

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 -

QUIXL AUTO SALES & LEASING INC

- and -

PARAMANANTHARAJAH SIVANANTHAN

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: September 3, 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 \$3,600 no later than **February 28, 2022.**
2. Sivanathan is ordered to pay a fine in the amount of \$500 no later than **February 28, 2022.**
3. Sivanathan is ordered to successfully complete the MVDA Key Elements course no later than **February 28, 2022.** This date is subject to any future pandemic disruptions Georgian College may encounter in delivering this course within the specified time frame.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be

offered the Course no later than **December 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 or who are otherwise required to do so pursuant to the Act.

5. The Dealer and Sivananthan 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

Background:

1. Quixl Auto Sales & Leasing Inc (the "Dealer") was first registered as a motor vehicle dealer in around April 2004. Paramanantharajah Sivananthan ("Sivananthan") was first registered as a motor vehicle salesperson in around May 1991. At all material times, Sivananthan was the sole Officer, as well as the person in charge of the day to day activities of the Dealer.
2. On or about April 30, 2004, Sivananthan executed terms and conditions of registration on behalf of the Dealer. As per condition 20, the Dealer agreed it was under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles it sells.
3. On or about January 11, 2016, Sivananthan successfully completed the Georgian College Automotive certification course (the "Course"). Included in the Course materials is information about the following:
 - a. Dealers' obligation to provide purchasers with written disclosure of a vehicle's accident damage history, including but not limited to, the dollar value of the damage sustained.
 - b. Dealers' credit and lease offer disclosure obligations ("finance disclosure").
4. Dealers have been reminded of the above-mentioned obligations via OMVIC publications, the contents of which continue to be published on the OMVIC website. These publications are referenced in the attached Schedule A.

Direct correspondence with Dealer:

5. During an inspection of the Dealer on or about September 29, 2010, Sivananthan was reminded of the Dealer's credit and lease disclosure obligations.
6. During and inspection of the Dealer on or about November 6, 2015, Sivananthan was reminded of the Dealer's vehicle history disclosure obligations, in addition to being reminded again of the Dealer's finance disclosure obligations.
7. By letter dated November 26, 2015, Sivananthan was reminded of the Dealer's vehicle history disclosure obligations.

Dealer non-compliance:

8. During an inspection of the Dealer on or about February 27, 2020, the following compliance issues were found:

Non-compliant vehicle trades:

9. On or about June 13, 2019, Sivananthan sold a 2004 Toyota Echo (VIN JTDKT123640047858) on behalf of the Dealer but failed to disclose the vehicle's \$4,502 accident damage history. 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 since provided with OMVIC with confirmation from the purchaser they are aware of their vehicle's history.
10. On or about September 10, 2019, Sivananthan sold a 2013 Nissan Altima (VIN 1N4AL3AP2DN506582), on behalf of the Dealer. The Dealer arranged for financing for the consumer but failed to ensure that the consumer was provided with the terms of the finance contract at the time of the sale. This is contrary to section 40(1) of the Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they were aware of the financing terms at the time of entering the agreement.
11. On or about October 19, 2019, Sivananthan sold a 2014 Honda Civic (VIN 2HGFB2F79EH010728) on behalf of the Dealer but failed to disclose that the vehicle had sustained damage from an accident or incident in the amount of \$3,623. 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. Moreover, the Dealer arranged for financing for the consumer, but failed to ensure the consumer was provided the terms of the finance contract at the time of sale. This is contrary to section 40(1) of the Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they are aware of their vehicle's history and were aware of their financing terms at the time of entering into the agreement.

Sivananthan non-compliance:

12. Sivananthan has failed to ensure that the Dealer conducts its business in compliance with the Regulations and Code of Ethics and has therefore 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:

40. Contracts for sales of used motor vehicles

(1) Before entering into a contract to sell a used motor vehicle to a purchaser who is not a registered motor vehicle dealer, a registered motor vehicle dealer shall ensure that the person providing financing for the purchase has provided to the purchaser the information that must be disclosed in any initial disclosure statement required under section 79 of the Consumer Protection Act, 2002 with respect to the financing if,

- (a) the purchaser is a consumer within the meaning of that Act; and*
- (b) the dealer is providing the financing or the application for the financing to the purchaser.*

42. Additional information in contracts of sale and leases:

(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.

It is thereby agreed that 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 Sivananthan 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 Sivananthan have breached the following section of the Code of Ethics, as set out in Regulation 332/08:

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 \$3,600 no later than **February 28, 2022.**
2. Sivanathan agrees to pay a fine in the amount of \$500 no later than **February 28, 2022.**
3. Sivanathan agrees to successfully complete the MVDA Key Elements course no later than **February 28, 2022.** This date is subject to any future pandemic disruptions Georgian College may encounter in delivering this course within the specified time frame.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **December 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 or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Sivanathan 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 Sivanathan 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 parties advised the Chair that the named parties had not been the subject of discipline previously. 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 \$3,600 no later than **February 28, 2022.**
2. Sivanathan is ordered to pay a fine in the amount of \$500 no later than **February 28, 2022.**
3. Sivanathan is ordered to successfully complete the MVDA Key Elements course no later than **February 28, 2022.** This date is subject to any future pandemic disruptions Georgian College may encounter in delivering this course within the specified time frame.

4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **December 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 or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Sivananthan 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