

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 -

1681230 ONTARIO INC o/a WINDSOR CHRYSLER

- AND -

JOSEPH DIEMER

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: June 4, 2018

Findings: Breach of Section 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$10,800 no later than **August 1, 2018**.
2. 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 September 15, 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.
3. 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 **July 2, 2018**.
4. 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. 1681230 Ontario Inc o/a Windsor Chrysler (the "Dealer") was first registered as a motor vehicle dealer in about May 2006. Joseph Diemer ("Diemer") was first registered as a motor vehicle salesperson in about February 1983. At all material times, Diemer was the sole officer of the Dealer.

OMVIC publications:

2. In or around December 2008, OMVIC issued a bulletin 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. In addition to this, dealers were also advised of the requirements to disclose former daily rental vehicles in a clear, comprehensible and prominent manner in all advertisements ("rentals") as well as on the bill of sale ("disclosure").
3. After the Act was proclaimed, OMVIC further issued the following publications reminding dealers of their advertising and disclosure obligations:

	Dealer Standard: Publication Date	Subject matter: all-in pricing	Subject matter: daily rental disclosure in ads	Subject matter: daily rental disclosure on the bill of sale
A.	Spring 2010	x	x	
B.	Summer 2010	x	x	
C.	Summer 2011	x	x	
D.	Summer 2012		x	
E.	Spring 2013	x		x
F.	Fall 2013	x	x	
G.	Winter 2014	x		
H.	Spring 2014	x		
I.	Issue #3 2014	x		
J.	Issue #3 2015	x		
K.	Issue #1 2016	x		
L.	Issue #2 2016	x		
M.	Issue #3 2016	x		



N.	Issue #4 2016	x		
	OMVIC bulletins: Publication Date			
O.	January 2010	x		
P.	January 2010	x		
Q.	April 2010	x		
R.	April 2010	x		
S.	February 2012	x		
T.	August 2012	x		
U.	September 2012			x
V.	April 2013	x		
W.	June 2014	x		

Direct correspondence with Dealer:

4. During an inspection on about December 5, 2012, the Dealer was reminded of its obligation to disclose former daily rental vehicles in advertisements. The Dealer's contract disclosure obligations were also discussed at this time.
5. By email dated December 28, 2012, the Dealer was reminded of its obligation to advertise all-inclusive vehicle prices.
6. During an inspection on about May 14, 2015, the Dealer was reminded of its obligation to advertise all-inclusive vehicle prices.

Previous Discipline Committee Orders:

7. On about December 17, 2015, the Registrar issued a Notice of Complaint against the Dealer. On about May 9, 2016, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the aforementioned Notice of Complaint.
8. As per condition 3 of the Order, the Dealer was required to offer all current and future sales staff the opportunity to complete the Automotive Certification course, at the Dealer's cost.
9. As per condition 4 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Current non-compliance:

10. During an inspection on or about November 9, 2017, it was revealed the Dealer had failed to comply with the all-inclusive pricing requirements, as well as the requirement to disclose former daily rental vehicles in advertisements, on the following vehicle trades. This is contrary to sections 36(5) and 36(7) of Regulation 333/08, as well as sections 4, 7, and 9 of the Code of Ethics:



	VEHICLE	STOCK #	DATE SOLD	DAILY RENTAL NON-DISCL. IN AD 36(5) Reg. 333/08	AMOUNT OVER AD PRICE 36(7) Reg. 333/08
A.	2016 Dodge Journey	P7058	2017/03/14	X	\$80
B.	2016 Dodge Journey	P7082	2017/03/25	X	\$190
C.	2015 Fiat 500	P7083	2017/04/11	X	\$80
D.	2016 Jeep Patriot	P7086	2017/04/18	X	
E.	2016 Chevrolet Malibu	P7066	2017/04/20	X	\$80
F.	2017 Chevrolet Cruze	P7080	2017/06/27	X	\$80
G.	2016 Dodge Durango	P7105	2017/07/21	X	
H.	2016 Dodge Durango	P7127	2017/10/13	X	
I.	2016 Chrysler 300	P7124	2017/10/18	X	

By failing to comply with the following sections of the Act:

Regulation 333/08

36. Advertising:

(5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine.

(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 sections 4 and 9 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.

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 \$10,800 no later than **August 1, 2018**.
2. 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 September 15, 2017. 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.
3. 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 **July 2, 2018**.
4. 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 subsections 4 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 \$10,800 no later than **August 1, 2018**.
2. 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 September 15, 2017. 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.
3. 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 **July 2, 2018**.
4. 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

