

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 -

KALSI MOTOR WHOLESALE INC.

-AND-

ANGREZ SINGH

-AND-

ANIT SINGH

Date of Hearing: January 21, 2015
Date of Decision: January 26, 2015
Findings: Breach of sections 7 and 9 of the Code of Ethics.

Order:

1. Kalsi Motor Wholesale Inc. (the "Dealer") shall pay a fine in the amount of \$6,000. The amount of \$1,000 is to be paid within 30 days of the date of this Order. The remainder to be paid within 180 days of the date of this Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Angrez Singh ("Angrez") shall successfully complete the OMVIC certification course no later than July 31, 2015. The dealer will incur all costs associated with this.
3. Anit Singh ("Anit") shall successfully complete the OMVIC certification course within 90 days of acceptance of this offer. The dealer will incur all costs associated with this.
4. The Dealer shall 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 acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with offering these courses. This clause does not apply to sales staff who have completed the course or

who are otherwise required to do pursuant to the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B (the "Act").

5. The Dealer, Angrez and Anit shall comply with the Act and Standards of Business Practice, as may be amended from time to time

Reasons for Decision

Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Act.

The Registrar was represented by Angela La Viola, and the registrants were represented by their counsel, Peter Verbeek. The Panel consisted of Wennie Lee (Chair), John Morabito (Vice-Chair), and Wally Pietraszko (Vice-Chair). Justin Safayeni attended as Independent Legal Counsel to the Panel.

The Panel received the following documents, which were accepted and marked as:

- Exhibit 1: the Notice of Complaint; and
- Exhibit 2: the Agreement Statement of Facts and Joint Submission on Penalty

Facts

The Agreed Statement of Facts (Exhibit 2) sets out as follows:

The parties to this proceeding agree that:

1. Kasli Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around August 2002.
2. Angrez Singh ("Angrez") was first registered as a motor vehicle sales person in or around February 1992.
3. Anit Singh ("Anit") was first registered as a motor vehicle sales person in or around February 2005. At all material times, Anit was the officer of the corporation.
4. On or about April 28, 2000, LAT issued a Consent Order, pursuant to a negotiated resolution regarding the Proposal to refuse registration of the Applicant, Angrez Singh.
 - i. The Applicant agrees not to be the final signatory on any sales contracts on behalf of the dealer.
5. Between on or before October, 2012, and April, 2013, Angrez was the final signatory on sales contracts on behalf of the Dealer. This is contrary to the Terms and Conditions signed by Angrez on or about April 28, 2000, as well as section 9 of the Code of Ethics.

6. The Dealer was informed of the requirement for written disclosure of vehicle accident damage on contracts. OMVIC issued numerous Dealer Standard publications in 2003, 2006, 2007, 2008, 2011 and 2012 specifically outlining the requirement. Bulletins reminding dealers of the new disclosure obligations under the new *Act, 2002*, which included: if a vehicle was involved in an incident and suffered more than \$3000 in damage, if there has been any structural damage, repairs or alternation to a vehicle, if a vehicle has been branded salvage, rebuilt or irreparable and if the dealer cannot give an accurate odometer reading, and does not have a past reading, a specific declaration must be made (amongst other disclosures). The Dealer was also informed of OMVIC's discipline process and recent LAT decisions resulting in revocation of a dealership for non-disclosure of material facts on contracts.
7. On or about September 25, 2012, the Dealer purchased a 1998 Ford Contour (VIN 1FAPF66L9WK203000). This vehicle is accident repaired. On or about October 12, 2012, the Dealer sold this vehicle without providing the purchaser with full written disclosure of the vehicle's accident repair history in the amount of \$5,800. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
8. On or about December 12, 2012, the Dealer purchased a 2005 Nissan Altima (VIN IN4AL11D85C206617). This vehicle has a history of structural damage. On or about December 15, 2012, the Dealer sold this vehicle without providing the purchaser with full written disclosure of the vehicle's structural damage history. This is contrary to section 42(10) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
9. On or about August 8, 2012, the Dealer purchased a 2000 Chevrolet Astro (VIN 1GCDM19W8YB132121). This vehicle is accident repaired. On or about December 12, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident repair history in the amount of \$3,322. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
10. On or about January 19 2013, the Dealer sold a 2002 Lincoln LS (VIN 1LNHM87AX2Y677397), without providing the purchaser with written disclosure of the vehicle's accident repair history in the amount of \$5,208. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
11. On or about December 14, 2012, the Dealer purchased a 2003 Acura 1.7 EL (VIN 2HHES36653H003373). This vehicle was registered in the province of Quebec. On or about January 30, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province status. This is contrary to section 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
12. On or about March 6, 2013, the Dealer purchased a 2002 Volkswagen Jetta (VIN 3VWSK69M52M054726). This vehicle was registered in the state of New York, the province of Quebec and the province of Alberta. This also has a salvaged history. On or about March 15, 2013, the Dealer sold this vehicle without providing the purchaser with full written disclosure of the vehicle's out of province status as well as the vehicle's history of being salvaged. Additionally, the Dealer did not provide the consumer with a copy of the sale contract. This is contrary to sections 39(10), 42(22) and 42(23) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
13. On or about May 12, 2012, the Dealer purchased a 2005 Honda Civic (VIN 2HGES163X5H016220). This vehicle has a history of Structural damage. On or about March 20, 2013, the Dealer sold this vehicle without providing the purchaser with

written disclosure of the vehicle's structural damage history. Additionally, the Dealer did not provide the consumer with a copy of the sale contract. This is contrary to sections 39(10) and 42(10) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

14. On or about November 14, 2012, the Dealer purchased a 2004 Chevrolet Aveo (VIN KL1TJ62634B198136). This vehicle was registered in the province of Quebec. On or about April 23, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province status. Additionally, the Dealer did not provide the consumer with a copy of the sale contract. This is contrary to sections 39(10) and 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
15. The Dealer has since attempted to contact the consumers by way of written correspondence. The sale contracts and the vehicle histories were provided to the consumers at that time.

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

Regulation 333/08:

39(10) For each contract mentioned in subsection (2) into which the registered motor vehicle dealer enters, the dealer shall ensure that,

- (a) The contract is signed by the parties;
- (b) If a registered salesperson is acting on behalf of the dealer respecting the sale, the contract is signed by the salesperson; and
- (c) The purchaser receives a copy of the contract immediately after signing it. O.Reg. 333/08, s. 39(10)

42 (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.

42 (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 total costs.

42 (22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of the Act to cover at least the seven previous consecutive years.

42 (23) If the motor vehicle has been classified, under section 199.1 of the *Highway Traffic Act*, as irreparable, salvage or rebuilt, a statement as to how it was last classified.

It is thereby agreed that the Dealer and Angrez Singh and Anit Singh 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.

The Agreed Statement of Facts mirrors the allegations in the Notice of Complaint, although they are not presented in precisely the same order.

Decision of the Panel:

Having reviewed and considered the admission of the Dealer, Angrez and Anit to the allegations contained in the Agreed Statement of Facts, the Panel of the Discipline Committee hereby concludes that the Dealer, Angrez and Anit have breached sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08 made under the Act.

Reasons for Decision:

Based on the Agreed Statement of Facts, the Panel is satisfied that the facts as they appear in the statement represent a violation of sections 7 and 9 of the Code of Ethics.

As noted in the Agreed Statement of Facts, the relevant portions of sections 39 and 42 of Regulation 333/08 made under the Act provide:

39(10) For each contract mentioned in subsection (2) into which the registered motor vehicle dealer enters, the dealer shall ensure that,

- (d) The contract is signed by the parties;
- (e) If a registered salesperson is acting on behalf of the dealer respecting the sale, the contract is signed by the salesperson; and
- (f) The purchaser receives a copy of the contract immediately after signing it. O.Reg. 333/08, s. 39(10)

42 (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.

42 (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 total costs.

42 (22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of the Act to cover at least the seven previous consecutive years.

42 (23) If the motor vehicle has been classified, under section 199.1 of the *Highway Traffic Act*, as irreparable, salvage or rebuilt, a statement as to how it was last classified.

Section 7 of the Code of Ethics provides:

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.

