

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

ACORES TRUCK & TRAILER SERVICE INC

- AND -

EUSEBIO CORDEIRO

- AND -

MARIA CORDEIRO

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: January 22, 2019

Findings: Breach of Section 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 no later than **April 15, 2019**.
2. The Dealer is ordered 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 **April 15, 2019**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer, Eusebio, and Maria agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.



Ontario Motor
Vehicle Industry
Council

Conseil ontarien
du commerce des
véhicules automobiles

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. Acores Truck & Trailer Service Inc (the "Dealer") was first registered as a motor vehicle dealer in around May 2010. Eusebio Cordeiro ("Eusebio") was first registered as a motor vehicle salesperson in around May 2010. Maria Cordeiro ("Maria") was first registered as a motor vehicle salesperson in around May 2010.
2. At all material times, Eusebio and Maria were officers and directors of the Dealer. Eusebio was also the Person in Charge of the Dealer.
3. On about May 3, 2010, Eusebio executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 22, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure on the bill of sale of all material facts about the vehicles it sells

OMVIC publications:

4. In the summer of 2011, reminding dealers of their requirement to disclose to purchasers all material facts about the vehicles they sell ("disclosure obligations").
5. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:
 - a. Summer2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
6. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their disclosure obligations:



- a. January 2010
- b. December 2013

Direct correspondence with Dealer:

7. During an inspection which commenced on June 8, 2015, a representative of the Registrar reviewed with Eusebio and Maria, on behalf of the Dealer, the Dealer's obligations with respect to material fact disclosure. The Dealer's terms and conditions of registration were also reviewed at this time.
8. As a result of OMVIC receiving a consumer complaint, Eusebio was further reminded of the Dealer's disclosure obligations by letter dated July 9, 2015.
9. During an inspection which commenced on April 30, 2018, the following non-compliant vehicle trades were discovered.
10. On about November 4, 2015, the Dealer, purchased a 2015 Audi Q3, (VIN WA1EFDFS5FR005638) with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty may have been cancelled
 - c. Repair estimate \$33,124.66
 - d. Total distance driven is unknown, but as of 10/7/2015 it was believed to be 10,028km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good
 - e. MTO Brand: Salvage

On or about March 29, 2016, Maria sold this vehicle on behalf of the Dealer without disclosing a, b, c, or d, above. This is contrary to sections 42(4), 42(19), 42(20), 42(21), and 42(25) of Regulation 333/08, the Dealer's terms and conditions of registration, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle history at the time of purchase.

11. On or about May 31, 2016, the Dealer purchased a 2014 Dodge Ram 3500, (VIN 3C63RRHL4EG123669) with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$30,219
 - d. Total distance driven is unknown, but as of 5/16//2016 it was believed to be 109,261km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Unreadable
 - e. MTO Brand: Salvage



On or about March 27, 2017, Maria sold this vehicle on behalf of the Dealer without disclosing a, b, c, or d, above. This is contrary to sections 42(4), 42(19), 42(20), 42(21), and 42(25) of Regulation 333/08, the Dealer's terms and conditions of registration, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle history at the time of purchase.

12. On or about November 30, 2016, the Dealer purchased a 2015 Nissan Versa, (VIN 3N1CE2CP7FL414460) with the following declarations:
- a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$8566.52
 - d. Total distance driven is unknown, but as of 11/22/2016 it was believed to be 50,873km The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about December 16, 2016, Maria sold this vehicle on behalf of the Dealer without disclosing a, b, c, or d, above. This is contrary to sections 42(4), 42(19), 42(20), 42(21), and 42(25) of Regulation 333/08, the Dealer's terms and conditions of Registration, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle history at the time of purchase.

13. The Dealer has failed to ensure its registered salespeople carry out their duties in compliance with the Code of Ethics, contrary to section 6 of the Code of Ethics.
14. As the Person in Charge of the Dealer, Eusebio has failed to ensure the Dealer and its salespeople have carried on business professionally and in compliance with Code of Ethics. As such, Eusebio's conduct has personally breached sections 6 and 9 of the Code of Ethics.
15. In failing to provide purchasers with the required disclosures about their vehicles, Maria has caused the Dealer to breach the Code of Ethics. As such Maria's conduct has personally breached sections 6 and 9 of the Code of Ethics.

By failing to comply with the Dealer's terms and conditions of registration, as well as the following sections of the Act:

Regulation 333/08:

42. Additional information in contracts of sale and leases:

- 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.
- 25. Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer has breached section 6(1) of the Code of Ethics, as set out in regulation 332/08:

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.

It is thereby agreed that Eusebio and Maria have breached section 6(2) of the Code of Ethics, as set out in regulation 332/08:

6. (2) 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.

It is thereby agreed that the Dealer, Eusebio, and Maria have breached sections 7(1) and 9(1) 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.



Joint Submission on Penalty

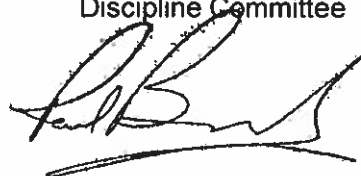
1. The Dealer agrees to pay a fine in the amount of \$4,500 no later than **April 15, 2019**.
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "course"). Current sales staff will be offered the course no later than **April 15, 2019**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer, Eusebio, and Maria agree 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:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 no later than **April 15, 2019**.
2. The Dealer is ordered 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 **April 15, 2019**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
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Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

