

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 -

KEN KNAPP FORD SALES LTD o/a
KEN KNAPP FORD SALES & LEASING

- AND -

KENNETH KNAPP

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: February 1, 2021

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,000 no later than **March 31, 2021.**
2. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2021.**
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 **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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Knapp 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. Ken Knapp Ford Sales Ltd o/a Ken Knapp Ford Sales and Leasing (the "Dealer") was first registered as a motor vehicle dealer in around March 1983. Kenneth Knapp ("Knapp") was first registered as a motor vehicle salesperson in around July 2003. At all material times, Knapp was the sole Officer of the Dealer.

OMVIC registrant education:

2. Since the Act was proclaimed, OMVIC has issued the following publications and webinars reminding dealers of the following:

| | <u>Dealer Standard: Publication Date</u> | Subject matter: All-inclusive ad prices 36(7) Reg.333/08 | Subject matter: daily rental disclosure in ads 36(5)/Reg. 333/08 |
|----|---|---|---|
| A. | Winter 2008 | x | x |
| B. | Spring 2010 | x | x |
| C. | Summer 2010 | | |
| D. | Spring 2011 | x | x |
| E. | Winter 2013 | x | |
| F. | Spring 2013 | x | |
| G. | Fall 2013 | | x |
| H. | 2014 Issue #1 | x | |
| I. | 2014 Issue #2 | x | x |
| J. | 2014 Issue #3 | x | x |
| K. | 2014 Issue #4 | x | |
| L. | 2015 Issue #3 | x | |
| M. | 2015 Issue #4 | x | |
| N. | 2016 Issue #1 | x | |

| | | | |
|----|--|---|---|
| O. | 2016 Issue #2 | x | |
| P. | 2016 Issue #3 | x | |
| Q. | 2016 Issue #4 | x | |
| | OMVIC bulletins: Publication Date | | |
| R. | April 2010 | | x |
| S. | September 2012 | | |
| T. | December 2013 | | |
| | Webinars: Publication Date | | |
| U. | December 2014 | | |
| V. | April 2015 | | x |
| W. | June 2015 | | |
| X. | August 2017 | | x |

The contents of these publications continue to be available on OMVIC's website

Direct correspondence with Dealer:

3. By email dated May 13, 2010, the Dealer was reminded of its all-in pricing obligations.
4. During an inspection on or about April 18, 2018, the Dealer was reminded of its all-in pricing obligations.

Dealer's current non-compliance

5. On or before September 9, 2020, the Dealer placed an advertisement for a 2016 Ford Focus (VIN 1FADP3K2XGL375180) with a selling price of \$12,999. The advertisement indicated the price did not include "taxes or any other additional fees", which is a breach of section 36(7) of Regulation 333/08, as well as section 4 and 9 of the Code of Ethics.
6. On this same date, a representative of the Registrar made inquiries about the vehicle, while posing as a member of the public. The Dealer's representative advised the Registrar's representative that the vehicle price did not include a \$399 administration fee, thus confirming the above referenced advertisement was non-compliant.
7. Upon discovering the subject vehicle had been previously sold, the Dealer's representative reached out to the Registrar's representative and offered a similar vehicle but failed to quote said vehicle's all-inclusive price. This is contrary to sections 4 and 9 and the Code of Ethics.
8. Knapp has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus has personally contravened sections 6 and 9 of the Code of Ethics.
9. The Dealer has since taken steps to ensure this will not occur moving forward, including but not limited to, agreeing that the above referenced Dealer's representative will successfully complete the Automotive Certification course, at the Dealer's cost.

10. The Dealer has since designated a new individual as the person in charge of the day to day activities of the Dealer. This individual successfully completed the Automotive Certification course on or about September 24, 2020.

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

Regulation 333/08:

36. Advertising:

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

(a) the amount that a buyer would be required to pay for the vehicle; and

(b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer has breached section 4(2) of the Code of Ethics, as set out in regulation 332/08:

Disclosure and marketing:

4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

It is thereby agreed that Knapp 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 Knapp 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 \$2,000 no later than **March 31, 2021.**
2. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2021.**
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 **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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Knapp 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 Knapp have breached subsections 4, 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*. There have been no prior findings by the Discipline Committee against this registrant. 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 \$2,000 no later than **March 31, 2021**.
2. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2021**.
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4. The Dealer and Knapp 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

