

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 -

2415574 ONTARIO INC. o/a GOLDEN MILE CHRYSLER DODGE JEEP RAM

- and -

SEAN CARTER

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: March 12, 2021

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 \$6,000 no later than **June 30, 2021.**
2. Carter is ordered to successfully complete the MVDA Key Elements Course no later than **June 30, 2021.** This date is subject to any pandemic related disruptions Georgian college may have in delivering this course within the specified time frame.
3. 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 **June 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.

4. The Dealer and Carter 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. 2415574 Ontario Inc o/a Golden Mile Chrysler Dodge Jeep Ram (the "Dealer") was first registered as a motor vehicle dealer in around June 2014. Sean Carter ("Carter") was first registered as a motor vehicle salesperson in or around December 2012. Since on or about January 1, 2012, Carter has been the person in charge of the day to day activities of the Dealer.
2. On or about November 27, 2012, Carter successfully completed the Automotive Certification course (the "Course"). Included in the Course materials is detailed information with respect to the following:
 - a. Disclosure obligation regarding a vehicle's past use and condition ("disclosure obligations")
 - b. The requirement for all salespeople to be registered under the Act

OMVIC Publications:

3. Since the Act was proclaimed, OMVIC has issued the following publications and webinars reminding dealers of their obligations, as outlined above, attached hereto as Schedule "A". The contents of said publications continue to be available on OMVIC's website.

Direct correspondence with Dealer:

4. During an inspection of the Dealer on or about February 20, 2015, a representative of the Registrar discussed dealers' disclosure obligations.

Current non-compliance:

5. During an inspection of the Dealer on or about August 25, 2020, the following areas of non-compliance were found:

Unregistered salespeople:

6. Between on or about June 10, 2020 and on or about June 18, 2020, the Dealer hired individuals new to the industry (“new hires”) to be employed as eventual salespeople at the Dealer. In an effort to familiarize these individuals with the motor vehicle sales industry, the Dealer allowed the new hires, under supervision, to communicate with consumers in furtherance of the trade of motor vehicles, on behalf of the Dealer, prior to becoming registered salespersons. In the event a vehicle trade was completed, the Dealer paid these individuals commission income on account of completed trades. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics. By in or around August 2020, all the new hires had either ceased employment with the Dealer or had become registered under the Act.

Former daily rental vehicles:

7. Between on or about July 27, 2020 and on or about August 8, 2020, the Dealer sold the following daily rental units but failed to disclose this information on the purchaser’s bill of sale:
 - a. July 27, 2020: 2019 Nissan Maxima (VIN 1N4AA6AV8KC365709)
 - b. August 8, 2020: 2019 Hyundai Tucson (VIN KM8J3CA4XKU879321)

This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since updated its dealer software and processes to minimize the risk of this conduct reoccurring and offered the purchasers of the above referenced vehicles compensation for the lack of disclosure.

Generally:

8. By failing to ensure the Dealer conducts its business in compliance with the law, Carter has personally breached sections 6 and 9 of the Code of Ethics.

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

4. Prohibition:

Unregistered salesperson

(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

Regulation 333/08:

42. Additional information in contracts of sale and leases

7. If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the Motor Vehicle Dealers Act or the Motor Vehicle Dealers Act, 2002,*
- ii. used as a police cruiser or used to provide emergency services, or*
- iii. used as a taxi or limousine.*

It is thereby agreed that the Dealer has breached section 7(1) of the Code of Ethics, as set out in regulation 332/08:

Compliance:

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.

It is thereby agreed that Carter 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 Carter have breached section 9(1) of the Code of Ethics, as set out in Regulation 332/08:

Professionalism

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 \$6,000 no later than **June 30, 2021**.
2. Carter agrees to successfully complete the MVDA Key Elements Course no later than **June 30, 2021**. This date is subject to any pandemic related disruptions Georgian college may have in delivering this course within the specified time frame.
3. 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 **June 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.
4. The Dealer and Carter 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 Carter have 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*. This is the first time that this dealer has been brought before Discipline Committee. The Chair of the Discipline Committee 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 \$6,000 no later than **June 30, 2021**.
2. Carter is ordered to successfully complete the MVDA Key Elements Course no later than **June 30, 2021**. This date is subject to any pandemic related disruptions Georgian college may have in delivering this course within the specified time frame.
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4. The Dealer and Carter 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