

**IN THE MATTER OF A DISCIPLINE HEARING
held pursuant to By-Law No. 1 of the
ONTARIO MOTOR VEHICLE COUNCIL**

DISCIPLINE DECISION

ONTARIO MOTOR VEHICLE COUNCIL

-and-

**HAL WRIGHT CHEVROLET CADILLAC
o/a OWEN SOUND MOTORS LTD.**

Date of Hearing: May 16, 2008

Panel: Jeff Prossler (Chair)
Glen Fenwick
Bruce Wilson

Findings: Breach of Section 2.4.1 of the Code of Ethics and Standards of
Business Practice

Fine: \$2,500.00

Other: Certification Course to be taken

Date of Decision: June 7, 2008

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DECISION AND REASONS

Introduction

1. A hearing was held on May 16, 2008 at the offices of the Ontario Motor Vehicle Industry Council ("OMVIC") in relation to a Notice of Complaint dated July 6, 2007 (the "Complaint"). The hearing took place before a Discipline Panel comprised of Jeff Prossler (Chair), Glen Fenwick and Bruce Wilson (the "Discipline Panel"). The Complaint alleged that Hal Wright Chevrolet Cadillac (the "Dealer") breached section 2.4.1 of the OMVIC Standards of Business Practice (the "Standards"). Ms. Aviva Harari represented OMVIC. Mr. Anthony Bak represented the Dealer. Mr. Brian Gover acted as independent legal counsel to the Discipline Panel.

The Allegations

2. The allegations related to the sale of five (5) vehicles. It was alleged that the Dealer failed to disclose on the bills of sale that the vehicles were daily rentals. Such disclosure is required by section 2.4.1 of the Standards, which provides as follows:

Prior Use

2.4.1 Wholesale and retail contracts states on the front of the contract any of the following statements if they accurately describe the past regular use of the motor vehicle:

- (a) "Daily rental" if the motor vehicle was a rental vehicle and has never been owned by a consumer;

The Evidence

3. The Dealer acknowledged the receipt of the following, which were marked as exhibits at the hearing:
 - a) Exhibit 1: the Complaint; and
 - b) Exhibit 2: Book of Documents (supplied by counsel for OMVIC, and consisting of the Complaint, results of a corporate information search

relating to the Dealer, an OMVIC inspection report dated August 12, 2003, a further OMVIC inspection report dated May 9, 2007, and dealer purchase reports relating to the five vehicles).

4. In addition, the following were also received as exhibits in the course of the hearing:
 - a) Exhibit 3: the Dealer's July 11, 2007 response to the Complaint, along with letters from the purchasers of the five vehicles;¹
 - b) Exhibit 4: Discipline Decision, in *OMVIC v. Terrace Ford Lincoln Sales Inc.*, March 23, 2006 supplied by the Dealer's counsel; and
 - c) Exhibit 5: the decisions of the Divisional Court and the Court of Appeal in *Bernstein v. College of Physicians & Surgeons*.

5. Oral testimony under oath was given by Mr. Carey Smith for OMVIC, and Mr. Gordon Edward (Ted) Wright on behalf of the Dealer.

6. Mr. Carey Smith was called on behalf of OMVIC. Mr. Smith, who is OMVIC's Director of Industry Conduct Investigations, explained he is a former a police officer and that he has worked for OMVIC for 5 years. He testified that an inspection was performed at the Dealer's premises on August 12, 2003 by Ms. Louise Gingras. Ms. Gingras prepared an inspection report (which is part of Exhibit 2), which was signed by Mr. Ted Wright as the Dealer Principal. In her report, Ms. Gingras noted two deficiencies: one vehicle, a 2000 Pontiac Grand Am which had been owned by Discount Car Rentals had been sold to a consumer without disclosing prior use; and the Dealer was employing a salesperson whose registration had expired. The last page of the Inspection Report, entitled "inspection findings" includes the following statement:

You must disclose the prior use of a motor vehicle on the contract as required by Section 2.4 of the Standards of Business Practice.

A copy of the Standards of Business Practice was provided to you today.

7. Mr. Smith then reviewed the report pertaining to a second inspection performed at the dealership in May of 2007 performed by Louise Cohn, (who despite the different surname was the same inspector as previous). In this inspection, it was discovered that 5 more vehicles that were formerly used as daily rentals had been sold (4 retail, 1 wholesale) without disclosing prior use. Mr. Smith explained how this was contrary to the Code of Ethics Section 2.4. Again the Inspection Report

¹ When Ms. Harari sought to file Exhibit 3, Mr. Anthony Bak, the Dealer's counsel, objected to its admission, arguing that it was inadmissible because OMVIC's intention to rely on it had not been disclosed to the Dealer at least 10 days prior to the hearing. After taking time to consider this issue during a short recess, the Discipline Panel ruled that it was admissible. In explaining the Discipline Panel's ruling, the Chair indicated that admitting the Dealer's response to the Complaint and the letters from the customers did not result in any "prejudice" to the Dealer.

outlined areas of concern in clear terms (“You must disclose the prior use of a Motor Vehicle as required by Section 2.4 of the Standards of Business Practice”), they were discussed with Mr. Wright and he signed the report, signifying his acknowledgement. Mr. Wright explained to Ms. Cohn that the fact that the vehicles were former daily rentals had been disclosed in the advertising for these vehicles. He indicated that clerical error was the reason why disclosure of the former use of these vehicles did not appear on the bill of sale.

