

## 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*  
("OMVIC")

- AND -

JASON ALBERT MOLINA o/a JM FINE AUTO SALES  
("Registrant")

---

**Date of Hearing:** February 9, 2018

**Date of Decision:** March 8, 2018

**Findings:** Breaches of sections 41 and 42 of Ontario Regulation 333/08, and sections 7 and 9 of the Code of Ethics (Ontario Regulation 332/08).

**Order:**

1. Jason Albert Molina o/a JM Fine Auto Sales shall pay a fine in the amount of \$8,400. \$2,000 is due within 60 days of the date of the Discipline Committee Order and the remaining balance is due within 180 days of the date of the Discipline Committee Order. If an extension is required, an application can be made to the Discipline Committee.
2. Jason Molina shall successfully complete the OMVIC certification course offered by Georgian College within six (6) months of the date of the Discipline Committee Order.
3. Jason Molina shall offer any salespersons working for JM Fine Auto Sales at the date of this Discipline Committee Order, or any salespersons employed by JM Fine Auto Sales at the date of the Discipline Committee Order or whose employment commences between the date of the Discipline Committee Order and December 31, 2021, the opportunity to complete the OMVIC certification course.
4. Jason Molina shall incur all costs associated with this Discipline Committee Order.



## Reasons for Decision

### Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002* (the “Act”).

OMVIC was represented by Ms. Diana Mojica, counsel. The Registrant, Mr. Molina, was self-represented. The Panel of the Discipline Committee consisted of Jennifer Cooper (Chair), Jonathan Lemaire (Vice-Chair), and Abolfazl Mohammad Rad (Vice-Chair). Justin Safayeni attended as Independent Legal Counsel to the Panel.

The Panel marked the following documents during the course of the hearing:

- Exhibit #1: Notice of Complaint (dated August 22, 2017)
- Exhibit #2: Notice of Further and Other Particulars (dated November 9, 2017)
- Exhibit #3: Registrar’s Book of Documents (27 tabs)<sup>1</sup>
- Exhibit #4: Chapter 18.12 – Safety Standards Certificate (excerpt from OMVIC Automotive Certification Course – Student Workbook)
- Exhibit #5: Package of documents relating to 2005 Toyota Corolla (VIN 2TIBR32E7SC84546S)
- Exhibit #6: Package of documents relating to 2004 BMW 325 XI (VIN WBAEU3346PM59599)
- Exhibit #7: Package of documents relating to 2008 Dodge Grand Caravan (VIN 2D8HN44P58R627881)
- Exhibit #8: Agreement of Purchase and Sale for 2003 Volvo XC70 (VIN YV1SZ59H631110077)
- Exhibit #9: Package of documents relating to 2002 Toyota Camry (VIN JTDDBE32KX20124466)
- Exhibit #10: Email exchange dated February 2-5, 2018 between Bruce Mitchell and A.W.
- Exhibit #11: Notes of statement from K.V. dated February 3, 2018<sup>2</sup>
- Exhibit #12: Bill of sale for 2009 Volkswagen Jetta (VIN 3VWJL71KX9MO72612)
- Exhibit #13: Package of documents including previous notices of hearing and pre-hearing order
- Exhibit #14: Email exchange dated February 6, 2018 between A. Di Fazio and J. Molina

Both parties agreed to hear evidence in respect of liability and penalty together, as well as argument in respect of liability and penalty together. In light of the parties’ agreement, the Panel proceeded in that manner.

At the conclusion of the hearing, the Panel reserved its decision on liability and penalty.

---

<sup>1</sup> At the request of counsel for OMVIC, Tab 13 was removed from the Book of Documents.

<sup>2</sup> This document was entered as an exhibit by the Registrant. Counsel for OMVIC was clear that she did not intend to rely on this document, and that it was disclosed to the Registrant as part of OMVIC’s continuing disclosure obligations.



