

## 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 -

ANTHONY UNUKEGWO *o/a BERRYLITE AUTO*

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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 21, 2019

**Findings:** Breach of Sections 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$500, no later than **July 31, 2019**.
2. Unukegwo is ordered to successfully complete the Automotive Record Keeping course, no later than **August 30, 2019**.
3. 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. Anthony Unukegwo o/a Berrylite Auto (the "Dealer") was first registered as a motor vehicle dealer in around May 2015. Anthony Unukegwo ("Unukegwo") is the sole proprietor of the Dealer.
2. The Dealer is wholesale restricted and its books and records are stored at a remote storage location located at 2 Bloor Street East, Suite 3500, Toronto, ON, M4W1A8.
3. On about April 26, 2013, Unukegwo successfully completed the Automotive Certification course (the "course"). Included in the course materials is the requirement for Dealers to store their records solely at a Registrar approved location that is accessible to representatives of the Registrar during normal business hours.
4. On about May 7, 2015, the Dealer executed a Records Storage Agreement (the "Agreement"). As per condition, 9, Schedule A, of the Agreement, the Dealer acknowledged that the subject records storage location ("Intelligent Office") shall be deemed to be the Dealer's registered premises.
5. On about May 12, 2015, the Dealer agreed to terms and conditions of Registration. As per condition 1, the Dealer agreed to comply with the Code of Ethics, and Standards of Business Practice, as may be amended from time to time. As per condition 10, the Dealer agreed to maintain its books and records at the Dealer's registered premises.

***Direct correspondence with Dealer:***

6. On about November 30, 2015, during a follow up to an attempted inspection, a representative of the Registrar reminded the Dealer that its books and records were required to be stored at the Dealer's Intelligent Office. The Registrar's representative advised the Dealer that its Intelligent Office record storage should be updated at least once a week.

***Dealer non-compliance:***

7. On about December 6, 2018 a representative of the Registrar attempted to conduct an inspection of the Dealer. The Dealer's books and records were not located at the Dealer's Intelligent Office at this time. This is contrary to sub section 56(b)(ii) of Regulation 333/08, the Dealer's terms and conditions of registration, as well as section 9 of the Code of Ethics.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

56. Retention of records

(2) A registered motor vehicle dealer shall keep a record retained under subsection (1) at,

(a) any place, other than a dwelling, chosen by the dealer and approved by the registrar, if the dealer,

(i) is registered as an outside Ontario dealer, lease finance dealer, fleet lessor or a combination of those classes, or

(ii) is registered as a broker or wholesaler and, in fact, trades only from a dwelling; or

(b) one of the following places in all other cases:

(i) any place, other than a dwelling, from which the dealer is authorized to trade,

(ii) any place, other than a dwelling, chosen by the dealer and approved by the registrar.

It is thereby agreed that the Dealer has breached the following section 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 \$500, no later than **July 31, 2019**.
2. Unukegwo agrees to successfully complete the Automotive Record Keeping course, no later than **August 30, 2019**.
3. 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 subsection 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 \$500, no later than **July 31, 2019**.
2. Unukegwo is ordered to successfully complete the Automotive Record Keeping course, no later than **August 30, 2019**.

3. 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



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*Paul Burroughs, Chair*

