

## 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 -

STEPHEN FITZGERALD MOTORS LTD

- and -

STEPHEN FITZGERALD

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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:** April 2, 2019

**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 \$4,800 no later than **June 21, 2019.**
2. Fitzgerald is ordered to successfully complete the Automotive Certification course, no later than **June 21, 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 **June 21, 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 **March 29, 2019.**
5. The Dealer and Fitzgerald 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. Stephen Fitzgerald Motors Ltd (the "Dealer") was first registered as a motor vehicle dealer in around September 1997. Stephen Fitzgerald ("Fitzgerald") was first registered as a motor vehicle salesperson in around September 1997. At all material times, Fitzgerald was the sole officer and director, as well as the person in charge, of the Dealer.

### **OMVIC publications:**

2. In or around December 2008, OMVIC issued a Dealer Standards 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").
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the all in pricing requirement.
  - a. Spring 2010
  - b. Summer 2010
  - c. Spring 2011
  - d. Spring 2013
  - e. Fall 2013
  - f. Issue #1
  - g. Issue #2
  - h. Issue #3 2014
  - i. Issue #4 2014
  - j. Issue #3 2015
  - k. Issue #1 2016
  - l. Issue #2 2016
  - m. Issue #3 2016
  - n. Issue #4 2016
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the all in pricing requirement:
  - a. January 2010 (2 publications)
  - b. April 2010 (2 publications)
  - c. February 2012
  - d. August 2012



- e. April 2013
- f. June 2014
- g. April 2015

**Direct correspondence with Dealer:**

- 5. By letter dated July 8, 2010, the Dealer was reminded of the all in pricing requirement.
- 6. During an inspection on about April 8, 2015, the Dealer was again reminded of the all in pricing requirement.

**Current non-compliance:**

***All-inclusive price advertising non-compliance:***

- 7. During an inspection on or about October 10, 2017, 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.	2013 Ford Escape	05-878	2017/08/02	\$16,319	\$299
B.	2013 Nissan Altima	05-875	2017/08/04	\$15,995	\$299
C.	2014 Kia Sorento	05-879	2017/08/08	\$18,319	\$299
D.	2015 Chevrolet Silverado	05-883	2017/09/05	\$28,995	\$299

- 8. In failing to ensure the Dealer conducted business in accordance with the Regulations and Code of Ethics, Fitzgerald has personally contravened sections 6 and 9 of the Code of Ethics.
- 9. The Dealer has since agreed to refund the subject purchasers the amount they were over charged for their vehicles.



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

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. (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 Fitzgerald has breached section 6 of the Code of Ethics, as set out in Regulation 332/08:

6. (2) A registered salesperson shall not do or omit to do 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 the Dealer and Fitzgerald have breached section 9 of the Code of Ethics, as set out in Regulation 332/08:

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 \$4,800 no later than **June 21, 2019**.
2. Fitzgerald will successfully complete the Automotive Certification course, no later than **June 21, 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 **June 21, 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 **March 29, 2019.**
5. The Dealer and Fitzgerald 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 and/Fitzgerald have breached subsections 4, 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 \$4,800 no later than **June 21, 2019.**
7. Fitzgerald is ordered to successfully complete the Automotive Certification course, no later than **June 21, 2019.**
8. 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 **June 21, 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 **March 29, 2019.**
10. The Dealer and Fitzgerald 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



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*Paul Burroughs, Chair*

