

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 -

STREETSVILLE AUTO GROUP INCORPORATED o/a
STREETSVILLE AUTO GROUP

- AND -

ZUBAIR SYED

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 29, 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 \$1,750 no later than **September 30, 2018**.
2. Syed is ordered to successfully complete the Automotive Certification Course (the "Course") no later than **October 31, 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 within 90 days of the date of the Discipline Committee Order. 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 is ordered to disclose all material facts about the motor vehicles for purchase or lease to its customers. The Dealer is also ordered to disclose all material facts on the Bill of Sale, in writing. The Dealer will ensure compliance with the disclosure obligation notwithstanding whether or not the vehicle has been branded through MTO. For greater certainty, a material fact is one that if disclosed could affect the decision of a reasonable person to purchase or lease the vehicle or affect the purchase price. In the case of damaged vehicles, the Dealer further agrees to disclose as much detail as possible regarding the nature, severity, and dollar value of the damage. The Dealer undertakes to research the history of all the motor vehicles under trade to ensure all material facts are disclosed.
5. The Dealer agrees to comply with the Act, Code of Ethics, 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. Syed Zubair o/a South Lake Motors was first registered as a motor vehicle dealer in or around June 2008. Zubair Syed ("Syed") was registered as a motor vehicle salesperson in or around October 2006. At all material times Syed was the sole proprietor of South Lake Motors.
2. Streetsville Auto Group Incorporated o/a Streetsville Auto (the "Dealer") was first registered as a motor vehicle dealer in or around May 2017. At all material times, Syed was the Director, as well as the Person in Charge of the Dealer.
3. On or about May 25, 2017, Syed executed terms and conditions of registration on behalf of the Dealer. As per condition 18, the Dealer agreed it was under a positive obligation to disclose to purchasers all material facts about the vehicles it sells. The Dealer further agreed to undertake to research the histories of the vehicles it sells and in the case of a previously damaged vehicle, to provide purchasers with as much detail as possible with respect to the nature and severity of the damage.



OMVIC publications:

4. In the winter of 2008, OMVIC issued a Dealer Standard publication advising registrants 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").
5. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding registrants of the disclosure requirements:
 - a. Summer2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
6. Furthermore, OMVIC issued the following bulletins which also reminded registrants of the disclosure requirements:
 - a. January 2010
 - b. December 2013

Direct correspondence with Registrant[s]:

7. During an inspection of South Lake Motors on or about January 9, 2012, Syed was reminded of registrants' obligation to provide purchasers with written disclosure of all material facts about the vehicles they sell.

Dealer non-compliance:

8. During an inspection of the Dealer on or about September 29, 2017, a representative of the Registrar found the following non-compliance issues:
 - a. On or about June 6, 2017, Syed, on behalf of the Dealer, purchased a 2009 Ford Explorer, (VIN 1FMEU23869UA38079), declared as an accident repair and insurance loss vehicle. In addition to this, a vehicle history report indicates the vehicle had sustained \$20,199 in damage and has been branded rebuilt by the Ministry of Transportation. On or about July 24, 2017, Syed, on behalf of the Dealer, sold this vehicle to a consumer. The bill of sale disclosed that the vehicle had a "previous insurance claim" and was branded rebuilt, however the Dealer failed to disclose the dollar amount of the damage the vehicle had sustained, or that it had been declared a total loss by an insurer. This is contrary to sections 42(19), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
 - b. On or about June 6, 2017, Syed, on behalf of the Dealer, purchased a 2008 Honda Civic (VIN 2HGFA15288H116143) declared as an accident repair and



insurance loss vehicle. In addition to this, a vehicle history report indicates it sustained \$7,013 in damage. On or about August 26, 2017, Syed, on behalf of the Dealer sold this vehicle without disclosing the dollar amount of damage the vehicle had sustained or the fact that it had been declared and insurance loss. This is contrary to sections 42(19), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Syed, on behalf of the Dealer, has since reached out to the consumer and advised them of their vehicle 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 its terms and conditions of registration, as well as section 9 of the Code of Ethics.

10. As the Person in Charge of the Dealer, Syed has failed to ensure the Dealer is conducting business in compliance with the Act, Code of Ethics, as well as the Dealer's terms and conditions of Registration. As such, Syed's conduct is non-compliant with 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

42. Additional information in 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.

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.

It is thereby agreed that the Dealer and Syed 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.



Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$1,750 no later than **August 31, 2018**.
2. Syed agrees to successfully complete the Automotive Certification Course (the "Course") no later than **August 31, 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 within 90 days of the date of the Discipline Committee Order. 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 agrees it will disclose all material facts about the motor vehicles for purchase or lease to its customers. The Dealer further agrees to disclose all material facts on the Bill of Sale, in writing. The Dealer will ensure compliance with the disclosure obligation notwithstanding whether or not the vehicle has been branded through MTO. For greater certainty, a material fact is one that if disclosed could affect the decision of a reasonable person to purchase or lease the vehicle or affect the purchase price. In the case of damaged vehicles, the Dealer further agrees to disclose as much detail as possible regarding the nature, severity, and dollar value of the damage. The Dealer undertakes to research the history of all the motor vehicles under trade to ensure all material facts are disclosed.
5. The Dealer agrees to comply with the Act, Code of Ethics, 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 \$1,750 no later than **September 30, 2018**.
2. Syed is ordered to successfully complete the Automotive Certification Course (the "Course") no later than **October 31, 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 within 90 days of the date of the Discipline Committee Order. 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.
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5. The Dealer agrees to comply with the Act, Code of Ethics, and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

