

## REASONS FOR DECISION

1. This hearing, held on March 13, 2006, relates to a Notice of Complaint dated November 16, 2005, which alleged that the Respondent, Lyle John Elliott o/a Elliott Alignment (the "Dealer") had breached Section 4.4.1 of the Standards of Business Practice (the "Standards") of the Ontario Motor Vehicle Industry Council ("OMVIC").
2. The allegations against the Dealer related to its leasing of certain vehicles to consumers and the failure to have current Safety Standard Certificates issued for those vehicles.
3. The Dealer acknowledged receipt of and the following were marked as Exhibits:
  - (a) Exhibit 1: Notice of Complaint dated November 16, 2005;
  - (b) Exhibit 2: OMVIC Book of Documents;
  - (c) Exhibit 3: Notice of Complaint dated February 8, 2006; and
  - (d) Exhibit 4: OMVIC Intake Information, updated to May 26, 2005.
4. The hearing was conducted pursuant to By-Law No. 1 of OMVIC. Ms. Aviva Harari represented OMVIC and submitted that it is a not-for-profit corporation which enacted its By-Law No. 1 on November 8, 2000. The By-Law deals with the Code of Ethics (the "Code") and the Standards. As a result of the By-Law, all registered motor vehicle dealers in Ontario, who by virtue of their registration are members of OMVIC, are required to comply with the Code and the Standards.
5. The Standards are based upon and were created to illustrate the Code. The Code and the Standards were created by dealers to ensure a level playing field and a degree of consistency by establishing minimum standards of business conduct required to be observed and complied with by members of OMVIC for the benefit of both the industry and the public.
6. Oral testimony, under affirmation, was provided by Mr. Brian Lia and Ms. Mary Jane South on behalf of OMVIC and Mr. James Matisse and Mr. Lyle Elliott on behalf of the Dealer.
7. Mr. Brian Lia, an OMVIC inspector, attended at the Dealer's premises on December 5, 2001, and determined that the Dealer was not issuing Safety Standard Certificates at the time of leasing. Accordingly, Mr. Lia discussed with the Dealer the obligation to provide a current Safety Standard Certificate in respect of any vehicle he leased to a consumer. A "current" Safety Standard Certificate is one which is no more than thirty-six (36) days old or completed within thirty-six (36) days of the consumer taking possession of the vehicle.

8. During the inspection on December 5, 2001, Mr. Lia also showed the Dealer a copy of the Standards and read out to him the applicable provisions pertaining to the requirement to issue a Safety Standard Certificate at the time of leasing, or section 4.4.1 of the Standards. Mr. Lia gave evidence that the Dealer appeared to understand this obligation at the time. A copy of Mr. Lia's inspection report, dated December 5, 2001, was Tab 3 of Exhibit 2.
9. The Dealer cross-examined Mr. Lia on his testimony.
10. Ms. Mary Jane South, Deputy Registrar for OMVIC since 1997, gave evidence regarding the history, publication, purpose and particulars of the Standards and the Code. In particular, Ms. South testified that the purpose of section 4.4.1 of the Code regarding the issuance and provision of Safety Standards Certificates was to place leasing consumers in the same position as purchasing consumers. Ms. South also gave evidence that a Safety Standard Certificate is valid for a period of thirty-six (36) days.
11. As a result of a consumer complaint (the "Complaint") received by OMVIC in April 2005, Ms. South testified that OMVIC learned that the Dealer again leased a vehicle to a consumer without the proper lease documentation. OMVIC advised the consumer to write to the Dealer and request a current Safety Standard Certificate, warranty documents and a lease disclosure statement. While the Dealer did provide the requested documentation to the consumer, the consumer was concerned that the Safety Standard Certificate provided by the Dealer was a year old, from March 2004, at the time of the lease. A copy of the OMVIC Intake Information was tendered as Exhibit 4 and contained notes of discussions with the consumer and the Dealer.
12. The Dealer's practices were again investigated by OMVIC in September 2005. Ms. Tina Cabot, an OMVIC investigator carried out the investigation and made notes of her findings which were located at Tab 4 of Exhibit 2.
13. Ms. Cabot's notes stated that the Dealer issues Safety Standards Certificate when he purchases a vehicle. Accordingly, by the time the Dealer makes the requisite repairs on a vehicle and arranges to lease it, the Safety Standard Certificate is outdated or past thirty-five (35) days.
14. The Dealer did not cross-examine Ms. South on her testimony.
15. The Dealer gave evidence that he understood that a current Safety Standard Certificate was not required at the time of delivery of a leased vehicle to a consumer since the vehicle remained under the Dealer's name. While the Dealer confirmed that he understood that Safety Standards Certificates expire within thirty-six (36) days of their issuance, he testified that he was not aware that he had to provide a "current" Safety Standard Certificate at the time of leasing.

