

## 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 -

2311390 ONTARIO INC o/a BARRIE AUTOHAUS/BARRIE VW

- AND -

KEVIN CAMPBELL

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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:** January 11, 2021

**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 \$2,500 no later than **April 30, 2021**.
2. Campbell is ordered to successfully complete the MVDA Key Elements course (the "Course") no later than **April 30, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering this course within the specified timeframe.
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 **April 30, 2021**,
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive certification course (the "Course"). Current sales staff will be offered the Course no later than **April 30, 2021**. 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.

5. The Dealer and Campbell 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. 2311390 Ontario Inc o/a Barrie Autohaus/Barrie VW (the "Dealer") was first registered as a motor vehicle dealer since around March 2012. Kevin Campbell ("Campbell") was first registered as a motor vehicle salesperson since around November 2010. Since in around October 2019, Campbell has been the general manager, and person in charge of the day to day activities of the Dealer.
2. On or about August 31, 2010, Campbell successfully completed Automotive Certification course (the "Course"). Included in the Course materials was information about a dealer's requirement to advertise all-inclusive vehicle prices ("all-in pricing").

### ***OMVIC registrant education re: all-in pricing***

3. Since the Act was proclaimed, OMVIC has issued the following publications and webinars reminding dealers of their all-in pricing obligations, the dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC's website.

### ***Direct correspondence with Dealer:***

4. During an inspection on or about October 11, 2013 the Dealer was reminded of its all-in pricing obligations.

### **Dealer's current non-compliance**

5. On or before August 18, 2020 the Dealer published an advertisement for a 2016 Volkswagen Jetta (Stock #P11812) with a selling price of \$12,500.

6. On this same date, representatives of the Registrar made inquiries about the Jetta, while posing as members of the public. A representative of the Dealer advised the Registrar's representatives that the advertised price of the Jetta did not include an additional \$499 "Dilawri Cares" fee, as well as the \$10 OMVIC fee, which would be charged as part of the total purchase price. As such, the Dealer's advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
  
7. As a person in charge of the Dealer, Campbell has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus has personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following section 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(2) 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 that Campbell has breached section 6(2) of the Code of Ethics, as set out in Regulation 332/08;

*Accountability:*

*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 that the Dealer and Campbell have breached section 9(1) 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 \$2,500 no later than **April 30, 2021.**
2. Campbell agrees to successfully complete the MVDA Key Elements course (the "Course") no later than **April 30, 2021.** This date is subject to any pandemic related disruptions Georgian College may encounter in delivering this course within the specified timeframe.
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 **April 30, 2021,**
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive certification course (the "Course"). Current sales staff will be offered the Course no later than **April 30, 2021.** 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.
5. The Dealer and Campbell 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 Campbell 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 registrant has not been the subject of a prior complaint to the Discipline Committee. Since the crux of the complaint was a "secret shop", no consumer harm ensued. The penalty is consistent with other recent settlement agreements. 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 \$2,500 no later than **April 30, 2021.**
2. Campbell is ordered to successfully complete the MVDA Key Elements course (the "Course") no later than **April 30, 2021.** This date is subject to any pandemic related disruptions Georgian College may encounter in delivering this course within the specified timeframe.
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5. The Dealer and Campbell 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

A handwritten signature in black ink, appearing to read "Paul Burroughs", written over a horizontal line.

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*Paul Burroughs, Chair*