

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 -

STEVE RUDMAN

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: May 29, 2018

Findings: Breach of Section 4, 6, 7 and 9 of the Code of Ethics

Order:

1. Rudman is ordered to pay a fine in the amount of \$2,000. \$500 will be paid no later than **June 22, 2018**. The remaining balance will be paid no later than **February 8, 2019**.
2. Rudman is ordered to successfully complete the Automotive Certification course, no later than **September 10, 2018**.
3. Rudman 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. [REDACTED] (the "Dealer") was first registered as a motor vehicle dealer in or around January 2011.
2. Steve Rudman ("Rudman") was first registered as a motor vehicle salesperson in or around February 2003. At all material times, he was employed in this capacity by the Dealer.

Consumer A

3. On or about August 16, 2016, [REDACTED] ("Consumer A") negotiated the purchase of a 2014 Nissan Versa (VIN 3N1CE2CP4EL350232) from Xian Auto Inc, a registered motor vehicle dealer.
4. A \$500 deposit was left and Consumer A was referred by Xian Auto Inc to Rudman to obtain financing for this purchase. The Registrar has the following concerns with the subsequent conduct of Rudman regarding this vehicle trade:
 - a. Rudman was able to obtain said financing, and the vehicle was wholesaled from Xian Auto Inc to the Dealer who in turn retailed the vehicle to Consumer A.
 - b. Rudman, on behalf of the Dealer, provided the following vehicle history disclosure on the bill of sale:
 - i. "Carproof signed by customer-airbag replaced no amount"
 - c. The vehicle has been declared a total loss by an insurance company, and a vehicle history report indicates it as having been "demolished".
 - d. As such, Rudman, on behalf of the Dealer, failed to provide written disclosure on the bill of sale of the vehicle's accident history. This is contrary to sections 42(21) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.



- e. Moreover, Rudman, on behalf of the Dealer charged Consumer A \$399 for delivery, \$150 for gas, and \$150 for licensing but did not deliver the vehicle to said consumer.
- f. Consumer A took delivery of the vehicle from Xian Auto Inc. At no time was the vehicle in the possession of the Dealer. As such, Rudman, on behalf of the Dealer, charged Consumer A for costs not incurred; this is contrary to sections 4 and 9 of the Code of Ethics.

Consumer B

- 5. On or about December 12, 2016, [REDACTED] ("Consumer B") negotiated the purchase of a 2013 Nissan Altima (VIN 1N4AL3APXDN428374) from Whybuynewmotors Ltd, a registered motor vehicle dealer.
- 6. The purchase price of said vehicle was \$12,000 plus HST.
- 7. An initial bill of sale was executed between Whybuynewmotors Ltd and Consumer B reflecting the agreed upon terms of purchase. Consumer B paid for the licensing of the vehicle separately.
- 8. Consumer B was referred by Whybuynewmotors Ltd to Rudman to obtain financing for this purchase. The Registrar has the following concerns with the subsequent conduct of Rudman regarding this vehicle trade:
 - a. Rudman was able to obtain said financing, and the vehicle was wholesaled from Whybuynewmotors Ltd to the Dealer who in turn retailed the vehicle to Consumer B.
 - b. On or about December 13, 2016, Consumer B purchased the vehicle from Rudman, on behalf of the Dealer. The sale price of the vehicle had been increased to \$13,210 and the following additional charges were added:
 - i. \$1499 Admin/GAP Protection
 - ii. \$399 Delivery,
 - iii. \$150 gas, and
 - iv. \$150 licensing

As such, the total price of the vehicle was now \$15,408 plus HST. The Registrar's concerns with this are as follows:

- v. Consumer B's copy of the bill of sale does not indicate the \$1499 administration fee includes GAP insurance. This is contrary to section 40(2) of Regulation 333/08, as well as sections 4, 7, and 9 of the Code of Ethics.



- vi. Rudman, on behalf of the Dealer, charged the Consumer \$399 for delivery, \$150 for gas, and \$150 for licensing but did not deliver the vehicle Consumer B.
 - vii. Consumer B took delivery of the vehicle from Whybuynemotors Ltd. At no time was the vehicle in the possession of Rudman or the Dealer.
 - viii. As such, Rudman, on behalf of the Dealer, charged Consumer B for costs not incurred; this is contrary to sections 4 and 9 of the Code of Ethics.
9. In addition to the aforementioned concerns, Rudman's conduct caused himself and the Dealer to contravene the Act, Regulations, and Code of Ethics. In doing so, Rudman has contravened sections 6 and 9 of the Code of Ethics.
10. The Dealer subsequently provided Consumer B with restitution of the additional charges incurred.

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

Disclosure and marketing:

4. (1) 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.

(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

Accountability

6. (2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

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.



Joint Submission on Penalty

1. Rudman agrees to pay a fine in the amount of \$2,000. \$500 will be paid no later than **June 22, 2018**. The remaining balance will be paid no later than **February 8, 2019**.
2. Rudman agrees to successfully complete the Automotive Certification course, no later than **September 10, 2018**.
3. Rudman 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 4, 6, 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. Rudman is ordered to pay a fine in the amount of \$2,000. \$500 will be paid no later than **June 22, 2018**. The remaining balance will be paid no later than **February 8, 2019**.
2. Rudman is ordered to successfully complete the Automotive Certification course, no later than **September 10, 2018**.
3. Rudman 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

