

## 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 -

LINDSAY BUICK GMC LTD.

- AND -

PAUL CROSS

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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:** April 24, 2015

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

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$3,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Cross is ordered 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.
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 ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. 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. Lindsay Buick GMC LTD. (the "Dealer") was first registered as a motor vehicle dealer in or around October 2009. Paul Cross ("Cross") was first registered as a motor vehicle salesperson in or around January 1999. At all material times, Cross was the person in charge and or director of the Dealer.
2. During an inspection on or about November 4, 2009, the Dealer was reminded of their obligation to ensure to provide consumers with written disclosure of a vehicle's prior daily rental use.
3. During an inspection on or about September 22, 2014, a representative of the registrar found the following areas of non-compliance.
4. On or about May 12, 2014, the Dealer purchased a 2013 Chevrolet Malibu (VIN 1G11C5SA8DU126693). This vehicle was a prior daily rental and previously registered in Quebec. On or about September 4, 2014, the Dealer sold this vehicle without providing the consumer with the required written disclosure of the prior daily rental use and out of province history. This is contrary to sub section 42(7) and (22) of regulation 333/08, as well as section 7 and 9 of the Code of Ethics. Furthermore, the Dealer placed an online advertisement for the vehicle with a selling price of \$17,999. The vehicle was sold for \$205 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. After the issuance of a Notice of Complaint by OMVIC, The Dealer provided the consumer with a refund for the amount paid in additional fees, and provided OMVIC with confirmation that the consumer is now fully aware of their pertinent vehicle history.
5. On or before August 27, 2014, the Dealer advertised a 2013 Chevrolet Impala (VIN 2G1WB5E35D136924), with a selling price of \$16,288. On or about August 27, 2014, the Dealer sold this vehicle for \$305 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. After the issuance of a Notice of Complaint by OMVIC, the Dealer has provided the consumer with a refund for the amount paid in additional fees.

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

### **Advertising**

36. (1) A registered motor vehicle dealer to whom this section applies shall ensure that



any advertisement placed by the dealer complies with this section.

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buyer would be required to pay for the vehicle; and
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

### **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 Motor Vehicle Dealers Act.

(22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdiction, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

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

4. A registrant shall be clear and truthful in describing the features, 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.

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. 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 \$3,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.



2. Cross agrees 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.
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 ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. 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 Cross breached subsections 4, 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 agrees to pay a fine in the amount of \$3,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Cross agrees 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.
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 ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. 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.

Ontario Motor Vehicle Industry Council  
Discipline Committee




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Catherine Poultney, Chair

