

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 -

**1374269 ONTARIO INC. O/A DALEO MOTORS**

Date of Hearing:	February 7, 2005
Panel:	Jeff Prossler (Chair) Jack Verspagen Tito Fernandes
Findings:	Breach of Section 4.4.1 of the Code of Ethics No Breach of Sections 1.2 and 1.3 of the Code of Ethics
Fine:	\$2,000.00
Costs:	\$3,000.00
Date of Decision:	March 2, 2005

## REASONS FOR DECISION

1. This hearing, held on February 7, 2005 relates to a Notice of Complaint dated August 10, 2004 which alleged that the Respondent 1374269 Ontario Inc. o/a Daleo Motors ("the Dealer") had breached Sections 1.2, 1.3 and 4.4.1 of the Code of Ethics of the Ontario Motor Vehicle Industry Council ("OMVIC").
2. The allegations against the Dealer related to its lease of a vehicle to a consumer.
3. The Dealer acknowledged receipt of the Notice of Complaint which was included as Tab 1 in the OMVIC Book of Documents, marked as Exhibit 1 on the hearing.
4. The hearing was conducted pursuant to By-Law No. 1 of OMVIC. The By-Law deals with the Code of Ethics and the Standards of Business Practice. 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. The Standards of Business Practice are based upon and were created to illustrate the Code of Ethics. The Code of Ethics and the Standards of Business Practice 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.
5. Oral testimony, under affirmation, was provided by Ms. Mary Jane South, Ms. Jean Cameron and Mr. Darren Senensky, on behalf of OMVIC and Mr. Felice Pasariello on behalf of the Dealer.
6. Mary Jane South, Deputy Registrar for OMVIC since 1997, gave evidence in respect of the history, publication and particulars of the Standards of Business Practice and Code of Ethics which were created before the Dealer became a registrant. However, the subject matter was included in the certification course taken by the Dealer and commented upon in the industry publication, Dealer Standard circulated quarterly.

7. Under cross-examination, Ms. South acknowledged that no oral tape recording was made of the telephone discussions between the Dealer and any OMVIC representative with whom the Dealer may have communicated concerning the lease in question.
8. Jean Cameron, an OMVIC investigator since 1979, gave evidence in respect of her attendance at the Dealer's premises on October 28, 2003. She confirmed that she met with the Dealer's principal, Mr. Felice Pasariello and supplied and reviewed with him the Standards of Business Practice. Ms. Cameron noted that the Dealer had been getting safety certificates in respect of leased vehicles but had been told by a licensing agent that they were not required so he stopped doing work orders and invoices.
9. As a result, Ms. Cameron issued Inspection Findings, signed by Mr. Pasariello in which it was noted that:

"Dealer has not been having safety standard certificates issued on leased vehicles as required by Section 4.4.1 of the Standards of Business Practice. Copy of the Standards of Business Practice provided and discussed."
10. As a result of a consumer complaint, the Dealer's practices were investigated by OMVIC.
11. Darren Senensky, an OMVIC complaint representative since May, 2003, received the consumer's complaint and engaged in a dialogue with the Dealer's representative, Felice Pasariello. The telephone conversations were not tape recorded, however, detailed log notes of the conversation were maintained on his computer.
12. The evidence of Mr. Senensky, consistent with the computer notes, revealed to his belief, that he had been informed that the Dealer did certify the consumer's vehicle, however, the Dealer required time to locate the paperwork. It was recorded that the Dealer's principal acknowledged the advice of Ms. Cameron that "safeties" were required on all vehicles.

13. In a timely manner, within one week of that previous conversation, Mr. Pasariello contacted Mr. Senensky advising that "he did the safety". However, when pressed for production of the certificate, he did acknowledge that "he in fact did not issue actual certificates on all vehicles leased out, even after his meeting with Jean" (Cameron).
14. Mr. Pasariello testified. He provided explanations in respect of the transaction and his participation in the OMVIC investigation. He strenuously asserted that he had not lied to OMVIC representatives as alleged, that he is a man of integrity and that his "word is his bond". He expressed disappointment that his conversations with Mr. Senensky were not tape recorded, because that would have disclosed the actual conversation and demonstrate there was a misunderstanding on the part of the OMVIC representatives.
15. Mr. Felice Pasariello did acknowledge both taking the requisite certification course which included the Standards of Business Practice and the attendance by Ms. Cameron including her direction in respect of the requirement to obtain safety certificates in respect of all leased vehicles.
16. However, Mr. Pasariello advised that he had been in a state of confusion because of the conflicting advice given by an agent of the licensing office who informed him that safety certificates were not required in respect of leased vehicles while he now understands that in fact the OMVIC Standards of Business Practice prevail and do require safety certificates in such circumstances.

**17. CODE OF ETHICS**

**"1. INTEGRITY**

1.2 Dealers conduct all business activities with honesty, fairness and integrity at all times

1.3. Dealers promptly, honestly and courteously respond to complaints made about them by other Dealers, consumers or others.

**4.4. LEASED MOTOR VEHICLES**

4.4.1. When leasing a used motor vehicle, Dealers ensure that the motor vehicle has been inspected and that a Safety Standards Certificate has been issued for that vehicle."

## REASONS

18. Having weighed the evidence, this Panel concludes that the evidence led by OMVIC does not substantiate the assertion that the Dealer has breached Sections 1.2 or 1.3 of the Code. There is conflicting evidence in respect of the content of the telephone discussions and there is doubt that the Dealer did act in the manner interpreted by the OMVIC witness.
19. **Accordingly, the Dealer is not found to have contravened Sections 1.2 or 1.3 of the Code of Ethics.**
20. However, on the evidence, which in fact is not contested by the Dealer, it is clear that the Dealer did fail to ensure "that a Safety Standards Certificate has been issued for that vehicle" which he leased to the consumer.
21. **Accordingly, the Dealer is found to have contravened Section 4.4.1 of the Code of Ethics.**
22. In October of 2003, during an inspection at Daleo Motors, it was noticed by the OMVIC inspector, Jean Cameron, that safety certificates had not been issued for the vehicles being leased. A discussion was had at that time with the owner, Mr. Felice Pasariello who was made aware of the non-compliance and assured the OMVIC inspector that he would comply from that point on. It was the consumer's complaint that eventually led to another inspection by OMVIC and the discovery that safety certificates were still not being issued in 2004. The dealer had been warned by OMVIC and did not follow the guidelines.

## COSTS

23. The Panel was informed, during the course of the hearing, of the significant OMVIC costs incurred in respect of this matter and the expense arising as a result of the proceedings. However, there was divided success in respect of this matter and there was no record of any previous discipline of the Dealer.
24. In addition, the Dealer testified as to the relatively recent establishment of his business. The ability to pay any monetary sanction has been taken into account.

25. Accordingly, OMVIC's submission in respect of the magnitude of the fine and costs to be imposed is not accepted but rather the Discipline Panel orders the following penalty for the Dealer:
- a) \$2,000.00 fine payable within 6 months of the date of this Decision;
  - b) \$3,000.00 costs payable within 6 months of the date of this Decision;
  - c) the Dealer shall successfully complete the certification course within 6 months of the date of this decision;
  - d) the Dealer's business shall be reinspected to ensure compliance with the Standards of Business Practice, on a quarterly basis, commencing June 1, 2005 for a period of one year ending May 31, 2006;
  - e) The Dealer shall ensure that all future leases shall have a copy of the Safety Certificate attached to the pertinent paperwork of OMVIC inspector at a later time.
26. Further, this Decision shall be communicated to the industry and the public.

Jeff Prossler (Chair)

Jack Verspagen

Tito Fernandes