

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 -

SAMNA TAXI LTD. O/A SAMNA AUTO

-AND-

VIKNESWARAN THANGARAJAH

Date of Hearing: May 8, 2014

Date of Decision: June 24, 2014

Findings: Breach of Section 7 of the Code of Ethics, Regulation 332/08
Breach of Section 9 of the Code of Ethics, Regulation 332/08
Breach of Sections 28(4), 42 (4), 42 (19), 42 (20) and 42 (21) of Regulation 333/08.

Order:

1. The Dealer and Mr. Thangarajah are ordered to pay a fine in the amount of \$6,000. The schedule of payment shall be as follows: The Dealer shall pay \$1,000 within 30 days of the Discipline Committee Order. The Dealer shall pay the remaining \$5,000 within 270 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council ("OMVIC").
2. Mr. Thangarajah shall enroll in and successfully complete the OMVIC certification course in person within 120 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this course.

Reasons for Decision

Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the *Motor Vehicle Dealers Act 2002*. (the "Act")

The Registrar was represented by Jane Samler and the Registrant and Dealer were represented by Robert Stewart. The Panel consisted of Caroline Brett (Chair), Alex Digneis (Vice-Chair), and Neil Joosse (Vice-Chair). Luisa Ritacca attended as Independent Legal Counsel to the Panel.

At the request of the parties, the following documents were marked by the Panel as Exhibits:

- Exhibit 1: Notice of Complaint, dated July 8, 2013
- Exhibit 2: OMVIC's Book of Documents containing Tabs 1 to 29
- Exhibit 3: Agreed Statement of Facts signed by both parties
- Exhibit 4: Samna Taxi Financial Statement as of December 31, 2012

At the commencement of the hearing, the Panel was advised that the parties had reached an agreement on liability. The Panel conducted a plea inquiry of Mr. Thanagarajah and was satisfied that Mr. Thanagarajah and the Dealer entered into the agreement with OMVIC on an unequivocal, voluntary and informed basis.

The Panel was provided with an Agreed Statement of Facts (Exhibit #3), which provides as follows:

Facts:

The parties to this proceeding agree that:

1. Samna Taxi Ltd. o/a Samna Auto (the "Dealer") was first registered as a motor vehicle dealer in or around November 2003. Vikneswaran Thangarajah ("Thangarajah") was first registered as a motor vehicle salesperson in or around November 2003. At all material times, Thangarajah was the sole officer and director of the Dealer. Thangarajah completed the Certification Course on or about May 29, 2003.
2. On or about November 4, 2003, Thangarajah executed terms and conditions of registration on behalf the Dealer. As per condition "F", the Dealer agreed to operate exclusively from its registered premises. As per condition "K", the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.
3. During an inspection on or about November 19, 2003, a representative of the Registrar reviewed with Thangarajah, on behalf of the Dealer, the Dealer's terms and conditions of registration.

4. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure all material facts about the vehicles they sell are disclosed in writing on the bill of sale.
5. In the summer of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure all material facts about the vehicles they sell are disclosed in writing on the bill of sale.
6. During an inspection on or about October 13, 2011, a representative of the Registrar reviewed and reminded Thangarajah, on behalf of the Dealer, to ensure all material facts about the vehicles it sells are disclosed in writing on the bill of sale.
7. On or about May 9, 2012, the Dealer sold one [1] vehicle without the providing the consumer with written disclosure of the following: vehicle has been declared a total loss by the insurer; the manufacturer's warranty had been cancelled; and a repair estimate of \$14,542. This is contrary to sections 42(19), 42(20) and 42(21) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
8. On or about August 7, 2012, the Dealer's class of registration changed from *wholesaler* to *general dealer (used)*, as applied for by the Dealer.
9. On or about August 24, 2012 until on or about December 12, 2012, the Dealer sold several vehicles without providing the consumer with written disclosure of the following: vehicle has been declared a total loss by the insurer; the manufacturer's warranty had been cancelled; and repair estimates over \$3,000. This is contrary to sections 42(19), 42(20) and 42(21) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
10. On or about November 21, 2012, the Dealer sold one [1] vehicle without providing the consumer with written disclosure of the following:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty had been cancelled
 - c. Repair estimate of \$12,095
 - d. Total distance vehicle has driven is unknown, but as of 8/27/2012 it was believed to be 74,700 km. The total distance driven is believed to be higher than the distance indicated.
 - e. Odometer is: UNREADABLE

This is contrary to sections 42(4), 42(19), 42(20) and 42(21) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

11. On or about August 1, 2012, Thangarajah executed terms and conditions of registration on behalf of the Dealer. As per condition 19, the Dealer agreed to operate from its registered premises. As per condition 23, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.
12. During an inspection on or about March 11, 2013, a Representative of the Registrar determined the Dealer was not operating exclusively from its registered premises. This is contrary to section 28 of Regulation 333/08, as well as section 9 of the Code of Ethics.
13. In or around December 2013, the Dealer provided proof to the Registrar that the above consumers were verbally made aware of the disclosures at the time of purchase

and/or the Dealer notified or attempted to notify the consumers after the time of purchase.

