

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 -

1587431 ONTARIO LTD. o/a DRIVETIME

- AND -

WAHEED BARAKZIYE

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: February 19, 2015

Findings: Breach of Sections 3, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$6,000. \$1,000 will be paid within 30 days of the date of the Discipline Committee Order and the remaining balance will be paid within 120 days of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer is ordered to ensure the general manager will successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this.
4. The Dealer 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. 1587431 Ontario Ltd. o/a Drivetime (the "Dealer") was first registered as a motor vehicle dealer in or around May 2004. Waheed Barakziye ("Barakziye") was first registered as a motor vehicle salesperson in or around May 2003. At all material times, Barakziye was an officer and director of the Dealer.
2. On or about May 26, 2004, the Dealer executed terms and conditions of registration, a copy of which are attached hereto as schedule "A". As per condition 1, the Dealer agreed to ensure that all personnel, agents, assignees to anyone acting on behalf of the Dealer trade motor vehicles shall be registered as a salesperson to the Dealer. As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practices as may be amended from time to time. As per condition 20, the Dealer agreed to ensure to disclose in writing on the bill of sale all material facts about the vehicles it sells, including, but not limited to previous daily rental histories.
3. During an inspection on or about September 14, 2011, a representative of the Registrar reminded the Dealer to ensure that all vehicle disclosures are made in writing on the purchase agreement.

Daily rental disclosure:

4. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to disclose former daily rental vehicles on purchase agreements.
5. In or around December 2008, OMVIC issued a bulletin which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to disclose former daily rental vehicles on purchase agreements.
6. By letter dated September 25, 2011, a representative of the Registrar reminded the Dealer to disclose former daily rental history in writing on the purchase agreement.

7. Once the Act came into effect, the following bulletins further reminded dealers of the requirement to disclose former daily rental vehicles on purchase agreements.
 - a. January 2010
 - b. September 2012
8. Furthermore, OMVIC issued a Dealer Standards in the summer of 2012 reminding dealers of the requirement to disclose former daily rental vehicles on purchase agreements.
9. On or about October 24, 2012, the Dealer purchased a 2011 Chevrolet Silverado (VIN 1GCRKREAXBZ435758) disclosed as a former daily rental vehicle. On or about April 22, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former daily rental use, contrary to sub section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC confirmation that the consumer is now fully aware of the vehicles former daily rental use.
10. On or about September 12, 2012 the Dealer purchased a 2011 Kia Soul (VIN KNDJT2A25B7313823). On or about July 5, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former daily rental use, contrary to sub section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC confirmation that they attempted to contact the consumer by email to make them aware of the vehicles former daily rental use.

Unregistered Salespeople:

11. In the spring of 2010, OMVIC issued a Dealer Standard publication, which reminded dealers of their obligation to ensure all sale staff are registered with OMVIC.
12. By letter dated September 25, 2011, as previously referenced in paragraph 6, a representative of the Registrar also reminded the Dealer that all salespeople require registration with OMVIC.
13. From in or around March 2013 to in or around November 2013, the Dealer retained the services of an unregistered salesperson, Jose Villegas. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.

Warranty submittals:

14. In or around June 2010, OMVIC issued a bulletin reminding dealers that all documents and funds from the sale of an extended warranty are to be remitted to the warranty provider within 7 days of the sale of the warranty.
15. During an inspection dated August 26, 2013, it was found that the Dealer failed to ensure that all extended warranty payments were remitted to the warranty provider within the required 7 days, contrary to section 47 (7) of Regulation 333/08, as well as section 3 and 7 of the Code of Ethics.

By failing to comply with the following section of the *Motor Vehicle Dealers Act, 2002*:

Prohibition

4. (1) No person shall,

(b) act as a salesperson unless he or she is registered as a salesperson.

Unregistered salesperson

(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

Salespersons

(5) A salesperson shall not trade a motor vehicle on behalf of a motor vehicle dealer unless the salesperson is registered to that dealer.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Disclosure

42. (7) If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the Act.

Warranty

47. (7) If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall ensure,

(c) Within 7 days after the parties enter into the contract for the warranty, provide the seller of the warranty with,

(i) all documents detailing the contract that the dealer has in its possession,
(ii) all payments that the dealer has received from the purchaser.

It is thereby agreed that the Dealer and Barakziye have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

3. A registrant shall be financially responsible in carrying on business.
7. A registrant shall ensure that all documents used by the registrant in the course of 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 \$6,000. \$1,000 will be paid upfront (within 30 days of the date of the Discipline Committee Order) and the remaining balance will be paid within 120 days of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer agrees that the general manager will successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this.
4. The Dealer agrees 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 Barakziye breached subsections 3, 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 \$6,000. \$1,000 will be paid within 30 days of the date of the Discipline Committee Order and the remaining balance will be paid within 120 days of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council
2. The Dealer is ordered to ensure the general manager will successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.



Ontario's Vehicle Sales Regulator

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3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this.
4. The Dealer 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

A handwritten signature in cursive script, appearing to read "C. Poultney", is written over a horizontal line.

Catherine Poultney, Chair