

## 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 -

1495742 ONTARIO INC o/a COMBO AUTO COLLISION

- and -

GEORGE ELNAAMEH

- and -

EDMOND NAKHLE

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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:** March 11, 2019

**Findings:** Breach of Section 6, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$3,250 no later than **May 18, 2019**.
2. Elnaameh is ordered to successfully complete the Automotive Certification Course (the "Course") no later than **May 18, 2019**.
3. Nakhle is ordered to successfully complete the Course no later than **May 18, 2019**
4. 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 **May 18, 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.



5. The Dealer, Elnaameh, and Nakhle, agree 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. 1495742 Ontario Inc o/a Combo Auto Collision (the "Dealer") was first registered as a motor vehicle dealer in around January 2003. George Elnaameh ("Elnaameh") was first registered as a motor vehicle salesperson in around January 2003. Edmond Nakhle ("Nakhle") was first registered as a motor vehicle salesperson in around January 2003. At all material times Elnaameh and Nakhle were the officers, directors, and persons in charge of the Dealer.
2. On about January 16, 2003, Nakhle executed terms and conditions of registration on behalf of the Dealer. As per condition "k", 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. As per condition "r", the Dealer agreed to maintain books and records which accurately record all transactions involving the purchase, sale, or lease its motor vehicles.

#### **OMVIC publications:**

3. In the winter of 2008, OMVIC issued a Dealer Standard publication highlighting some of the changes that would take place when the Act was proclaimed, including but not limited to, dealers' requirement to provide purchasers with written and detailed disclosure of all material facts about the vehicles they sell ("disclosure obligations").
4. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:
  - a. Summer 2011
  - b. Summer 2012
  - c. Summer 2013
  - d. Issue #4 2014
  - e. Issue #4 2016



5. OMVIC also issued the following dealer bulletins to remind dealers of their disclosure obligations:

- a. January 2010
- b. September 2012
- c. December 2013

**Direct correspondence with Dealer:**

6. During an inspection on about May 16, 2012, a representative of the Registrar reviewed with Elnaameh, on behalf of the Dealer, the Dealer's obligations with respect to material fact disclosure were discussed in detail. Elnaameh was also advised of the Dealer's requirements to retain fulsome and accurate records relating to the Dealer's vehicle trades, including but not limited to the wholesale purchase agreements.

**Non-compliant vehicle trades:**

7. During an inspection on or about November 8, 2017, a representative of the Registrar discovered the following non-compliant vehicle trades. Specifically, the following vehicles had been sold to purchasers without written disclosure of the following:
- a. The vehicle had been branded by the Ministry of Transportation ("MTO brand") and/or;
  - b. The dollar amount of damage the vehicle had sustained previously

This is contrary to sections 42(19), and 42(23), of Regulations 333/08, the Dealer's terms and conditions of registration, as well as sections 7(1) and 9(4) of the Code of Ethics.

	VEHICLE MAKE/MODEL	DATE SOLD	NON-DISCLOSED ACCIDENT REPAIR AMOUNT 42(19) Reg. 333/08	NON-DISCLOSED MTO BRAND 42(23) Reg. 333/08
A.	2016 Ford F-150 (VIN 1FTEW1EP0GFC62267)	25/09/2017	\$24,147.68	Rebuilt
B.	2016 Chevrolet Cruz (VIN 1G1PF5SB7G7105265)	3/11/2017	\$20,516	Rebuilt
C.	2016 Mercedes (VIN WD3BE8DD4GP196431)	30/09/2017	\$31,915.39	Rebuilt



8. Moreover, the Dealer failed to retain the following records in relation to the above referenced vehicle trades:

- a. Wholesale/incoming bill of sale and/or vehicle trade in statement
- b. Records relating to the repair and/or reconditioning of the vehicles
- c. Results of any inspection of the vehicle under the *Highway Traffic Act*
- d. Copies of any safety standards certificates issued for the subject vehicles

This is contrary to sections 52(2) and 53(1) of Regulation 333/08, the Dealer's terms and conditions of registration, as well as sections 7(1) and 9(4) of the Code of Ethics.

9. The Dealer did provide purchasers with a "Salvage Vehicle Disclosure Statement" indicating the subject vehicles had suffered damage to the extent that the previous owners considered them uneconomical to repair.
10. The Dealer has since provided OMVIC with written confirmation from the purchasers that they were fully aware of their vehicle histories at the time of purchase.
11. Elnaameh and Nakhle have failed to ensure the Dealer conducts its motor vehicle trades in compliance with the Regulations and Code of Ethics. As such, Elnaameh and Nakhle have personally contravened section 6(2) of the Code of Ethics.

By failing to comply with the Dealer's terms and conditions of registration, as well as the following sections of the Act:

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.

23. If the motor vehicle has been classified, under section 199.1 of the Highway Traffic Act, as irreparable, salvage or rebuilt, a statement as to how it was last classified.

52. *Records of motor vehicles:*

1. A registered motor vehicle dealer shall maintain a record of every motor vehicle that comes into the dealer's possession for the purpose of a trade in the vehicle.
2. The record required under subsection (1) for a motor vehicle shall include,
  - a. the vehicle identification number of the vehicle;
  - b. a copy of any safety standards certificate under the *Highway Traffic Act* provided to the registered motor vehicle dealer for the vehicle;
  - c. the results of any inspection of the vehicle under the *Highway Traffic Act* provided to the registered motor vehicle dealer;
  - d. if the registered motor vehicle dealer causes work to be done on the vehicle, including any repair or reconditioning, the full and accurate particulars of the work,



the sources of any parts used for the work, the cost of the work and the name of the person doing the work

**53. Records relating to trades:**

1. A registered motor vehicle dealer shall maintain records of,
  - (h) each purchase of a motor vehicle by the dealer, including as a trade-in;

It is thereby agreed that the Dealer, Elnaameh, and Nakhle have breached sections 7(1) and 9(4) of the Code of Ethics, as set out in regulation 332/08:

**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. (4) A registrant shall provide conscientious service to the registrant's customers in the course of a trade in a motor vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services.

It is thereby agreed that Elnaameh and Nakhle have breached section 6(2) of the Code of Ethics, as set out in regulation 332/08:

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.

**Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$3,250 no later than **May 18, 2019.**
2. Elnaameh agrees to successfully complete the Automotive Certification Course (the "Course") no later than **May 18, 2019.**
3. Nakhle agrees to successfully complete the Course no later than **May 18, 2019.**
4. 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 **May 18, 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer, Elnaameh, and Nakhle, agree 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 6, 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 \$3,250 no later than **May 18, 2019**.
2. Elnaameh is ordered to successfully complete the Automotive Certification Course (the "Course") no later than **May 18, 2019**.
3. Nakhle is ordered to successfully complete the Course no later than **May 18, 2019**.
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5. The Dealer, Elnaameh, and Nakhle, agree 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



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*Paul Burroughs, Chair*

