

**IN THE MATTER OF A DISCIPLINE HEARING  
Held pursuant to By-Law No. 1 of the  
Ontario Motor Vehicle Industry**

**DISCIPLINE DECISION**

**ONTARIO MOTOR VEHICLE COUNSEL**

**- and -**

**TOP CONDITION USED CARS**

**Date of Hearing:** April 18, 2005

**Panel:** Jeff Prossler (Chair)  
Jack Dewar  
Tito Fernandes

**Findings:** Breach of Sections 1.2, 1.3, 2.0 and 4.1, Standards of Business Practice

**Fine:** \$2,000.00

**Costs:** \$2,800.00

**Other:** Certification Course to be taken

**Date of Decision:** May \*, 2005

**REASONS FOR DECISION**

1. This hearing, held on April 18, 2005, relates to a Notice of Complaint dated September 1, 2004, which alleged that, the Respondent Top Condition Used Car Inc. (the "Dealer") breached Sections 1.2, 1.3, 2.0 and 4.1 of the Standards of Business Practice.
2. The allegations against the Dealer generally related to obligations pursuant to a bill of sale and the failure to maintain a Garage Registry as required by the *Highway Traffic Act*.
3. The dealer acknowledged receipt of and the following were marked as Exhibits:
  - (a) Exhibit 1: Notice of Complaint dated September 1, 2004
  - (b) Exhibit 2: OMVIC Book of Documents
4. Ms. A. Harari represented OMVIC and submitted that it is a not-for-profit corporation which enacted its By-Law No. 1 on November 8, 2000. 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. A copy of the Code of Ethics and the Standards of Business Practice were distributed to all OMVIC members, including the Dealer, in December 2000. Thereafter, particular portions of the Code of Ethics were highlighted in monthly publications distributed to OMVIC members, including the Dealer.
5. Oral testimony under oath was provided by Ms. Mary Jane South, Mr. Brian Lee and Mr. Kevin Van Pedro on behalf of OMVIC and Mr. Golan (Glen) Shirpanjeh on behalf of the Dealer.
6. Ms. South, Director of Operations of OMVIC, provided evidence of the inspection she carried out at the Dealer's premises on June 1, 2000. This inspection was a routine six (6) month inspection visit which is, as a matter of course, carried out with every new Dealer. At that time, Ms. South discovered that the Dealer was not properly maintaining his Garage Registry. During the course of this inspection, Ms. South advised the Dealer of what was required to maintain a Garage Registry. Ms. South's notes of the inspection formed Tab 7 of Exhibit 2.
7. The Dealer did not cross-examine Ms. South on her testimony.
8. Mr. Lee, an OMVIC inspector, also attended at the Dealer's premises on May 12, 2002, and discussed with the Dealer the obligation to keep and maintain a Garage Registry pursuant to section 60(1) of the *Highway Traffic Act*. It was noted at that time that the dealer was not properly maintaining his Garage Registry and he was advised by Mr. Lee of what was required. Mr. Lee documented these discussions by way of an OMVIC Inspection Finding Form, which formed Tab 8 of Exhibit 2.
9. Mr. Lee conducted another inspection at the Dealer's premises on May 17, 2004. At that time, Mr. Lee discovered that the Dealer was not properly maintaining his Garage Registry. Amongst other things, Mr. Lee found that the registry was not properly

completed as it was missing VIN digits, contained incomplete serial numbers and no "in and out dates". Mr. Lee again provided the Dealer with directions on how to properly maintain the Garage Registry. This inspection was documented by way of a further OMVIC Inspection Finding Form, which formed Tab 9 of Exhibit 2.