## The Allegations

The allegations against Mr. Molina are set out in the Notice of Further and Other Particulars (Exhibit #2) (“NFOP”). The NFOP withdraws and replaces the contents of the original Notice of Complaint. In addition, at the outset of the hearing, counsel for OMVIC advised that it was seeking to withdraw paragraph 7 from the NFOP.

Accordingly, the allegations against Mr. Molina – as reflected in the NFOP, with paragraph 7 removed – are as follows:

1. Paragraphs 1-9 of the Notice of Complaint, dated August 22, 2017, are deleted and replaced with the following.
2. Molina, Jason Albert o/a JM Fine Auto Sales (the “Dealer”) was first registered as a motor vehicle dealer in or around June 2005. Jason Molina is the sole proprietor of the Dealer.
3. On or about June 2, 2005, Molina executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 20, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells. This includes but is not limited to: accident repair histories.

### OMVIC publications:

#### *Disclosure requirements:*

4. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement for dealers to provide purchasers with written disclosure of a vehicle’s accident repair history (“disclosure”).
5. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the disclosure requirements:
  - a. Summer2011
  - b. Summer 2012
  - c. Summer 2013
  - d. Issue #4 2014
  - e. Issue #4 2016
6. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:
  - a. January 2010
  - b. December 2013

#### *Leasing:*



## 7. [Withdrawn]

Direct correspondence with Dealer:

8. During an inspection on or about November 23, 2010, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to accident repair histories.
9. During an inspection on or about April 19, 2017, a representative of the Registrar found the following non-compliance issues:
  - a. On or about October 23, 2016, the Dealer sold a 2009 Volkswagen Jetta, (VIN 3VWJL71KX9M072612). This vehicle has a \$3,146 accident damage history which the Dealer failed to disclose on the bill of sale. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
  - b. On or about November 10, 2016, the Dealer purchased a 2002 Toyota Camry, (VIN JTDBE32KX20124466) declared as having a \$3,489 accident damage history. On or about February 22, 2017, the Dealer sold this vehicle and failed to disclose this information on the bill of sale. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
  - c. On or about November 19, 2016, the Dealer leased a 2008 Dodge Grand Caravan, (VIN 2D8HN44P58R627881). This vehicle has 3 separate accident damage records in the amounts of: \$4,133, \$16,877, and \$3,307. The Dealer failed to disclose any of this information on the lease agreement. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer failed to subject this vehicle to a safety standards inspection prior to lease inception. As such, the Dealer failed to provide the lessee of this vehicle with a copy of a current Safety Standards Certificate ("SSC"). This is contrary to section 41(9) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
  - d. On or about December 3, 2016, the Dealer leased a 2005 Toyota Corolla, (VIN 2T1BR32E75C845465). This vehicle has a \$6,195 accident damage history which the Dealer failed to disclose on the lease agreement. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer failed to subject this vehicle to a safety standards inspection prior to lease inception. As such, the Dealer failed to provide the lessee of this vehicle with a copy of a current SSC. This is contrary to section 41(9) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
  - e. On or about January 26, 2017, the Dealer took a 2003 Volvo XC70 (VIN YV1S259H63111007) on trade. This vehicle has a \$9,070 accident damage history. On or about March 4, 2017, the Dealer sold this vehicle and failed to disclose the accident history on the bill of sale. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.



f. On or about February 25, 2017, the Dealer purchased a 2004 BMW 325 (VIN WBAEU33464PM59599) declared as having a \$20,883 accident damage history. A vehicle history report indicates the vehicle has sustained four separate accidents or incidents, two of which exceed \$3,000 in damage (\$13,404 and \$3,931 in damage). On or about March 16, 2017, the Dealer sold this vehicle and failed to disclose any of this information on the bill of sale. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

10. Also during the April 19, 2017 inspection, Molina advised the Registrar's representative that the Dealer offers in-house lease contracts to consumers, including those referenced in paragraphs "9(c)" and "9(d)" of this document, but does not provide the lessees these vehicles with a copy of a current SSC. This is contrary to section 41(9) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

### **Registrant's plea**

Mr. Molina denied all allegations set out in the NFOP.

