

**IN THE MATTER OF THE DISCIPLINE HEARING  
held pursuant to Regulation 332/08 of the Motor Vehicle Dealers Act 2002  
of the ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

**DISCIPLINE DECISION**

**ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

**-and-**

**JULIUS AGUNWA O/A BUCHI AUTO SALES**

<b>Date of Hearing:</b>	Friday, September 23, 2011
<b>Panel:</b>	Sherry Darvish (Chair) Gerry Barg Neil Joosse
<b>Findings:</b>	Breach of Sections 7 and 9 of the Code of Ethics
<b>Fine:</b>	\$8,750.00
<b>Other:</b>	Successful completion of OMVIC's Automotive Certification Course
<b>Date of Decision:</b>	November 4, 2011

## INTRODUCTION

1. This hearing, held before a panel comprised of S. Darvish (Chair), G. Barg and N. Joose, on September 23, 2011, related to a Notice of Complaint, dated November 23, 2010, issued by the Applicant, the Ontario Motor Vehicle Industry Council (“OMVIC”), which alleged that the Respondent, Julius Agunwa o/a Buchi Auto Sales (the “Dealer”) had breached sections 7 (Compliance) and 9 (Professionalism) of the Code of Ethics, as set out in *Ontario Regulation 322/08*. The hearing was conducted pursuant to Section 17 of the *Motor Vehicle Dealers Act, 2002*. Mr. Jason Morische represented OMVIC. Mr. Adekunle Elabanjo appeared on behalf of the Dealer.
2. The allegations against the Dealer related to the sales of certain vehicles without written disclosure of their out of province registration, MTO brand, salvage brand history, and true kilometres unknown (“TKU”) history on the bills of sale. The relevant particulars as set out in the Notice of Complaint were as follows:
  1. The Dealer was first registered as a motor vehicle dealer on or around July 2006. Julius Agunwa is the sole proprietor.
  2. During an inspection on or about September 17, 2009, the Dealer was reminded by a representative of the Registrar of his obligation to ensure a vehicle’s history is disclosed in writing, on the Bill of Sale. At this time, the dealer was also reminded of his obligation to ensure adequate TKU disclosure, when applicable, appears in writing on the Bill of Sale.
  3. On or about June 25, 2009, the Dealer purchased a 2003 Nissan Murano, VIN JN8AZ08W13W224970 through Copart Auto Auctions, from a New York dealer. On or about April 8, 2010, the Dealer sold this vehicle, without providing the purchaser with written disclosure of the vehicle’s previous out of province registration. This is contrary to sections 7 and 9 of the Code of Ethics.
  4. On or about October 7, 2009, the Dealer purchased a 2004 Nissan 350Z, VIN JN1AZ36A84M251345 through Copart Auto Auctions, from a New York insurance company. On or about July 20, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle’s MTO brand, or previous out of province registration. This is contrary to sections 7 and 9 of the Code of Ethics.
  5. On or about October 9, 2009, the Dealer purchased a 2009 Nissan Rogue, VIN JN8AS58V49W168203, through Copart Auto Auctions, from a New Jersey dealer. On or about June 28, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle’s

MTO Brand and previous out of province registration. This is contrary to sections 7 and 9 of the Code of Ethics.

6. On or about November 23, 2009, the Dealer purchased a 1997 Honda Accord, VIN 1HGCD5630VA814331, through Copart Auto Auctions, declared as brand salvage. On or about February 10, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's salvage brand history. Additionally, the Dealer failed to adequately disclose the vehicle's TKU history. This is contrary to sections 7 and 9 of the Code of Ethics.
7. On or about December 7, 2009, the Dealer purchased a 1995 Lexus ES, VIN JT8GK13T3S0075748, through Copart Auto Auctions, declared as brand salvage. On or about February 6, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's salvage brand history. Additionally, the Dealer failed to adequately disclose the vehicle's TKU history. This is contrary to sections 7 and 9 of the Code of Ethics.
8. On or about February 1, 2010, the Dealer purchased a 1996 Honda Accord, VIN 1HGCD5636TA809910 through Copart Auto Auctions, declared as brand salvage, TKU. On or about February 6, 2010, the Dealer sold this vehicle with a written declaration on the Bill of Sale advising the vehicle was "accident repair", but "not branded". Additionally, the Dealer failed to adequately disclose the vehicle's TKU history. This is contrary to sections 7 and 9 of the Code of Ethics.
9. On or about May 5, 2010, the Dealer purchased a 1999 Lexus RX, VIN JT6HF10U1X0088889 through Copart Auto Auctions, declared as brand salvage, TKU. On or about May 12, 2010, the Dealer sold this vehicle, without providing the purchaser with written disclosure of the vehicle's TKU history. This is contrary to sections 7 and 9 of the Code of Ethics.

3. The Dealer acknowledged receipt of and the following were marked as Exhibits:

- Exhibit 1: OMVIC's Book of Documents, which included (at Tab 1) the Notice of Complaint, dated November 23, 2010
- Exhibit 2: A copy of a record showing that on or about September 14, 2005, the Dealer charged with 6 counts of being an unregistered dealer and that The Dealer pleaded guilty to 2 counts of being an

unregistered dealer and was fine \$250 for each count for a total of \$500.

Exhibit 3: A copy of the terms and conditions of the Dealer's registration pursuant to subsection 5(2) of the *Motor Vehicle Dealers Act* dated July 5, 2006 and signed by the Dealer

Exhibit 4: A copy of the Dealer's written submissions dated September 23, 2010 in respect of the fine

4. At the outset of the hearing, the Dealer advised the Registrar and the Panel that he was prepared to accept all of the breaches of the Code of Ethics as outlined in the Notice of Complaint and set out above. The Panel accepted the Dealer's acceptance of the breaches of the Code of Ethics as set out in the Notice of Complaint above. Accordingly, the Dealer is found to have contravened sections 7 and 9 of the Code of Ethics.
5. The Registrar and the Dealer advised that the hearing would therefore only proceed with submissions on the penalty. As a result, there was no oral evidence presented at the hearing.
6. OMVIC is a non-for-profit corporation which enacted its By-Law No. 1 on November 8, 2000. The By-Law creates the Code of Ethics. 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 of Ethics.
7. The Code of Ethics was 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.
8. The Code of Ethics applies to all registrants registered under the *Motor Vehicle Dealers Act, 2002*. The Code of Ethics requires that all registrants conduct business with integrity, accountability, compliance, respect and professionalism as well as ensuring that minimum requirements are met when it comes to disclosure in marketing and the disclosure of information in contracts of sale and lease.

## **PENALTY DECISION**

9. Counsel for OMVIC submitted that an appropriate fine in these circumstances would be between \$1250 and \$1500 per vehicle to be paid within six months time. Mr. Morische also submitted that the Dealer should be required to take a certification course at his own cost to ensure that he understands his obligations under the Code of Ethics. Mr. Morische did not seek costs for the hearing.

10. Mr. Morische submitted that the purpose of the fine sought by the Registrar for OMVIC was appropriate as the Dealer had a prior conviction for failing to register as outlined in Exhibit 1, the Dealer failed to disclose material information on the bills of sale with respect to the above noted vehicles, the Dealer was given notice of and an opportunity to remedy the breaches of the Code of Ethics in a previous inspection that conducted in September 2009, and the Dealer did not remedy the breaches by the time of the second inspection in September 2010. The Dealer was also aware of his obligations under the Code of Ethics as he had signed the terms and conditions of the Registration on July 5, 2006 (Exhibit 2). Mr. Morische further submitted that the legislative intent of the fine was to instil public confidence in the system, protect consumers, and ensure a level playing field for all registrants.
  
11. The Dealer's representative, Mr. Elabanjo, submitted that the Dealer's fine should be low, approximately \$250 per vehicle to be paid within one year's time, on the basis that the Dealer admitted to the breaches in question. He further submitted that the Dealer should not be required to take the certification course as he had already taken the course several years ago and he has the materials from the course in his office which he reviews on a regular basis.
  
12. In support of the Dealer's position regarding the penalty, Mr. Elabanjo submitted that the Dealer had several hundred transactions per year and the breaches of the Code of Ethics only occurred on seven of these transactions. He submitted that the ratio of breaches to the total number of transactions was indeed quite low and these were isolated incidents. The Panel did not find this argument persuasive as the Inspection Report (Tab 3 of Exhibit 1) noted that only 20 to 25 transactions were reviewed. Of these 20 to 25 transactions, breaches were found in 7 transactions of these transactions. Therefore, the ratio of breaches to the number of transactions could be between 28% and 35% of all transactions. The Panel was of the view that this was a rather significant percentage of breaches of the Code of Ethics in this case, particularly in light of the fact that the Dealer would have been aware of his obligations under the Code of Ethics as he had taken a certification course upon registration, he had signed the terms and conditions of the registration, and he was provided with an opportunity to remedy the breaches between the first and second inspection.
  
13. Mr. Elabanjo further submitted that no consumer had ever filed a complaint with OMVIC against the Dealer with respect to such breaches of the Code of Ethics. While that may be the case, the Panel finds that consumers may not have been aware that certain material facts had not been disclosed in the bills of sale. Whether or not a consumer complaint is filed with OMVIC does not absolve a Dealer of his obligations under the Code of Ethics. In any event, the Dealer, in this case, admitted to the breaches outlined in the Notice of Complaint set out above.

14. In determining the appropriate penalty for the breaches of the Code of Conduct noted above, this Panel has considered, in addition to our reasons noted above, the following factors:

- (a) the Code of Conduct regulates the conduct of dealers in their dealings with consumers and they were created to establish minimum standards of business conduct required to be observed and complied with by dealers for the benefit of both the industry and the public;
- (b) the Dealer admitted that he breached sections 7 and 9 of the Code of Ethics with respect to the seven vehicle transactions noted above in the Notice of Complaint;
- (c) the Dealer has a prior disciplinary history as set out in Exhibit 2 above;
- (d) the Dealer would have been aware of his obligations under the Code of Ethics as he had taken a certification course and he acknowledged same by signing the terms and conditions of his registration as per Exhibit 3 above;
- (e) the Dealer was provided with an opportunity to remedy the breaches between the first and second inspections, but he failed to do so; and
- (f) the Dealer failed to disclose significant material facts in the bills of sale for the above noted vehicle transactions.

15. On the basis of the above reasons, the Panel orders the following penalty for the Dealer:

- (a) \$8750.00 fine payable within nine (9) months of the date of this decision;
- (b) the Dealer shall successfully complete the OMVIC certification course within sixty (60) days of the date of this decision; and
- (c) this decision shall be communicated to the industry and to the public.

**November 4, 2011**

Sherry Darvish (Chair)

Gerry Barg

Neil Joosse