

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 -

RND AUTO SERVICE INC.

- AND -

ROMIO YOUKHANNA

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: March 30, 2017

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 \$3,600. \$1,200 is due within 90 days of the date of the Discipline Committee Order, and the remaining balance is due within 180 days of the date of the Discipline Committee Order.
2. Youkhanna is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Youkhanna 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. RND Auto Service Inc (the "Dealer") was first registered as a motor vehicle dealer in or around November 1998. Romio Youkhanna ("Youkhanna") was first registered as a motor vehicle salesperson in or around November 1998. At all material times, Youkhanna was an officer and director, as well as the Person in Charge, of the Dealer.

OMVIC publications:

2. In the Winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the changes that would take place when the Motor Vehicle Dealers Act, 2002 (the "Act") came into effect, such as the requirement to provide written disclosure, of a vehicle's history and condition, such accident repair histories, previous daily rental histories, and out of province registrations ("disclosure").
3. The following Dealer Standard publications also reminded dealers of their disclosure obligations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Summer 2013
 - e. Issue #4 2014
 - f. Issue #2 2015
4. In addition to this, OMVIC also issued the following bulletins which reminded dealers of their disclosure obligations:
 - a. January 2010
 - b. September 2012
 - c. December 2013
 - d. December 2014 (disclosure webinar)

Direct correspondence with Dealer:

5. During an inspection on or about February 17, 2009, a representative of the Registrar reminded Youkhanna, on behalf of the Dealer, of the Dealer's obligation to ensure all material facts are disclosed to purchasers.
6. During an inspection on or about March 21, 2011, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about a vehicle, including but not limited to, accident histories.

Dealer non-compliance:

7. During an inspection on or about August 8, 2016, a representative of the Registrar found the following concerns:
 - a. Incomplete service/repair/re-conditioning records for the vehicles the Dealer sells
 - b. Missing copies of the Safety Standards Certificates for the vehicles the Dealer sells
 - c. Adesa wholesale purchase agreements missing the disclosure (2nd) page.
8. Moreover, the above mentioned inspections revealed the following non-compliant retail vehicle trades:
 - a. On or about September 30, 2015, Youkhanna purchased a 2010 Suzuki SX4 (VIN JS2YA5A19A6300340) on behalf of the Dealer, which was declared by the seller as having an accident history. A vehicle history report indicates the dollar value of the damage was \$7,700. On or about November 19, 2015, Youkhanna sold this vehicle on behalf of the Dealer without disclosing on the bill of sale the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
 - b. On or about February 25, 2016, Youkhanna purchased a 2006 Chevrolet Equinox (VIN 2CNDL13F676020278) on behalf of the Dealer. This vehicle was declared by the seller as having a \$5900 accident history. On or about March 10, 2016, Youkhanna sold this vehicle on behalf of the Dealer without disclosing on the bill of sale the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation the purchaser of this vehicle is aware of their vehicle's accident history.
 - c. On or about April 6, 2016, Youkhanna purchased a 2009 Nissan Versa (VIN 3N1BC13E29L385500) on behalf of the Dealer. This vehicle was declared by the seller as having a \$5600 accident history. On or about May 28, 2016, Youkhanna sold this vehicle on behalf of the Dealer without disclosing on the bill of sale the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The Dealer

has since provided OMVIC with confirmation the purchaser of this vehicle is aware of their vehicle's accident history.

- d. On or about April 26, 2016, Youkhanna purchased a 2007 Pontiac G6 (VIN 1G2ZG58B374152609) on behalf of the Dealer. This vehicle was declared by the seller as having a \$5900 accident history. On or about July 26, 2016, Youkhanna sold this vehicle on behalf of the Dealer without disclosing on the bill of sale the vehicle's accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation the purchaser of this vehicle is aware of their vehicle's accident history.

By failing to comply with the following sections of the Motor Vehicle Dealers Act, 2002:
Regulation 333/08

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.

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer and Youkhanna have breached the following sections of the Code of Ethics, as set out in 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 agrees to pay a fine in the amount of \$3,600. \$1,200 is due within 90 days of the date of the Discipline Committee Order, and the remaining balance is due within 180 days of the date of the Discipline Committee Order.
2. Youkhanna agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.

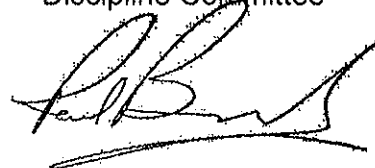
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Youkhanna agree 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 the Dealer and Youkhanna 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 \$3,600. \$1,200 is due within 90 days of the date of the Discipline Committee Order, and the remaining balance is due within 180 days of the date of the Discipline Committee Order.
2. Youkhanna is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Youkhanna 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



Paul Burroughs, Chair