

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

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

AURORA GROUP AURORA INC. o/a AURORA TOYOTA

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: June 11, 2018

Findings: Breach of Sections 4 and 7 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000.00 no later than **August 10, 2018**.
2. 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 no later than August 10, 2018. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to 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. Auto Group Aurora Inc. o/a Aurora Toyota (the "Dealer") was first registered as a motor vehicle dealer in or around September 1991. Joseph Cornacchia ("Cornacchia") has been a registered motor vehicle salesperson since around March 1983. At all material times, Cornacchia was a Person in Charge of the Dealer.

OMVIC publications:

2. In or around December 2008, OMVIC issued a Dealer Standards publication advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all-inclusive vehicle prices ("all-in pricing") in advertisements. In addition to this, dealers were also advised of the requirement to disclose in writing all material facts, including but not limited to, a vehicle's accident repair history ("disclosure").
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their advertising and disclosure obligations:
 - a. Spring 2010 (all-in pricing)
 - b. Summer 2010 (all-in pricing)
 - c. Spring 2011 (all in pricing/disclosure)
 - d. Summer 2012 (disclosure)
 - e. Winter 2013 (disclosure)
 - f. Spring 2013 (all-in pricing)
 - g. Fall 2013 (all-in pricing)
 - h. Issue #1 (all-in pricing)
 - i. Issue #2 (all-in pricing)
 - j. Issue #3 2014 (all-in pricing)
 - k. Issue #4 2014 (all-in pricing/disclosure)
 - l. Issue #3 2015 (all-in pricing)
 - m. Issue #1 2016 (all-in pricing)
 - n. Issue #2 2016 (all-in pricing)
 - o. Issue #3 2016 (all-in pricing/disclosure)
 - p. Issue #4 2016 (all-in pricing/disclosure)

4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their advertising and disclosure obligations:
 - a. January 2010 (3 publications)
 - b. April 2010 (2 publications)
 - c. February 2012
 - d. August 2012
 - e. September 2012
 - f. April 2013
 - g. December 2013
 - h. June 2014
 - i. April 2015

Dealer Inspection History:

5. During an inspection on or about September 27, 2011, a representative of the Registrar reminded the Dealer of the requirement to ensure all material facts, including but not limited to, accident repair histories, are disclosed in writing on the bill of sale. The Dealer was also reminded of its all-in pricing obligations.
6. During an inspection on or about August 2, 2017, a representative of the Registrar discovered the following areas of non-compliance:

Material fact non-disclosure:

- a. On or about June 19, 2017, the Dealer sold a 2009 Nissan Versa (VIN 3N1BC13E39L413935) without providing the purchaser with disclosure of the vehicle's \$5,382 accident repair history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as section 7 of the Code of Ethics. Subsequently, a new bill of sale was created with the accident repair disclosure and the purchaser signed off on the new bill of sale.

All-inclusive price advertising non-compliance:

- b. On or about June 29, 2017, the Dealer advertised a 2014 Toyota Rav 4 (VIN 2T3ZFREV2EW111828) for sale on AutoTrader.ca and Wheels.ca. On or about July 5, 2017, this Dealer sold this vehicle without being in compliance with the Regulation regarding all-inclusive pricing contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics.
- c. Prior to the Notice of Complaint being issued, the Dealer provided the consumer with restitution in the amount of the overcharge.

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

Section 42: Additional Information on 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.

Section 36: Advertising

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

(a) the amount that a buyer would be required to pay for the vehicle; and

(b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

7. (1) 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$4,000.00 no later than **August 10, 2018**.
2. 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 no later than August 10, 2018. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer 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 the Dealer breached subsections 4 and 7 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 \$4,000.00 no later than **August 10, 2018**.
2. 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 no later than August 10, 2018. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to 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