### **Evidence**

OMVIC called two witnesses: Jennifer Andrew, Compliance Inspector; and Andrea Korth, Business Standards Manager. Counsel for OMVIC submitted a Book of Documents (Exhibit 3), which included 6 (six) Bills of Sale and other documentation related to the vehicles outlined in paragraphs 9 (a) through (f) of the NFOP.

Mr. Molina testified on his own behalf. He called no other witnesses.

### **Jennifer Andrew** (Compliance Inspector, OMVIC)

Ms. Andrew is one of the Compliance Inspectors from OMVIC who inspected the Registrant's premises on November 23, 2010. Mr. Molina was present.

At the inspection, it was revealed that Mr. Molina had failed to ensure that all material facts related to vehicles sold/leased were disclosed in writing in the Bill of Sale. Ms. Andrew stated that she reminded Mr. Molina of his obligations to provide purchasers/lessees with written disclosure of a vehicle's accident history. As a result, Ms. Andrew issued an Inspection Findings document, signed by Mr. Molina, which included the following statement: "Dealer to ensure to disclose all material facts, including but not limited to, accident repair as per MVDA". (Mr. Molina's signature on the document was an acknowledgment that he had received a copy of the document, and not an admission of non-compliance.)

Ms. Andrew's next contact with Mr. Molina was approximately five years later, on March 21, 2017, when she attended the premises for a scheduled routine inspection. On that date, Mr. Molina was



provided with additional time to obtain copies of documentation related to approximately 9 (nine) purchase/sale and purchase/lease agreements requested and Ms. Andrew returned to continue the inspection on April 19, 2017.

Ms. Andrew testified that the review of the purchase/sale and purchase/lease agreements obtained on April 19, 2017 revealed that with respect to each of the 6 (six) vehicles identified in paragraphs 9 (a) through (f) of the NFOP, all had in excess of \$3,000 accident damage history and Mr. Molina sold each vehicle without disclosing this information on the bill of sale/lease agreement. In addition, 2 (two) of the 6 (six) vehicles which were leased, were transferred without a copy of a current Safety Standards Certificate (“SSC”).

The documentation contained in the Book of Documents (Exhibit #3) was consistent with Ms. Andrew’s testimony.

During cross examination, Ms. Andrew acknowledged that at no time did she contact the individuals who purchased/leased the six vehicles from Mr. Molina.

Andrea Korth (Business Standards Manager, OMVIC)

Andrea Korth has been employed by OMVIC since 2005. She was originally a complaint handler and since 2007 has held the position of Business Standards Manager. Ms. Korth gave evidence regarding the history and purpose of the Standards of Business Practice and Code of Ethics. She also testified about quarterly publications entitled “The Dealer Standard” issued to all registrants of OMVIC since 2008, which provide information regarding disclosure requirements on the bill of sale as a result of the proclamation of the new Act on January 1, 2010.

Ms. Korth reviewed six (6) issues of the Dealer Standard published between 2008 and 2013, all of which contained information regarding the dealers’ obligations to be transparent and disclose damage over \$3,000, and to disclose any material fact which may influence a consumer’s purchasing decision. She also identified two Dealer Bulletins dated January 2010 and December 2013 on the same issue. Ms. Korth testified that these documents were published on OMVIC’s website and were mailed and/or emailed to all registrants.

Ms. Korth testified that shortly after the Notice of Complaint was mailed out on August 24, 2017, she received a telephone call from Mr. Molina during which he advised that his customers who purchased/leased the vehicles identified in the NFOP were aware of the vehicle history. Ms. Korth requested that Mr. Molina provide her with confirmation in writing from each of the purchasers. Between September and October 2017, Mr. Molina advised Ms. Korth that he was in possession of letters from 2 (two) customers/purchasers, but no such letters were provided to OMVIC until early 2018.

During cross examination, Ms. Korth confirmed that she did not contact any of the purchasers of the vehicles identified in the NFOP to determine if they were advised verbally of the accident history at the time of purchases.



