

## 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 -

1681230 ONTARIO INC. o/a WINDSOR CHRYSLER

- AND -

JOSEPH DIEMER

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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:** May 9, 2016

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

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$3,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure the General Sales Manager ("GSM") successfully completes the OMVIC certification course ("course") within 90 days of the date of the Discipline Committee Order. In the event the GSM fails to complete the course, Diemer will successfully complete the course within 120 days of the date of the Discipline Committee Order.
3. 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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall 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. 1681230 Ontario Inc o/a Windsor Chrysler (the "Dealer") was first registered as a motor vehicle dealer in or around May 2006. Joseph Diemer ("Diemer") was first registered as a motor vehicle salesperson in or around February 1983. At all material times, Diemer was the sole officer and director of the Dealer.

### ***OMVIC publications:***

2. 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, including the vehicle's history and condition, such accident repair histories, previous daily rental histories, and out of province registrations ("disclosure"). In addition to this, the upcoming advertising regulations were reviewed, including the requirement to disclose former daily rental histories and the requirement to promote an all-inclusive vehicle price ("advertising").
3. The following Dealer Standard publications also reminded dealers of their disclosure and/or advertising obligations:
  - Summer 2011
  - Summer 2012
  - Winter 2013
  - Fall 2013
4. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their disclosure and/or advertising obligations:
  - January 2010 (2 advertising, 1 disclosure)
  - April 2010 (2 advertising)
  - June 2010 (advertising)
  - June 2011 (advertising)
  - February 2012 (advertising)
  - August 2012 (advertising)
  - September 2012 (disclosure)
  - December 2013 (disclosure)
  - April 2014 (advertising)



- June 2014 (advertising)

**Direct Correspondence with Dealer: inspections and letter**

5. On or about July 29, 2010, the Dealer was advised by a representative of the Registrar that when advertising vehicle prices not available to the general public, this information must be disclosed in a clear, comprehensible and prominent manner.
6. On or about August 11, 2010, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such. Said representative gave the Dealer specific examples as to what was acceptable disclosure.
7. On or about June 16, 2011, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
8. On or about July 25, 2011, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
9. On or about June 27, 2012, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
10. On or about December 5, 2012, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
11. On or about January 29, 2013, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
12. On or about August 15, 2013, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
13. On or about August 29, 2013, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
14. On or about August 29, 2013, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
15. On or about April 1, 2015, the Dealer was again reminded by a representative of the Registrar of their obligation to ensure advertised vehicle prices not available to the general public are clearly indicated as such.
16. During an inspection on or about May 14, 2015, the following examples of non-compliance were found:



## ADVERTISING

17. In or around April 2015, advertisements were placed by or on behalf of the Dealer that promoted pricing incentives, but failed to disclose that these prices were not available to the general public. As such, the advertisements were misleading and did not comply with sections 4 and 9 of the Code of Ethics.

## DISCLOSURE

### Non-disclosure on RBOS:

18. On or about January 8, 2015, the Dealer wholesaled a 2004 Jeep Liberty (VIN 1JHGL48K74W156035) without providing the purchaser with written disclosure on the bill of sale of the vehicle's \$5137 accident history. This is contrary to section 42(19) of Regulation 333/08 as well sections 5, 7 and 9 of the Code of Ethics. The dealer has since provided confirmation the purchaser was aware of the accident history at the time of purchase.
19. As a result of the aforementioned issues, the General Sales Manager has agreed to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.

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

**42(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

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

**4. 1)** A registrant shall be clear and truthful in describing the feature, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

**2)** A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

**5. (16)** 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

**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. (1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonable by regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

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

(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.

### **Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$3,500 within 90 days of the date of the Discipline Committee Order.
2. In the event the General Sales Manager is unwilling or unable to complete the OMVIC certification course ("course") within 90 days of the date of the Discipline Committee Order, Diemer will successfully complete the course within 120 days of the date of the Discipline Committee Order.
3. 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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees 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 and Diemer breached subsections 4, 5, 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 \$3,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure the General Sales Manager ("GSM") successfully completes the OMVIC certification course ("course") within 90 days of the date of the Discipline Committee Order. In the event the GSM fails to complete the course, Diemer will successfully complete the course within 120 days of the date of the Discipline Committee Order.



3. 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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall 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*

