

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

DISCIPLINE DECISION

ONTARIO MOTOR VEHICLE COUNCIL

-and-

TERRACE FORD LINCOLN SALES INC.

Date of Hearing: Monday March 23, 2006

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: \$2,250.00

Costs: \$2,250.00

Other: Certification Course to be taken

Date of Decision: April 28, 2006

REASONS FOR DECISION

1. This hearing, held on March 23, 2006, relates to a Notice of Complaint dated November 16, 2005, which alleged that the Respondent, Terrace Ford Lincoln Sales Inc. (the "Dealer") had breached Section 2.4.1 of the Standards of Business Practice (the "Standards") of the Ontario Motor Vehicle Industry Council ("OMVIC"). Mr. Richard Solwicki appeared on behalf of the Dealer.
2. The allegations against the Dealer related to the sale of certain vehicles without disclosing their former "daily rental" status on the bills of sale.
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; and
 - (c) Exhibit 3: *R. v. Ontario Chrysler (1977) Ltd.*, [1994] O.J. No. 428 (C.A.).
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. Corey Smith on behalf of OMVIC and by Mr. Richard Solwicki and Mr. Theo Manousos, on behalf of the Dealer.
7. Mr. Smith, an OMVIC inspector, attended at the Dealer's premises and determined that the Dealer had sold certain vehicles without disclosing that these vehicles were former "daily rentals". Copies of the six (6) bills of sale and purchase agreements which sold the former "daily rentals" without disclosure were tendered as evidence at Tabs 4 through 9 of Exhibit 2.
8. Mr. Smith also gave evidence that the disclosure of a vehicle's former "daily rental" status is a material fact because it may alter a consumer's decision to purchase a vehicle and it also affects the vehicle's price or value.
9. OMVIC also entered the decision of the Ontario Court of Appeal in *R. v. Ontario Chrysler (1977) Ltd.* as Exhibit 3 and as some evidence of the importance of disclosure of former "daily rental" status of a vehicle given that the public perception of such vehicles

is that they have less value than vehicles owner by a dealership given the fact that they "were driven by a great many people, none of whom had any interest in the vehicle beyond its immediate use".

10. The Dealer did not cross-examine Mr. Smith on his testimony.
11. The Dealer gave evidence and did not dispute the fact that certain vehicles were sold by his dealership without disclosing that they were former "daily rentals". The Dealer apologized for the failure to disclose and attributed the failure to administrative problems the dealership was going through at the time. Those administrative problems have been rectified and procedures have been put into place to avoid lack of disclosure in the future.
12. OMVIC did not cross-examine the Dealer on his testimony.
13. Mr. Manousos, a used car manager with the Dealer, admitted his mistake in failing to disclose the vehicles' former "daily rental" status on the bills of sale and/or purchase agreements. Mr. Manousos stated that staffing irregularities at the dealership had caused this problem. A large stamp bearing the term "Daily Rental" is now being used by the Dealer to ensure appropriate disclosure is made to consumers.
14. Neither the Dealer nor Manousos tendered any documentary evidence in support of the new procedure which has been employed to ensure proper disclosure is made to consumers.
15. OMVIC cross-examined Mr. Manousos on his testimony and determined that the Dealer had implemented the new stamping procedure four (4) months prior to the hearing and only after OMVIC had attended the dealership to conduct an investigation.
16. The relevant provisions of the Code and the Standards provide the following:

DISCLOSURE

Standard – Communicate all material facts, and ensure products and services are fully understood.

PRIOR USE

2.4.1 Wholesale and retail contracts state on the front of the contract of 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; ...**

REASONS

17. Having weighed the evidence, this Panel concludes that the evidence led by OMVIC substantiates the assertion that the Dealer breached Section 2.4.1 of the Code. It is clear to the Panel that the Dealer failed to disclose that six (6) vehicles which it sold to consumers were former "daily rentals". The Dealer failed to make any written disclosure

of the vehicles' former "daily rental" status on either the bills of sale of the purchase agreements.

18. Accordingly, the Dealer is found to have contravened Section 2.4.1 of the Code.

PENALTY & COSTS

19. 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 employee of the Dealer, Mr. Manousos, who was responsible for purchasing vehicles from the auction was also the individual who signed the retail bills of sale, has twenty-one (21) years of experience in the industry;
- (c) the Dealer gave evidence that it has incorporated new procedures to ensure disclosure of former "daily rental" status is made to consumers; and
- (d) the Dealer has no record of disciplinary history.

20. Counsel for OMVIC submitted that an appropriate fine in these circumstances would be approximately \$6,000.00 or \$1,000.00 per vehicle. The Panel is of the view that a \$1,000.00 fine per vehicles would be appropriate in the normal course. However, in this case, given the fact that the Dealer accepted responsibility for the breaches of the Code, apologized to the panel, took procedural steps to rectify the problem and has no record of disciplinary history, such a fine would not be appropriate in this particular case.

21. 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. OMVIC requested costs in the amount of \$2,250.00.

22. 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) \$2,250.00 fine payable within ninety (90) days of the date of this Decision;
- b) \$2,250.00 costs payable within ninety (90) days of the date of this Decision
- c) the Dealer and each of his employees shall successfully complete the OMVIC certification course within one hundred twenty (120) days of the date of this decision; and

d) the Dealer's business shall be re-inspected to ensure compliance with the Standards.

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

Jeff Prossler (Chair)

Glen Fenwick

Bruce Wilson