

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 -

1511905 ONTARIO INC o/a GUELPH VOLKSWAGEN

-and-

JASON CHOW

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: November 21, 2018

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,000 no later than **January 31, 2019.**
2. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **December 31, 2018.**
3. The Dealer is ordered 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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the Course within 90 days of be 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 agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. 1511905 Ontario Inc o/a Guelph Volkswagen (the "Dealer") was first registered as a motor vehicle dealer in about July 2002. Jason Chow ("Chow") was first registered as a motor vehicle salesperson in about February 1990. At all material times Chow was the Officer, Director, as well as the Person in Charge of the Dealer.

OMVIC publications:

1. In or around December 2008, OMVIC issued a Dealer Standard publication advising dealers of up and coming changes to the Act. Included in the publications was the requirement for dealers to advertise all inclusive vehicle prices ("all-in pricing") in advertisements.
2. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their all-in pricing advertising obligations:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Spring 2013
 - e. Fall 2013
 - f. Issue #1
 - g. Issue #2
 - h. Issue #3 2014
 - i. Issue #4 2014
 - j. Issue #3 2015
 - k. Issue #1 2016
 - l. Issue #2 2016
 - m. Issue #3 2016
 - n. Issue #4 2016
 - o. Issue #3 2017

3. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their all-in pricing advertising obligations:
 - a. January 2010 (2 publications)
 - b. April 2010 (2 publications)
 - c. February 2012
 - d. August 2012
 - e. April 2013
 - f. June 2014 (2 publications)
 - g. April 2015
 - h. July 2017
 - i. August 2017

Direct prior warnings regarding all-in price advertising:

4. By email dated November 13, 2013, the Dealer was further reminded of its all in pricing obligations.

Current advertising non-compliance:

5. During an inspection on or about April 18, 2018, a representative of the Registrar found the dealer had sold the following vehicles over their advertised price:

VEHICLE	STOCK #	DATE SOLD	AMOUNT OVER AD PRICE 36(7) Reg. 333/08
A. 2016 VOLKSWAGEN JETTA	P3412	2018/03/24	\$449.50
B. 2018 VOLKSWAGEN ATLAS	1842	2018/04/09	\$212.75

As such, the Dealer's advertised prices were not all inclusive. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

6. As Person in Charge of the Dealer, Chow failed to ensure the Dealer's advertising complies with the Act and Code of Ethics. As such, Chow has contravened sections 4, 6, and 9 of the Code of Ethics.
7. The Dealer has since agreed to refund the purchasers of these vehicles the amount they were charged over their vehicle's advertised price.

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

Regulation 333/08

36. Advertising:

7. If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,
- (a) the amount that a buyer would be required to pay for the vehicle; and
 - (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

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

- 4. 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.
- 9. 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.

It is thereby agreed that Chow has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

- 6. 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.

Joint Submission on Penalty

- 1. The Dealer agrees to pay a fine in the amount of \$2,000 no later than **January 31, 2019**.
- 2. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **December 31, 2018**.
- 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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the Course within 90 days of be 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 agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer breached subsections 4, 6 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

8. The Dealer is ordered to pay a fine in the amount of \$2,000 no later than **January 31, 2019**.
9. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **December 31, 2018**.
10. The Dealer is ordered 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 within 90 days of the date of the Discipline Committee Order. 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.
11. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair