

## 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 :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*  
("OMVIC")

- AND -

TNT INTERNATIONAL LEASING INC., STEPHEN SMITH AND WAI PONG YEUNG  
("Registrants")

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**Date of Hearing:** October 17, 18, 19, 20 and 21, 2016

**Date of Decision:** October 27, 2016

**Findings:**

The conduct of TNT International Leasing Inc. and Stephen Smith was not becoming of a registrant and thereby not in accordance with subsection 9(1) of the Code of Ethics.

**Order:**

1. TNT International Leasing Inc. and Stephen Smith agree to pay a fine in the amount of \$1,000.00 within 30 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Stephen Smith agrees to successfully complete the OMVIC certification course, in person, within 90 days of the date of this Order. TNT International Leasing Inc. shall pay all costs associated with this.
3. TNT International Leasing Inc. agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of this Order. TNT International Leasing Inc. shall pay all costs associated with this. This 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 *Motor Vehicle Dealers Act, 2002*.
4. TNT International Leasing Inc. agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Motor Vehicle Dealers Act 2002.

The Panel consisted of Sherry Darvish (Chair), Joe Wade (Vice-Chair), and Nelson Caetano (Vice-Chair). Luisa Ritacca (and Andrea Gonsalves on October 21) attended as Independent Legal Counsel to the Panel. OMVIC was represented by Angela La Viola (counsel), and the registrants were represented by Trent Morris (counsel).

This matter is in regards to a Notice of Complaint dated July 31, 2015 and a Notice of Further and Other Particulars, dated May 30, 2016.

The Notice of Complaint provides as follows:

1. TNT International Leasing Inc. (the "Dealer") was first registered as a Wholesale motor vehicle dealer in or around November 2013. Stephen Smith ("Smith") was first registered as a motor vehicle salesperson in or around November 2013. At all material times, Smith has been the officer and general manager of the Dealer. Wai Pong Yeung ("Yeung") was first registered as a motor vehicle salesperson in or around May 2005.
2. On or around November 14, 2013, Smith, on behalf of the Dealer, executed wholesale terms and conditions of registration. These include, but are not limited to the following conditions:
  - a. As per condition 3, the Dealer agreed not to conduct any purchases with anyone who is in the trading of motor vehicles without first confirming that the person is registered as a dealer under the Act.
  - b. As per condition 6, the Dealer agreed to comply with Ontario Regulation 332/08 under the *Motor Vehicle Dealers Act* and Code of Ethics.
  - c. As per condition 29, the Dealer agreed not to receive any new sources of financing or to change the person(s) in charge, officers, directors, partners or owners for the dealership without first obtaining the Registrar's prior approval, in writing.
3. On his original application submitted on or about June 26, 2013, Smith indicated that he would be the person in charge of the Dealer. As such, Smith accepted primary responsibility for, and has agreed to be accountable for, compliance with the Act and Regulations.
4. On or about September 25, 2014, Smith, on behalf of the Dealer, submitted a renewal application for registration, in which Smith indicated there is no change to the person in charge of the Dealer.



5. During inspections on or about September 26, 2014, and on or about November 18, 2014, a representative of the Registrar found the following areas of non-compliance:
  - (3)(a) On or about December 5, 2013, the Dealer received new sources of financing from Clifford Bentley without receiving the prior approval from the registrar. This is contrary to condition 29 of the Dealer's terms and conditions of registration, as well as sections 3 and 9 of the Code of Ethics.
  - (3)(b) Smith was unable to provide the representative of the Registrar with basic information concerning the Dealers compliance with the Act and Regulations without consulting Yeung. The Dealer failed to notify the registrar that there was a change of person in charge of the Dealer. This is contrary to condition 29 of the Dealer's terms and conditions of registration, as well as section 9 of the Code of Ethics.
  - (3)(c) On or about December 13, 2013, the Dealer leased a vehicle to a consumer, despite being registered for wholesale transactions only. This is contrary to condition 3 of the Dealers terms and conditions, as well as section 21 of Regulation 333/08 and section 9 of the Code of Ethics.
  - (3)(d) Between in or around December 2013, to in or around June 2014, the Dealer purchased 2 vehicles from private individuals, despite being registered for wholesale transactions only. This is contrary to condition 3 of the Dealers terms and conditions, as well as section 21 of Regulation 333/08 and section 9 of the Code of Ethics.
  - (3)(e) Smith failed to exercise reasonable due diligence, in his capacity as person in charge, to ensure that the Dealer complied with the Act and Regulations and with their terms and conditions of registration.

