

## 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 -

G&M Auto Sales & Service Inc.

- and -

Shawn Cyr

- and -

Stephen Summerell

- and -

Michel Danis

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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 28, 2021

**Findings:** Breach of Sections 3, 6, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$3,000 no later than **January 31, 2021.**
2. Shawn Cyr and Stephen Summerell are ordered to successfully complete the Key Elements Course (the "Course") no later than **January 31, 2021.**

3. 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 **January 31, 2021**. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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.

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. G&M Auto Sales & Service Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around June 2016.
2. Shawn Cyr ("Cyr") was first registered as a motor vehicle salesperson in or around March 1998.
3. Stephen Summerell ("Summerell") was first registered as a motor vehicle salesperson in or around October 2001.
4. Michel Danis ("Danis") was first registered as a motor vehicle salesperson in or around October 2001.
5. Since the Dealer was first registered, Cyr, Summerell, and Danis have been Directors of the Dealer, and Danis has been the person responsible for its day to day activities.
6. In around 2016, Cyr, Summerell, and Danis successfully completed the Automotive Certification course (the "Course"). Included in the Course materials is information about the requirement for dealers to provide purchasers with written disclosure of vehicle's former daily rental history, as well as the requirement to ensure liens are discharged from vehicles taken in by dealers on trade ("lien removal obligations").

### **OMVIC publications re daily rental disclosure**

7. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement to disclose former daily rental vehicles on the bill of sale ("disclosure").

- a. Summer 2011
  - b. Summer 2012
  - c. Summer 2013
  - d. Issue #4 2014
  - e. Issue #4 2016
8. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:
- a. January 2010
  - b. September 2012
  - c. December 2013
9. In around December 2014 and June 2015, OMVIC hosted webinars to assist registrants in understanding their disclosure requirements. The contents of said webinars continue to be available on OMVIC's website.

### **OMVIC publications re lien removal**

10. Since approximately December 2008, OMVIC issued the following publications reminding dealers of their lien removal obligations:
- a. Dealer Standard: Issue #4 2016
  - b. Bulletin: June 2017

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

11. During an inspection on or about September 21, 2016, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to a vehicle's former daily rental history.
12. During an inspection on or about October 2017, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to a vehicle's former daily rental history.

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

13. During an inspection on or about January 14, 2020 a representative of the Registrar found the following non-compliance issues:
- a) On or about August 6, 2016, the Dealer sold a 2019 Hyundai Sonata (VIN 5NPE34AF6KH748149) to Consumer B without disclosing the vehicle's former daily rental history. As a part of this transaction, Consumer B traded in a 2013 Hyundai Elantra (VIN 5NPDH4AE8DH326357) to the Dealer. Consumer B still had an outstanding loan for approximately \$11,000 owing on the 2013 Hyundai Elantra, and the lender had registered a lien against it. As a part of Consumer B's purchase agreement, the Dealer agreed to immediately pay off the outstanding loan on the

- vehicle and have the lien discharged. The Dealer did not remit payment for the outstanding loan to the lending institution until September 12, 2019. This is contrary to section 42(7) and (25) of Regulation 333/08, as well as sections 3, 7 and 9 of the Code of Ethics. The consumer has since passed away.
- b) On about September 21, 2019 the Dealer sold a 2019 Ram 1500 Classic (VIN 1C6RR7LT5KS532483) to Consumer C. As a part of this transaction, Consumer C traded in a 2010 Ford F150 (VIN 1FTNF1EV1AKA64469) to the Dealer. Consumer C still had an outstanding loan for approximately \$8,500 owing on the 2010 Ford F150, and the lender had registered a lien against it. As a part of Consumer C's purchase agreement, the Dealer agreed to immediately pay off the outstanding loan on the vehicle and have the lien discharged. The Dealer did not remit payment for the outstanding loan to the lending institution until October 17, 2019. This is contrary to sections 3 and 9 of the Code of Ethics.
- c) On about October 26, 2019 the Dealer sold a 2017 Nissan Micra (VIN 3N1CK3CPXHL264555) to Consumer D. As a part of this transaction, Consumer D traded in a 2016 Kia Forte (VIN KNAFX4A62G5491424) to the Dealer. Consumer D still had an outstanding loan for approximately \$10,000 owing on the 2016 Kia Forte, and the lender had registered a lien against it. As a part of Consumer D's purchase agreement, the Dealer agreed to immediately pay off the outstanding loan on the vehicle and have the lien discharged. The Dealer did not remit payment for the outstanding loan to the lending institution until December 3, 2019. This is contrary to sections 3 and 9 of the Code of Ethics
- d) On about November 13, 2019 the Dealer sold a 2019 Hyundai Sante Fe (VIN 5NMS2CAD5KH054533) to Consumer E. As a part of this transaction, Consumer E traded in a 2017 Kia Optima (VIN 5XXGT4L35HG163787) to the Dealer. Consumer E still had an outstanding loan for approximately \$26,000 owing on the 2017 Kia Optima, and the lender had registered a lien against it. As a part of Consumer E's purchase agreement, the Dealer agreed to immediately pay off the outstanding loan on the vehicle and have the lien discharged. The Dealer did not remit payment for the outstanding loan to the lending institution until January 6, 2020. This is contrary to sections 3 and 9 of the Code of Ethics

14. In failing to ensure the Dealer conducts its business in compliance with the Regulations and Code of Ethics, Cyr, Summerell, and Danis have 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:

(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*,

(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 that the Dealer has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

#### Integrity

3. (1) A registrant shall be financially responsible in carrying on business.

#### 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 Shawn Cyr, Stephen Summerell, and Michel Danis 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.

It is thereby agreed that the Dealer, Shawn Cyr, Stephen Summerell, and Michel Danis have 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.

#### **Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$3,000 no later than **January 31, 2021.**
2. Shawn Cyr and Stephen Summerell agree to successfully complete the Key Elements Course (the "Course") no later than **January 31, 2021.**
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 **January 31,**

**2021.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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.

### **Decision of the Chair**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer, Cyr, Summerell and Danis have breached subsections 3, 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. The Dealer is ordered to pay a fine in the amount of \$3,000 no later than **January 31, 2021.**
2. Shawn Cyr and Stephen Summerell are ordered to successfully complete the Key Elements Course (the "Course") no later than **January 31, 2021.**
3. 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 **January 31, 2021.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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.

Ontario Motor Vehicle Industry Council  
Discipline Committee



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*Paul Burroughs, Chair*