Section 9 of the Code of Ethics provides:

9. In carrying on business, a registrant shall not engage in any act or omission that, having regard to all circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

The Panel is satisfied the agreed facts as admitted by the Dealer, Angrez and Anit amount to a violation of subsection 7 and 9 of the OMVIC Code of Ethics. In particular, paragraphs 7-9 of Exhibit 2, describe clear instances of failure to comply with the Regulation with respect to full written disclosure of the vehicles sold including not providing the vehicle's structural damage history, the vehicle's accident repair history exceeding \$3000, the vehicle's out of province status, and not providing the purchaser with a copy of the sale contract. Such disclosure is required pursuant to s.39 and s.42 of the Regulation. The Panel concludes that these violations amount to a breach of s.7 and s.9 of the Code of Ethics.

Submissions on Penalty

The Panel was provided with a Joint Submission on Penalty (also part of Exhibit 2), which sets out as follows:

1. The Dealer agrees to pay a fine in the amount of \$6000. The amount of \$1000 to be paid within 30 days of the date of the Discipline Committee Order. The remainder to be paid within 180 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Angrez Singh agrees to successfully complete the OMVIC certification course no later than July 31, 2015. The dealer will incur all costs associated with this.
3. Anit Singh agrees to successfully complete the OMVIC certification course within 90 days of acceptance of this offer. The dealer will incur all costs associated with this.

4. 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 acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 pursuant to the Act.
5. The Dealer and Angrez and Anit agree to comply with the Act and Standards of Business Practice, as may be amended from time to time

Decision on Penalty

Having reviewed and considered the Joint Submission on Penalty, the Panel of the Discipline Committee accepts the Joint Submission and hereby orders that:

1. Kalsi Motor Wholesale Inc. (the "Dealer") shall pay a fine in the amount of \$6,000. The amount of \$1,000 is to be paid within 30 days of the date of this Order. The remainder to be paid within 180 days of the date of this Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Angrez Singh ("Angrez") shall successfully complete the OMVIC certification course no later than July 31, 2015. The dealer will incur all costs associated with this.
3. Anit Singh ("Anit") shall successfully complete the OMVIC certification course within 90 days of acceptance of this offer. The dealer will incur all costs associated with this.
4. The Dealer shall 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 acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with offering these courses. This clause does not apply to sales staff who have completed the course or who are otherwise required to do pursuant to the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B (the "Act").
5. The Dealer, Angrez and Anit shall comply with the Act and Standards of Business Practice, as may be amended from time to time

Reasons for Penalty:

The Panel accepts the proposed Joint Submission on Penalty by the parties, as on the whole, taking into account all the elements of the joint submission, and the facts of this case, the penalty is within the appropriate range of penalties.

In evaluating the joint submissions of the parties, the Panel is guided by Madam Justice Weiler in the Court of Appeal for Ontario in *R. v. R.W.E.* (2007), 86 O.R. (3d) 493, where the court stated at para. 22,

[22] It is trite law that a sentencing judge is not bound to accept a joint submission. It is well-settled, however, that a judge should not reject a joint submission unless it is contrary to the public interest and the sentence would bring the administration of justice into disrepute: R. v. Cerasuolo, [2001] O.J. No. 359, 151 C.C.C. (3d) 445 (C.A.); R. v. Dorsey, [1999] O.J. No. 2957, 123 O.A.C. 342 (C.A.). [page500]

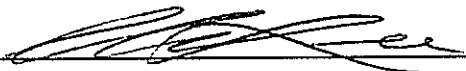
Here, the proposed joint submission on penalty falls within a range of penalties that is reasonable in the circumstances, and is therefore, neither contrary to the public interest, nor will it bring the administration of justice into disrepute.

In accepting the joint submission on penalty, the Panel is cognizant of the mandate of OMVIC to regulate dealers and salespersons in accordance with the Act and Code of Ethics, and the importance of the legislated intent to protect consumers.

The main focus on the joint submission on penalty before the Panel is that the Registrants accepted responsibility early on, their admission they have not exercised due diligence in their practice thereby breaching the Act and Code of Ethics; and their willingness to fully co-operate with OMVIC's investigators. Also, the fine amount is significant to the Registrants as their business operation is fairly small.

In reviewing the joint submission on penalty, the Panel is satisfied that the fine amount will serve as a specific deterrent to the Registrants and general deterrent to the industry. The Panel is also satisfied the successful completion of the OMVIC certification course, will help the Registrants to comply with the Act and Standards of Business Practice.

Ontario Motor Vehicle Industry Council
Discipline Panel



Wennie Lee, *Chair*
John Morabito, *Vice Chair*
Wally Pietraszko, *Vice Chair*