

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 -

PETERBOROUGH S LP o/a PETERBOROUGH SUBARU

- AND -

KULDEEP BILLAN

Date of Panel's review: March 10, 2021

Date of Decision: March 19, 2021

Pursuant to Rule 1.07(3) of the Rules of Practice before the Discipline Committee and the Appeals Committee this Panel has 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:

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

Order requested by Joint Submission on Penalty:

1. The Dealer is ordered to pay a fine in the amount of \$15,000 no later than **March 31, 2021.**
2. Billan is ordered to pay a fine in the amount of \$2,000 no later than **March 31, 2021.**
3. Billan is ordered to successfully complete the Automotive certification course (the "Course") no later than **March 31, 2021.** This date is subject to any pandemic disruptions Georgian College may encounter in delivering the course within the specified timeframe.
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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

5. Billan and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Introduction

Pursuant to Rule 1.07(3) of the Rules of Practice before the Discipline Committee and the Appeals Committee. The panel was provided with an Agreed Statement of Facts and Joint Submission on Penalty, along with written submissions from both Parties' for their consideration.

The panel thanks the Chair for the opportunity to review this matter and to provide reasons to the parties regarding the decision.

The purpose of this review by a panel of the Discipline Committee is to determine whether or not the proposed Joint Submission on Penalty (JSOP) as submitted by the parties is in the public interest.

Reasons for Decision

Case law is quite clear about the very high threshold for rejecting Agreed Statements of Fact and Joint Submissions on Penalty. Current jurisprudence sets out two distinct factors to be considered: that the agreement does not support the public interest, or the agreement brings the administration of justice into disrepute. If neither of these factors is present then the panel should not overturn or go behind an agreement.

The Panel reviewed the following disciplinary hearing orders :The Law Society of Upper Canada v. Henderson, Ontario College of Teachers v. Seymour, Discipline Decision between REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002 AND BARRIE FORD LTD AND PETER PANAGAKIS, REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002 AND BENNETT CHEVROLET CADILLAC BUICK GMC LTD o/a BENNETT GM, REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002 AND BLUE MOUNTAIN CHRYSLER LTD AND TERRENCE BROWN AND KEVIN SLY.

The Panel also reviewed R. v. Anthony-Cook a Supreme Court of Canada decision.

With respect to the prior disciplinary decisions the panel acknowledges that they are not bound by these matters but rather utilize them as comparisons and guidelines in considering similar facts, penalties and points of law.

With respect to the decision of the Supreme Court of Canada, the panel is bound to apply the two part test set out in the decision to determine whether or not the Joint Submission on Penalty brings the administration of justice into disrepute or would be contrary to the public interest. This does not mean that the panel is bound to accept every JSOP submitted to it, but rather that the panel must have compelling reasons to depart from the agreement, and those reasons must demonstrate that the order is not in the public interest or that the order brings the administration of justice into disrepute. This is a very high bar but not insurmountable depending on the circumstances.

In the case before the panel there is no evidence that either of tests have been met.

The submissions provided jointly by the parties, to the panel make it clear there was no real or perceived harm to the consumer (public interest). The issue at the heart of this matter is that at the time the salesperson participated in 15 transactions between August 20, 2018 and October 5, 2018, the salesperson was not registered to the Dealer. The salesperson was however a registered salesperson (under their former employer) with the Registrar (OMVIC).

According to the Agreed Statement of Facts (ASF) the Dealer offered employment to the salesperson in August of 2018. The salesperson applied to the Registrar to transfer their registration to the new Dealer (employer) on August 17, 2018. On August 20, 2018 the salesperson participated in their first vehicle trade on behalf of the Dealer. The salesperson subsequently completed 14 additional vehicle trades between August 20 and October 5, 2018. On December 14, 2018, the salespersons' former employer filed a complaint with the Registrar about the salespersons' involvement in the transactions as the salespersons' registration had still not been transferred to the new employer (the Dealer) by that date.

