



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 -

CAPITAL DODGE CHRYSLER JEEP LIMITED

- AND -

JAMES DURRELL

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: August 19, 2011

Findings: Breach of Sections 4 and 9 of the Code of Ethics

- Order:**
1. The dealer will pay a fine in the amount of \$9,000 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 will offer all registered salespeople the opportunity to complete the OMVIC certification course, as it is revised with regards to the *Motor Vehicle Dealers Act 2002* within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
 3. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer to trade motor vehicles shall be registered as a salesperson to the dealer.
 4. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer to trade motor vehicles has successfully completed the OMVIC salesperson registration process and have been duly registered as salespersons prior to commencing their duties on behalf of the dealer.
 5. The dealer further acknowledges that the restrictions concerning the activities of salespersons referred to in these Terms and Conditions apply



to trading on behalf of the dealer. "Trading" refers to buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle and is not limited to the signing of contracts. This further includes attendance at auction on behalf of the dealer and positions commonly referred to as Sales Manager, Finance and Insurance Manager, Branch Manager, Business Manager, General Manager or any individual who has supervisory authority over salespersons.

6. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer are informed concerning the terms and conditions contained in this document to the extent necessary to ensure compliance with these terms and conditions.
7. The dealer will comply with Regulations 332/08 and 333/08 of the Act, and the Standards of Business Practice, as may be amended from time to time.

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. Capital Dodge Chrysler Jeep Limited (the "dealer") was first registered as a motor vehicle dealer in or around August 2000. James Durrell ("Durrell") was first registered as a motor vehicle salesperson in or around March 2004. Durrell is sole officer and director of the dealer.
2. During an inspection on or about September 20, 2005, the dealer was reminded by a representative of the Registrar of the obligation to ensure all sales representatives involved in the trade of motor vehicles on behalf of the dealer possess a valid OMVIC license.
3. During an inspection on or about September 12, 2006, the dealer was again reminded by a representative of the Registrar of the obligation to ensure all sales representatives involved in the trade of motor vehicles on behalf of the dealer possess a valid OMVIC license.
4. On or about June 11, 2008, the dealer signed an Authorization, Agreement and Undertaking, attached hereto as Schedule "A". As per condition 1a and b of this document, the dealer agreed to ensure all salespeople involved in the trade of motor vehicles on behalf of the dealer possess a valid OMVIC license.



5. In or around January 2011 to February 2011, the dealer retained the services of the following unregistered salespeople:
 - i. Andrew Hartin
 - ii. William Allen
 - iii. Mathew Hayes
 - iv. Brady Atchison
6. On or before February 22, 2011, the dealer published an advertisement for a 2010 Dodge Grand Caravan, Stock # 31091 which did not disclose the all inclusive vehicle price.
7. On or before February 22, 2011 the dealer published an advertisement for a 2010 Jeep Wrangler, Stock # 30654 which did not disclose the all inclusive vehicle price.

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

4(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

Regulation 333/08:

36(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buyer would be required to pay for the vehicle; and
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

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

Code of Ethics, as set out in Ontario Regulation 332/08:

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

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 will pay a fine in the amount of \$9,000 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 will offer all registered salespeople the opportunity to complete the OMVIC certification course, as it is revised with regards to the *Motor Vehicle Dealers Act 2002* within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.



3. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer to trade motor vehicles shall be registered as a salesperson to the dealer.
4. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer to trade motor vehicles has successfully completed the OMVIC salesperson registration process and have been duly registered as salespersons prior to commencing their duties on behalf of the dealer.
5. The dealer further acknowledges that the restrictions concerning the activities of salespersons referred to in these Terms and Conditions apply to trading on behalf of the dealer. "Trading" refers to buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle and is not limited to the signing of contracts. This further includes attendance at auction on behalf of the dealer and positions commonly referred to as Sales Manager, Finance and Insurance Manager, Branch Manager, Business Manager, General Manager or any individual who has supervisory authority over salespersons.
6. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer are informed concerning the terms and conditions contained in this document to the extent necessary to ensure compliance with these terms and conditions.
7. The dealer will comply with Regulations 332/08 and 333/08 of the Act, and the 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 and James Durrell breached subsections 4 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 will pay a fine in the amount of \$9,000 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 will offer all registered salespeople the opportunity to complete the OMVIC certification course, as it is revised with regards to the *Motor Vehicle Dealers Act 2002* within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
3. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer to trade motor vehicles shall be registered as a salesperson to the dealer.
4. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer to trade motor vehicles has successfully completed the OMVIC salesperson



registration process and have been duly registered as salespersons prior to commencing their duties on behalf of the dealer.

5. The dealer further acknowledges that the restrictions concerning the activities of salespersons referred to in these Terms and Conditions apply to trading on behalf of the dealer. "Trading" refers to buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle and is not limited to the signing of contracts. This further includes attendance at auction on behalf of the dealer and positions commonly referred to as Sales Manager, Finance and Insurance Manager, Branch Manager, Business Manager, General Manager or any individual who has supervisory authority over salespersons.
6. The dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the dealer are informed concerning the terms and conditions contained in this document to the extent necessary to ensure compliance with these terms and conditions.
7. The dealer will comply with Regulations 332/08 and 333/08 of the Act, and the 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