

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*
("OMVIC")

- AND -

2016933 ONTARIO INC o/a JOHNNY B'S AUTOMOTIVE CAR CARE

AND

JOHANNES BULSINK

("Registrants")

Date of Hearing: October 20, 2015

Date of Decision: November 5, 2015

Preliminary Matters: During plea inquiry the Registrant, Mr Bulsink, on behalf of the Registrants, indicated that he would welcome the opportunity to speak to OMVIC's counsel in order to explore the possibility of an agreement. The hearing, with the consent of the parties, was set down for a short period to provide the parties with the opportunity to discuss matters. Following their discussion the parties indicated that they had reached an agreement. Ms. Samler, OMVIC's counsel, requested that allegations at paragraphs 10, 14, 17, and 18 in the Notice of Complaint dated April 2, 2015, be withdrawn. During the discussions between the parties, OMVIC was satisfied that Mr. Bulsink had provided the purchasers of the specific vehicles identified in paragraphs 12, 15, 20 and 22 of the notice of complaint with the vehicle information required at the time of purchase. (In the subsequent Agreed statement of Facts, these vehicles were represented at paragraphs 11, 13, 16, and 18 respectively). As such the allegations relating to the sale of these vehicles had the following sentences inserted into the Agreed Statement of Facts: "The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicles history at the time of purchase." Accordingly these circumstances were considered as mitigating factors during the joint calculation of the penalty.

The parties presented an Agreed Statement of Facts (ASF) for the Panels' consideration. During consideration of the ASF it was noted that Section 39 of Ontario Regulation 333/08 had been incorrectly cited in the ASF at

paragraphs 9 through 18 inclusive. Each of the 10 paragraphs were amended to correctly reference Section 40.

Findings: Breach of Sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08.

Introduction:

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002.

OMVIC was represented by Andrea Korth and Jane Samler (Counsel), and for the registrants was Johannes Bulsink, who represented both the corporation, 2016933 ONTARIO INC o/a JOHNNY B'S AUTOMOTIVE CAR CARE, and himself as owner operator.

The Panel consisted of Debra Mattina (Chair), Paul Burroughs (Vice-Chair), and John Morabito (Vice-Chair). Mr. Aaron Dantowitz attended as Independent Legal Counsel to the Panel.

The Panel marked:

The Notice of Complaint dated April 2, 2015 as Exhibit #1.
The Agreed Statement of Facts as Exhibit #2 and
The Joint Submission on Penalty as Exhibit #3.

On completion of discussions which took place between the parties following the first plea inquiry, the Panel was provided with an Agreed Statement of Facts (Exhibit #2), which provides as follows:

AGREED STATEMENT OF FACTS

2016933 Ontario Inc o/a Johnny B's Automotive Car Care and Johannes Bulsink have breached the following:

Section 7 of the Code of Ethics, Regulation 332/08

Section 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. 2016933 Ontario Inc o/a Johnny B's Automotive Car Care (the "Dealer") was first registered as a motor vehicle dealer in or around December 2009. Johannes Bulsink ("Bulsink") was first registered as a motor vehicle salesperson in or around December 2009. At all material times Bulsink as an officer and director of the Dealer.
2. In or around July 2009, Bulsink successfully completed the OMVIC certification course.
3. On or about December 1, 2009, Bulsink executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with the Code

of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 39, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.

4. During an inspection on or about May 12, 2010, a representative of the Registrar reminded Bulsink, on behalf of the Dealer, of the Dealer's obligations regarding material fact disclosure. The Code of Ethics was also reviewed at this time.

OMVIC publications:

5. In the Summer of 2012, OMVIC issued a Dealer Standard publication which reminded dealers to provide written disclosure of a vehicle's history and condition, such as accident repair histories, previous daily rental histories, and previous out of province registrations ("disclosure"). also issued the following Dealer Standard publications reminding dealers of their disclosure and/or advertising obligations:
 - a. Winter 2013
 - b. Spring 2013
 - c. Fall 2013
 - d. Winter 2014
6. The following Dealer Standard publications further reminded dealers of their disclosure obligations:
 - a. Winter 2013
 - b. Spring 2013
 - c. Fall 2013
 - d. Winter 2014
7. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their disclosure and/or advertising obligations:
 - a. January 2010
 - b. September 2012
 - c. December 2013

