

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 -

CLUTCH CANADA INC. o/a CLUTCH

- and -

DANIEL PARK

- and -

STEPHEN SEIBEL

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 7, 2021

Findings: Breach of Section 6 of the Code of Ethics, as it relates to permitting Clutch to trade from a place other than the place which had been approved by the Registrar.

Breach of Section 9 of the Code of Ethics, as it relates to trading from a place other than the place which had been approved by the Registrar.

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 no later than **July 31, 2021**.
2. Park is ordered to pay a fine in the amount of \$1,000 no later than **July 31, 2021**.
3. Park is ordered to successfully complete the MVDA Key Elements course (the "Course") no later than **December 31, 2021**. This date is subject to any pandemic related

disruptions Georgian College may encounter in delivering the course within the specified time frame.

4. Siebel is ordered to successfully complete the MVDA Key Elements course (the "Course") no later than **December 31, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering the course within the specified time frame.

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. The Dealer was first registered as a motor vehicle dealer in or around January 2020.
2. From the time the Dealer became registered until on or about December 23, 2020, the Dealer's registered premises were located at: #2-83 Strada Drive in Woodbridge Ontario.
3. Daniel Park ("Park") was first registered as motor vehicle salesperson in or around January 2020. At all material times, Park was an officer of the Dealer.
4. Stephen Seibel ("Seibel") was first registered as a motor vehicle salesperson in or around January 2020. At all material times, Seibel was an officer as well as the person in charge of the day to day activities at the Dealer.
5. On or about October 31, 2019, both Park and Seibel successfully completed the Automotive Certification course (the "Course"). Included in the Course materials is the requirement for dealers to operate exclusively from their registered premises.
6. On about January 6, 2020, Park executed terms and conditions of registration on behalf of the Dealer.
7. Per condition 1, the Dealer agreed to comply with all requirements of the Act, Regulations, Standards of Business Practice, and OMVIC guidelines, as may be amended from time to time.

8. Per condition 10, the Dealer agreed to operate exclusively from the location approved by the Registrar, and to not invite the public to trade at a place other than the approved location, pursuant to section 28 of Ontario Regulation 333/08.

Previous correspondence with Dealer:

9. On or about February 6, 2020, a representative of the Registrar reminded Park and Seibel of the Dealer's obligation to:
 - a. Only allow registered salespersons to conduct test drives away from the approved location; and
 - b. Operate exclusively from the location approved by the Registrar.

Dealer non-compliance:

Consumer trades:

10. Between on or about September 24, 2020 and on or about October 2, 2020, the Dealer traded the following vehicles from a location other than the Dealer's registered location:
 - a. September 24, 2020: 2017 Hyundai Sonata (VIN KMHE34L10HA048897).
 - b. September 30, 2020: 2018 Volvo S60 (VIN YV149MTL9J2465011).

Specifically, the purchasers of the above referenced vehicles had been invited to attend at the Dealer's inventory lot, located at 12 Goldthorne Avenue in Etobicoke ("Goldthorne Avenue") to view and test drive vehicles prior to purchase. This was not the Dealer's registered location and is contrary to section 28(4) of Ontario Regulation 333/08, the Dealer's terms and conditions of Registration, as well as section 9 of the Code of Ethics.

Shortly after receiving the Notice of Complaint, the Dealer ceased inviting purchasers to Goldthorne Avenue and further stopped all test drives and transitioned to an entirely virtual business model. The Dealer is in the process of obtaining the required zoning approval to permit a dealership to operate at Goldthorne Avenue.

OMVIC representatives:

11. On or about October 13, 2020, a representative of the Registrar, while posing as a member of the public, contacted the Dealer and enquired about a 2016 Ford Edge (VIN 2FMPK4J99GBC32565) which had been advertised on the Dealer's website. An OMVIC registered representative of the Dealer invited the Registrar's representative to view and test drive the vehicle at Goldthorne Avenue. This is contrary to section 28(4) of Ontario Regulation 333/08, the Dealer's terms and conditions of Registration, as well as section 9 of the Code of Ethics. The Registrar's representative followed up on this invitation and confirmed the vehicle was being traded from the above referenced location.

Generally:

12. Park and Seibel have failed to ensure that the Dealer conducts its business in compliance with the Regulations and Code of Ethics, and thus have personally breached sections 6 and 9 of the Code of Ethics, as these sections relate to trading vehicles in a place other than the place that is authorized in the registration of the motor vehicle dealer.

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

Prohibition

4(2) A motor vehicle dealer shall not,

- (b) invite the public to deal in a place other than the place that is authorized in the registration of the motor vehicle dealer.

It is thereby agreed that the Dealer has breached the following section 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.*

It is thereby agreed that Park and Siebel have breached the following section 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.*

Joint Submission on Penalty

1. Park agrees to pay a fine in the amount of \$1,000 no later than **July 31, 2021**.
2. Park agrees to successfully complete the MVDA Key Elements course (the "Course") no later than **December 31, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering the course within the specified time frame.
3. Siebel agrees to successfully complete the MVDA Key Elements course (the "Course") no later than **December 31, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering the course within the specified time frame.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer, Park and Siebel have breached subsections 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:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 no later than **July 31, 2021**.
2. Park is ordered to pay a fine in the amount of \$1,000 no later than **July 31, 2021**.
3. Park is ordered to successfully complete the MVDA Key Elements course (the "Course") no later than **December 31, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering the course within the specified time frame.
4. Siebel is ordered to successfully complete the MVDA Key Elements course (the "Course") no later than **December 31, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering the course within the specified time frame.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair