



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 -

1760565 ONTARIO INC O/A MINO AUTO SALES

- AND -

ABDULWAHAB SAEED

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: November 29, 2011

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

Order:

1. The Dealer agrees that it is under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles it sells or leases to its customers, whether or not the Dealer agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, insurance write-off and any other material fact which may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Dealer further agrees to disclose as much details as known and/or available to him, with respect to the nature and severity of the damage. The Dealer agrees to make reasonable efforts to research the history of all the Dealer's vehicles prior to sale to ensure all material facts are disclosed.
2. The Dealer agrees that all contracts for trades will comply with sections 40 to 45 of Ontario Regulation 333/08 as applicable.
3. The Dealer agrees to accept full responsibility for the quality of any repairs or alterations to a motor vehicle, which were completed by the Dealer's personnel, agents, assignees, affiliated repair facilities or anyone acting on behalf of the Dealer.



4. The dealer will reply, in writing, to any request, either written or verbal, for further information or material to be submitted to the Registrar, as soon as reasonably possible and in any event no later than 5 business days.
5. The Dealer agrees to maintain a garage register in accordance with the *Highway Traffic Act* and section 57 of Ontario Regulation 333/08 and will maintain all books and records as required by the Act at the Dealer's registered premises. The Dealer further agrees to provide free access to books and records of the Dealer to any authorized representative of the Registrar.
6. The Dealer will ensure that any vehicles sold are registered in the name of the purchaser in the records of the Ministry of Transportation before releasing the vehicle to the purchaser.
7. The Dealer will not purchase a vehicle without ensuring the vehicle is registered to the seller in the records of the Ministry of Transportation.
8. The Dealer agrees to register all vehicles purchased within 6 days in accordance with the *Highway Traffic Act*.
9. The Dealer agrees that, in the event their books and records are lost, stolen or destroyed in whole or in part, they shall advise the Registrar, in writing, within 5 days of the event in accordance with section 55 of Ontario Regulation 333/08, and shall include all relevant documentation including, but not limited to, police reports, insurance claims, affidavits, etc. The Dealer further agrees to make all reasonable efforts to reconstitute the lost, stolen or damaged records.
10. The Dealer agrees, prior to the removal of any records from the registered premises of the Dealer, to obtain a receipt including the recipient's name, address, phone number, description of records taken, time of return and signature of recipient. The Dealer further agrees to make said receipt available to any representative of the Registrar, upon request.
11. The Dealer shall maintain books and records, which accurately record the nature of transactions involving the purchase, sale or lease of a motor vehicle. The Dealer will not be involved in the creation of books and records, which are misleading as to the nature of a transaction involving the purchase, sale or lease of a motor vehicle.
12. The dealer will comply with its obligations under the *Motor Vehicle Dealers Act 2002* and the Regulations thereunder.
13. The dealer will pay a fine in the amount of \$4,000 within 180 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
14. The dealer will complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order and will offer all registered salespeople



the opportunity to complete the OMVIC certification course. The dealer will incur all costs associated with this.

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. 1760565 Ontario Inc. o/a Mino Auto Sales (the "dealer") was first registered as a motor vehicle dealer in or around September 2008. Abdulwahab Saeed ("Saeed") was first registered as a salesperson around October 1995. Saeed is the sole officer and director of the dealer.
2. On or around June 4, 2010, the dealer sold a 1998 Acura CIP, VIN 2HHMB4674WH905981 to a consumer without providing written disclosure that the vehicle's true distance travelled is unknown. This is contrary to sub-section 42(6) of Regulation 333/08 of the *Motor Vehicle Dealers Act, 2002* (the "Act"), as well as sections 7 and 9 of the Code of Ethics.
3. Additionally, the dealer failed to provide the consumer with written disclosure that the aforementioned vehicle had been declared a "total loss" by an insurer. This contrary to sub-section 42(21) of Regulation 333/08 of the Act, as well as sections 7 and 9 of the Code of Ethics.
4. The Consumer purchased the vehicle of \$3,150 and the Dealer offered a refund of \$1,700.
5. On or about July 5, 2010, OMVIC received a complaint from the purchaser of this vehicle.
6. On or about September 28, 2010, an OMVIC representative requested the dealer provide her with all documentation concerning the purchase and sale of this vehicle.
7. On or about October 22, 2010, an OMVIC representative again requested the dealer provide her with all documentation concerning the purchase and sale of this vehicle.
8. On or about November 4, 2010, an OMVIC representative again requested the dealer provide her with all documentation concerning the purchase and sale of this vehicle.
9. By letter dated November 12, 2010, an OMVIC representative again requested the dealer provide her with all documentation concerning the purchase and sale of this vehicle.



