

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 -

PRIME TIME AUTO SALES INC.

- AND -

SALVATORE BARBERIO

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 26, 2021

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

Order:

1. Barberio is ordered to pay a fine in the amount of \$3,000 no later than **December 31, 2021.**
2. Barberio is ordered to successfully complete the Automotive Certification course (the "Course") no later than **February 26, 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. Prime Time Auto Sales Inc (the "Dealer") was first registered as a motor vehicle dealer in around June 2012. Salvatore Barberio ("Barberio") was first registered as a motor vehicle salesperson in around February 1983. At all material times, Barberio was the sole Director of the Dealer.
2. On or about May 28, 2012, Barberio successfully completed the Automotive Certification course (the "course"). The following subject matter is included in the course materials:
 - a. Dealer premises requirements
 - b. Dealer records storage requirements
 - c. Material fact disclosure requirements
3. On about June 22, 2012, Barberio executed a terms and conditions of registration on behalf of the Dealer.
4. As per condition 14, the Dealer agreed that in the event its books and records were lost, stolen, or destroyed in whole or in part, it would notify the Registrar, in writing, within 5 days of the event.
5. As per condition 17, the Dealer agreed to maintain its books and records in accordance with sections 52 through 57 of Regulation 333/08, inclusive.
6. As per condition 19, the Dealer agreed to operate exclusively from its registered location.
7. As per condition 20, the Dealer agreed to not invite the public to deal at a place other than its approved location.

8. As per condition 23, the Dealer agreed to provide purchasers with written disclosure of all material facts about the vehicles it sells.

Previous inspection history:

9. During an inspection on or about July 30, 2012, a representative of the Registrar reviewed the following with the Barberio:
 - a. Books and records maintenance and storage requirements
 - b. Material fact disclosure requirements on bills of sale
10. During an attempted inspection on or about November 2, 2018, the OMVIC inspector noted the Dealer appeared to no longer be located at its registered premises. The inspector followed up with Barberio and was advised that he had moved the Dealer to a location in Niagara Falls, ON. Barberio was advised to follow up with OMVIC's registration department to ensure the Dealer's business change was complete.
11. To date, the Dealer's registered location with OMVIC remains #7-7089 Tobram Road in Mississauga, ON.

Dealer non-compliance:

12. During an inspection on or about November 27, 2019, the following areas of non-compliance were found:

Premises and records:

13. The Dealer was found to not be operating from its registered premises and had failed to notify the office of the Registrar of its change in location. This is contrary to section 31(1) of Regulation 333/08, as well as section 9 of the Code of Ethics.
14. Moreover, the Dealer's complete records were not being stored at its registered premises, contrary to section 56(1) of Regulation 333/08, as well as section and 9 of the Code of Ethics.
15. Barberio advised the OMVIC inspector that some of the Dealer's books and records had been lost, however Barberio had failed to advise the office of the Registrar about this at the time of the occurrence. This is contrary to section 55 of Regulation 333/08, as well as section 9 of the Code of Ethics.
16. Barberio advised the OMVIC inspector he would trade in motor vehicles, on behalf of the Dealer, at various locations, including but not limited to, the purchaser's residence. In inviting the public to deal in locations other than the Dealer's registered premises, the Dealer has contradicted section 4(2) of the Act, as well as section 9 of the Code of Ethics.

Motor vehicle trade:

17. On or about July 18, 2019, Barberio sold a 2007 Ford Ranger ((VIN 1FTZR45E47PA39877) on behalf of the Dealer. The bill of sale for this vehicle indicated the Dealer was located at 6 Cushman Road in St. Catharines, ON. This is contrary to section 40(1) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the vehicle had previously sustained \$9,818 in accident damage which the Dealer failed to disclose to the purchaser. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has made its best efforts to reach out to the purchaser to ensure she is aware of her vehicle history, to no avail. The Dealer will compensate the purchaser if compensation is required by the consumer.

Acknowledgment and Undertaking

18. Barberio acknowledges and undertakes that he shall not apply to be a motor vehicle dealer for a period of two years. This two-year period will commence at the execution of this document ("**Term Period**").
19. Barberio acknowledges that his registration as a motor vehicle salesperson shall be subject to terms and conditions.
20. Barberio acknowledges and undertakes that he shall not to be partner, shareholder, officer, director, or have direct or indirect control of a dealer during the Term Period.
21. Barberio acknowledge and undertakes that he shall not be a manager, person in charge or be involved in the financial management of a dealer during the Term Period

Generally:

22. Barberio has failed to ensure the Dealer conducts its business in compliance with the Regulations ad Code of Ethics, and thus he has personally breached sections 6 and 9 of the Code of Ethics.
23. The Dealer is no longer in business and therefore no longer registered under the Act.

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.

Regulation 333/08:

Notice of events to registrar

31. (1) Every registrant shall, within five days after the occurrence of the event, notify the registrar in writing of,

- (a) any change to the information that the registrant supplied for the purpose of obtaining registration

Contracts for sales of used motor vehicles

40(2) The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39 (2):

39(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a new motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

- 3. The business address of the place at which the dealer entered into the contract.

Additional information in contracts of sale and leases

42(19) If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

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.

Reporting of unavailable records

55. If a record required under section 52, 53 or 54 becomes unavailable by reason of force majeure, the registered motor vehicle dealer shall advise the registrar in writing within five days and specify the nature of the force majeure.

Retention of records

56. (1) A registered motor vehicle dealer shall retain a record required under section 52, 53 or 54 for at least six years after,

- (a) in the case of a record required under section 52 or 53, the date of the consignment contract or trade made by the dealer for the motor vehicle to which the record relates; or
- (b) in the case of a record required under section 54, the date that the record is made.

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.*

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*

It is thereby agreed that Barberio has 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. Barberio agrees to pay a fine in the amount of \$3,000 no later than **December 31, 2021**.
2. Barberio agrees to successfully complete the Automotive Certification course (the "Course") no later than **February 26, 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 and Barberio 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:

3. Barberio is ordered to pay a fine in the amount of \$3,000 no later than **December 31, 2021**.
4. Barberio is ordered to successfully complete the Automotive Certification course (the "Course") no later than **February 26, 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

