

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*

- AND -

Wayne Pitman Ford Lincoln Inc.

- AND -

Wayne Bricknell

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 27, 2020

Findings: Breach of Sections 4, 5, 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$8,350 no later than **May 30, 2020.**
2. Bricknell is ordered to pay a fine in the amount of \$1,250 no later than **May 30, 2020.**
3. Bricknell is ordered to successfully complete the Automotive Certification On-Site Course (the "Course") no later than **May 30, 2020.**



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 30, 2020**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Bricknell 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. Wayne Pitman Ford Lincoln Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around June 2006. Wayne Bricknell ("Bricknell") was first registered as a motor vehicle salesperson in or around November 1983. At all material times Bricknell was an Officer and the person in charge of the day to day activities of the Dealer.

Previous direct correspondence with Dealer:

2. During an inspection on about March 21, 2007, a representative of the Registrar reminded Bricknell, on behalf of the Dealer, of the Dealer's obligation to provide purchasers with written disclosure of all material facts about their vehicles he sells.
3. During an inspection on about November 12, 2013, a representative of the Registrar reminded Bricknell on behalf of the Dealer, of the Dealer's obligation to provide purchasers with written disclosure of all material facts about their vehicles it sells.



Dealer non-compliance:

4. During an inspection on or about December 10, 2018, a representative of the Registrar found the following non-compliance issues:
- a) On about February 21, 2018 the Dealer wholesaled a 2005 Toyota Corolla (VIN 2T1BR32E75C554786), without providing the purchaser with written disclosure of the vehicle's accident damage history of \$3,361 on the bill of sale. This is contrary to sections 5, 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC confirmation the purchaser was aware of their vehicle's history.
 - b) On about February 26, 2018, the Dealer sold a 2009 Toyota Corolla (VIN 2T1BU40E89C026364) without providing the purchaser with written disclosure of the vehicle's accident damage history of \$7,505 on the bill of sale. This is contrary to sections 42 (19) and (25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC confirmation the purchaser they are aware of their vehicle's history. The Dealer offered monetary compensation for the lack of disclosure.
 - c) On about June 30, 2018, the Dealer sold a 2009 Acura MDX (VIN 2HNYD28289H006883) without providing the purchaser with written disclosure of the vehicle's accident damage history of \$3,069 on the bill of sale. This is contrary to section 42 (19) and (25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC confirmation the purchaser was aware of their vehicle's history.
 - d) The Dealer advertised and/or sold the following former daily rental vehicles without providing disclosure in the advertisement and/or the bill of sale. This is contrary to section 36(5), 42(7) and 42(25) of Regulation 333/08, as well as sections 4, 7 and 9 of the Code of Ethics.

	Vehicle	Date advertised	Date sold	Non-disclosure on contract Reg 42(7) and (25)	Non-disclosure Ad Reg 36(5)
i.	2017 Ford Flex VIN - 2FMHK6C80HBA10812	N/A	2018-04-07	•	
ii.	2018 Ford Flex	N/A	2018-04-20	•	



	VIN - 2FMHK6D82JBA00268				
iii.	2017 Ford Fusion VIN - 3FA6P0T97HR376034	N/A	2018-04-26	•	
iv.	2018 Ford Flex VIN - 2FMHK6D84JBA00238	2018-08-28	2018-09-18	•	•
v.	2017 Ford Edge VIN - 2FMPK4J89HBB84266	2018-08-28	2018-10-30	•	•
vi.	2018 Ford Flex VIN - 2FMHK6D8XJBA10305	2018-12-10	N/A		•
vii.	2018 Ford Escape VIN - 1FMCU9J91JUA37776	2018-11-12	N/A		•

5. The Dealer has since provided OMVIC with confirmation three of the five purchasers were aware of their vehicle's history. The Dealer has attempted to reach out to the remaining two purchasers to advise them of their vehicle's history.
6. The Dealer has failed its due diligence requirement with respect to thoroughly researching the histories of the vehicles it sells, and in doing so is non-compliant with section 9(3) of the Code of Ethics.
7. In failing to ensure the Dealer's disclosure requirements is compliant with the law, Bricknell has personally breached sections 6(2) and 9(1) of the Code of Ethics.



Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$8,350 no later than **May 30, 2020.**
2. Bricknell agrees to pay a fine in the amount of \$1,250 no later than **May 30, 2020.**
3. Bricknell agrees to successfully complete the Automotive Certification On-Site Course (the "Course") no later than **May 30, 2020.**
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 30, 2020.** 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Bricknell 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 both the Dealer and the Registrant breached subsections 4, 5, 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, having been satisfied that neither the Dealer nor the Registrant have previously been found in breach of the Code of Ethics 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 \$8,350 no later than **May 30, 2020.**
2. Bricknell is ordered to pay a fine in the amount of \$1,250 no later than **May 30, 2020.**



3. Bricknell is ordered to successfully complete the Automotive Certification On-Site Course (the "Course") no later than **May 30, 2020**.
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5. The Dealer and Bricknell 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



Paul Burroughs, Chair