Jason Albert Molina (Registrant)

JM Fine Auto Sales was first registered as a motor vehicle dealer, and Mr. Molina registered as a motor vehicle salesperson, in 2002. Around the same time, Mr. Molina successfully completed the OMVIC certification course and confirmed he understood his obligations under the Act and its regulations.

On or about October 2002, Mr. Molina executed terms and conditions of registration on behalf of JM Fine Auto Sales and agreed that he was under a positive obligation to disclose in writing on the bill of sale all material facts about vehicles JM Fine Auto Sales sells or leases, including as much detail as possible regarding the nature and severity of accident damage.

During cross-examination, Mr. Molina confirmed he recalled signing the terms and conditions of registration; that he likely received all Standard Dealer publications and other Bulletins sent by OMVIC; and that, if received, he would have read them. He also testified that he understood his obligations as set out in the terms and conditions document and Code of Ethics.

Although Mr. Molina denied the allegations contained within the NFOP at the outset of the hearing, during cross examination he confirmed that the bills of sale for the vehicles which he issued and that were identified in paragraphs 9 (a) through (f) did not disclose in writing that each vehicle had accident damage history in excess of \$3,000.

Mr. Molina testified that he told the purchasers/lessees of 5 (five) of the 6 (six) vehicles identified in the NFOP of the accident damage history at the time of the purchase/lease, but he forgot to disclose the history in writing on each bill of sale. He indicated that he did not tell the purchaser of the 2003 Volvo XC70 identified in paragraph 9 (e) that the vehicle had \$9,070 accident damage history because he was not aware of the damage at the time of the sale.

Mr. Molina submitted letters/statements purportedly signed by purchasers/lessees of 5 (five) of the vehicles. 3 (three) letters indicate that the purchaser/lessee was aware of the accident damage history at the time of purchase/lessee and 2 (two) indicate that they were informed on or around the date the letters/statements were signed. The letters/statements were all dated between December 6, 2017 and January 22, 2018.

On cross examination, Mr. Molina admitted that he had not received any letters/statements from purchasers/lessees when he advised Ms. Korth on September 25, 2017 that he was in possession of 2 (two) such letters.

Mr. Molina acknowledged that he did not provide a current SSC on the date of the transfer to the lessees of vehicles identified in paragraphs 9 (c) and (d) of the NFOP. However, he claimed that safety standards inspections were conducted on both vehicles. Mr. Molina provided a copy of the SSC for the 2005 Toyota Corolla (vehicle identified in paragraph 9 (d)), which was dated 10 days after the lease agreement. With respect to the vehicle identified in paragraph 9 (d), Mr. Molina provided a copy of an invoice for the replacement of front brake pads, rotors, and other miscellaneous parts, which was dated 2 days after the lease agreement. He claims the invoice was for work required to be done to have a SSC issued. A letter/statement purportedly from the lessee states that the vehicle was "safety and E-Tested and I was supply [sic] with the safety paper...". There is no mention of the when the "safety paper" was received.



Mr. Molina testified that he had made some mistakes in relation to the transactions identified in the NFOP, but had since taken steps to rectify them, which included offering to buy back any of the vehicles if the customers were not satisfied. One of the customers of vehicles identified in the NFOP had taken him up on his offer.

### Decision of the Panel

The Panel finds the Registrants committed the following breaches of the Code of Ethics:

