

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 -

TIMAFI, ANDREI, N o/a DURABLE AUTO SALES

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: April 26, 2018

Findings: Breach of Section 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$750 no later than **July 2, 2018**.
2. Timafi is ordered to successfully complete the Automotive Certification course no later than **July 31, 2018**.
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. Timafi, Andrei, N o/a Durable Auto Sales (the “Dealer”) was first registered as a motor vehicle dealer in or around August 1999. Andrei Timafi (“Timafi”) is the sole proprietor of the Dealer.

OMVIC publications:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement for dealers to provide purchasers with written disclosure of a vehicle’s accident repair history (“disclosure”).
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the disclosure requirements:
 - a. Summer2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:
 - a. January 2010
 - b. December 2013

Direct correspondence with Dealer:

5. On or about May 30, 2013, OMVIC received a consumer complaint regarding non-disclosure of an accident history on a vehicle the Dealer had sold. The Dealer was advised by a representative of the Registrar of the importance of doing due diligence with respect to researching vehicle histories. It was suggested at this time that the various vehicle history reporting systems available are a useful tool to assist with this. The Dealer resolved the complaint by rescinding the consumer’s purchase.
6. During an inspection on or about October 9, 2014, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to accident repair histories. The Dealer was again advised of the importance of doing due diligence with respect to researching vehicle histories. It was also suggested at this time that the various vehicle history reporting systems available are a useful tool to assist with this.



7. By letter dated February 9, 2015, the Dealer was further reminded of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to accident repair histories.
8. During an inspection on or about July 18, 2017, a representative of the Registrar found the following non-compliance issues:
 - a. On or about April 22, 2015, the Dealer purchased a 2004 Chevrolet Avalanche , (VIN 3GNEK12T74G149026) with the following declarations:
 1. Vehicle declared a total loss by the insurer
 2. Repair Estimate: \$9869
 3. Total distance driven is unknown, but as of 3/17/2015 it was believed to be 143723 km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about November 23, 2015, the Dealer sold this vehicle without disclosing #3, above. This is contrary to section 42(4) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, a vehicle history report indicates 2 previous accident repair claims in the amounts of \$7,873, and \$12,701 which were not disclosed to the purchaser. 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 unsuccessfully attempted to contact the purchaser and advise them of their vehicle's history.

9. The Dealer has failed its due diligence requirement with respect to thoroughly researching the histories of the vehicles it sells, and in doing so is non-compliant with section 9(3) of the Code of Ethics.

It is thereby agreed that the Dealer has breached section 9 of the Code of Ethics, as set out in regulation 332/08:

Professionalism

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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$750 no later than **July 2, 2018**.
2. Timafi agrees to successfully complete the Automotive Certification course no later than **July 31, 2018**.
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 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:

4. The Dealer is ordered to pay a fine in the amount of \$750 no later than **July 2, 2018**.
5. Timafi is ordered to successfully complete the Automotive Certification course no later than **July 31, 2018**.
6. 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