Dealer non-compliance issues:

8. During an inspection on or about December 2, 2014, a representative of the Registrar discovered the following non-compliant vehicle trades:
9. On or about June 29, 2012, Bulsink, on behalf the Dealer, purchased a 2005 Chrysler Sebring, (VIN 1C3EL46X25N551635) declared as having an accident history of \$9450. On or about July 11, 2014, Bulsink, on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics.
10. On or about June 28, 2013 Bulsink, on behalf of the Dealer, purchased a 2005 Saturn, (VIN 1G8AJ52F75Z133156) declared has having multiple accident histories. One of these incidents resulted in damage in the amount of \$6,343. On or about April 22, 2014, Bulsink, on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover,

the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics.

11. On or about September 28, 2013 Bulsink, on behalf of the Dealer, purchased a 2006 Ford F150, (VIN 1FTPW14506FB41634) declared has having a \$4,986 accident history. On or about May 8, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.
12. On or about December 14, 2013 Bulsink, on behalf of the Dealer, purchased a 2006 Ford Fusion, (VIN 3FAFP07Z66R159758) declared has having a \$12,101 accident history. On or about January 28, 2014, Bulsink, on behalf of the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics.
13. On or about December 14, 2013 Bulsink, on behalf of the Dealer, purchased a 2006 Volkswagen Jetta, (VIN 3VWRT71K26M820767) declared has having a \$4,854 accident history. On or about March 12, 2014, Bulsink, on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.
14. On or about January 17, 2014 Bulsink, on behalf of the Dealer, purchased a 2005 Ford Focus, (VIN 3FAFP37N45R123998) declared has having multiple accident histories. One of these incidents resulted in damage in the amount of \$4,599. On or about July 20, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics.
15. On or about April 26, 2014, Bulsink, on behalf of the Dealer, purchased a 2009 Mazda 3, (VIN JM1BK32F391255612) declared has having multiple accident histories. One incident resulted in damage in the amount of \$5,277 and a second incident resulted in damage in the amount of \$6,118. On or about May 8, 2014, Bulsink, on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale

was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics.

16. On or about June 21, 2014, Bulsink, on behalf of the Dealer, purchased a 2010 Ford Fusion, (VIN 3FAHP0JA2AR125501) declared has having multiple accident histories. One incident resulted in damage in the amount of \$4,352. On or about July 2, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.
17. On or before July 22, 2014, Bulsink, on behalf of the Dealer, purchased a 2001 Ford Fusion, (VIN 1FAFP34351W252424) declared has having multiple accident histories. One of these incidents resulted in damage in the amount of \$4,614. On or about September 19, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics.
18. On or about July 26, 2014, Bulsink, on behalf of the Dealer, purchased a 2003 Ford Ranger, (VIN 1FTYR44E83PA86482) declared has having multiple accident histories. One of these incidents resulted in damage in the amount of \$14,906. On or about August 28, 2014, Bulsink, on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the retail bill of sale was not fully completed in accordance with section 40 of Regulation 333/08. This is contrary to sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.

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

40. Contracts for sales of used motor vehicles:

(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

1. The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39 (2):
 1. The name and address of the purchaser.
 2. A registered name and the registration number of the dealer that entered into the contract, together with the legal name of the dealer if it is different from the registered name.

