



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 -

WEST END MOTORS (FORT FRANCES) INCORPORATED

- AND -

CHAD AVIS

- AND -

ROY AVIS

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: January 16, 2012

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer agrees to pay a fine in the amount of \$5,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer agrees to ensure all current and future sales managers have successfully completed the MVDA 2002 OMVIC certification course.
3. The Dealer agrees to offer all sales staff the opportunity to complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
4. The Dealer agrees to audit its records from August 22, 2011 to present to ensure that customers have been provided with proper written disclosure on their bills of sale, in accordance with Section 42 Regulation 333/08 of the Act. If there are any transactions wherein the dealer failed to make proper written disclosure on the bills of sale, the Dealer agrees that



a letter will be sent to the customers involved in these transactions. The purpose of this letter is to advise these customers of their vehicle histories. Where the customer indicates they were not aware of their vehicle history, the Dealer will offer the customer compensation for the lack of disclosure at the time of sale. The letter to the customer will be mutually acceptable between parties. The Dealer will complete this within 90 days of the date of the Discipline Committee Order.

5. The Dealer, Chad Avis and Roy Avis agree to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

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.

The Agreed Statement of Facts read:

1. West End Motors (Fort Frances) Incorporated (the "Dealer") was first registered as a motor vehicle dealer in or around March 1984. Roy Avis was first registered as a motor vehicle sales person in or around January 1983. Chad Avis was first registered as a motor vehicle salesperson in or around November 2006. At all material times, Roy Avis and Chad Avis were officers and directors of the corporation.
2. During an inspection on or about August 1, 2006, a representative of the Registrar found the Dealer had failed to disclose 4 former daily rental vehicles on the retail bills of sale. At this time, the dealer was advised of his obligation to provide purchasers with written disclosure of a vehicle's former daily rental history.
3. On or about August 23, 2010 the Dealer purchased a 2010 Chrysler Sebring (VIN 1C3CC5FV4AN120364) declared as a former daily rental unit. On about September 1, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the Notice of Complaint was issued, the Dealer provided OMVIC with confirmation from the purchaser that oral disclosure of the rental history was made prior to sale.
4. On or about August 23, 2010 the Dealer purchased a 2010 Dodge Avenger (VIN 1B3CC5FB4AN120691) declared as a former daily rental unit. On about November 2, 2010, Chad on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's former rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the Notice of Complaint was issued, the Dealer provided OMVIC with confirmation from the purchaser that oral disclosure of the rental history was made prior to sale.
5. On or about April 21, 2011 the Dealer purchased a 2010 Dodge Charger (VIN 2B3CA3CV2AH233492) declared as a former daily rental unit. On about June 7, 2011,



the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the Notice of Complaint was issued, the Dealer provided OMVIC with confirmation from the purchaser that oral disclosure of the rental history was made prior to sale.

6. On or about April 21, 2011 the Dealer purchased a 2010 Jeep Grand Cherokee (VIN 1J4PR5GKXAC139197) declared as a former daily rental unit. This vehicle was previously registered in Manitoba. On about June 7, 2011, Ray on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's previous out of province registration and former rental history. This is contrary to sections 42(7) and 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the Notice of Complaint was issued, the Dealer provided OMVIC with confirmation from the purchaser that oral disclosure of the rental history was made prior to sale.
7. On or about April 21, 2011 the Dealer purchased a 2010 Jeep Compass (VIN 1J4NF4FB3AD631110) declared as a former daily rental unit. On about May 10, 2011, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former rental history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. After the Notice of Complaint was issued, the Dealer provided OMVIC with confirmation from the purchaser that oral disclosure of the rental history was made prior to sale.
8. On or about July 22, 2011, the Dealer failed to disclose former rental vehicles in web based advertising, contrary to section 36(5) of Regulation 333/08, as well as section 4 of the Code of Ethics.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08:

42. Additional information in contracts of sale and leases

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* or the *Motor Vehicle Dealers Act, 2002*,
 - ii. used as a police cruiser or used to provide emergency services, or
 - iii. used as a taxi or limousine.

It is thereby agreed that the dealer, Chad Avis and Roy Avis have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

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 \$5,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer agrees to ensure all current and future sales managers have successfully completed the MVDA 2002 OMVIC certification course.
3. The Dealer agrees to offer all sales staff the opportunity to complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
4. The Dealer agrees to audit its records from August 22, 2011 to present to ensure that customers have been provided with proper written disclosure on their bills of sale, in accordance with Section 42 Regulation 333/08 of the Act. If there are any transactions wherein the dealer failed to make proper written disclosure on the bills of sale, the Dealer agrees that a letter will be sent to the customers involved in these transactions. The purpose of this letter is to advise these customers of their vehicle histories. Where the customer indicates they were not aware of their vehicle history, the Dealer will offer the customer compensation for the lack of disclosure at the time of sale. The letter to the customer will be mutually acceptable between parties. The Dealer will complete this within 90 days of the date of the Discipline Committee Order.
5. The Dealer, Chad Avis and Roy Avis agree 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 breached subsections 7(1) and 9(1) 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 \$5,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer agrees to ensure all current and future sales managers have successfully completed the MVDA 2002 OMVIC certification course.
3. The Dealer agrees to offer all sales staff the opportunity to complete the OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.



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 5. The Dealer, Chad Avis and Roy Avis agree 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

A handwritten signature in black ink, appearing to read "C. Poultney", written over a horizontal line.

Catherine Poultney, Chair