10. The Dealer did not cross-examine Mr. Lee on his testimony.
11. As a result of a consumer complaint (the "Complaint") received by OMVIC in May 2004, the Dealer's practices were investigated again by OMVIC. The substance of the Complaint formed Tab 3 of Exhibit 2.
12. Generally, the Complaint alleged that the Dealer sold a car to a consumer with inoperative air conditioning and that only the Freon would be re-filled. The Complaint further alleged that after the Freon was filled, the air conditioning was still malfunctioning. The Bill of Sale formed Tab 5 of Exhibit 2.
13. Mr. Kevin Van Pedro, a Complaints Handler with OMVIC, received the Complaint. Upon receipt of the Complaint, Mr. Van Pedro contacted Mr. Golan Shirpanjeh, the owner of the Dealer. Mr. Shirpanjeh informed Mr. Van Pedro that the air conditioning on the vehicle was "re-filled" rather than repaired. Mr. Van Pedro testified that he urged the Dealer to repair the air conditioning and suggested that the Dealer and the consumer split the cost of the repairs.
14. During the hearing, Mr. Sharpanjeh gave evidence and was cross-examined by Ms. Harari with respect to written notes on the conditional sales contract that stated "I will fix A/C for Tony". Mr. Sharpanjeh stated that it was written after the fact by his bookkeeper who was under pressure from the consumer who was threatening him at the time. Mr. Sharpanjeh was asked if he brought his bookkeeper to the hearing to corroborate his statements but he had not. Mr. Sharpanjeh stated that he told the consumer he would fill the Freon but did not say he would repair the air conditioning. Mr. Shirpanjeh testified that he had done what he promised to the consumer and that he had fulfilled his obligations.
15. Mr. Sharpanjeh explained he had no financial resources to spend on repairs of the vehicle and that he had already lost \$1,500.00 on the sale. Mr. Sharpanjeh suggested to Mr. Van Pedro that the customer bring the vehicle back and he would take \$2,000.00 off what the customer had paid for the vehicle four (4) to six (6) weeks prior as a usage fee.
16. Mr. Sharpanjeh did not bring any witnesses to the hearing nor did he cross-examine any witnesses produced by OMVIC. Mr. Sharpanjeh made statements regarding his loss of money on the vehicle. Mr. Shirpanjeh did not provide any closing remarks.
17. The relevant excerpts of the Standards of Business Practice provide the following:

**Integrity**

- 1.2 Dealers conduct all business activities with honesty, fairness and integrity at all times.
- 1.3 Dealers promptly, honestly and conspicuously respond to complaints made about them by other Dealers, consumers and others.

- 1.4 Dealers meet all financial obligation incurred in relation to motor vehicle transactions including buying, selling or leasing vehicles.

### **Disclosure**

- 2.1.1 All contracts respecting motor vehicle transactions are in writing and disclose all terms and conditions, including the total amount of all payments made or received in relation to the sale or lease of a motor vehicle. After all terms and conditions have been filled out on the contract, every contract is signed by all parties to the contract and a signed duplicate original contract is provided to all parties to the contract.
- 2.1.2 All terms and conditions in contracts respecting motor vehicle transactions are set out clearly and in plain language. Disclosure statements are expressed clearly and concisely in a logical order and in a manner that is likely to bring the information to the attention of the purchaser.

### **Accountability**

- 4.1 Generally, Dealers promptly, honestly and willingly perform all of their contractual obligations.

### **Compliance**

- 5.1 Knowledge and compliance with Applicable Laws, Dealers must comply with all the laws that govern the motor vehicle industry, including applicable parts of the following a) *Motor Vehicle Dealers Act*, b) *Business Practices Act*, c) *Consumer Protection Act*, d) *Highway Traffic Act*, e) *Ontario Human Rights Code*, f) *Sale of Goods Act*, g) *Environmental Protection Act*, h) *Personal Property Security Act*, i) *Repair and Storage Liens Act*, j) *Competition Act*.

## **REASONS**

### i. Garage Registry

1. The Dealer was warned by OMVIC on three (3) different occasions that his Garage Registry must be properly maintained. On each visit, OMVIC inspectors found that the Dealer had made no improvements to the Garage Registry in order to comply with the *Highway Traffic Act*. Having weighed the evidence, the Panel has concluded that the Dealer breached section 5.1 of the Standards of Business Practice.
2. Accordingly, the Dealer contravened section 5.1 of the Standards of Business Practice.

