

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 -

UNIQUE CHRYSLER DODGE JEEP LIMITED

- AND -

MICHAEL CAROBELLI

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 9, 2018

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$7,500 no later than **Friday January 11, 2019**.
2. Carobelli is ordered to successfully complete the Automotive Certification course (the "course") no later than **Friday January 11, 2019**.
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 **Friday January 11, 2019**. 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 is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **Friday November 30, 2018.**
5. The Dealer and Carobelli 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. Unique Chrysler Dodge Jeep Ltd (the "Dealer") was first registered as a motor vehicle dealer in about August 1998. Michael Carobelli ("Carobelli") was first registered as a motor vehicle salesperson in about February 2005. Since about January 2013, Carobelli has been the general manager, as well as the person in charge, of the Dealer.

OMVIC publications:

2. In around December 2008, OMVIC issued a Dealer Standard publication 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 publications reminding dealers of their advertising and disclosure obligations:

Dealer Standard:

- a. Spring 2010
- b. Summer 2010
- c. Summer 2011
- d. Spring 2013
- e. Fall 2013
- f. Issue #1 2014
- g. Issue #2 2014
- h. Issue #4 2014
- i. Issue #3 2015
- j. Issue #1 2016
- k. Issue #2 2016



- l. Issue #3 2016
- m. Issue #4 2016

OMVIC bulletins:

- n. January 2010
- o. January 2010
- p. April 2010
- q. April 2010
- r. February 2012
- s. August 2012
- t. April 2013
- u. June 2014

Direct correspondence with Dealer:

4. During an inspection on about July 24, 2012, a representative of the Registrar reminded the Dealer of its obligation to ensure advertised vehicle prices are all inclusive.
5. During an inspection which commenced on about March 17, 2015, a representative of the Registrar further reminded the Dealer of its obligation to ensure advertised vehicle prices are all inclusive.
6. By email dated October 27, 2016, the Dealer was again reminded of its obligation to ensure advertised vehicle prices are all inclusive.

Current non-compliance:

7. During an inspection on or about May 16, 2018, a representative of the Registrar discovered the Dealer had failed to comply with the all-inclusive pricing requirements, contrary to section 36(7) of Regulation 333/08, as well as sections 4, and 9 of the Code of Ethics. Specifically, the purchasers of the following vehicles were charged additional fees over their vehicle's advertised price:

	VEHICLE	STOCK #	DATE SOLD	AD PRICE	AMOUNT OVER AD PRICE 36(7) Reg. 333/08
A.	2018 JEEP GRAND CHEROKEE	J156	2017/11/26	\$56,988	\$1,477.12
B.	2018 DODGE CHALLENGER	J665	2018/04/04	\$44,888	\$1,285.15
C.	2018 JEEP WRANGLER	J416	2018/02/12	\$52,988	\$786.00
D.	2018 JEEP WRANGLER	J431	2018/02/16	\$44,988	\$2,182.94
E.	2018 RAM 2500	J179	2018/03/05	\$63,588	\$1,021.00



8. In failing to ensure the Dealer conducted business in accordance with the Regulations and Code of Ethics, Carobelli has personally contravened sections 6 and 9 of the Code of Ethics.
9. The Dealer has since refunded the aforementioned purchasers the price overage amounts, as outlined above.

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 has breached section 4 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.

It is thereby agreed Carobelli has breached section 6 of the Code of Ethics, as set out in Regulation 332/08:

Accountability

6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.



It is thereby agreed that the Dealer and Carobelli have 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 \$7,500 no later than **Friday January 11, 2019.**
2. Carobelli agrees to successfully complete the Automotive Certification course (the "course") no later than **Friday January 11, 2019.**
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 **Friday January 11, 2019.** 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 agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **Friday November 30, 2018.**
5. The Dealer and Carobelli 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 and Carobelli breached subsections 6 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:

6. The Dealer is ordered to pay a fine in the amount of \$7,500 no later than **Friday January 11, 2019**.
7. Carobelli is ordered to successfully complete the Automotive Certification course (the "course") no later than **Friday January 11, 2019**.
8. 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 **Friday January 11, 2019**. 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.
9. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **Friday November 30, 2018**.
10. The Dealer and Carobelli 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

