

DISCIPLINE DECISION

REVIEWING PANEL: Aviva Harari, Public Member
Joe Wade, Discipline Tribunal Chair, Registrant
Wally Pietraszko, Registrant

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 :

ONTARIO MOTOR VEHICLE)
INDUSTRY COUNCIL)
)
- and -)
)
HAM K AUTO LP)
o/a KIA OF HAMILTON)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: September 18, 2024

Findings: Ham K Auto LP o/a Kia of Hamilton (the “Dealer”) has breached the following:

- Section 4(1), 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. Ham K Auto LP o/a Kia of Hamilton shall pay a fine in the amount of \$5,000 no later than ninety (90) calendar days from October 17, 2024.

2. The Dealer shall offer to all current and future salespersons, employed by the Dealer, to fund their completion of the Automotive Certification Course, no later than ninety (90) calendar days from October 17, 2024.
3. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002*, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated July 16, 2024, a Joint Submission on Penalty and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

WITHDRAWALS:

The allegations against Mark Lensink contained in paragraphs 2, 5, and 14 of the Notice of Complaint (“NOC”) dated January 8, 2024 are hereby withdrawn.

Amendment:

1. The NOC is amended to reflect that the Ontario Motor Vehicle Industry Council (“OMVIC”) replaces the Registrar, *Motor Vehicle Dealers Act, 2002* as a party to this proceeding.

Background:

2. Ham K Auto LP o/a Kia of Hamilton (the “Dealer”) was first registered as a motor vehicle dealer in and around November 2021, after the conclusion of an asset purchase between Hamilton Foreign Cars Inc. o/a Kia of Hamilton and the Dealer.

OMVIC Publications:

3. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule “A”. Educational materials continue to be available on OMVIC’s website.

Prior OMVIC Communications:

4. On or about December 23, 2021, after the Dealer had completed the asset purchase mentioned above and became registered as a motor vehicle dealer, a representative of the Registrar sent an email to the Dealer, reminding the Dealer of its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Dealers Non-Compliance:

5. On or before March 8, 2023, the Dealer published an advertisement for a red 2022 Kia Soul EX, stock# P11034 (VIN# *157445) with an advertised price of \$27,190 plus taxes and licensing.
6. On or about the same date, a representative of the Registrar made inquiries about the vehicle, while posing as a member of the public.
7. Brenton Steven Carvalho (“Carvalho”), acting on behalf of the Dealer as a salesperson, provided the Registrar’s representative with a worksheet for the vehicle.
8. The worksheet showed the “value price” of the vehicle as \$27,981, which was \$791 higher than the advertised price of \$27,190. An additional “Regulatory & Dealer Costs” of \$609 was also added to the price of the vehicle.
9. Carvalho advised the Registrar’s representative that the “Regulatory & Dealer Costs” fee was mandatory.
10. The subtotal on the worksheet equalled to \$28,590, which was an increase of \$1,400 over the advertised price.
11. As such, the Dealer’s advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.
12. Carvalho was not a registered salesperson when he presented himself to the Registrar’s representative on or about March 8, 2023 and engaged in a trade of a motor vehicle on behalf of the Dealer. Carvalho became registered as a salesperson on or about March 29, 2023 and, to date, remains registered as a salesperson to the Dealer.
13. As such, the Dealer retained the services of an unregistered salesperson. This is contrary to section 4(3) of the Act, as well as section 9(1) of the Code of Ethics.
14. As particularized above, the Dealer has violated the following sections of the Code of Ethics:

Disclosure and marketing

4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

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.

9(3) A registrant shall use the registrant’s best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that the Dealer has breached subsections 4(1), 4(2) and 9(3) of the Code of Ethics.

Reasons for Decision

The evidence and submissions filed left the Reviewing Panel with no concerns that the disposition proposed by the Parties may be contrary to the public interest. The Reviewing Panel accordingly granted the order requested.

Dated: October 17, 2024

Ontario Motor Vehicle Industry Council
Discipline Tribunal

A handwritten signature in black ink, appearing to be 'Joe Wade', written over a horizontal line.

Joe Wade, Discipline Tribunal Chair
On behalf of:

Aviva Harari, Public Member
Wally Pietraszko, Registrant

