

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 -

1529039 ONTARIO LTD. o/a INDIAN RIVER AUTO WORKS

- and -

GRAHAM ARMSTRONG

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 7, 2019

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 no later than **September 30, 2019**.
2. Armstrong is ordered to successfully complete the Automotive Certification course (the "course") no later than **September 30, 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 **September 30, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Armstrong 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. 1529039 Ontario Ltd o/a Indian River Auto Works (the "Dealer") was first registered as a motor vehicle dealer in around July 2011. Graham Armstrong ("Armstrong") was first registered as a motor vehicle dealer (sole proprietor) in around April 2002. Since around July 2011, Armstrong has been registered as a motor vehicle salesperson. At all material times, Armstrong was the sole officer, as well as the person in charge of the day to day activities of the Dealer.

OMVIC publications re: material fact disclosure:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to provide purchasers with written disclosure of the dollar amount of a vehicle's accident damage history on the bill of sale ("disclosure requirements").
3. OMVIC further issued the following Dealer Standard publications reminding dealers of the disclosure requirements:
 - a. Spring 2009
 - b. Summer 2011
 - c. Summer 2012
 - d. Summer 2013
 - e. Issue #4 2014
 - f. Issue #4 2016
 - g. Issue #3 2017
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:
 - a. January 2010
 - b. September 2012
 - c. December 2013
5. In addition to the above referenced publications, in around December 2014 and June 2015, OMVIC hosted webinars to assist registrants in understanding their disclosure requirements. The contents of said webinars continue to be available on OMVIC's website.

Direct correspondence with Dealer:

6. During an inspection of the sole proprietorship on or about February 23, 2012, Graham was reminded of his disclosure requirements.
7. During an inspection of the Dealer on or about July 17, 2015, a representative of the Registrar reminded Graham, on behalf of the Dealer, of the Dealer's disclosure requirements.
8. By letter dated October 22, 2015, Graham was reminded, on behalf of the Dealer, of the Dealer's disclosure requirements.
9. During an inspection of the Dealer on or about July 24, 2017, a representative of the Registrar reminded Graham, on behalf of the Dealer, of the Dealer's disclosure requirements.
10. By letter dated October 5, 2017 Graham was again reminded, on behalf of the Dealer, of the Dealer's disclosure requirements.

Dealer non-compliance:

11. During an inspection on about November 28, 2018, a representative of the Registrar found the following non-compliant trades:
 - a. On about September 13, 2018, Armstrong sold a 2014 Cadillac ATS (VIN 1G6AH5RX3E0141262) on behalf of the Dealer. This vehicle had sustained an accident which resulted in damage in the amount of \$17,324. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of Code of Ethics. The Dealer has since provided OMVIC with confirmation the purchaser of this vehicle is now aware of this information.
 - b. On about October 16, 2018, Armstrong sold a 2014 Chevrolet Equinox (VIN 2GNALAEK1E6177318) on behalf of the Dealer. This vehicle had sustained an accident which resulted in damage in the amount of \$15,538. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of Code of Ethics. The Dealer has since provided OMVIC with confirmation the purchaser of this vehicle is now aware of this information.
 - c. On about October 23, 2018, Armstrong sold a 2014 Chevrolet Equinox (VIN 2GNALBEKXE6147062) on behalf of the Dealer. This vehicle had sustained an accident which resulted in damage in the amount of \$14,457. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of Code of Ethics. The Dealer has since provided OMVIC with confirmation the purchaser of this vehicle is now aware of this information.

- d. On about November 5, 2018, Armstrong sold a 2014 Dodge Challenger (VIN 2C3CDYAG7EH290059) on behalf of the Dealer. This vehicle had sustained an accident which resulted in damage in the amount of \$8,900. The Dealer failed to provide the purchaser with written disclosure of the dollar amount of the vehicle's damage. This is contrary to sections 42(19), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of Code of Ethics. The Dealer has since provided OMVIC with confirmation the purchaser of this vehicle is now aware of this information.

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.

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer and Armstrong have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

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.

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 \$4,000 no later than **September 30, 2019**.
2. Armstrong agrees to successfully complete the Automotive Certification course (the "course") no later than **September 30, 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 **September 30, 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 or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Armstrong 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 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. The Dealer is ordered to pay a fine in the amount of \$4,000 no later than **September 30, 2019**.
2. Armstrong is ordered to successfully complete the Automotive Certification course (the "course") no later than **September 30, 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 **September 30, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Armstrong 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