

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 -

GR8 CARS CANADA INC.

- and -

RICHARD CROOKE

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: July 20, 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 \$3,000. \$1,000 will be paid no later than **July 30, 2021** and the remaining balance (\$2,000) will be paid no later than **March 31, 2021**.
2. Crooke is ordered to successfully complete the Georgian College Automotive Certification course (the "Course") no later than **March 31, 2022**.
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 **March 31, 2022**. 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.

4. The Dealer and Crooke 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. Target Auto Zone Inc. ("Target") was first registered as a motor vehicle dealer on or about July 5, 1999.
2. Richard W. Crooke ("Crooke") was first registered as a motor vehicle salesperson on or about November 28, 1984.
3. At all material times, Crooke was the sole officer and director of Target. He was also a registered salesperson for Target.
4. On or about July 20, 2004, a Notice of Proposal to Revoke the registrations of Target and Crooke was issued.
5. On or about April 26, 2005, a Licence Appeal Tribunal ("LAT") decision was released revoking the registration of Target only. A final notice revoking Target's registration was sent to Target on or about May 9, 2005.
6. In its decision, LAT outlined Crooke's lack of integrity and concern—and breach of the implied warranty of fitness as per section 15.1 of the Sales of Goods Act—with respect to a consumer who purchased a vehicle from Target that subsequently required major repairs despite Target knowing the vehicle had a serious problem when it was sold. LAT also found that Crooke retained the services of an unregistered salesperson for approximately 19 months exhibiting an ongoing course of misconduct and a lack of concern for carrying on business according to the law.
7. Target appealed the LAT decision to the Divisional Court, and the revocation of its registration was stayed pending the outcome of this appeal.
8. Target withdrew its appeal to the Divisional Court and the matter was instead resolved by Target and Crooke agreeing to have conditions attached to its registration. These conditions came into effect on or about March 7, 2006.

9. As per condition 16, Target and Crooke agreed to provide copies of SSC to its customers for all of the vehicles it leases or sells. As per condition 17, Target and Crooke agreed to comply with OMVIC's Code of Ethics (Ontario Regulation 332/08) and the Standards of Business Practice. And as per condition 21, Target and Crooke agreed to disclose in writing on bills of sale all material facts about the vehicles Target sells or leases (e.g. accident damage claims).
10. In or around February 2008, Target changed its name to GR8 Cars Canada Inc. ("GR8 Cars").
11. At all material times, Crooke has been the sole Officer, signing authority, as well as the person in charge of the day-to-day activities of GR8 Cars.

OMVIC Publications:

12. In December 2016, OMVIC issued a "Dealers Best Practices" publication which included motor vehicle leasing best practices/guidelines. Among other things, this document advised that if a used vehicle is being leased the dealer is required to provide the lessee with a copy of the current SSC for the vehicle. The contents of this publication continue to be available on OMVIC's website.

Direct Correspondence with Dealer

13. During an inspection of GR8 Cars on or about July 17, 2014, an OMVIC inspector discussed the following with Crooke, on behalf of GR8 Cars of the requirement to provide lessees with a current SSC for their vehicle.

OMVIC Inspection: February 3, 2020

14. On or about February 3, 2020, an OMVIC inspector conducted an inspection of GR8 Cars' books and records. Crooke was present on behalf of GR8 Cars and the inspection revealed the following issues:

Non-Compliant Vehicle Trades

Leased Vehicles:

15. Between on or about January 8, 2019 and on or about January 13, 2020, Crooke leased vehicles on behalf of GR8 Cars but failed to have them undergo a safety standards inspection prior to the start of the lease, and therefore failed to provide the lessees with a current SSC for their vehicles. This is contrary to section 41(9)(d) of O. Reg. 333/08, as well as sections 7 and 9 of the Code of Ethics:
 - A. June 13, 2019: 2005 Kia Spectra (VIN KNAFE121X55145688)
 - B. June 17, 2019: 2006 Chevrolet Impala (VIN 2G1WB58NX69396866)
 - C. November 6, 2019: 2008 Hyundai Accent (VIN KMHCN35CX8U080717)

Moreover, the dealer also failed to retain repair or re-conditioning records for these vehicles, contrary to section 52(2)(d) of O. Reg. 333/08, as well as sections 6(2), 7 and 9 of Code of Ethics.

Generally

16. Crooke has failed to ensure that GR8 Cars conducted its business in compliance with the Regulations and Code of Ethics, personally contravening sections 6, 7 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:

41. Leases:

(9) For each contract mentioned in subsection (1) into which the registered motor vehicle dealer enters, the dealer shall ensure that,

- (d) if the motor vehicle being leased is a used vehicle, the lessee receives a copy of a current safety standards certificate for the vehicle along with the contract. O. Reg.

52. Records of motor vehicles

(1) A registered motor vehicle dealer shall maintain a record of every motor vehicle that comes into the dealer's possession for the purpose of a trade in the vehicle.

(2) The record required under subsection (1) for a motor vehicle shall include,

- (d) if the registered motor vehicle dealer causes work to be done on the vehicle, including any repair or reconditioning, the full and accurate particulars of the work, the sources of any parts used for the work, the cost of the work and the name of the person doing the work;

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 Crooke 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 Crooke 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.

Additional written submissions from OMVIC

OMVIC provided the following information in an additional submission:

1. The parties have not been to discipline previously.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of **\$3,000**. \$1,000 will be paid no later than **July 31, 2021** and the remaining balance (\$2,000) will be paid no later than **March 31, 2022**.
2. Crooke agrees to successfully complete the Georgian College Automotive Certification course (the "Course") no later than **March 31, 2022**.
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 **March 31, 2022**. 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.
4. The Dealer and Crooke 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 Crooke 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. The Dealer is ordered to pay a fine in the amount of \$3,000. \$1,000 will be paid no later than **July 30, 2021** and the remaining balance (\$2,000) will be paid no later than **March 31, 2021**.
2. Crooke is ordered to successfully complete the Georgian College Automotive Certification course (the "Course") no later than **March 31, 2022**.

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 **March 31, 2022**. 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.
4. The Dealer and Crooke 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', with a horizontal line underneath it.

Paul Burroughs, Chair