<i>Vehicle</i>	<i>Nature of the missing information</i>	<i>Section(s) of Regulation 333/08 breached</i>	<i>Section(s) of the Code of Ethics breached</i>
2009 Volkswagen Jetta (VIN 3VWJL7KX9M072612)	Accident damage history of \$3,146 not disclosed on bill of sale.	42(19) and (25)	7: Compliance and 9: Professionalism
2002 Toyota Camry (VIN JTDBE32KX20124466)	Accident damage history of \$3,489 not disclosed on bill of sale.	42(19) and (25)	7: Compliance and 9: Professionalism
2008 Dodge Grand Caravan (VIN 2D8HN44P58R627881)	Accident damage history of \$4,133, \$16,977 and \$3,307 not disclosed on bill of sale.  Copy of current SSC not provided with the contract.	42(19) and (25)  41(9)(d)	7: Compliance and 9: Professionalism
2005 Toyota Corolla (VIN 2T1BR32E75C845465)	Accident damage history of \$6,195 not disclosed on bill of sale.  Copy of current SSC not provided with the contract.	42(19) and (25)  41(9)(d)	7: Compliance and 9: Professionalism
2003 Volvo XC70 (VIN YV1SZ59H63111007)	Accident damage history of \$9,070 not disclosed on bill of sale.	42(19) and (25)	7: Compliance and 9: Professionalism
2004 BMW 325 (VIN WBAEU3346PM59599)	Accident damage history of \$13,404 and \$3,931 not disclosed on bill of sale.	42(19) and (25)	7: Compliance and 9: Professionalism





## Reasons for Decision

### Onus and standard of proof

At the hearing, the onus, or burden of proof, is on OMVIC to prove, on a balance of probabilities that a finding should be made against Mr. Molina.

The standard of proof in this matter is the civil standard of proof, which is proof on a balance of probabilities. Proof on a balance of probabilities is a level of proof determined on the basis of whether something is more likely to be true than not. It is this standard that OMVIC must reach in order for the Panel to make a finding against Mr. Molina.

### Summary of allegations

As outlined in further detail above, in respect of each vehicle, the allegations against Mr. Molina are that he failed to disclose the vehicle accident history on the bill of sale or lease agreement, and in so doing breached sections 42(19) and 42(25) of Regulation 333/08 and sections 7 and 9 of the Code of Ethics.

In respect of two vehicles identified in paragraphs 9 (c) and (d) of the NFOP (the 2008 Dodge Grand Caravan and the 2005 Toyota Corolla), it is also alleged that Mr. Molina failed to subject the vehicle to a safety standards inspection prior to lease inception and failed to provide a copy of a current SSC along with the contract, thereby breaching section 41(9) of Regulation 333/08 and sections 7 and 9 of the Code of Ethics.

The key provisions in Regulation 333/08 are as follows:

41. (1) A registered motor vehicle dealer, other than a fleet lessor, that enters into a contract to lease a motor vehicle to a lessee who is not another registered motor vehicle dealer shall ensure that the contract includes, in a clear, comprehensible and prominent manner, the following:

...

(9) For each contract mentioned in subsection (1) into which the registered motor vehicle dealer enters, the dealer shall ensure that,

...

(d) if the motor vehicle being leased is a used vehicle, the lessee receives a copy of a current safety standards certificate for the vehicle along with the contract.

...

42. For the purposes of section 30 (1) of the Act, the information mentioned in paragraph 22 of subsection 39 (2) and paragraph 11 of subsection 41 (1) of this Regulation is the following:

...

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.



...

25. Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

The key provisions in Code of Ethics (O. Reg. 332/08) are as follows:

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.

...

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.

(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.

(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.

#### Findings on allegations in respect of 2009 Volkswagen Jetta

With respect to this vehicle, identified in paragraph 9 (a) of the NFOP, the Panel finds that accident history damage history in excess of \$3,000 was not disclosed on the bill of sale. The Panel reached this conclusion based on the documentary evidence, including the Carproof history report (which outlined accident damage in the amount of \$3,146) and the bill of sale, which did not contain written disclosure of the accident damage history. The Panel also relied on Mr. Molina's statement that he was aware of the accident history at the time of sale.

Based on these factual findings, the Panel concludes that Mr. Molina breached sections 42(19) and (25) of O. Reg 333/08 and sections 7 and 9 of the Code of Ethics in relation to this vehicle.

#### Findings on allegations in respect of 2002 Toyota Camry

With respect to this vehicle, identified in paragraph 9 (b) of the NFOP, the Panel finds that accident history damage history in excess of \$3,000 was not disclosed on the bill of sale. The Panel reached this conclusion based on the documentary evidence including the Carproof history report (which outlined accident damage in the amount of \$3,489), disclosure statement from H.J. Pfaff Volkswagen (Plaff Motor



Inc.)(which provided damage in the same amount as was listed in the Carproof history report), and the bill of sale which did not contain written disclosure of the accident damage history. The Panel also relied on Mr. Molina's statement during cross examination that he was aware of the accident history at the time of sale but forgot to provide disclosure of same on the bill of sale.