### Wai Pong Yeung

6. On or about July 2, 2013, Yeung submitted a renewal application, but failed to disclose an outstanding judgment, as well as certain financial obligations which were in collections.
7. After numerous requests on behalf of a representative of the Registrar, on or about October 7, 2014, OMVIC received correspondence from Yeung's counsel advising they had been retained to address the outstanding judgments and accounts in collections.
8. Since receiving the above mentioned correspondence, numerous requests have been made of Yeung on behalf of the Registrar, to provide OMVIC with documentation demonstrating the outstanding judgments and accounts in collections are being resolved.
9. To date, OMVIC has not received the requested above referenced documentation. In failing to provide this information, Yeung's conduct does not comply with sections 3 and 9 of the Code of Ethics.



The Notice of Further and Other Particulars sets out the following:

11. Yeung was not registered to the Dealer during the relevant times: July 2, 2013 to April 2, 2015.
12. Smith was advised and was aware that Yeung was not registered to the Dealer.
13. Smith was reminded that Yeung was not authorized to act as the person in charge of the Dealer.

At the hearing, the Panel marked the following exhibits:

- Exhibit #1 - Volume 1 of OMVIC's Book of Documents (with page 34A appended at Tab 7)
- Exhibit #2 – Volume 2 of OMVIC's Book of Documents (Tab 11 was removed)
- Exhibit #3 – Volume 3 of OMVIC's Book of Documents
- Exhibit #4 – Book of Documents of the Registrants
- Exhibit #5 – Copy of letter dated June 9, 2014 from Mr. J.A. De Bousquet with attached OMVIC Complaints Process Acknowledgement form signed by Mr. S. Glasco, dated June 10, 2014
- Exhibit #6 – Copy of email dated December 6, 2013 from S. Smith to D. Dumitru
- Exhibit #7 – Copy of letter dated December 5, 2013 from S. Smith to T. Gengatharan
- Exhibit #8 – Copy of email chain between S. Smith and T. Gengatharan dated December 6, 2013

Between October 17 and 20, 2016, the Panel heard evidence from six witnesses on behalf of OMVIC. Those witnesses were: Delia Dumitru, Marcella Coellar, Rebecca Harris, Tim Hines, Thaya Gengatharan, and Andrea Korh. At the end the day on October 20, 2016, the parties requested a brief adjournment in the hopes that a resolution of the matter could be reached.

On October 21, 2016, the parties advised the Panel that they had reached a partial resolution of the matter based on an agreed statement of facts and joint submission on penalty. The Panel was provided with an Agreed Statement of Facts and Joint Submission on Penalty, dated October 21, 2016, signed by both parties.

On the basis of the foregoing, the Panel makes the following findings of fact:

1. TNT International Leasing Inc. (the "Dealer") was first registered as a Wholesale motor vehicle dealer in or around November 2013. Stephen Smith ("Smith") was first registered as a motor vehicle salesperson in or around November 2013. At all material times, Smith has been the officer and general manager of the Dealer.
2. On or around November 14, 2013, Smith, on behalf of the Dealer, executed wholesale terms and conditions of registration.
3. On or about December 5, 2013, the Dealer received a new source of financing without receiving the prior approval from the Registrar. This is not in accordance with condition 29 of the Dealer's terms and conditions of registration, as well as section 9 of the Code of Ethics.
4. The Registrar has made no allegation in the Notice of Complaint that the loan in relation to the new source of financing has not been paid.



5. The Dealer and Smith's conduct was not becoming of a registrant and thereby not in accordance with subsection 9(1) of the Code of Ethics.

On the basis of the Joint Submission on Penalty, the Panel makes the following orders:

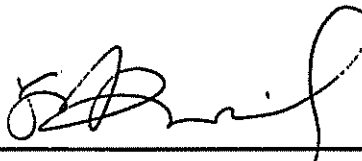
1. The Dealer and Smith agree to pay a fine in the amount of \$1,000.00 within 30 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Smith agrees to successfully complete the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this. This 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 *Motor Vehicle Dealers Act, 2002*.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

OMVIC has withdrawn the allegations against Smith and the Dealer outlined in the Notice of Complaint at paragraphs 5(3)(b), 5(3)(c), 5(3)(d), and 5(3)(e). OMVIC has also withdrawn the allegations against Smith outlined in the Notice of Further and Other Particulars at paragraphs 12 and 13.

OMVIC has withdrawn the allegation against Yeung outlined in the Notice of Complaint at paragraph 6.

On consent of both parties, the balance of the allegations against Yeung in the Notice of Complaint at paragraphs 7, 8, 9 and in the Notice of Further and Other Particulars at paragraph 11 are adjourned sine die. The parties shall notify the Discipline Committee no later than November 30, 2016 whether these matters have been resolved or whether additional hearing dates are needed to address these matters.

Ontario Motor Vehicle Industry Council  
Discipline Panel




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*Sherry Darvish, Chair*  
*Joe Wade, Vice Chair*  
*Nelson Gaetano, Vice Chair*