10. To date, OMVIC has not received the requested documentation from the dealer. This is contrary to section 14(3) of the Act, as well as section 9 of the Code of Ethics.

By failing to comply with the following sections of the Act:

14. If the registrar receives a complaint about a registrant, the registrar may request information in relation to the complaint from any registrant.

(3) A registrant who receives a written request for information shall provide the information as soon as practicable.

Regulation 333/08:

Additional information in contracts of sale and leases

42. For the purposes of section 30 (1) of the Act, the information mentioned in paragraph 22 of subsection 39 (2) and paragraph 11 of subsection 41 (1) of this Regulation is the following:

6. If the motor vehicle's odometer is broken or faulty, has been replaced, has been rolled back or is in miles, a statement to that effect.

21. If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.

It is thereby agreed that the dealer and Saeed have breached the following:

Code of Ethics, as set out in Ontario 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 that it is under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles it sells or leases to its customers, whether or not the Dealer agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, insurance write-off and any other material fact which may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Dealer further agrees to disclose as much details as known and/or available to him, with respect to the nature and severity of the damage. The Dealer agrees to make reasonable efforts to research the history of all the Dealer's vehicles prior to sale to ensure all material facts are disclosed.



2. The Dealer agrees that all contracts for trades will comply with sections 40 to 45 of Ontario Regulation 333/08 as applicable.
3. The Dealer agrees to accept full responsibility for the quality of any repairs or alterations to a motor vehicle, which were completed by the Dealer's personnel, agents, assignees, affiliated repair facilities or anyone acting on behalf of the Dealer.
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6. The Dealer will ensure that any vehicles sold are registered in the name of the purchaser in the records of the Ministry of Transportation before releasing the vehicle to the purchaser.
7. The Dealer will not purchase a vehicle without ensuring the vehicle is registered to the seller in the records of the Ministry of Transportation.
8. The Dealer agrees to register all vehicles purchased within 6 days in accordance with the *Highway Traffic Act*.
9. The Dealer agrees that, in the event their books and records are lost, stolen or destroyed in whole or in part, they shall advise the Registrar, in writing, within 5 days of the event in accordance with section 55 of Ontario Regulation 333/08, and shall include all relevant documentation including, but not limited to, police reports, insurance claims, affidavits, etc. The Dealer further agrees to make all reasonable efforts to reconstitute the lost, stolen or damaged records.
10. The Dealer agrees, prior to the removal of any records from the registered premises of the Dealer, to obtain a receipt including the recipient's name, address, phone number, description of records taken, time of return and signature of recipient. The Dealer further agrees to make said receipt available to any representative of the Registrar, upon request.
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12. The dealer will comply with its obligations under the *Motor Vehicle Dealers Act 2002* and the Regulations thereunder.
13. The dealer will pay a fine in the amount of \$4,000 within 180 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.



14. The dealer will complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order and will offer all registered salespeople the opportunity to complete the OMVIC certification course. The dealer will incur all costs associated with this.

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 Abdulwahab Saeed breached subsections 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 that it is under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles it sells or leases to its customers, whether or not the Dealer agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, insurance write-off and any other material fact which may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Dealer further agrees to disclose as much details as known and/or available to him, with respect to the nature and severity of the damage. The Dealer agrees to make reasonable efforts to research the history of all the Dealer's vehicles prior to sale to ensure all material facts are disclosed.
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Ontario Motor Vehicle Industry Council
Discipline Committee

Catherine Poultney, Chair