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## 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 -

MARK WILSON'S BETTER USED CARS LIMITED

- AND -

MARK WILSON

- AND -

SUZANNE WILSON

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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:** June 13, 2011

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

- Order:**
1. The Dealer is ordered to pay a fine in the amount of \$6,000.00, within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
  2. Mark McMullen, Scott Wilson and John Wilton are ordered to complete the OMVIC certification course within 90 days of this Order. The dealer will incur all costs associated with this.
  3. The Dealer is ordered to ensure a minimum of 7 sales staff employees, not including the aforementioned individuals, have completed the OMVIC certification course within 90 days of acceptance of this offer.
  4. The Dealer and Mark Wilson agree that they are obliged to comply with Regulation 332/08 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. At all material times, Mark Wilson's Better Used Cars Limited (the "Dealer") was registered as a motor vehicle dealer. Mark Wilson and Suzanne Wilson are officers and directors of the corporation.
2. On or about January 20, 2005, the Dealer was advised by a representative of the Registrar of their obligation to ensure all material facts about a vehicle are disclosed in writing to the purchaser.
3. On or about April 6, 2010 the Dealer purchased a 2010 Ford Fusion, VIN 3FAHP0JG2AR152962 declared as a former daily rental. On or about April 13, 2010, the dealer sold this vehicle without providing the purchaser with written disclosure of the former rental history. This is contrary to subsection 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
4. On about April 7, 2010, the Dealer purchased a 2009 Nissan Versa, VIN 3N1BC13EX9L391335, declared as a former daily rental vehicle. On or about April 21, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the former rental history. This is contrary to subsection 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
5. On about April 6, 2010, the Dealer purchased a 2009 Toyota Corolla, VIN 2T1BU40E99C061382, declared as a former daily rental vehicle. On or about July 13, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the former rental history. This is contrary to subsection 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
6. On or about May 11, 2010, the Dealer purchased a 2006 Nissan X-Trail, VIN JN8BT08V06W206462, declared as an out of province vehicle. On or about May 23, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the previous out of province registration. This is contrary to subsection 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
7. On or about May 12, 2010, the Dealer purchased a 2010 Ford Escape, VIN 1FMCU9DG6AKA13592, declared as a former daily rental vehicle. On or about July 28, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the former rental history. This is contrary to subsection 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
8. On or about May 18, 2010, the Dealer purchased a 2008 Dodge Grand Caravan, VIN 1D8HN44H98B154994 declared as "accident repair, Carproof estimate



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\$4509" On or about June 12, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the accident repair history. This is contrary to subsection 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

9. On or about May 31, 2010, the Dealer purchased a 2009 Chrysler 300 Limited, VIN 2C3KA33V99H639974, declared as a former daily rental vehicle. On or about July 10, 2010, the Dealer sold this vehicle without providing the purchaser with written disclosure of the former rental history. This is contrary to subsection 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

By failing to comply with the following sections of the General Regulations under the *Motor Vehicle Dealers Act, 2002* ("the Act"):

Section 42(7) of Regulation 333/08 of the Act:

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.

Section 42(19) of Regulation 333/08 of the Act:

42 Additional information in contracts of sale and leases

19. If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

Section 42(22) of Regulation 333/08 of the Act:

42 Additional information in contracts of sale and leases

22. If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

It is thereby agreed that the Dealer and Mark Wilson 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 is ordered to pay a fine in the amount of \$6,000.00, within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Mark McMullen, Scott Wilson and John Wilton are ordered to complete the OMVIC certification course within 90 days of acceptance of this offer. The dealer will incur all costs associated with this.
3. The Dealer is ordered to ensure a minimum of 7 sales staff employees, not including the aforementioned individuals, have completed the OMVIC certification course within 90 days of acceptance of this offer.
4. The Dealer and Mark Wilson agree that they are obliged to comply with Regulation 332/08 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 Mark Wilson and Suzanne Wilson 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 is ordered to pay a fine in the amount of \$6,000.00, within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Mark McMullen, Scott Wilson and John Wilton are ordered to complete the OMVIC certification course within 90 days of acceptance of this offer. The dealer will incur all costs associated with this.
3. The Dealer is ordered to ensure a minimum of 7 sales staff employees, not including the aforementioned individuals, have completed the OMVIC certification course within 90 days of acceptance of this offer.



4. The Dealer and Mark Wilson agree that they are obliged to comply with Regulation 332/08 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*