

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 -

J.B. TRUCKS N' STUFF

- AND -

JOHN BROTZEL

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: July 12, 2019

Findings: Breach of Sections 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$3,000.00 no later than August 23, 2019.
2. Brotzel is ordered to successfully complete the OMVIC Automotive Certification Course ("Course") no later than August 23, 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 August 23, 2019. 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 and Brotzel 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:

The reasons for this notice are:

1. J.B. Trucks N' Stuff was first registered as a motor vehicle dealer in or around November 1993. John Brotzel ("Brotzel") was first registered as a motor vehicle salesperson in or around February 1983. At all material times Brotzel was the Officer and person in charge of the day to day operations of the Dealer.

OMVIC publications:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes which would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect. This included the obligation for dealers to provide purchasers with written disclosure of a vehicle's history and condition, such as accident repair histories and previous out of province registrations ("disclosure obligations").
3. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their disclosure obligations:
 - a. January 2010
 - b. December 2013

Direct correspondence with Dealer:

5. During an inspection on about January 11, 2016, a representative of the Registrar reviewed with Brotzel, the Dealer's disclosure obligations. Specifically, the Dealer was advised of its obligation to provide, in writing on the bill of sale, all required disclosures, including but not limited to, the dollar amount of accident damage a vehicle has sustained.



6. On or about May 1, 2017, a representative of the Registrar contacted the Dealer in reference to a consumer complaint regarding a 2007 Chevrolet Equinox (VIN 2CNDL23F676239800). The vehicle had a \$3,227.00 accident history which was not disclosed to the consumer. A representative of the Dealer was advised of its disclosure obligations. The Dealer subsequently attempted to reach out to the customer to advise them of their vehicle's history.
7. During an inspection of the Dealer on about December 11, 2018 the following non-compliance issues were revealed:

Non-compliant vehicle trades:

8. On about August 23, 2018, the Dealer purchased a 2005 Dodge Dakota (VIN 1D7HW48N25S136494), declared as having a \$7,267.00 accident history. On about August 23, 2018 Brotzel sold this vehicle on behalf of the Dealer, but failed to provide the purchaser with written disclosure of its accident history. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7(1) and 9 (1) of the Code of Ethics. The Dealer subsequently attempted to reach out to the purchaser to advise them of their vehicle's history.
9. On about October 12, 2018 the Dealer sold a 2005 Chevrolet Avalanche, (VIN 3GNEK12T65G294172). This vehicle has a \$7,537.00 accident history which was not disclosed in writing to the purchaser, contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7(1) and 9(1) of the Code of Ethics. The Dealer subsequently attempted to reach out to the purchaser to advise them of their vehicle's history.
10. The Dealer and Brotzel have failed their due diligence requirements with respect to thoroughly researching the histories of the vehicles it sells, and in doing so, is non-compliant with section 9(3) of the Code of Ethics.
11. In failing to ensure the Dealer's motor vehicle trades are compliant with the law, Brotzel has personally breached sections 6(2) and 9(1) of the Code of Ethics.

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

Additional Information in contracts of sale and leases

42 (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.

42 (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 John Brotzel breached the following section of the Code of Ethics:



6. (2) A registered salesperson shall not do or omit anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

It is thereby agreed that J.B. Trucks N' Stuff and John Brotzel breached the following section of the Code of Ethics:

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, dishonorable, unprofessional or unbecoming of a registrant.

9. (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$3,000.00 no later than August 23, 2019.

2. Brotzel agrees to successfully complete the OMVIC Automotive Certification Course ("Course") no later than August 23, 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 August 23, 2019. 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 and Brotzel 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 6, 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 \$3,000.00 no later than August 23, 2019.
2. Brotzel is ordered to successfully complete the OMVIC Automotive Certification Course ("Course") no later than August 23, 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 August 23, 2019. 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 and Brotzel 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

