



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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

DOUGLAS FORD LINCOLN SALES LTD

-AND-

ANGELO VILARDO

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 3, 2012

Findings: Breach of Sections 4, 7 and 9 of the Code of Ethics

- Order:**
1. The dealer and Vilaro agree to pay a fine in the amount of \$3,000 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 offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
 3. The dealer agrees to audit its records from May 5, 2011 to present to ensure that proper disclosure of daily rental, accident repair and true distance travelled has been made, in writing, to the purchaser at the time of the transaction. If there are any transactions wherein the dealer failed to make proper written disclosure, the dealer shall contact the purchaser and make the necessary disclosure in writing. If requested by the purchaser, the dealer will offer compensation for the failure to make disclosure. The dealer agrees to complete the audit and contact purchasers within 90 days of the date of the Discipline Committee Order.
 4. The dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002*



and 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.

The Agreed Statement of Facts read:

1. Douglas Ford Lincoln Sales Ltd (the "dealer") was first registered as a motor vehicle dealer in or around February 1983. Angelo Vilardo ("Vilardo") was first registered as motor vehicle salesperson in or around January 1983. Vilardo is the director of the corporation.
2. On or about June 25, 2007, the dealer was advised by a representative of the Registrar of his obligation to provide purchasers with written disclosure of a vehicle's former daily rental history.
3. On or about October 7, 2009, the dealer was again advised by a representative of the Registrar of his obligation to provide purchasers with written disclosure of a vehicle's former daily rental history.
4. On or about March 30, 2011, the dealer purchased a 2010 Ford Focus, (VIN 1FAHP3FN4AW110640) declared as a former daily rental vehicle. On or about April 1, 2011, the dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former daily rental history. This is contrary to sub-sections 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
5. On or about March 31, 2011, the dealer purchased a 2010 Ford Escape, (VIN 1FMCU9DG2AKD35176) declared as a former daily rental vehicle. On or about April 2, 2011, the dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's former daily rental history. This is contrary to sub-sections 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
6. Additionally, the dealer failed to disclose former daily rental vehicles as such in advertisements, contrary to sub-sections 36(5) of Regulation 333/08, as well as section 4 of the Code of Ethics.
7. After receiving the Notice of Complaint dated June 28, 2011, the dealer provided OMVIC with written confirmation from the purchasers referred to in paragraphs 4 and 5 that they were aware of their vehicle's former rental history at the time of purchase.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:



36. Advertising:

5. If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine.

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 and Vilardo have breached the following sections of the Code of Ethics, as set out in 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.

A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

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 and Vilardo agree to pay a fine in the amount of \$3,000 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 offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.



3. The dealer agrees to audit its records from May 5, 2011 to present to ensure that proper disclosure of daily rental, accident repair and true distance travelled has been made, in writing, to the purchaser at the time of the transaction. If there are any transactions wherein the dealer failed to make proper written disclosure, the dealer shall contact the purchaser and make the necessary disclosure in writing. If requested by the purchaser, the dealer will offer compensation for the failure to make disclosure. The dealer agrees to complete the audit and contact purchasers within 90 days of the date of the Discipline Committee Order.
4. The dealer agrees 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 Angelo Vilardo breached subsections 4(1), 4(2), 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 and Vilardo agree to pay a fine in the amount of \$3,000 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 offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
3. The dealer agrees to audit its records from May 5, 2011 to present to ensure that proper disclosure of daily rental, accident repair and true distance travelled has been made, in writing, to the purchaser at the time of the transaction. If there are any transactions wherein the dealer failed to make proper written disclosure, the dealer shall contact the purchaser and make the necessary disclosure in writing. If requested by the purchaser, the dealer will offer compensation for the failure to make disclosure. The dealer agrees to complete the audit and contact purchasers within 90 days of the date of the Discipline Committee Order.
4. The dealer agrees 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

Catherine Poultney, Chair