In the panels' view there was no error or omission intended. There is no evidence before the panel to suggest there was any action taken by the Dealer or Billan to circumvent the regulations. The salesperson applied, as required, to have their registration transferred from one employer to another. After having applied the salesperson began making trades on behalf of the Dealer and continued to do so for a couple of months, There were no known complaints from consumers with respect to any of the vehicles traded by the salesperson during the relevant time period. However, during that time period, neither the salesperson nor the Dealer or Billan, appear to have followed up on the status of the transfer. It was not until the salespersons former employer filed the complaint with the Registrar on December 14, 2018, that the issue came to light. The transfer of registration ultimately occurred on January 15, 2019.

While both the Dealer and the Registrar agree that the salesperson applied for their registration to be transferred to their new employer (the Dealer) on August 17, 2018, there are no submissions as to why there was such a significant delay in the transfer taking place. To be clear at all relevant times the salesperson was a registered salesperson, but for some unidentified reason, the transfer of registration from one dealership to another was not completed in a timely manner.

The panel recognizes that it is the responsibility of the Dealer under sections 6(2) - Accountability and 9(3) - Professionalism to be in compliance with the regulations and to be free of error, fraud, or unethical practice. As the panel views it, which supported by the submissions, the Dealers' failure was in not following up on the salespersons' requested transfer of registration. The panel is of the opinion that once the transfer of registration was applied for, the salesperson and the new employer (the Dealer) had a reasonable expectation that the transfer would have occurred quite expeditiously. However in this instance, the transfer of registration did not occur until after the previous employers' complaint was filed with the Registrar in December of 2018. This was a rather lengthy and disturbing delay; one for which the panel was provided no rationale but the panel nevertheless hopes the issue will generate some reflection and possible proposed solutions to eliminate a reoccurrence of a similar scenario in the future.

The panel also notes that there were no submissions regarding any prior disciplinary matters with respect to the Dealer or Billan.

The panel recognizes and accepts that the principles for consideration in determining penalties in disciplinary action, as listed below, are met in the proposed JSOP. The panel made note of which penalties of the proposed JSOP relate to each of the specific goals of penalty.

Public Protections/Public Interest - *Fines to both the Dealer and Billan, all current and future staff offered the OMVIC Automotive Certification course, current sales staff to be offered the course within 90 days of this order, future sales staff to be offered the course within 90 days of being retained, the costs of such measures to be incurred by the dealer. These provisions assure the public that the Registrar is holding accountable the person or persons responsible for any breaches to the code of ethics. Their inclusion supports the public trust in the Registrars ability to regulate the industry.*

Specific Deterrence - *Fines to both the dealer and Billan, the sole director and person in charge at all material times, and costs of providing OMVIC training, damage to reputation finding on the website. These provisions impress upon the person or persons responsible that breeches of the code of ethics will not be tolerated and that costs associated with fines and retraining will be ordered against those responsible.*

General Deterrence - *Fines to both the dealer and sole director and person in charge at all material times, costs of providing OMVIC training, damage to reputation with finding on the website. These provisions send a message to the industry that breaches of the code of ethics comes with a cost to the persons responsible, to the dealership and ultimately to the reputation of the dealership.*

Remediation - *Courses provided to sales staff on rules and regulations. Refreshment and reeducation on the requirements of the Motor Vehicle Dealers Act (MVDA) so as to improve compliance with the Act.*

The panel accepts that the agreed statement of facts do support breaches of Sections 6(2) and 9(3) in that the Dealer and Billan failed to ascertain that the salespersons' registration was transferred as required by the Act.

The panel is satisfied endorses that while the error may be an accidental one, it is still a breach of the Code of Ethics. In the panels' view acknowledging that the breach appears unintentional provides grounds to consider and accept a penalty that might otherwise have been expected to be much higher in light of the length of the period of time and the involvement of 15 transactions.

Having found that there is no evidence that the public interest/trust was at risk and that the penalties agreed to are appropriate to a seemingly unintentional breach of the Code of Ethics in an apparent first offence, the panel accepts the Joint Submission on Penalty. The Panel issues the order as requested with adjustments to the dates so as to prevent noncompliance with the order due to possible expired dates at the time of receipt of the order.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. Peterborough S LP o/a Peterborough Subaru (the "Dealer") was first registered as a motor vehicle dealer in around April 2015. Kuldeep Billan ("Billan") was first registered as a motor vehicle salesperson in or around May 2015. At all material times, Billan was the sole director, as well as the person in charge of the Dealer.

