

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 -

ABBASS YASSINE O/A Z AUTO

Date of Hearing:	June 29, 2004
Panel:	Glen Fenwick (Chair) Bruce Wilson Jack Dewar
Findings:	Breach of Section 1 of the Code of Ethics No Breach of Section 5 of the Code of Ethics
Fine:	\$2,000.00
Costs:	\$3,000.00
Date of Decision:	July 30, 2004

REASONS FOR DECISION

1. This hearing, held on June 29, 2004 relates to a Notice of Complaint dated November 24, 2003 which alleged that the Respondent Abbass Yassine o/a Z Auto ("the Dealer") had breached Sections 1 and 5 of the Code of Ethics of the Ontario Motor Vehicle Industry Council ("OMVIC").
2. The allegations against the Dealer related to his wholesale purchase of two cars subsequently sold to two consumers.
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 oath or affirmation, was provided by Ms. Nadine Cosentino, Ms. Mary Jane South and Mr. Ralph Bailey, on behalf of OMVIC and Mr. Abbass Yassine on behalf of the Dealer.
6. Ms. Cosentino, Regional Manager for AFC Automotive Finance Corporation ("AFC") testified in respect of its floor plan financing arrangement available to independent car dealers across North America. In particular, it entered into such an arrangement with Hamzi Tahan o/a Mizo Car Sales ("Mizo"). In the ordinary course, AFC entered into a financing arrangement with Mizo and registered a blanket security agreement pursuant to the *Personal Property Securities Act*.

7. In June 2003 AFC determined that Mizo had sold at least two particular vehicles (1999 Honda Civic and 1993 Audi) without notification or payment to AFC as required by their contractual arrangement. As a result, AFC registered vehicle specific liens in respect of the Honda and Audi on June 23, 2003.
8. AFC investigation determined the following (which was not contradicted by the Dealer):

(a) **1999 Honda Civic**

- (i) Mizo purchased the vehicle from Toronto Auto Auction on April 17, 2003 for \$6,800.00 which was financed by AFC;
- (ii) the Toronto Auto Auction Bill of Sale contains the notation "original ownership held at AFC...dealer cannot apply for duplicate or loss" (Exhibit 1, Tab 2, page 3);
- (iii) Mizo transferred the registration of the vehicle to the Dealer on June 19, 2003;
- (iv) the Dealer transferred the registration of the vehicle to a consumer L.Y., unplatd on June 21, 2003 (Exhibit 1, Tab 2, page 6);
- (v) AFC registered a vehicle specific lien on June 23, 2003 (Exhibit 1, Tab 2, page 4).

(b) **1993 Audi**

- (i) Mizo purchased the vehicle from Manheim's Oshawa Dealers Exchange on May 28, 2003 for \$4,555.00 which was financed by AFC;
- (ii) the Manheim's Oshawa Dealers Exchange Bill of Sale contains the notation "original ownership held at AFC...dealer cannot apply for duplicate or loss" (Exhibit 1, Tab 2, page 7);

- (iii) Mizo transferred the registration of the vehicle to the Dealer on June 19, 2003;
- (iv) the Dealer transferred the registration of the vehicle to A.W. on June 21, 2003 (Exhibit 1, Tab 2, page 11);
- (v) AFC registered a vehicle specific lien on June 23, 2003 (Exhibit 1, Tab 2, page 9).

Ms. Cosentino described the unsuccessful efforts of AFC to recover the vehicles or payment from Mizo, the dealer and the subsequent consumer purchasers L.Y. and A.W.

9. Mary Jane South, Deputy Registrar for OMVIC since January 1997 gave evidence in respect of her involvement in the investigation of this matter with respect to a telephone discussion between herself and the Dealer. In various respects, the evidence of Ms. South recounting information provided to her by the Dealer during the course of various telephone conversations at the time of the investigation was contradicted by the Dealer in his testimony given during the course of this hearing. However, the differences in the testimony were not in any way determinative of opur decision.
10. Ralph Bailey, employed as an inspector for OMVIC since 2001 gave evidence in respect of his investigation of this matter by contacting the consumers and the Dealer. He did acknowledge that the Dealer had been co-operative during the course of the investigation and had provided contact information in respect of the Consumer A.W.
11. Following the completion of evidence by both parties, OMVIC was granted leave to recall Ms. Cosentino to give evidence in respect of a document purporting to be a receipt from the Consumer A.W. purporting to record payment for the 1993 Audi, which document was said to be faxed to AFC.

