

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 -

AUTOPOLIS INC

- AND -

KAREN BOTELLO VALBUENA

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: May 23, 2019

Findings: Breach of Section 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$1,250 no later than **September 23, 2019**.
2. The Dealer and Valbuena are ordered to not conduct any further motor vehicle trades with Caliber and/or Martinez, until such time as Caliber and/or Martinez become registered under the Act. This includes allowing Caliber and/or Martinez to provide, or assist in obtaining, financing for motor vehicle trades.
3. Valbuena is ordered to successfully complete the Automotive Certification course (the "Course") no later than **September 23, 2019**.
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 no later than **September 23,**

2019. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

5. The Dealer and Valbuena agree 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:

Autopolis Inc:

1. On about March 14, 2011, Autopolis Inc ("Autopolis") was first registered as a motor vehicle dealer under the Act. On this same date, Autopolis executed terms and conditions of registration.
2. As per condition 6, Autopolis agreed it would comply with the Code of Ethics.
3. On about February 9, 2012, Karen Botello Valbuena ("Valbuena") was first registered as a motor vehicle salesperson under the Act. At all material times, Valbuena was the sole officer, as well as the person in charge of Autopolis.
4. On about November 7, 2014, Valbuena successfully completed the Automotive Certification course. Included in the course materials are suggestions as to how to ensure wholesale trades only take place between registrants.

Caliber Motors Inc and Natanael Leites Martinez:

5. Caliber Motors Inc ("Caliber") was registered as a motor vehicle dealer from about May 9, 2008 to about May 14, 2017.
6. Natanael Leites Martinez ("Martinez") was registered as motor vehicle salesperson from about May 9, 2008 to about October 11, 2017. At all material times, Martinez was the sole director of Caliber.

7. On about August 29, 2016, the Registrar issued a proposal to revoke the registrations of Caliber and Martinez. Caliber and Martinez appealed the Registrar's proposal to the License Appeal Tribunal.
8. On about October 11, 2017, the License Appeal Tribunal issued a Consent Order pursuant to a negotiated resolution of the above referenced proposal.
9. As per condition 11 of the Order, the license of Caliber was cancelled, effective as of October 11, 2017.
10. As per condition 3 of the Order, Martinez can only be registered as a motor vehicle salesperson with a dealer approved by the Registrar.
11. Since the issuance of the Order, Martinez has not re-applied for registration under the Act.

Non-compliance:

12. On about January 10, 2018, Autopolis sold Caliber a 2014 Audi A4 (VIN WAUFFCFLFLXEN005063). Caliber was not registered under the Act at that time. This is contrary to section 4(4) of the Act, as well as section 9 of the Code of Ethics.
13. Valbuena and the Dealer acknowledge that they failed to confirm the OMVIC registration of Caliber and/or Martinez, which led to the Dealer completing the trade.

By failing to comply with the following section of the Act:

Supply to Unregistered Person

4(4) A motor vehicle dealer shall not supply motor vehicles to another motor vehicle dealer for the purpose of trading in motor vehicles unless the other motor vehicle dealer is registered in that capacity.

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

Code of Ethics:

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

6. The Dealer agrees to pay a fine in the amount of \$1,250 no later than **September 23, 2019**.
7. The Dealer and Valbuena agree to not conduct any further motor vehicle trades with Caliber and/or Martinez, until such time as Caliber and/or Martinez become registered under the Act. This includes allowing Caliber and/or Martinez to provide, or assist in obtaining, financing for motor vehicle trades.
8. Valbuena agrees to successfully complete the Automotive Certification course (the "Course") no later than **September 23, 2019**.
9. 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 no later than **September 23, 2019**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
10. The Dealer and Valbuena 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 subsection 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 \$1,250 no later than **September 23, 2019**.
2. The Dealer and Valbuena are ordered to not conduct any further motor vehicle trades with Caliber and/or Martinez, until such time as Caliber and/or Martinez become registered under the Act. This includes allowing Caliber and/or Martinez to provide, or assist in obtaining, financing for motor vehicle trades.
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2019. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

5. The Dealer and Valbuena agree 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

A handwritten signature in black ink, appearing to read 'Paul Burroughs', is written over a solid horizontal line.

Paul Burroughs, Chair

