

## 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 -

HOSSEIN TONCHIAN

---

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 14, 2015

**Findings:** Breach of Section 9 of the Code of Ethics

**Order:**

1. Totonchian is ordered to pay a fine in the amount of \$ 5,000.00 within 90 days of the date of the Discipline Committee Order.
2. Totonchian shall comply with the Act 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.

### **Agreed Statement of Facts**

The parties to this proceeding agree that:

1. Hossein Totonchian ("Totonchian") was first registered as a salesperson in or around November of 1989. At all material times, Totonchian was an officer, director, and the General Manager of Toronto Smart Cars Ltd. o/a North York Chrysler Jeep Dodge Ram Fiat ("North York Chrysler").
2. On or about November 5, 2008, OMVIC issued a Notice of Complaint against North York Chrysler which related primarily to consumer complaints regarding contract cancellation and North York Chrysler's failure to properly resolve these complaints. As a result of a Discipline Decision released on December 29, 2009, North York Chrysler was found to have breached Sections 1, 2 and 4 of the OMVIC Code of Ethics.
3. On or about May 18, 2011, OMVIC sent a cautionary letter to North York Chrysler and Totonchian, in his capacity as the General Manager of North York Chrysler, about a continuing pattern of consumer complaints.
4. By way of letter sent on North York Chrysler's behalf by its legal counsel to OMVIC dated July 28, 2011, North York Chrysler undertook to take steps to address OMVIC's concerns regarding consumer complaints including:
  - Ensuring all sales managers, business managers and the dealer principal have completed the new OMVIC certification course.
  - Training all managers regarding OMVIC regulations.
  - Retaining a Customer Care Manager who would contact every customer after delivery to deal with outstanding issues and to resolve issues in a timely manner and to notify OMVIC when issues arise.
  - Ensuring the Customer Care Manager has authority to make decisions necessary to deal with customer complaints.
  - Randomly auditing sales transactions on a monthly basis to ensure paperwork has been properly completed.
  - Implementing a standard letter for customers who fail to take delivery.
  - Implementing a standard letter regarding claims for liquidated damages.
  - Implementing written guidelines to ensure legal and ethical compliance.
  - Implementing a written process for Sales Managers concerning how to handle cancelled sale transactions.
5. On or about February 6, 2012, North York Chrysler and Totonchian, in his capacity as General Manager of North York Chrysler, were given written notice that an inspection would be conducted to ensure that North York Chrysler had implemented the steps described in its July 28, 2011 letter.
6. On or about March 5, 2012, OMVIC representatives conducted a seminar facilitated by Totonchian at North York Chrysler. During this seminar, staff of North York Chrysler were advised that any mandatory additional charges must be included in the advertised price of a vehicle.

7. On April 18 and 19, 2012, representatives of OMVIC attended at North York Chrysler for a scheduled inspection.
8. Among other things, the inspection included an examination of the measures North York Chrysler had taken to comply with the undertakings provided to OMVIC in its July 28, 2011 letter.
9. The inspection revealed the following:
  - Supporting documentation regarding how staff had been trained concerning OMVIC regulations could not be provided.
  - Only one monthly audit of sales transactions had been completed.
  - The Customer Care Manager was unaware of a number of the consumer complaints which had come to OMVIC's attention.
  - The Customer Care Manager had not been given authority to resolve complaints.
10. Totonchian, in his capacity of General Manager of North York Chrysler, was reminded during the inspection that, pursuant to section 9 of the Code of Ethics, prompt and timely action must be taken to resolve and/or address consumer complaints.
11. The inspection also revealed that:
  - i) In or around March 2012, North York Chrysler improperly added extra fees to the advertised price of a 2012 Dodge Grand Caravan (Deal # 73053). This is contrary Section 36(7) of Regulation 333/08 as well as Section 4 and 9 of the Code of Ethics.
  - ii) In or around March 2012, North York Chrysler improperly added extra fees to the advertised price of a 2012 Dodge Ram 1500 (Deal # 73244). This is contrary Section 36(7) of Regulation 333/08 as well as Section 4 and 9 of the Code of Ethics.
  - iii) In or around March 2012, North York Chrysler improperly added extra fees to the advertised price of a 2012 Dodge Ram 1500 (Deal # 73518). This is contrary Section 36(7) of Regulation 333/08 as well as Section 4 and 9 of the Code of Ethics.
  - iv) In or around March 2012, North York Chrysler improperly added extra fees to the advertised price of a 2010 Jeep (Deal# 73309). This is contrary to Section 36(7) of Regulation 333/08 as well as Section 4 and 9 of the Code of Ethics.
  - v) In or around March 2012, North York Chrysler improperly added extra fees to the advertised price of a 2009 Dodge Journey (Deal# 73675). This is contrary to Section 36(7) of Regulation 333/08 as well as Section 4 and 9 of the Code of Ethics
12. On or about August 2, 2012, OMVIC was notified by North York Chrysler that Totonchian's employment and involvement with North York Chrysler had ended.
13. Totonchian is currently registered as a salesperson under the Act.

## GENERALLY

It is thereby agreed that Totonchian has breached the following section of the Code of Ethics, as set out in 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).

### Joint Submission on Penalty

1. Totonchian agrees to pay a fine in the amount of \$ 5,000.00 within 90 days of the date of the Discipline Committee Order.
2. Totonchian agrees to comply with the Act 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 Totonchian 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. Totonchian is ordered to pay a fine in the amount of \$5,000.00 within 90 days of the date of the Discipline Committee Order.
2. Totonchian shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



Catherine Poultney, Chair