3. The business address of the place at which the dealer entered into the contract.
5. If a registered salesperson is acting on behalf of the dealer respecting the sale, the registered name and registration number of the salesperson.
6. The date of the sale.
7. The date that the vehicle is to be delivered or a manner for determining that date.
8. The colour of the vehicle.
9. The vehicle identification number of the vehicle, if known.
10. The body type of the vehicle.
14. An itemized list of the charges that the purchaser is required to pay under the contract to conclude the transaction, including charges for freight, charges for inspection before delivery of the vehicle, fees and levies.
15. An itemized list of items or inducements, including guarantees or extended warranties, service plans or rights under sales policies if the dealer has agreed to provide the items or inducements to the purchaser and there is no extra charge to the purchaser for them beyond the total sale price of the motor vehicle under the contract, and the list shall show a fair and accurate description and the retail value, if any, of each of the items or inducements.
16. The total sale price under the contract, including the charges described in paragraph 14.
17. The down payment or deposit, if any, paid by the purchaser.
18. The balance that the purchaser will be required to pay under the contract.
19. An itemized list of all other charges that the purchaser will be required to pay in connection with the vehicle at the time of delivery but that are not required under the contract, such as taxes.
21. If the dealer or the salespersons registered to the dealer have received or will receive, from any source other than the dealer, a commission, remuneration or any other incentive for providing the application for financing for the purchase to the purchaser, a statement to that effect that is initialled by the purchaser.
22. The information required to be included under section 42.
23. If there is a trade-in of another motor vehicle under the contract, anything required to be included under section 43.
24. On the same page of the contract as the purchaser's signature and next to it, a statement in accordance with subsection (3) in 12 point bold font, except for the heading which shall be in 14 point bold font.
25. A statement in accordance with subsections (4) and (5) in 12 point bold font, except for the heading which shall be in 14 point bold font.
26. A statement in accordance with subsection (6) or (7), as the case may be, in 12 point bold font, except for the heading which shall be in 14 point bold font.
27. A statement by the purchaser of all particular facts, if any, respecting the vehicle that the purchaser considers material to the purchase.

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.

(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 and Bulsink have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

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.

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.

The agreement was duly signed and dated by the parties in Toronto, on October 20, 2015.

Following receipt of the ASF, the Panel conducted a second plea inquiry to satisfy itself that the Registrants' admissions were voluntary, informed and unequivocal. The Panel was satisfied that Mr. Bulsink's admissions met those criteria.

Reasons for Decision

The Panel considered the details of the ASF. The Panel was satisfied that the facts as set out in the ASF reasonably demonstrated breaches of sections 40(2.1), 42(19) and 42(25) of Ontario Regulation 333/08 and as such those breaches demonstrated a contravention of the Code of Ethics at sections 7 and 9 of the Ontario Regulation 332/08.

Decision of the Panel:

Being satisfied that the admissions were voluntary, informed and unequivocal and that the facts of the matters contained within the ASF fairly represent breaches of both Ontario Regulations 332/08 and 333/08, the Panel therefore accepts the ASF. (as amended with respect to section 40)

Submissions on Penalty

The parties prepared a joint submission on penalty and submitted it to the Panel for consideration.

JOINT SUBMISSION ON PENALTY:

1. The Dealer agrees to pay a fine in the amount of \$11,500 within 90 days of the date of the Discipline Committee Order.
2. Bulsink agrees to successfully complete the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order.
3. Bulsink agrees to successfully complete the Automotive Record Keeping course within 90 days of the date of the Discipline Committee Order.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC certification course (the "course"). Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Bulsink agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision on Penalty

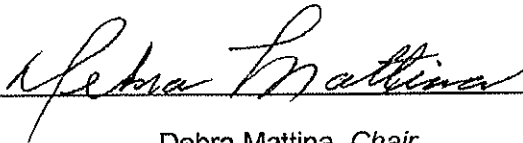
1. The Dealer is ordered to pay a fine in the amount of \$11,500 within 90 days of the date of the Discipline Committee Order.
2. Bulsink is ordered to successfully complete the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order.
3. Bulsink is ordered to successfully complete the Automotive Record Keeping course within 90 days of the date of the Discipline Committee Order.
4. The Dealer shall offer all current and future sales staff the opportunity to complete the OMVIC certification course (the "course"). Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Bulsink shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons for Penalty:

The Panel being satisfied, that during their discussion on penalty the parties considered both aggravating and mitigating circumstances as well as the appropriateness of the penalty, therefore accepts the Joint Submission on Penalty (JSP) as fair and appropriate to the circumstances.

The Panel noted that the penalty is consistent with a range of penalties in recent decisions containing similar facts. In addition the Panel was also satisfied that the amount of the penalty serves as a specific deterrent to the Registrant and a general deterrent to other members of the industry. Perhaps most importantly, it appears to have achieved the desired outcome of public protection in that the Registrant voiced on the record how much he had learned through the hearing process and acknowledged that he did not want to have to go through the process ever again. The Panel thanks the parties for their cooperation in resolving this matter.

Ontario Motor Vehicle Industry Council
Discipline Panel



Debra Mattina, *Chair*
Paul Burroughs, *Vice Chair*
John Moribito, *Vice Chair*

