

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 -

2018216 ONTARIO INC. o/a PRO-TECH AUTOMOTIVE

- AND -

ZIA ISLAM

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: June 14, 2016

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 \$2,000. \$500 is due within 30 days of the date of the Discipline Committee Order and the remaining balance is due within 150 days of the date of the Discipline Committee Order.
2. Islam is ordered to complete the OMVIC certification course (the "course"), within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete 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 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 so pursuant to the Act.
4. The Dealer and Islam shall comply with the *Motor Vehicle Dealers Act, 2002* 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. 2018216 Ontario Inc o/a Pro-Tech Automotive (the "Dealer") was first registered as a motor vehicle dealer in or around March 2005. Zia Islam ("Islam") was first registered as a motor vehicle salesperson in or around March 2005. At all material times, both Islam was an officer and director, as well as the Person in Charge, of the Dealer.
2. On or about March 14, 2005, Islam 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 20, the Dealer agreed it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells.

OMVIC publications:

3. In the Winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, such as the requirement to provide written disclosure, of a vehicle's history and condition, such accident repair histories, previous daily rental histories, and out of province registrations ("disclosure").
4. The following Dealer Standard publications also reminded dealers of their disclosure obligations:
 - a) Summer 2011
 - b) Summer 2012
 - c) Winter 2013
 - d) Fall 2014 (Issue 4)
5. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their disclosure obligations:
 - a) January 2010
 - b) September 2012
 - c) December 2013
 - d) December 2014



Direct Correspondence with Dealer:

6. During an inspection on or about May 9, 2006, a representative of the Registrar reminded Islam, on behalf of the Dealer, of Dealer's obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells.
7. During an inspection on or about November 6, 2013, a representative of the Registrar reminded Islam, on behalf of the Dealer, of the Dealer's disclosure obligations under Regulation 42 of the Act.

Dealer non-compliance:

8. During an inspection on or about October 29, 2015, the following issues of non-compliance were found:

Non-disclosure:

9. On or about June 5, 2014, Islam purchased a 2008 Honda Civic (VIN 2HGFA16598H102325) on behalf of the Dealer. This vehicle was declared as having a \$6,044 accident history. On or about August 25, 2014, Islam sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the dollar amount of the vehicle's accident repair 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. The Dealer has since provided OMVIC with confirmation from the purchaser they are now aware of their vehicle history.
10. On or about November 20, 2014, Islam sold a 2003 Toyota Corolla (VIN 2T1BR32E53C744483) on behalf of the Dealer. This vehicle has a \$6,525 accident history which the Dealer failed to disclose in writing on the bill of sale. 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 Dealer indicated the vehicle had not sustained damage in excess of \$3,000. This is misleading, and contrary to sections 4, 7, and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are now aware of their vehicle history.

By failing to comply with the following regulations under 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.

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 Islam 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$2,000. \$500 is due within 30 days of the date of the Discipline Committee Order and the remaining balance is due within 150 days of the date of the Discipline Committee Order.
2. Islam agrees to complete the OMVIC certification course (the "course"), within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete 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 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 so pursuant to the Act.
4. The Dealer and Islam agree to comply with the *Motor Vehicle Dealers Act, 2002* 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 and Islam 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 \$2,000. \$500 is due within 30 days of the date of the Discipline Committee Order and the remaining balance is due within 150 days of the date of the Discipline Committee Order.
2. Islam is ordered to complete the OMVIC certification course (the "course"), within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete 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 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 so pursuant to the Act.

4. The Dealer and Islam shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

