

## 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 -

A CANADIAN CARS INC

- AND -

SYED AFZAL

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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 14, 2021

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

**Order:**

1. Afzal is ordered to pay a fine in the amount of \$1,000 no later than **March 31, 2021.**
2. The Dealer is ordered to pay a fine in the amount of \$4,000. \$2,000 will be paid no later than **August 31, 2021** and the remaining balance (\$2,000) will be paid no later than **December 31, 2021**
3. Afzal is ordered to successfully complete the Georgian College Automotive Certification course (the "Course") no later than **March 31, 2021.**
4. 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 **March 31, 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 or who are otherwise required to do so pursuant to the Act.

5. The Dealer and Afzal shall 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. A Canadian Cars Inc (the "Dealer") is currently registered as a motor vehicle dealer under the Act. The Dealer was originally registered on or about April 10, 2007.
2. Syed Afzal ("Afzal") is currently registered as a motor vehicle salesperson under the Act. Afzal was originally registered on or about April 10, 2007.
3. Afzal has been the sole officer and person in charge of the day to day activities of the Dealer at all material times.
4. On or about May 24, 2007, Afzal executed conditions of registration on behalf of the Dealer. As per condition 20, the Dealer agreed it was under a positive obligation to provide purchasers with written disclosure, on the bill of sale, of all material facts about the vehicles it sells.

#### ***OMVIC registrant education***

5. Since approximately December 2008, OMVIC has issued the following publications and webinars reminding dealers of their obligations to provide purchasers with written disclosure of a vehicle's accident repair history ("disclosure requirements"):

	<b>Dealer Standard</b>		<b>Bulletin</b>		<b>Webinar</b>
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A	Winter 2008	O	January 2010	R	December 2014
B	Spring 2009	P	September 2012	S	June 2015
C	Summer 2011	Q	December 2013		
D	Winter 2012				
E	Summer 2012				
F	Winter 2013				
G	Summer 2013				
H	2014: Issue 4				
I	2016: Issue 3				
J	2016: Issue 4				
K	2017: Issue 3				
L	2018: Issue 3				
M	2019: Issue 1				
N	2019: Issue 2				

All of these materials continue to be available on OMVIC's website.

***Direct Correspondence with Dealer***

6. During an inspection on or about May 7, 2007, a representative of the Registrar reviewed with Afzal the Dealer's conditions of registration.
7. As a result of a consumer complaint received by OMVIC, a representative of the Registrar reviewed with Afzal, on or about November 8, 2018, the Dealer's obligations to ensure its contracts (i.e. bills of sale) contain all required information including all material facts about a vehicle. The complaint was resolved.

**Dealer's current non-compliance**

8. During an inspection on or about April 24, 2019, the following non-compliance issues were discovered:

***Failure to Disclose Material Facts***

9. The Dealer sold the following vehicles to consumers without disclosing on the bills of sale the following information:

	Vehicle	VIN	Date of sale	Damage over \$3,000 s.42(19)	Total loss s.42(21)	Warranty cancelled s.42(20)
a.	2012 Honda Civic EXL	2HGFG3B93CH000448	Nov. 28, 2018	claim \$12,982	✓	
b.	2014 Acura ILX 20 Tech	19VDE1F73EE401899	Dec. 10, 2018	claim \$16,305		✓
c.	2012 Honda Civic LX	2HGFB2F43CH048667	Dec. 14, 2018	claim \$9,448		
d.	2013 Honda Civic LX	2HGFB2F47DH023174	Dec. 14, 2018	estimate \$12,022		✓

This is contrary to sections 42(19), 42(20), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchasers they were aware of their vehicle histories.

### Generally

10. Afzal has failed to ensure the Dealer conducts its business in compliance with the Regulations 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 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.

20. If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

21. If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.

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 the Dealer has breached the following section 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.

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

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. Afzal shall pay a fine in the amount of \$1,000 no later than **March 31, 2021.**
2. The Dealer shall pay a fine in the amount of \$4,000. \$2,000 will be paid no later than **August 31, 2021** and the remaining balance (\$2,000) will be paid no later than **December 31, 2021**
3. Afzal shall successfully complete the Georgian College Automotive Certification course (the "Course") no later than **March 31, 2021.**
4. The Dealer shall offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **March 31, 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 or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Afzal shall 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 Afzal 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*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. Afzal is ordered to pay a fine in the amount of \$1,000 no later than **March 31, 2021**.
2. The Dealer is ordered to pay a fine in the amount of \$4,000. \$2,000 will be paid no later than **August 31, 2021** and the remaining balance (\$2,000) will be paid no later than **December 31, 2021**
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5. The Dealer and Afzal shall 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*