Based on these factual findings, the Panel concludes that Mr. Molina breached sections 42(19) and (25) of O. Reg 333/08 and sections 7 and 9 of the Code of Ethics in relation to this vehicle.

#### Findings on allegations in respect of 2008 Dodge Grand Caravan

With respect to this vehicle, identified in paragraph 9 (c) of the NFOP, the Panel finds that accident history damage history in excess of \$3,000 was not disclosed on the lease agreement. The Panel reached this conclusion based on the documentary evidence including the Carproof history report (which outlined accident damage in amounts of \$4,133.00, \$16,877.00 and \$3,307.00), and the bill of sale, which did not contain written disclosure of the accident damage history. The Panel also relied on Mr. Molina's statement during cross examination that he was aware of the accident history at the time of the lease but did not provide written disclosure to the lessee.

The Panel considered a letter from the lessee commissioned on December 14, 2017 and Mr. Molina's position with respect to this vehicle was that the lessee was made aware of the damage history.

The Panel also finds that a current SSC was not provided to the lessee for the vehicle with the lease/contract. The Panel reached this conclusion based on documentary evidence, which indicates the vehicle was leased on November 19, 2016, but a SSC was last issued on June 8, 2012. The Panel also relied on Mr. Molina's statement during cross examination that a SSC was not issued, although he did work on the vehicle.

Based on these factual findings, the Panel concludes that Mr. Molina breached sections 41(9)(d), 42(19)(d) and 42(25) of O. Reg 333/08 and sections 7 and 9 of the Code of Ethics in relation to this vehicle.

#### Findings on allegations in respect of 2005 Toyota Corolla

With respect to this vehicle, identified in paragraph 9(d) of the NFOP, the Panel finds that accident history damage history in excess of \$3,000 was not disclosed on the lease agreement. The Panel reached this conclusion based on the documentary evidence including the Carproof history report (which outlined accident damage in the amount of amounts of \$6,195.00), and the bill of sale which did not contain written disclosure of the accident damage history. The Panel also relied on Mr. Molina's statement during cross examination that he was aware of the accident history at the time of the lease but did not provide written disclosure to the lessee.

The Panel considered the letter from the lessee and Mr. Molina's position with respect to this vehicle, which was that the lessee was made aware of the damage history at the time he entered into the lease.

The Panel also finds that a current SSC was not provided to the lessee for the vehicle with the lease/contract. The Panel reached this conclusion based on documentary evidence, which indicates the



vehicle was leased on December 3, 2016 but a SSC was last issued on February 29, 2012. The Panel also relied on Mr. Molina's statement during cross examination that a SSC was not issued, although he did work on the vehicle.

Based on these factual findings, the Panel concludes that Mr. Molina breached sections 41(9)(d), 42(19)(d) and 42(25) of O. Reg 333/08 and sections 7 and 9 of the Code of Ethics in relation to this vehicle.

#### Findings on allegations in respect of 2003 Volvo XC70

With respect to this vehicle, identified in paragraph 9(e) of the NFOP, the Panel finds that accident history damage history in excess of \$3,000 was not disclosed on the bill of sale. The Panel reached this conclusion based on the documentary evidence, including the Carproof history report (which outlined accident damage in the amount of \$9,070.00) and the bill of sale, which did not contain written disclosure of the accident damage history.

The Panel also relied on Mr. Molina's statement during cross examination that he did not provide written disclosure at the time of the sale. The Panel considered his explanation that it was not disclosed because he was not aware of the damage history at the time and the purchaser's letter dated December 6, 2017, which indicates she has since been advised. However, the Panel notes that pursuant to the terms and conditions signed by Mr. Molina in or around 2002, he is under an obligation to make "reasonable efforts" to research the history of all vehicles prior to sale to ensure all material facts are disclosed. Mr. Molina's acknowledged that he made no efforts in this regard and as such his lack of knowledge does not release him from liability in this instance.