12. The document was marked as Exhibit 2. No evidence was given by the Consumer A.W. to establish how or when the purported receipt was prepared or the meaning to be attached to the document by the Dealer. The Dealer testified that the document was not in his handwriting, did not bear his signature and was not the form of a receipt he used in the ordinary course of business. Accordingly, we attach no weight to the receipt document marked as Exhibit 2.
13. The Dealer testified. He provided explanations in respect of the transactions and his participation in the OMVIC investigation.

CODE OF ETHICS

14. The Code of Ethics provides as follows:

"1. INTEGRITY

Conduct activities with honesty, fairness and financial responsibility.

"5. COMPLIANCE

Abide by all applicable laws and regulations and never knowingly do business with those operating outside these laws."

REASONS

15. We have determined that the Dealer has not lived up to the standards of Section 1. We have concluded based upon the evidence presented, that Mr. Yassine participated in the transactions under suspicious circumstances. We have determined that the way that the Dealer conducted the sales of these two vehicles was without regard to honesty, fairness and financial responsibility.

1999 Honda Civic

16. Mr. Yassine marked the invoice for the 1999 Honda Civic purchased by a consumer, "Paid in Full by Cash". There was no evidence provided to substantiate this statement. He also transferred the ownership into the consumer's name before payment was made. This same Bill of Sale shows a \$500.00 cash deposit, yet evidence shows that L.Y. stated that she had provided Mr. Yassine with a cheque for \$1,000.00 as a deposit although it is the Panel's conclusion that this did not actually occur, which added more doubt as to the accuracy of the Bill of Sale and the transaction in general.
17. Mr. Yassine did not disclose on the Bill of Sale that there was unibody damage even though he admitted that Mizo had informed him of it. Mr. Yassine stated that he did not need to, since damage to the rear bumper was visible to the consumer. The Panel's conclusion is that regardless of appearance of the bumper, the unibody damage must be disclosed on the Bill of Sale.

1993 Audi

18. On the Bill of Sale for the 1993 Audi 90 sold to another consumer, the transaction described does not coincide with details described by Mr. Yassine at the hearing. Mr. Yassine stated that the vehicle was paid for by a \$1,000.00 cash deposit plus an additional \$1,500.00 provided by the consumer plus the forgiveness of a \$1,350.00 debt for mechanical work previously performed by the consumer and a credit for \$2,000.00 worth of future repair work.
19. On the Bill of Sale, only the \$1,000.00 deposit is shown but no other form of payment or amount of payment appears.

CONCLUSION

20. The wholesale buyers agreement between Mr. Yassine and Mizo contains anomalies that were not clearly explained by Mr. Yassine to the satisfaction of the Panel. The total amount for the sale of the two vehicles was \$9,523.00. The only proof of payment shown was a bank statement provided by Mr. Yassine showing two withdrawals of \$2,500.00 each. The balance owed, according to Mr. Yassine was paid by cash but no supporting documents were provided to support this claim.
21. It is expected as a responsible dealer that Mr. Yassine would maintain accurate records of account that could have been made available to substantiate his claim of payment, but were not produced

Accordingly, the Dealer is found to have contravened Section 1 of the Code of Ethics.

22. This Panel concludes that the evidence led by OMVIC, does not substantiate the assertion that the Dealer has breached Section 5 of the Code because no evidence was adduced to conclude that the Dealer knowingly did business with someone outside the law. If Mizo acted improperly, OMVIC has not led compelling evidence that Mr. Yassine was aware of that fact.

Accordingly, the Dealer is not found to have contravened Section 5 of the Code of Ethics.

PENALTY

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 who co-operated with Mr. Bailey. 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:

\$2,000.00 fine

\$3,000.00 costs.

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

Glen Fenwick (Chair)

Bruce Wilson

Jack Dewar