2. In or about August of 2018, the Dealer extended an offer of employment to an individual (the "Employee") who at the time was employed as a registered salesperson by another dealer (the "Former Employer").
3. The Employee accepted the Dealer's offer and on or about August 17, 2018 applied to the Registrar for transfer of the Employee's salesperson license (the "License") to the Dealer.
4. The Employee commenced employment with the Dealer before the Registrar transferred the License to the Dealer, which did not occur until January 15, 2019.

Motor Vehicle Trades

5. Between on or about August 20, 2018 to on or about January 11, 2019, the Employee was involved in the trade of the following vehicles on behalf of the Dealer while not registered to do so. This was contrary to section 4(3) of Act.
 - a. August 20, 2018: 2018 Subaru Crosstrek (VIN JF2GTAEC5JH338366)
 - b. August 20, 2018: 2018 Subaru Outback (VIN 4S4BSFTC0J3394591)
 - c. August 27, 2018: 2019 Subaru Impreza (VIN 4S3GTAA61K3705079)
 - d. August 28, 2018: 2008 Toyota Corolla (VIN 2T1BR32E58C869106)
 - e. September 1, 2018: 2019 Subaru Crosstrek (VIN JF2GTANC9KH217602)
 - f. September 4, 2018: 2019 Subaru Legacy (VIN 4S3BNDN69K3004905)
 - g. September 7, 2019: 2018 Subaru Forester (VIN JF2SJEDC0JH615322)
 - h. September 8, 2018: 2019 Subaru Crosstrek (VIN JF2GTANCXK8222095)
 - i. September 14, 2018: 2019 Subaru WRX (VIN JF1VA1A61K9805473)
 - j. September 14, 2018: 2018 Subaru Outback (VIN 4S4BSDNC7J3383069)
 - k. September 19, 2018: 2019 Subaru Outback (VIN 4S4BSFNC8K3201828)
 - l. September 25, 2018: 2018 Subaru Forester (VIN JF2SJEWC5JH547452)
 - m. September 27, 2018: 2018 Subaru Crosstrek (VIN JF2GTACC1KH227799)
 - n. September 28, 2018: 2018 Subaru Forester (VIN JF2SJESC7JH615207)
 - o. October 5, 2018: 2019 Subaru Crosstrek (VIN JF2GTANC5KH227639)

(the "Transactions")

6. On or about December 14, 2018, the Former Employer made a complaint to the Registrar regarding the Employee's involvement in the Transactions.
7. Although the Employee later became registered to the Dealer, the Dealer's failure to use best efforts to prevent the Employee from becoming involved in the Transactions was contrary to section 9 (3) of the Code of Ethics.
8. The Registrar is not aware of any consumer complaints relating to the Transactions.

Generally

9. In omitting to use best efforts to prevent the Employee from becoming involved in the Transactions, Billan has breached section 6(2) and 9(3) of the Code of Ethics.

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.

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

10. In omitting to use best efforts to prevent the Employee from becoming involved in the Transactions, the Dealer breached section 9(3) of the Code of Ethics.

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 \$15,000 no later than **March 31, 2021.**
2. Billan agrees to pay a fine in the amount of \$2,000 no later than **March 31, 2021.**
3. Billan agrees to successfully complete the Automotive certification course (the "Course") no later than **March 31, 2021.** This date is subject to any pandemic disruptions Georgian College may encounter in delivering the course within the specified timeframe.
4. **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, 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.

5. Billan and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Panel

Having reviewed and considered the Agreed Statement of Facts, the Panel of the Discipline Committee hereby concludes that the Dealer and Billan 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 Panel also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order: (***with the dates adjusted to permit time to come into compliance post issuance of the order***)

Order

1. The Dealer is ordered to pay a fine in the amount of \$15,000 no later than **May 31, 2021**.
2. Billan is ordered to pay a fine in the amount of \$2,000 no later than **May 31, 2021**.
3. Billan is ordered to successfully complete the Automotive certification course (the "Course") no later than **May 31, 2021**. This date is subject to any pandemic disruptions Georgian College may encounter in delivering the course within the specified timeframe.
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 **May 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.
5. Billan and the Dealer 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

Deb Mattina, Chair
Nelson Caetano, Vice Chair
Stuart Sherman, Vice Chair