 8(d) of Exhibit 1B was withdrawn by OMVIC's request. Speaking on behalf of the respondents, Mr. Jakubiak confirmed that both the Dealer and the individual Registrant admitted to all allegations remaining in Exhibits 1A and 1B, as amended. The Panel made inquiries of Mr. Jakubiak and was satisfied that all admissions contained in the ASF made on behalf of both the Registrant and the Dealer were voluntary, informed, and unequivocal.

After deliberation and review, the Panel was satisfied that the facts as set out in the ASF constituted breaches of the Code of Ethics as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002* (the "**Code**"). The Dealer was found to have breached sections 7 and 9 of the Code. Mr. Congi was found to have breached sections 6 and 9 of the Code. The Panel was satisfied that the admitted conduct would have been reasonably regarded by members of the profession as disgraceful, dishonorable, unprofessional, or unbecoming of a registrant.

The Panel was also satisfied, for the reasons set out below, that the JSOP was commensurate with the seriousness of the above breaches and, if accepted, would not undermine the publicly perceived integrity of the Tribunal. An order was made on the record on February 16, 2023, consistent with the terms of the JSOP before the conclusion of the hearing. These are the reasons for the Panel's decision and order.

Agreed Statement of Facts

The material evidentiary provisions of the ASF entered as Exhibit 2 are as follows:

By failing to disclose the dollar value of previous accident damage with respect to three vehicles, Bac Auto Body Limited has breached the following:

Section 7 of the Code of Ethics, Regulation 332/08

Section 9 of the Code of Ethics, Regulation 332/08

By failing to disclose the dollar value of previous accident damage with respect to three vehicles, Franco Congi has breached the following:

Section 6 of the Code of Ethics, Regulation 332/08

Section 9 of the Code of Ethics, Regulation 332/08

The parties to this proceeding agree that:

Background:

1. BAC Auto Body Limited (the “Dealer”) was first registered as a motor vehicle dealer in or around January 1983. Franco Congi (“Congi”) was first registered as a motor vehicle salesperson in around February 2007. Since in or around December 2010, Congi has been the person in charge of the day-to-day activities of the Dealer.

OMVIC publications re: material fact disclosure:

2. Since the Act was proclaimed, OMVIC has issued numerous publications and webinars reminding dealers of their disclosure obligations including but not limited to, the requirement to disclose the dollar value of a vehicle’s accident damage history. The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC’s website.

Prior Discipline Committee Orders:

3. On or about July 24, 2019, the Registrar issued a Notice of Complaint against the Dealer and Congi, for failing to provide purchasers with written disclosure of the dollar amount of accident damage their vehicles had sustained.
4. On or about February 19, 2020, the Discipline Committee issued an Order against the Dealer and Congi, pursuant to a negotiated resolution of the above referenced Notice. This Order is attached hereto as Schedule “B”.
5. As per condition 2 of the Order, Congi was required to successfully complete the MVDA Key Elements course.
6. On or about August 27, 2020, Congi successfully completed this course. Included in the course materials are dealers’ disclosure obligations, including but not limited to, the requirement to disclose the dollar value of a vehicle’s accident damage history on the contract.

Dealer non-compliance:

7. During an inspection of the Dealer which commenced on or about January 25, 2022, and was completed on or about February 1, 2022, the following non-compliant vehicle trades were found:

- a. On or about October 15, 2020, Congi, on behalf of the Dealer, purchased a 2009 Nissan Rogue (VIN JN8AS58V09W), declared as being an insurance loss with an accident damage history of \$4,804. On or about November 23, 2020, Congi sold this vehicle on behalf of the Dealer but failed to disclose on the bill of sale the dollar value of the previous accident damage. This is contrary to sections 42(19) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. At the time of the purchase, the Dealer provided the purchaser with a Carfax report disclosing the dollar value of the accident damage and the Dealer has since provided confirmation from the purchaser that they were aware of the dollar value of the accident damage, at the time of purchase.
- b. On or about October 19, 2020, the Dealer purchased a 2015 Volkswagen Jetta (VIN 3VW2K7AJ4FM) declared as being an insurance loss with an accident damage history of \$11,252. On or about February 10, 2021, Congi sold this vehicle on behalf of the Dealer but failed to disclose on the bill of sale the dollar value of the previous accident damage. This is contrary to sections 42(19) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. At the time of the purchase, the Dealer provided the purchaser with a Carfax report disclosing the dollar value of the accident damage and the Dealer has provided confirmation from the purchaser that they were aware of the dollar value of the accident damage at the time of purchase.
- c. On or about May 11, 2021, Congi sold a 2012 Mercedes E250 (VIN WDDGF8FB2CF) on behalf of the Dealer. This vehicle had been declared an insurance loss with an accident damage history of \$16,374. The Dealer failed to disclose on the bill of sale the dollar value of the previous accident damage. This is contrary to sections 42(19) and 42(25) of Ontario Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. At the time of the purchase, the Dealer provided the purchaser with a Carfax report disclosing the dollar value of the accident damage and the Dealer has provided confirmation from the purchaser that they were aware of the dollar value of the accident damage at the time of purchase.

Congi's contravention of the Code of Ethics:

8. Congi has failed to ensure that the Dealer conducts its business in compliance with the Regulations and Code of Ethics and has therefore personally contravened sections 6 and 9 of the Code of Ethics, as these sections related to disclosing the dollar value of accident damage on a bill of sale.

Joint Submission on Penalty

The JSOP at Exhibit 3 states as follows:

1. The Dealer is a small dealership, averaging between 5 and 10 retail vehicle sales per year. Congi is the sole registered salesperson employed by the Dealer.
2. Congi shall pay a fine in the amount of \$500 and it will be paid no later than **July 31, 2023**.
3. The Dealer shall pay a fine in the amount of \$3,500. \$200 shall be paid no later than **June 30, 2023**, and the remaining balance (\$3,300) may be paid in \$200 per month instalments, or in full no later than **December 31, 2024**.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete 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 or who are otherwise required to do so pursuant to the Act.

5. The Dealer and Congi agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons for Decision

The Panel is satisfied that the admissions of the Registrant and Dealer in the ASF are voluntary. The Panel finds that the facts as set out in the ASF are sufficient to constitute breaches by the Dealer of sections 7 and 9 of the Code and breaches by the Registrant of sections 6 and 9 of the Code. The Panel is also satisfied that the admitted conduct is reasonably regarded by members of the profession as disgraceful, dishonorable, unprofessional, or unbecoming of a registrant.

With respect to the JSOP, the Panel notes that each case is decided on its own facts and parties that present a JSOP must convince the Panel as to why the JSOP is appropriate in each case. The fact that a previous Panel of this tribunal accepted a similar JSOP does not automatically mean that a Panel will accept as of right any JSOP that is presented to it.

Having said that, in this case, the Panel finds that the JSOP meets the necessary objectives of penalty and it is not disconnected from the facts of the matter such it risks undermining of the public's trust in the tribunal.

The JSOP meets the principles of general and specific deterrence. The Panel finds that the Dealer took mitigation steps by making consumers aware of the value of the damage to the cars in question at the time of sale. The penalty amount and time for payment is appropriate given that this is a small dealership with no intention of further expansion. The Panel finds that the penalty does not bring the administration of justice into disrepute and as such, the Panel accepts the JSOP.

I, Sherry Darvish, sign this decision and reasons for the penalty on behalf of the members of the Discipline Panel as set out below.

S. Darvish
Ms. Sherry Darvish

March 20, 2023
Date

Panel Members:

Ms. Sherry Darvish, Chair
Mr. Wally Pietraszko, Vice Chair
Mr. Paul Burroughs, Vice Chair