8. In his cross-examination of Mr. Smith, the Dealer’s counsel focused on the actual history of the vehicles in question, contrasting their ownership with their use. He questioned how anybody could actually determine that these vehicles had been daily rentals just because (as the dealer purchaser reports in Exhibit 2 indicated) they had been purchased from GM Off Rental Vehicles. Mr. Bak suggested that the vehicles may have been corporate vehicles used by management. Mr. Smith replied that that was highly unlikely. Mr. Bak then discussed the letters contained in Exhibit 3 that were prepared by the Dealer, sent to and signed by the customers who purchased saying they were made aware that the vehicle they had purchased was a former daily rental.
9. The Dealer’s counsel made a motion for non-suit at the conclusion of OMVIC’s case, arguing that there was no evidence that the vehicles in question were former daily rentals. In dismissing the motion, the Discipline Panel noted that at the time of the inspections, the Dealer had admitted these were daily rentals so there was no question of their prior history.
10. Mr. Bak then called the Dealer Principal, Gordon Edward (Ted) Wright as a witness. Mr. Wright testified that he has never been charged criminally or under the Provincial Offences Act, nor has he ever previously faced disciplinary proceedings. After he received the Complaint, Mr. Wright prepared the letters from the customers who purchased the 5 vehicles and those customers came to the dealership and signed them. All the customers involved that they were made aware of the vehicles’ prior use. The advertising relating to the vehicles in question clearly stated they were former daily rentals. He testified that when he sold the vehicles, he told the customers that they were former daily rentals, and in his opinion, no one was misled.
11. In cross-examination by Ms. Harari, Mr. Wright did not dispute that the vehicles were in fact former daily rentals and agreed that written disclosure was required and should have been made. Mr. Wright further agreed that he was a “hands on “ Dealer Principal, as evidenced by the fact that 4 out of the 5 vehicles were sold by him personally.

Counsel’s Submissions

12. In closing argument, Ms. Harari did not contend that Hal Wright Chevrolet Cadillac had any intention to deceive its customers. Instead, she emphasized that it was the second time this had happened and the second communication time this

form of non-compliance had been noted by an inspector. Simply put, the Dealer did not comply with section 2.4.1 of the Standards, even after being warned.

13. OMVIC submitted that a fine of \$1500.00 per transaction (\$7500.00 in total) be imposed and that the Dealer Principal be required to take the certification course (2002) within 90 days.
14. In Mr. Bak's closing argument, he again submitted that there was no proof of prior use of these vehicles, and that the fact they were purchased from GM Off Rental did not determine prior use. He stated that there was no question of Mr. Wright's credibility as he has always done business fairly and has an honorable reputation in his community. Since a majority of the vehicles sold were sold by Mr. Wright, it should also be noted that the registered sales people at the dealership should not be held responsible. Mr. Bak argued that none of the allegations had been proven.
15. Mr. Bak also argued that in the circumstances of this case, no fine is appropriate.

Decision and Reasons for Decision – Allegations

16. Having weighed the evidence, the Discipline Panel concluded that the evidence substantiates the assertion that the Dealer breached section 2.4.1 of the Standards. It is clear to the panel that the Dealer failed to disclose on the bills of sale that five (5) vehicles that it had sold (4 retail, 1 wholesale) were former daily rentals. This should have been done by written disclosure on the bills of sale. However, the Dealer supplied letters from the customers and also declared in his advertising that these vehicles were daily rentals. In the circumstances, the Discipline Panel accepts counsel's submission that this was "a technical type of breach" and that there was no deliberate attempt to deceive the customer. The Discipline Panel recognizes that the objective of section 2.4.1 of the Standards is that there be a verifiable way to confirm that disclosure was made to the consumer. Showing this on a bill of sale is the ONLY way to comply with 2.4. Mr. Wright's admitted failure to disclose on the contracts in question, coupled with the admissions in his letter to OMVIC (Exhibit 3), along with his testimony that he did not dispute that the vehicles in question were daily rentals amounted to convincing proof that section 2.4.1 was breached.
17. Accordingly the Dealer is found to have contravened section 2.4.1 of the Standards.

Decision and Reasons for Decision – Penalty

18. In this case, the Discipline Panel found that the following exceptional circumstances exist:

- a) although the contracts were not in compliance with section 2.4.1, there was no attempt to mislead through non-disclosure on the face of the contracts; and
 - b) the Dealer followed up with the customers who had purchased the vehicles.
19. The Discipline Panel concluded that because of the exceptional circumstances identified in this case, a fine of only \$500.00 per vehicle (\$2,500 in total) should be imposed.
20. In addition, the Discipline Panel requires that OMVIC conduct a six (6) month follow-up visit to the Dealer.
21. The Discipline Panel also requires that the Dealer Principal, Mr. G.E. (Ted) Wright complete the new certification course when it is available.

Recommendations to OMVIC

22. Before leaving this matter, the Discipline Panel makes the following recommendations to OMVIC:
- a) When inspecting a dealership and sampling sales contracts, OMVIC should consider a higher sample rate with greater randomization; and
 - b) If customers have provided written evidence as occurred in this case, OMVIC investigators should follow up to confirm the circumstances in which that evidence was provided and its accuracy.

I, **Jeff Prossler**, sign this Decision on my own behalf and on behalf of the other members of the Discipline Panel.



Jeff Prossler, Chair

Glen Fenwick

Bruce Wilson

June 7, 2008.