

DISCIPLINE DECISION

REVIEWING PANEL: Aviva Harari, Public Member
Joe Wade, Discipline Tribunal Chair, Registrant
Wally Pietraszko, Registrant

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 :

ONTARIO MOTOR VEHICLE)
INDUSTRY COUNCIL)
)
- and -)
)
HAMID FAQIRZAI & KARIM FAQIRZAI)
O/A K-W USED CARS FOR SALE)
)
- and -)
)
MOHD HAMID FAQIRZAI)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: September 18, 2024

Findings: Hamid Faqirzai & Karim Faqirzai o/a K-W Used Cars for sale (the “Dealer”) has breached the following:

- Section 7(1), 9(1), 9(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Mohd Hamid Faqirzai (“Faqirzai”) has breached the following:

- Section 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. HAMID FAQIRZAI & KARIM FAQIRZAI O/A K-W USED CARS FOR SALE (“the Dealer”) shall pay a fine in the amount of **\$8,000** no later than twelve (12) months from **October 17, 2024**.
2. Mohd Hamid Faqirzai (“Faqirzai”) shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from **October 17, 2024**.
3. The Dealer shall **offer** to all current and future salespersons, employed by the Dealer, to **fund** their completion of the Automotive Certification Course, no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order. This shall remain in effect for a period of one year from the date of the Discipline Tribunal’s order.
4. The Dealer and Faqirzai shall comply with the *Motor Vehicle Dealers Act, 2002*, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

Overview

This matter proceeded on an Agreed Statement of Facts, dated August 8, 2024, a Joint Submission on Penalty and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

Amendment:

The Notice of Complaint (“NoC”) dated March 1, 2024, was amended to reflect that the Ontario Motor Vehicle Industry Council (“OMVIC”) replaced the *Registrar, MVDA 2002* as a party to this proceeding.

Withdrawals:

The allegations contained in paragraphs 13 to 16, 19 to 21 and 22(c)-(l), of the NoC dated March 1, 2024, were withdrawn.

Background

1. Hamid Faqirzai & Karim Faqirzai o/a K-W Used Cars For Sale (the “Dealer”) was first registered as a motor vehicle dealer in and around July 2010.
2. Mohd Hamid Faqirzai (“Faqirzai”) was first registered as a salesperson in and around July 2010. At all material times, Faqirzai has been a General Manager, a Partner and the Person in Charge of the day-to-day activities of the Dealer.
3. On or about July 13, 2010, Faqirzai executed terms and conditions of registration on behalf of the Dealer.

4. Per condition 6, the Dealer agreed to comply with Ontario Regulation 332/08 and the Code of Ethics.
5. Per condition 22, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure, on the bill of sale, of all material facts about the vehicles it sells.

Prior OMVIC Communications:

6. During an inspection on or about March 24, 2015, a representative of the Registrar reminded the Dealer of its disclosure obligations under Section 42 of O. Reg. 333/08.
7. During an inspection on or about September 7, 2017, a representative of the Registrar again reminded the Dealer of its disclosure obligations under Section 42 of O. Reg. 333/08.

Prior Discipline Committee Order:

8. On or about June 15, 2015, the Registrar issued a Notice of Complaint against the Dealer and Faqirzai following an inspection conducted on or about April 7, 2015. This inspection showed that the Dealer was in violation of its obligation under Section 42(19) of O. Reg. 333/08, to disclose the value of the previous accident damage where it exceeded \$3,000.
9. On or about December 16, 2015, the Discipline Committee issued an Order, attached hereto as Schedule "A". Among other things, the Dealer was ordered to pay a fine of \$5,250 while Faqirzai was ordered to retake the OMVIC certification course (the "Course").
10. On or about April 7, 2016, Faqirzai successfully completed the Course. The course materials covered the disclosures required on the bill of sale under the Act.

Dealer's Contravention of the Code of Ethics:

11. On or about October 18, 2023, an Inspector attended the Dealer's premises to conduct an inspection of its books and records. The following issues of non-compliance were discovered as part of the inspection, as particularized below.

Failure to provide written disclosure:

12. On or about July 11, 2022, the Dealer sold a 2017 Honda Civic (VIN ***009388), with a prior claim of \$10,694. The Dealer failed to disclose this on the bill of sale. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7(1), 9(2) and 9(3) of the Code of Ethics.
13. On or about May 5, 2023, the Dealer sold a 2016 Lexus 300 (VIN ***5003136), which had been declared an insurance total loss. The Dealer failed to disclose this on the bill of sale. This is contrary to section 42(21) of Regulation 333/08, as well as sections 7(1), 9(2) and 9(3) of the Code of Ethics.
14. On or about July 18, 2023, the Dealer sold a 2020 Toyota Corolla SE (VIN ***001832), with a prior claim of \$25,714 and which had been declared an insurance total loss. The

Dealer failed to disclose these on the bill of sale. This is contrary to sections 42(19) and 42(21) of Regulation 333/08, as well as sections 7(1), 9(2) and 9(3) of the Code of Ethics.

Retaining services of an unregistered person:

15. Between July 2022 and September 2023, the Dealer sold four vehicles. Each of the vehicles were sold with Karim Faqirzai, acting as the salesperson. However, Karim Faqirzai, at all material times, was not a registered salesperson. As such, the Dealer retained the services of an unregistered salesperson, contrary to section 4(3) of the Act, as well as section 9(1) of the Code of Ethics.
 - a. 2017 Honda Civic, VIN ***009388
 - b. 2014 Toyota Camry, VIN ***138564
 - c. 2015 Toyota Camry, VIN ***495556
 - d. 2021 Toyota Corolla, VIN ***239241.

Faqirzai's Contravention of the Code of Ethics

16. Faqirzai failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.
17. As particularized above, the Dealer and Faqirzai have violated the following section of the Code of Ethics:

Professionalism

9. (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

18. As particularized above, the Dealer has violated the following section of the Code of Ethics:

Compliance

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.

Professionalism

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.

9. (2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

9. (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

19. It is thereby agreed that Faqirzai has contravened the following section of the Code of Ethics, as set out in O. Reg. 332/08:

Accountability

6. (2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached subsections 7(1), 9(1), 9(2), and 9(3) of the Code of Ethics; and (2) Farqirzai has breached subsections 6(2) and 9(3) of the Code of Ethics.

The Reviewing Panel accepted the Joint Submission on Penalty for the reasons that follow.

Reasons for Decision

The evidence is clear that Mr. Faqirzai admittedly failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thereby personally contravened sections 6(2) and 9(3) of the Code of Ethics. As set out in the Agreed Statement of Facts, this is not the first case of the Dealer failing to comply with the Code of Ethics, and specifically the professionalism requirements of Section 9. Nonetheless, on the totality of the record and submissions before it, the Reviewing Panel did not form any concern that the consent disposition proposed by the Parties could be inconsistent with the public interest. The Reviewing Panel granted the requested order accordingly and this matter is at an end.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: October 17, 2024



Joe Wade, Discipline Tribunal Chair
On behalf of:

Aviva Harari, Public Member
Wally Pietraszko, Registrant