14. The Dealer and Thangarajah acknowledge that their acts and/or omissions, having regard to all of the circumstances, would reasonably be regarded as unprofessional and unbecoming of a registrant.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08:

28. (4) Except for advertising, a registered motor vehicle dealer other than a motor vehicle dealer registered only as a broker, shall not trade except from a place authorized by the dealer's registration.

42. (4) If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

(19) If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

(20) If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

(21) If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the Highway Traffic Act, a statement to that effect.

It is thereby agreed that the Dealer and Thangarajah have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

7(1) 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.

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 of the Panel:

Having reviewed Agreed Statement of Facts and the admissions contained therein, the Panel finds that the Dealer and Mr. Thangarajah breached subsections 7 and 9 of the OMVIC Code of Ethics, as set out in the Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Reasons for Decision:

Based on the Agreed Statement of Facts, the panel is satisfied that the facts as they appear therein and as admitted by the Dealer and Mr. Thangarajah amount to a violation of subsection 7 and 9 of the OMVIC Code of Ethics. In particular, the Panel is satisfied that the Dealer and Mr. Thangarajah failed to disclose on the sale of several vehicles sold that they had been declared a total loss by the insurer; that the manufacturer's warranty had been cancelled; and that the total cost of repairs exceeded \$3,000. This disclosure is required pursuant to Section 42 of Regulation 333/08.

Submissions on Penalty

The parties presented the panel with submissions as to penalty, which are outlined as follows:

1. OMVIC submitted that an appropriate fine in this circumstance should be \$10,000 payable within 180 days of the date of the Discipline Committee Order. Counsel suggested a fine in the range of \$1,500 - \$2,000 per transaction, but given the fact that the consumers were ultimately notified of the non-disclosure in this case, OMVIC conceded that a reduced fine of \$10,000 was appropriate. OMVIC also submitted that Mr. Thangarajah be required to successfully complete the OMVIC certification course at his own expense to ensure that he understands his obligations under the Code of Ethics.
2. OMVIC argued that the penalty being suggested was required for specific deterrence and to set an example, to denounce unlawful conduct and level the playing field amongst registrants.
3. Counsel for the Dealer and Mr. Thangarajah submitted that his client was of limited means and submitted that the Panel ought to consider his client's ability to pay a significant fine in the circumstances. In explaining why Mr. Thangarajah may not have followed direction from OMVIC inspectors, Mr. Stewart submitted that Mr. Thangarajah did not purposely thwart his obligations, but that there may have been a language barrier that made it difficult for Mr. Thangarajah to fully appreciate the significance of his obligations under the Code of Ethics. Additionally, Mr. Stewart advised the panel that there had not been a consumer complaint to OMVIC against Mr. Thangarajah or the Dealer. In the circumstances, Mr. Stewart submitted that a fine in the range of \$1,500 to \$3,000 was appropriate

Decision on Penalty

The Panel makes the following order on penalty:

1. The dealer and Mr. Thangarajah are ordered to pay a fine in the amount of \$6,000. The schedule of payment shall be as follows: The Dealer shall pay \$1,000 within 30 days of the Discipline Committee Order. The Dealer shall pay the remaining \$5,000 within 270 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Mr. Thangarajah shall enroll in and successfully complete the OMVIC certification course in person within 120 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this course.

Reasons for Penalty:

In determining the appropriate penalty for the breaches of the Code of Ethics this Panel considered the following:

1. The mandate of OMVIC is to regulate the practices of dealers and salespersons in accordance with the Code of Ethics and the Act.
2. The legislative intent of a fine is to instil public confidence in the system, protect consumers and ensure a level playing field for all registrants.
3. Whether or not a consumer complaint has ever been filed with OMVIC does not absolve a person or a dealer of their obligations under the Code of Ethics.
4. Mr. Thangarajah made some effort to visually disclose the extent of the damage to consumers. Although Mr. Thangarajah also made some effort to provide written disclosure, these efforts did not provide disclosure to the extent that is required by OMVIC.
5. The Panel is of the view that registrants ought to comply with the Code of Ethics and they are in agreement with the submission of OMVIC's counsel, that a penalty should be levied to denounce unlawful conduct, set an example and level the playing field.
6. The Code of Ethics regulates the conduct of dealers in their dealings with consumers and they were created to establish minimum standards of business conduct required to be observed and complied with by dealers for the benefit of both the industry and the public.
7. The Panel considered Mr. Thangarajah's difficult financial and family situation and compared this to his ability to pay. In addition, the panel considered the mitigating factor that some late disclosure was made to the consumers. For these reasons the panel agreed on the lesser fine with a longer period to pay.

Ontario Vehicle Industry Council
Discipline Panel

C Brett

Caroline Brett, Chair
Alex Digenis, Vice Chair
Neil Joosse, Vice Chair