Based on these factual findings, the Panel concludes that Mr. Molina breached sections 42(19) and (25) of O. Reg 333/08 and sections 7 and 9 of the Code of Ethics in relation to this vehicle.

#### Findings on allegations in respect of 2004 BMW 325

With respect to this vehicle, identified in paragraph 9(f) of the NFOP, the Panel finds that accident history damage history in excess of \$3,000 was not disclosed on the bill of sale. The Panel reached this conclusion based on the documentary evidence, including the Carproof history report (which outlined accident damage in the amounts of \$13,404.00 and \$3,931.00), the disclosure statement from H.J. Pfaff Volkswagen (Plaff Motor Inc.) (which provided damage in excess of \$20,000.00), and the bill of sale which did not contain written disclosure of the accident damage history. The Panel also relied on Mr. Molina's statement during cross examination that he was aware of the accident history at the time of sale but forgot to provide written disclosure of same.

The Panel considered Mr. Molina's position with respect to this vehicle, which was that he told the purchaser of the damage history at the time of sale but neglected to put this information on the bill of sale. The Panel also considered the letter from the purchaser commissioned on December 29, 2017, which indicates she was aware of the damage history at the time of the purchase from Mr. Molina.

However, as is the case with each of the allegations contained in the NFOP, the legislation is clear. Section 42(19) and (25) of O. Reg 33/08 state that a dealer "shall ensure" that if the total costs to fix



damage caused to the motor vehicle by an accident exceed \$3,000, any contract to a non-dealer purchaser includes a clear, comprehensible and prominent manner to that effect.

In each sale contained in the NFOP, the purchaser was a non-dealer, there was accident damage history in excess of \$3,000 and this information was not disclosed within the contract. As such, regardless of what Mr. Molina told his customers, the fact remains that this information was not disclosed in a manner required by the legislation. Therefore, in respect each allegation, Mr. Molina has violated the sections of O.Reg 333/08 noted above.

The Panel also concludes that Mr. Molina breached sections 7 and 9 of the Code of Ethics in relation to each allegation contained in the NFOP. Mr. Molina's failure to disclose the vehicle accident history in a manner required by the legislation equates to a breach of section 7(1) of the Code of Ethics as the contracts used by Mr. Molina did not comply with the law. The fact that Mr. Molina breached the law constitutes an act that, having regard to all the circumstances, is reasonably regarded as unprofessional of a registrant.

### **Decision on Penalty**

The Panel decision on penalty is as follows:

1. Jason Albert Molina o/a JM Fine Auto Sales shall pay a fine in the amount of \$8,400. \$2,000 is due within 60 days of the date of the Discipline Committee Order and the remaining balance is due within 180 days of the date of the Discipline Committee Order. If an extension is required, an application can be made to the Discipline Committee.
2. Jason Molina shall successfully complete the OMVIC certification course offered by Georgian College within six (6) months of the date of the Discipline Committee Order.
3. Jason Molina shall offer any salespersons working for JM Fine Auto Sales at the date of this Discipline Committee Order, or any salespersons employed by JM Fine Auto Sales at the date of the Discipline Committee Order or whose employment commences between the date of the Discipline Committee Order and December 31, 2021, the opportunity to complete the OMVIC certification course.
4. Jason Molina o/a JM Fine Auto Sales shall incur all costs associated with this Discipline Committee Order.

### **Submissions on Penalty**

#### **OMVIC**

Diana Mojica, counsel for OMVIC, highlighted that the main the purpose of the Act and regulations is to protect the consumer and public safety. Positive obligations are placed on registrants in the motor vehicle industry to ensure that members of the public purchasing vehicles have sufficient information about those vehicles to make informed decisions. These safeguards are in place to protect the consumer and need to be followed by all registrants.



