

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 -

JABLONSKI KRZYSZTOF o/a ALPINE AUTO PARTS

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: September 18, 2019

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,800. \$2,400 will be paid no later than November 30, 2019. The remaining \$2,400 will be paid no later than March 30, 2020.
2. Jablonski is ordered to successfully complete the Automotive Certification course (the "Course") no later than November 30, 2019.
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 no later than October 25, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees 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:

1. Jablonski Krzysztof o/a Alpine Auto Parts (the "Dealer") was first registered as a motor vehicle dealer in or around October 1999. Krzysztof Jablonski ("Jablonski") is the sole proprietor of the Dealer.

OMVIC publications:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement for dealers to provide purchasers with written disclosure of a vehicle's accident repair history ("disclosure").
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the disclosure requirements:
 - a. Summer 2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
 - f. Issue #3 2017
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:
 - a. January 2010
 - b. December 2013
5. In addition to the above referenced publications, in around December 2014 and June 2015, OMVIC hosted webinars to assist registrants in understanding their disclosure requirements. The contents of said webinars continue to be available on OMVIC's website.



Direct correspondence with Dealer:

6. During an inspection on or about January 12, 2011, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to the dollar value of a vehicle's accident damage history, as well as whether or not the vehicle had been declared an insurance loss.
7. During an inspection on or about September 25, 2018, a representative of the Registrar again reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to the dollar value of a vehicle's accident damage history, as well as whether or not the vehicle had been declared an insurance loss.

Dealer non-compliance:

8. During an inspection on about January 22, 2019, a representative of the Registrar found the following non-compliant trades:
 - a. On about June 25, 2018, the Dealer purchased a 2007 Volkswagen Golf (VIN 9BWEL41J274009738). This vehicle had sustained \$5,163 in accident damage and had been declared an insurance loss. On about September 7, 2018, the Dealer sold this vehicle without providing written disclosure it had ever been in an accident or been declared an insurance loss. This is contrary to sections 42(19), 42(21), 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since reached out to the purchaser of this vehicle, via registered mail, to advise of them of their vehicle's history.
 - b. On about August 13, 2018, the Dealer purchased a 2005 Chrysler 300 (VIN 2C3AA53G25H678618). This vehicle had sustained \$8,869 in accident damage and had been declared an insurance loss. On about November 21, 2018, the Dealer sold this vehicle without providing written disclosure it had ever been in an accident or been declared an insurance loss. This is contrary to sections 42(19), 42(21), 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since reached out to the purchaser of this vehicle, via registered mail, to advise of them of their vehicle's history.
 - c. On about October 22, 2018, the Dealer purchased a 2008 Honda Civic (VIN 2HGFA16418H104593). This vehicle had sustained \$5,936 in accident damage and had been declared an insurance loss. Moreover, the vehicle had been previously registered in Quebec. On about December 10, 2018, the Dealer sold this vehicle without providing written disclosure it had ever been in an accident, been declared an insurance loss, or been registered out of province. This is contrary to sections 42(19), 42(21), 42(22), 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since reached out to the purchaser of this vehicle, via registered mail, to advise of them of their vehicle's history.



- d. On about December 10, 2018, the Dealer purchased a 2012 Volkswagen Jetta (VIN 3VW2K7AJ2CM394618). This vehicle had sustained \$8,913.18 in accident damage and had been declared an insurance loss. Moreover, the vehicle had been previously registered in Quebec. On about December 14, 2018, the Dealer sold this vehicle without providing the purchaser with written disclosure that the vehicle had been declared an insurance loss and been previously registered out of province (QC). This is contrary to sections 42(21), 42(22), 42(25) of Regulations 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since reached out to the purchaser of this vehicle, via registered mail, to advise of them of their vehicle's history.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:
Regulation 333/08:

42. Additional information in contracts of sale and leases:

(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.

(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.

(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 that Act to cover at least the seven previous consecutive years.

(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 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$4,800. \$2,400 will be paid no later than November 30, 2019. The remaining \$2,400 will be paid no later than March 30, 2020.



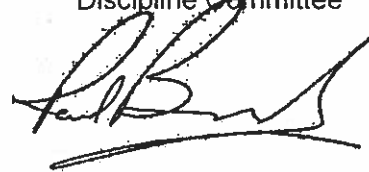
2. Jablonski agrees to successfully complete the Automotive Certification course (the "Course") no later than **November 30, 2019**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **October 25, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees 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 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 **\$4,800**. \$2,400 will be paid no later than **November 30, 2019**. The remaining \$2,400 will be paid no later than **March 30, 2020**.
2. Jablonski is ordered to successfully complete the Automotive Certification course (the "Course") no later than **November 30, 2019**.
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 no later than **October 25, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees 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



Paul Burroughs, Chair