### ii. Consumer Complaint

3. Further, having weighed the evidence in the matter of the sale to the consumer, the Dealer testified that he would have taken the vehicle back due to the inoperative air conditioning. However, at that time, the consumer had owned the vehicle for approximately four (4) to six (6) weeks. While the Dealer told the consumer he would take back the vehicle, he also informed the consumer that he would deduct a usage fee of \$2,000.00. The Panel is of the view that a \$2,000.00 usage fee for a vehicle that was sold for \$6,100.00 is unfair and excessive and discloses a lack of fairness and integrity.

Accordingly, this contravened section 1.2 as the Dealer failed to deal with the consumer in a fair manner.

4. Additionally, the Dealer gave evidence that he did not have the financial means to fix the consumer's vehicle. The Panel finds that this contravened section 1.4 of the Standards of Business Practice as the Dealer failed to fulfill his financial obligations incurred in relation to this motor vehicle transaction.
5. While OMVIC also relied on section 2.1 of the Standards of Business Practice, the Panel finds that the Dealer did not contravene this section. Section 2.1 of the Standards of Business Practice provides that the all terms and conditions must be disclosed on the contract. The Panel is of the view that on the face of the Bill of Sale, the relevant terms and conditions of sale were disclosed.
6. However, section 2.1.2 further provides that all statements on the contract or Bill of Sale must be clearly and concisely expressed in a manner that is likely to bring the information to the attention of the purchaser. On the Bill of Sale, the Dealer wrote "fill Freon" which reasonably led the consumer to believe that the air conditioning would be fixed prior to sale. The vehicle was equipped with air conditioning and the consumer was told it was inoperative. The wording on the Bill of Sale was vague and unclear as to why the Freon would need to be filled. Accordingly, the Panel finds that the Dealer has contravened section 2.1.2.
7. Lastly, after discussions with Mr. Van Pedro the Dealer was reluctant to fix the air conditioning problem for the customer, stating that he had already lost money on the sale of this vehicle. The Panel has determined that this is a contravention of section 4.1 of the Standards of Business Practice as the Dealer failed to perform all of his contractual obligations.

## **PENALTY**

1. In determining the appropriate penalty for the breaches of the *Highway Traffic Act* and the Standards of Business Practice noted above, this Panel has considered the following:
  - (a) the Standards of Business Practice regulate the conduct of dealers in their dealings with consumers and were created to establish minimum standards of business conduct required to be observed and complied with by dealers for the benefit of both the industry and the public;
  - (b) the Dealer disregarded three (3) warnings by OMVIC with respect to the failure to properly maintain a Garage Registry;
  - (c) OMVIC witnesses testified that the Dealer offered to take back the vehicle for an excessive and unreasonable usage fee;
  - (d) the terms and conditions on the face of the Bill of Sale were vague and unclear and could have reasonably led the consumer to believe that the air conditioning would be repaired prior to sale;

- (e) the Dealer has testified that he experienced a level of financial impecuniosity that made it difficult to meet financial obligations to consumers as they became due ;  
and
  - (f) the Dealer has no record of disciplinary history.
2. Counsel for OMVIC submitted that an appropriate fine in these circumstances would be in the range of \$1,500.00 to \$2,500.00. However, having regard for the factors described above, it is ordered that the Dealer pay a fine of \$2,000.00 in these particular circumstances.
  3. Counsel for OMVIC also sought an Order for the recovery of costs in the amount of \$2,800.00. Having regard for all of the circumstances, this Panel concludes it is appropriate for the Dealer to pay \$2,800.00 by way of costs.
  4. In summary, the Dealer is ordered to pay \$4,800.00 within six months of the date of this decision.
  5. It is further ordered that the Dealer be required to take the OMVIC certification course, to be completed within 90 days of the date of this Order.

Further, this decision shall be communicated to the industry and to the public.

Jeff Prossler (Chair)

Jack Dewar

Tito Fernandes