Ms. Mojica submitted that penalties are for general and specific deterrence purposes. The penalty should be harsh enough to deter other registrants from engaging in similar behaviour and for Mr. Molina to learn from his conduct and be deterred from repeating it in the future.

Ms. Mojica submitted that as Mr. Molina (i) was an experience registrant, with over 15 years in the motor vehicle sector; (ii) had been cautioned in the past about the legislated requirement to disclose vehicle accident history in writing on the bill of sale; and (iii) did not take sufficient responsibility for his conduct. In light of these factors, Ms. Mojica submitted that a fine in the range of \$1,000 for each violation (6) related to written disclosure and \$1,200 for each violation (2) related to failure to provide current SSC to the purchaser was required for specific deterrence. Given the fact that it has been over 15 years since Mr. Molina has taken the OMVIC certification course and he employs salespersons at JM Fine Auto Sales, Ms. Mojica submitted that Mr. Molina should be required to complete the course and offer it to his current and future employees.

### Registrant

Mr. Molina submitted that the fine amount requested by OMVIC's counsel was too high and the OMVIC certification course was not necessary for the following reasons:

- None of the customers associated with the allegations contained in the NFOP had filed a complaint with OMVIC
- Most customers were aware of the accident damage at the time of the sale and he simply forgot to include on the bill of sale (paperwork issue) and they had provided letters confirming same
- He made very little profit off any of the sale of vehicles contained in the NFOP
- He has very little assistance running his dealership, which was part of what caused his failure to comply with the requirements contained in the relevant regulations
- He has rectified the problem by locating all relevant customers and offering to buy back the vehicles if they were not satisfied
- He simply made a mistake and knows how to do business

### Reasons for Penalty

The Panel considered the submissions from both parties, including Mr. Molina's experience in the automotive industry, the previous warning/information provided by OMVIC inspectors regarding his obligations regarding written disclosure, the general information provided to the industry on this same issue, and Mr. Molina's attitude toward his misconduct. Mr. Molina downplayed the seriousness of the allegations and although he indicated he understood his obligations under the Code of Ethics, his testimony during the hearing suggested otherwise.

The Panel accepts that the majority of Mr. Molina's customers were aware of the vehicle damage history at the time of the sale or were made aware sometime thereafter. This is a mitigating factor. However, the Panel remains concerned that despite his claims that he understood his obligations and being reminded of same, Mr. Molina failed to ensure he complied with the Act and Regulations, and continues to downplay his misconduct. As such, the penalty imposed must be sufficient to act as a



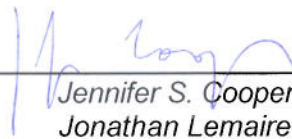
deterrent to Mr. Molina in the future, but not too onerous given this mitigating factor. The Panel is satisfied that the fine requested by OMVIC's counsel of \$1,000.00 per violation meets this balance.

The requirement that a copy of a current SSC is provided to the lessee is designed to provide assurance that the vehicle underwent a safety inspection and met certain basic standards of safety. The purpose is protection of the consumer and the public, which is OMVIC's primary purpose as well. As such, the fine amount requested by OMVIC counsel regarding these particular breaches is reasonable.

The principle of rehabilitation is intended to be addressed by the requirement that Mr. Molina successfully complete the OMVIC certification course. Improved and/or confirmed competence as a professional in the automotive industry should be achieved by the re-education requirement of Mr. Molina. The offer for any current or future employees to take the OMVIC certification course will assist maintain public confidence in JM Fine Auto Sales and its employees.

The Panel is satisfied based on the case law presented by OMVIC counsel that the penalty imposed satisfies the principles of general and specific deterrence, as well as rehabilitation, and will maintain public confidence in members of the profession by sending the message that members are trustworthy. It will also maintain confidence in the regulator to fulfill its mandate to govern the profession in the public interest.

Ontario Motor Vehicle Industry Council  
Discipline Panel



---

*Jennifer S. Cooper, Chair*  
*Jonathan Lemaire (Vice-Chair)*  
*Abolfazl Rad-Mohammad (Vice-Chair).*

