

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 -

2081868 ONTARIO INC. o/a HANSEN TRUCK & CAR SALES

- AND -

RAVIDEEP JOHAL

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 14, 2015

Findings: Breach of Sections 4, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,500. \$1500 is due within 90 days of the date of the Discipline Committee Order, and the remaining balance is due within 150 days of the date of the Discipline Committee Order.
2. Johal is ordered to complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete 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 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 and Johal shall 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. 2081868 Ontario Inc. o/a Hansen Truck & Car Sales (the "Dealer") was first registered as a motor vehicle dealer in or around December 2005. Ravideep Johal ("Johal") was first registered as motor vehicle salesperson in or around December 2005. At all material times, Johal was an officer and director of the corporation.
2. On or about December 1, 2005, Johal executed terms and conditions of registration on behalf of the Dealer, attached hereto as Schedule "A". As per condition 6, the Dealer agreed to comply with the Code of Ethics, and Standards of Business Practice, as may be amended from time to time. As per condition 20, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.

Material fact non-disclosure:

3. During an inspection on or about January 19, 2005, a representative of the Registrar reminded, Johal, on behalf of the Dealer, of its obligation to provide written disclosure of all material about the vehicles it sells. The Dealer's terms and conditions of registration were also reviewed at this time.
4. During an inspection on or about October 30, 2008, a representative of the Registrar reminded, Johal, on behalf of the Dealer, of its obligation to provide written disclosure of all material about the vehicles it sells. The Dealer's terms and conditions of registration were also reviewed at this time.
5. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to provide purchasers written disclosure of all material facts about the vehicles they sell.
6. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of their material fact disclosure requirements:
 - A. Summer 2011
 - B. Summer 2012

7. Furthermore, OMVIC issued the following bulletins which also reminded dealers of their material fact disclosure requirements: :
- A. January 2010
 - B. September 2012 (2 separate publications)
 - C. December 2013
8. On or about March 28, 2011, the Dealer purchased a 2004 Chevrolet Cavalier (VIN 3G1JC52F14S106443). This vehicle has sustained damage in excess of \$3,000 from two separate accidents or incidents. On or about December 21, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the dollar amount of either of the above mentioned incidents. This is contrary to sub-section 42(19) of Regulation 333/08, 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.
9. On or about March 11, 2013, the Dealer purchased a 2007 Mercedes S550 (VIN WDDNG71X77A011772). This vehicle has sustained \$15,000 in damage from an accident or incident. On or about May 14, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the dollar amount of the above mentioned accident or incident. This is contrary to sub-section 42(19) of Regulation 333/08, 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.
10. On or about December 30, 2013, the Dealer purchased a 2006 Toyota Corolla (VIN 2T1BR32E36C708380), declared as having structural damage. On or about January 31, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's previous structural damage. This is contrary to sub-section 42(10) of Regulation 333/08, 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 March 24, 2014, the Dealer purchased a 2006 Honda Civic (VIN 2HGFA16356H014061), declared as being true distance travelled unknown. On or about May 12, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure that the vehicle's true distance travelled is unknown. This is contrary to sub-section 42(5) of Regulation 333/08, 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.

Advertising:

12. On or before May 16, 2014, advertisements were published by or on behalf of the Dealer for various vehicles which had sustained considerable damage in excess of \$3,000 from accidents or incidents. The advertisements described these vehicles as being in "excellent condition", despite their previous repair history. This is misleading, contrary to section 4 and 9 of the Code of Ethics.

Consignment agreements:

13. In November 2010, OMVIC issued a bulletin reminding Dealers of the best practices and regulatory requirements when selling vehicles on consignment.
14. In the spring of 2010, OMVIC issued a Dealer Standards publication which reminded dealers of their obligation to ensure the proceeds from consignment sales are deposited into a trust account.
15. During an inspection on or about May 21, 2014, a representative of the Registrar discovered the Dealer was selling vehicles on consignment without having either a written consignment agreement or trust account for the proceeds from the sale. This is contrary to sub-sections 45(1) and 58(1) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics

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

4(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

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.

10. If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.

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.

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

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.
7. 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. 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 \$5,500. \$1500 is due within 90 days of the date of the Discipline Committee Order, and the remaining balance is due within 150 days of the date of the Discipline Committee Order.
2. Johal agrees to complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete 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 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 and Johal 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 and Johal breached subsections 4, 7 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 \$5,500. \$1500 is due within 90 days of the date of the Discipline Committee Order, and the remaining balance is due within 150 days of the date of the Discipline Committee Order.
2. Johal is ordered to complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.

3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete 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 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 and Johal shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair