

DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

PANEL: Mr. Robert MacKay, Chair Public Member
 Mr. Jon Lemaire Registrant
 Mr. Achilles Pelitis Registrant

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 :

Appearances¹:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002)	Mr. Vlad Bosis for the Registrar
- and -)	
DONWAY FORD Inc.)	
and)	Mr. Michael Burokas for the Registrants
SEAN RILEY)	
and)	
CRAIG RILEY)	
)	Date of Hearing: March 16, 2022

Date of Decision: April 5, 2022

¹ Also present at the hearing were independent legal counsel Mr. Edward Marrocco, Ms. Andrea Korth for OMVIC, and Hearing Administrator Mr. David Daily who recorded the hearing.

Findings:

Donway Ford Inc and Mr. Sean Riley have breached the Following:

Sections 14(3) of the Act and section 9(1) of the Code of Ethics, Regulation 332/08.

DECISION AND REASONS

Introduction

This was a hearing before a panel of the Discipline Committee (the "Panel") of the Ontario Motor Vehicle Industry Council ("OMVIC") pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B ("MVDA"). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.

The one-day hearing was convened March 16, 2022 (the "Hearing"). The Hearing was held virtually using video conferencing with the consent of the parties to comply with Provincial physical distancing recommendations.

The Allegations

The allegations against Donway Ford, Mr. Sean Riley, and Mr. Craig Riley were set out in an Amended Notice of Complaint, dated October 22, 2021. The Amended Notice of Complaint was entered as Exhibit 1 at the Hearing. The Amended Notice of Complaint is attached to these reasons as Appendix "A" of the Decision and Reasons of the Panel.

At the outset of the Hearing, counsel for the Registrar, Mr. Bosis, advised that discussions with the responding parties had resulted in an agreement which they intended to present.

Withdrawal of Certain Allegations

Before presenting the parties' joint position, Mr. Bosis advised the Panel that the Registrar would be seeking leave to withdraw all the allegations in the Amended Notice of Complaint against Mr. Craig Riley. The parties confirmed that the Panel was only being requested to make findings with respect to Donway Ford Inc. and Mr. Sean Riley (collectively the "Registrants").

Plea of the Registrants

The Registrants admitted the allegations contained in paragraph 10 of the Amended Notices of Complaint. A plea inquiry was conducted by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the admissions of the remaining Registrants were voluntary, informed, and unequivocal.

Agreed Statement of Facts

An initial Agreed Statement of Facts and Joint Submission on Penalty² which had been signed by the parties on December 13, 2021, titled "Agreed Statement of Facts and Penalty", was entered as Exhibit 2 and is attached to these reasons as Appendix "B". During the course of the submissions that followed, Mr. Bosis and counsel for the Registrants, Mr. Burokas, took the Panel through Exhibit 2. The Panel then sought and received advice from its Independent Legal Counsel before rising to deliberate on the merits portion of the Hearing.

Following a break, the Panel returned with questions for the parties with respect to the Agreed Statement of Facts. The Panel understood from the oral submissions it received that there were other material and agreed facts which were not included anywhere in Exhibit 2. The Panel explained to counsel that admissible evidence of these additional

² Prior to the beginning of the Hearing, the exhibit was delivered to the Panel members electronically in the interests of hearing economy and on consent of the parties.

facts would be very useful to the Panel in making the findings, which were being requested. The parties accordingly agreed to take a recess and modify the Agreed Statement of Facts in order to present it again later in the day.

Upon reconvening later that same day, the parties jointly presented what Mr. Bosis referred to as an "elaborated ASF". The "elaborated" Agreed Statement of Facts was entered as Exhibit 3 and provided as follows:

The parties to this proceeding agree that:

Background:

1. All allegations against Craig Riley set out in the Amended Notice of Complaint, dated October 22, 2021 are hereby withdrawn.
2. Donway Ford Inc (the "Dealer") was first registered as a motor vehicle dealer in around February 2020.
3. Sean Riley ("Riley") was first registered as a motor vehicle salesperson in around September 2006. At all material times, Riley was an Officer as well as the person in charge of the day to day activities of the Dealer.

Consumer A:

4. On or about August 19, 2020, Consumer A filed a complaint with OMVIC against the Registrants.
5. On or about August 28, 2020, an OMVIC representative contacted Riley, on behalf of the Dealer, in writing with request for information regarding the complaint.
6. Although the Registrants provided some information on August 28, 2020, the request for information was fully addressed only in October 2021.
7. The Dealer and Riley failed to provide the OMVIC representative with the above referenced information as soon as practicable. This is contrary to sections 14(3) of *Motor Vehicle Dealers Act, 2002*, as well as section 9 (1) of the Code of Ethics.

Generally:

8. In failing to provide information regarding the complaint as soon as practicable, the Registrants breached section 9(1) of the Code of Ethics.

Exhibit 3 also contained a Joint Submission on Penalty which the parties asked the Panel to consider concurrent with the revised Agreed Statement of Facts:

JOINT SUBMISSION ON PENALTY:

9. The Dealer agrees to pay a fine in the amount of \$1,000 no later than **May 1, 2022.**
10. Riley agrees to successfully complete the Automotive certification course (the "Course") no later than **July 1, 2022.**
11. Riley and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

The Panel received further submissions from counsel regarding the additional evidence contained in the second Agreed Statement of Facts at Exhibit 3. Counsel highlighted that the further admitted facts supported the findings that were being requested and jointly invited the Panel to make specific findings of breaches against the remaining Registrants. The Panel once again sought and received advice from its Independent Legal Counsel and then rose to deliberate.

Decision of the Panel

After deliberations, the Panel was satisfied that the admissions made by the Registrants were supported by the revised Agreed Statement of facts.

The Panel made a finding against Donway Ford Inc. and Mr. Sean Riley in relation to the admitted portions of the Amended Notice of Complaint. Specifically, the Panel found that the Dealer, Donway Ford Inc., and Mr. Sean Riley each breached section 14(3) of the MVDA for failing to respond to a written request from the Registrar for information further to a complaint and section 9(1) of the Code of Ethics (Ontario Regulation 332/08) for engaging in an act or omission in the course of carrying on business which would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

In reaching its decision the Panel relied exclusively on the evidence presented at the Hearing as contained in the revised Agreed Statement of Facts at Exhibit 3. The Panel found the facts contained in Exhibit 3 provided a sufficient foundation for the findings requested by the parties.

Penalty

The Joint Submission on Penalty contained in Exhibit 3 invited the Panel to make an order on penalty that:

1. The Dealer agrees to pay a fine in the amount of \$1,000 no later than **May 1, 2022.**
2. Riley agrees to successfully complete the Automotive certification course (the "Course") no later than July 1, 2022.
3. Riley and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

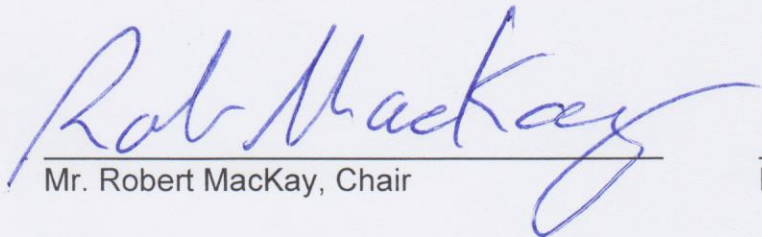
Penalty Decision and Reasons

The Panel was satisfied that the parties had come to a fair and equitable resolution, having carefully balanced the issues of protection of the public interest and remediation / rehabilitation of the Registrants and their conduct. The Panel noted that the Registrants saved all of the parties and OMVIC the delay and expense that would have been incurred in deciding the allegations at a contested hearing. The Registrants have no prior discipline history.

The Panel therefore made the following orders:

1. The Registrants to pay a fine in the amount of \$1,000 no later than May 1, 2022.
2. Mr. Sean Riley to successfully complete the Automotive certification course no later than July 1, 2022.
3. The Registrants to comply with the Act and Standards of Business Practice, as may be amended from time to time.

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: April 5, 2022

Panel Members:

Mr. Jon Lemaire
Mr. Robert MacKay
Mr. Achilles Pelitis

Appendix "A"
IN THE MATTER OF

THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Donway Ford Inc
1975 Eglinton Avenue E
Scarborough, ON M1L2N1

AND TO: Craig Riley
6 Bunting Court
Ajax, ON L1T3S5

AND TO: Sean Riley
2 Sugarbush Lane
Uxbridge, ON L9P2A1

AMENDED NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar is issuing a Notice of Complaint against DONWAY FORD INC, and, CRAIG RILEY, and SEAN RILEY for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the *Motor Vehicle Dealers Act, 2002*. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease.

DONWAY FORD INC, and, CRAIG RILEY, and SEAN RILEY have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

Background:

1. Donway Ford Inc (the "Dealer") was first registered as a motor vehicle dealer in around February 2020.
2. Craig Riley ("C. Riley") was first registered as a motor vehicle salesperson in around March 1983. At all material times, C. Riley was an Officer of the Dealer.

3. Sean Riley ("S. Riley") was first registered as a motor vehicle salesperson in around September 2006. At all material times, S. Riley was an Officer as well as the person in charge of the day to day activities of the Dealer.
4. On or about May 18, 2016, S. Riley successfully completed the Automotive Certification course (the "Course"). Included in the Course syllabus is how Dealers should handle any costs incurred as a result of a consumer cancelling their contract to purchase a vehicle ("liquidated damages"). The Code of Ethics is also reviewed in the Course syllabus.
5. In the the fall of 2016, OMVIC issued a Dealer Standard publication which reminded Dealers how to appropriately handle liquidated damages.

Consumer A:

6. On or about March 21, 2020, Consumer A purchased a 2020 F150. The vehicle was to be factory ordered. Consumer A left a \$2,500 deposit for this vehicle and signed a bill for sale.
7. On or about April 6, 2020, Consumer A cancelled their purchase of the above referenced vehicle. S. Riley, on behalf of the Dealer, retained \$1,000 of Consumer A's deposit alleging this amount represented costs the Dealer incurred as a result of the cancellation. S. Riley did not provide Consumer A with an itemized list of the Dealer's costs.
8. On or about August 19, 2020, Consumer A contacted OMVIC to complain about the partial loss of their deposit.
9. An OMVIC representative contacted S. Riley on behalf of the consumer to request an itemized list of the Dealer's liquidated damages.
10. S. Riley failed to provide the OMVIC representative with the above referenced list of liquidated damages. This is contrary to sections 14(3) of ~~Regulation 333/08~~ the Act as well as section 9 of the Code of Ethics.

Purchaser B

11. On or about February 10, 2021, Purchaser B purchased a 2021 Ford F150 from the Dealer. Purchaser B left a \$1,000 deposit for this vehicle and signed a bill of sale. The vehicle was to be located from another dealer, and registered to Purchaser B's business.
12. Subsequent to the bill fo sale being executed, the Dealer alleges it discovered Purchaser B had been flagged by the vehicle manufacturer as being a potential vehicle exporter, and therefore completing this sale with Purchaser B could contradict the vehicle manufacturer's prohibition on exporting new motor vehicles.
13. S. Riley cancelled the bill of sale on behalf of the Dealer and refused to sell the vehicle to Purchaser B, but also refused to return his \$1,000 deposit. This is unprofessional and contrary to section 9 of the Code of Ethics.

14. On or about March 8, 2021 Purchaser B contacted OMVIC to complain about the Dealer's refusal to return the deposit. The OMVIC representative was unable to reach a resolution that was satisfactory to both parties.

Generally:

15. C. Riley failed to ensure the Dealer conducts itself in compliance with the Code of Ethics, and therefore he has personally breached section 6 of the Code of Ethics.
16. S. Riley failed to ensure the Dealer conducts itself in compliance with the Code of Ethics, and therefore he has personally breached section 6 of the Code of Ethics.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act, R.S.O 1990 c.s.22*, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

The Rules of Practice of the Discipline Committee will apply, copy attached. A Notice of Hearing and Book of Disclosure will be provided in accordance with the Rules of Practice of the Discipline Committee.

Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE COMMITTEE

This is to serve notice that the Registrar shall make application for its cost pursuant to Rule 13 of the Rules of Practice

FURTHER PARTICULARS/SUPPLEMENTAL NOTICE

The Registrar may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further particulars of violations of the Code of Ethics, Standards of Business Practice.

DATED at Toronto, this day of October, 2021

Thaya Gengatharan
Deputy Registrar,
Motor Vehicle Dealers Act, 2002

Appendix "B"
AGREED STATEMENT OF FACTS AND PENALTY

Donway Ford Inc and Sean Riley (the "Registrants") have breached the following:

Section 9(1) of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

Background:

1. Donway Ford Inc (the "Dealer") was first registered as a motor vehicle dealer in around February 2020.
2. Sean Riley ("Riley") was first registered as a motor vehicle salesperson in around September 2006. At all material times, S. Riley was an Officer as well as the person in charge of the day to day activities of the Dealer.

Consumer A:

3. On or about August 19, 2020, Consumer A filed a complaint with OMVIC against the Registrants.
4. An OMVIC representative contacted the Registrants with request for information regarding the complaint.
5. The Registrants failed to provide the OMVIC representative with the above referenced information as soon as practicable. This is contrary to sections 14(3) of *Motor Vehicle Dealers Act, 2002*, as well as section 9 (1) of the Code of Ethics.
6. The requested information was eventually provided to the Registrar.

Generally:

7. In failing to provide information regarding the complaint as soon as practicable, the Registrants breached section 9(1) of the Code of Ethics.

JOINT SUBMISSION ON PENALTY:

1. The Dealer agrees to pay a fine in the amount of \$1,000 no later than **January 10, 2022.**
2. Riley agrees to successfully complete the Automotive certification course (the "Course") no later than **March 31, 2022.** This date is subject to any pandemic disruptions Georgian College may encounter in delivering the course within the specified timeframe.

3. Riley and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT _____ THIS _____ DAY OF _____, 2021.

(please print)

(signature)

I have the authority to bind the corporation:
Donway Ford Inc

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT _____ THIS _____ DAY OF _____, 2021.

Sean Riley (signature)

By signature below the Registrar agrees, acknowledges, understands and consents to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

DATED AT _____ THIS _____ DAY OF _____, 2021

Thaya Gengatharan
Deputy Registrar,
Motor Vehicle Dealers Act, 2002

Pursuant to Rule 1.07, I accept this Agreed Statement of Facts and Penalty from the Parties identified above:

DATED AT _____ THIS _____ DAY OF _____, 2021

Paul Burroughs
Chair, Discipline Committee of the
Ontario Motor Vehicle Industry Council