



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 -

MARKHAM OUTDOOR POWER LIMITED

- AND -

DANIEL LAWRENCE

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: February 1, 2011

Findings: Breach of Section 9 of the Code of Ethics

Order:

1. The dealer shall pay a fine of \$1,000.00 to OMVIC within 90 days of this Order.
2. The dealer shall offer OMVIC's Certification Course to all registered salespeople within 90 days of this Order.
3. The dealer and Daniel Lawrence agree to comply with Regulation 332/08 Code of Ethics under the Motor Vehicle Dealers Act, 2002 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. Thomas Scott Gillespie ("Gillespie") was first registered as a salesperson on or around August 2006.
2. Gillespie's registration terminated in or around August 2008.
3. Gillespie reinstated his registration in or around September 2010.
4. Gillespie worked as a salesperson for Markham Outdoor Power Limited during the time he was not registered.
5. Markham Outdoor Power Limited retained the services of an unregistered salesperson, contrary to section 9.1 of the Code of Ethics and section 9.16 of the Standards of Business Practice.

It is thereby agreed that Markham Outdoor Power Limited and Daniel Lawrence have breached the following:

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

9. (1) 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. O. Reg. 332/08, s. 9 (1).

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness. O. Reg. 332/08, s. 9 (2).

(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle. O. Reg. 332/08, s. 9 (3).

(4) A registrant shall provide conscientious service to the registrant's customers in the course of a trade in a motor vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services. O. Reg. 332/08, s. 9 (4).

Standards of Business Practice:

9.16 Registrants do not knowingly allow anyone other than a registered Salesperson to be involved in negotiating or approving motor vehicle transactions or to give information about specific motor vehicles that are for sale or lease. Without limiting the generality of the foregoing, such positions include those typically known as business managers, finance and insurance staff, leasing staff, sales staff and all sales and leasing managers.

Joint Submission on Penalty

1. Markham Outdoor Power Limited is ordered to pay a fine in the amount of \$1,000.00, within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.



2. Markham Outdoor Power Limited is ordered to 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 acceptance of this offer. Markham Outdoor Power Limited will incur all costs associated with this.
3. Markham Outdoor Power Limited and Daniel Lawrence agree to comply with Regulation 332/08 Code of Ethics under the *Motor Vehicle Dealers Act, 2002* 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 Daniel Lawrence breached subsection 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 shall pay a fine of \$1,000.00 to OMVIC within 90 days of this Order.
2. The dealer shall offer OMVIC's Certification Course to all registered salespeople within 90 days of this Order.
3. The dealer and Daniel Lawrence agree to comply with Regulation 332/08 Code of Ethics under the *Motor Vehicle Dealers Act, 2002* and the Standards of Business Practice, as may be amended from time to time

Ontario Motor Vehicle Industry Council
Discipline Committee

Catherine Poultney, Chair