

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 -

BEST RATE AUTO SALES

-and-

DONALD REZOSKI

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: October 31, 2018

Findings: Breach of Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$8,000.00 no later than **November 15, 2018**.
2. The Dealer is ordered to have staff review OMVIC's advertising webinar no later than **November 15, 2018**.
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 no later than **November 15, 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.
4. The Dealer and Rezoski agree 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. 1037166 Ontario Inc. o/a Best Rate Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in about April 2006. Donald Rezoski ("Rezoski") was first registered as a motor vehicle sales person in about February 1983. At all material times Rezoski was the Officer and Person in Charge at the Dealer.

OMVIC Publications:

2. In or around December 2008, OMVIC issued a bulletin 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.
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure and all-in pricing advertising.
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Spring 2013
 - e. Fall 2013
 - f. Issue #1 2014
 - g. Issue #2 2014
 - h. Issue #3 2014
 - i. Issue #4 2014
 - j. Issue #3 2015
 - k. Issue #1 2016
 - l. Issue #2 2016
 - m. Issue #3 2016
 - n. Issue #4 2016
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of requirements to advertise all-in prices.
 - a. January 2010 (2 publications)
 - b. April 2010
 - c. February 2012
 - d. August 2012

- e. April 2013
- f. April 2014
- g. June 2014
- h. April 2015

Prior warnings and Disciplinary Action regarding advertising:

5. By email dated March 8, 2011, the Dealer was advised that the price of a vehicle must be disclosed in clear, comprehensible, and prominent manner. More specifically, the Dealer was advised not to present a monthly payment as though it was the cash price of the vehicle, as this is misleading. In addition to this, the Dealer was also reminded that advertised vehicle prices must be all inclusive.
6. The Dealer continued to produce similar publications as the above referenced advertisements, and was again advised of OMVIC's concerns on the following dates:
 - a. February 2, 2012
 - b. August 8, 2012
 - c. October 9, 2012
7. On or about March 13, 2013, the Registrar issued a Notice of Complaint (the "Notice") against the Dealer for *inter alia*, failing to advertise all inclusive vehicle prices.
8. During an inspection on or about April 10, 2013, Rezoski, on behalf of the Dealer, was further reminded of the Dealer's advertising obligations, including but not limited to, the requirement to advertise all inclusive vehicle prices.
9. On or about August 20, 2013 the Discipline Committee issued an Order (the "Order") pursuant to a negotiated resolution of the above mentioned Notice. The Order included the following conditions:
 - a. As per condition 2 of the Order, Rezoski was required to successfully complete the OMVIC Automotive Certification Course (the "Course") within 90 days of the date of the Order.
 - b. As per condition 3 of the Order, the Dealer shall ensure all future advertising is in compliance with the Act and Standards of Business Practice, as may be amended from time to time.
10. Rezoski successfully completed the Course on or about May 13, 2014.

Current advertising non-compliance:

11. Between on or about May 20, 2017 and on or about June 12, 2017, eight (8) individual advertisements were published by or on behalf of the Dealer which failed to comply with

advertising regulations and Code of Ethics. Specifically, the subject advertisements were non-compliant for the following reasons:

- a. A monthly payment was presented as though it was the cash price of the vehicle. This is misleading and contrary to section 4 of the Code of Ethics.
- b. The advertisements indicated the prices of the vehicles were not inclusive of a dealer administration fee. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics.

12. The Dealer has failed to ensure its advertising complies with the Act, contrary to condition 3 of the Order, as well as section 9 of the Code of Ethics.

13. As the Person in Charge of the Dealer, Rezoski has failed to ensure the Dealer's advertising complies with the Act, Code of Ethics, and the Order. This is contrary to section 9 of the Code of Ethics.

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

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 and/or Rezoski have 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.

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 \$8,000.00 no later than **November 15, 2018**.

2. The Dealer agrees to have staff review OMVIC's advertising webinar no later than **November 15, 2018**.
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 no later than **November 15, 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.
4. The Dealer and Rezoski 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 breached subsections 4 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:

5. The Dealer is ordered to pay a fine in the amount of \$8,000.00 no later than **November 15, 2018**.
6. The Dealer is ordered to have staff review OMVIC's advertising webinar no later than **November 15, 2018**.
7. 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 **November 15, 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.
8. The Dealer and Rezoski agree 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