

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 -

SAMAKT AUTO SALES & SERVICES INC.

- AND -

ADETUNJI KOLAWOLE

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: August 30, 2018

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 \$6,800 no later than **December 7, 2018**.
2. Kolawole is ordered to successfully complete the Automotive Certification Course (the "course") no later than **December 7, 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 **December 7, 2018**. Future sales staff will be offered the course within 90 days 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Kolawole are ordered 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. Samakt Auto Sales & Services Inc (the "Dealer") was first registered as a motor vehicle dealer in or around October 2009. Adetunji Kolawole ("Kolawole") was first registered in or around October 2009. At all material times Kolawole was the officer and Person in Charge of the Dealer.
2. On or about October 29, 2009, Kolawole executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 21, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure on the bill of sale of all material facts about the vehicles it sells.

OMVIC publications:

3. In the summer of 2011, reminding dealers of their requirement to disclose to purchasers all material facts about the vehicles they sell ("disclosure obligations").
4. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:
 - a. Summer2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their disclosure obligations:
 - a. January 2010
 - b. December 2013

Direct correspondence with Dealer:

6. During an inspection on or about December 14, 2009, a representative of the Registrar reviewed with Kolawole, on behalf of the Dealer, the Dealer's obligations with respect to material fact disclosure. The Dealer's terms and conditions of registration were also reviewed with Kolawole at this time.



7. During an inspection on or about May 2, 2012, a representative of the Registrar reviewed with Kolawole, on behalf of the Dealer, the Dealer's obligations with respect to material fact disclosure.
8. During an inspection of the Dealer on or about December 11, 2017, the following non-compliance issues were revealed:

Assisting wholesale dealers to sell vehicles out of class:

9. Between on or about February 6, 2017 and on or about October 24, 2017, Kolawole, on behalf of the Dealer, assisted the following four (4) wholesale restricted dealers to sell vehicles to members of the public:
 - a. Bayden Auto Sales
 - b. Mega North Auto Sales
 - c. MMM Car Sales
 - d. RK Auto Centre (Canada) Inc.

This is contrary to section 9 of the Code of Ethics, as well as section 6 of the Dealer's terms and conditions of registration, which obligate the Dealer to comply with the Code of Ethics.

Non-compliant vehicle trades:

10. On or about January 17, 2017, the Dealer, purchased a 2016 Chevrolet Cruz , (VIN 1G1PE5SB1G7101506) with the following declarations:
 - a. The manufacturer's warranty may have been cancelled
 - b. Repair Estimate: \$10,318
 - c. Total distance driven is unknown, but as of 12/28/2016 it was believed to be 48159km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about January 31, 2017, Kolawole, on behalf of the Dealer, sold this vehicle without disclosing a, b, or c, above. This is contrary to section 42(4), 42(19), 42(20), 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 from the purchaser that they were aware of their vehicle history at the time of purchase.

11. On or about January 24, 2017, the Dealer purchased a 2007 Honda Accord , (VIN 1HGCM56707A806929) with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$5726.71
 - d. Total distance driven is unknown, but as of 1/10/2017 it was believed to be 189965km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good



On or about January 31, 2017, Kolawole, on behalf the Dealer, sold this vehicle without disclosing a, c, or d, above. This is contrary to section 42(4), 42(19), 42(21), 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 reach to the purchaser of this vehicle to confirm they were aware of their vehicle history at the time of purchase.

12. On or about September 12, 2017, the Dealer purchased a 2014 Chevrolet Cruz, (VIN 1G1PE5SB9E7455092) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturer's warranty has been cancelled
- c. Repair Estimate: \$8901.89
- d. Total distance driven is unknown, but as of 8/22/2017 it was believed to be 141330km The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about October 12, 2017, Kolawole, on behalf of the Dealer, sold this vehicle without disclosing a, b, c, or d, above. This is contrary to section 42(4), 42(19), 42(20), 42(21), 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 from the purchaser that they were aware of their vehicle history at the time of purchase.

By failing to comply with the Dealer's terms and conditions of registration, as well as the following sections of the Act:
Regulation 333/08:

42. Additional information in contracts of sale and leases:

4. If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

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.

20. If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

21. If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the Highway Traffic Act, a statement to that effect.

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 Kolawole have breached sections 7 and 9 of the Code of Ethics, as set out in regulation 332/08:

Compliance

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.

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.

Moreover, in assisting wholesale restricted dealers sell to the public; both Kolawole and the Dealer have breached section 9 of the Code of Ethics.

JOINT SUBMISSION ON PENATY:

1. The Dealer agrees to pay a fine in the amount of \$6,800 no later than **December 7, 2018**.
2. Kolawole agrees to successfully complete the Automotive Certification Course (the "course") no later than **December 7, 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 **December 7, 2018**. Future sales staff will be offered the course within 90 days 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Kolawole 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 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 \$6,800 no later than **December 7, 2018**.
2. Kolawole is ordered to successfully complete the Automotive Certification Course (the "course") no later than **December 7, 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 **December 7, 2018**. Future sales staff will be offered the course within 90 days 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Kolawole are ordered 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