16. The Dealer confirmed that he signed the OMVIC Inspection Findings, dated December 5, 2001, and September 26, 2005, located at Tabs 3 and 4 of Exhibit 2.
17. The Dealer brought Mr. Matisse with him to the hearing. Mr. Matisse was neither the Dealer's legal counsel nor agent but is an employee (mechanic) of the Dealer. Mr. Matisse gave evidence that he knew that a Safety Standard Certificate was only valid for thirty-six (36) days but nevertheless, failed to provide a current Safety Standard Certificate with certain leased vehicles.
18. Matisse also testified that he never had any dealings, discussions or contact whatsoever with OMVIC representatives and that the Dealer never spoke to him about the obligation to provide current Safety Standard Certificates with all leased vehicles.
19. The relevant provisions of the Code and the Standards provide the following:
  - 4.4. **LEASED MOTOR VEHICLES**
    - 4.4.1 When leasing a used motor vehicle, Dealers ensure that the motor vehicle has been inspected and that a Safety Standards Certificate has been issued for that vehicle.

## **REASONS**

20. Having weighed the evidence, this Panel concludes that the evidence led by OMVIC substantiates the assertion that the Dealer breached Section 4.4.1 of the Code. It is clear to the Panel that the Dealer failed to ensure that a current Safety Standards Certificate was issued for vehicles which he leased to consumers.
21. Accordingly, the Dealer is found to have contravened Section 4.4.1 of the Code.

## **PENALTY & COSTS**

22. In determining the appropriate penalty for the breaches of the Code and the Standards noted above, this Panel has considered the following:
  - (a) the Standards regulate the conduct of dealers in their dealings with consumers and were created to establish minimum standards of business conduct required to be observed and complied with by dealers for the benefit of both industry and the public;
  - (b) the Dealer disregarded OMVIC's warnings with respect to the failure to provide current and valid Safety Standards Certificate with leased vehicles;
  - (c) OMVIC witnesses testified that the Dealer was specifically informed about its obligation to provide current Safety Standard Certificates with a leased vehicles and that the Code and the Standards obliged it to do so;

- (d) despite having been warned in 2001 of this obligation, the Dealer nevertheless continued to lease vehicles without a current Safety Standard Certificate; and
  - (e) the Dealer has no record of disciplinary history.
23. Counsel for OMVIC submitted that an appropriate fine in these circumstances would be in the range of \$4,500.00 to \$6,000.00.
24. During the course of the hearing, the Panel was also informed of the significant costs OMVIC incurred in respect of this matter and the expense arising as a result of these proceedings. While the Dealer was asked by the Panel to make submissions respecting costs at the hearing, the Dealer declined to do so.
25. OMVIC's submissions with respect to the quantum of fine and costs to be imposed were taken under consideration and the Panel orders the following penalty for the Dealer:
- a) \$1,500.00 fine payable within three (3) months of the date of this Decision;
  - b) \$3,000.00 costs payable within three (3) months of the date of this Decision;
  - c) the Dealer and each of his employees shall successfully complete the certification course within three (3) months of the date of this decision;
  - d) the Dealer's business shall be re-inspected to ensure compliance with the Standards on a regular basis; and
  - e) the Dealer shall ensure that all future leases have a copy of a current Safety Standard Certificate attached.

Further, this decision shall be communicated to the industry and to the public.

Tito Fernandes (Chair)

Jack Verspagen

Robert Fines