

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 -

2345824 ONTARIO INC o/a SUBARU OF NIAGARA

- and -

MARKUS FALKENBERG

- and -

ALEXANDER DIGENIS

- and -

DEVIN KAULBACK

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: March 22, 2022

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500 no later than **March 31, 2022.**
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

3. Falkenberg, Digenis, Kaulback, and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

The fact that the Dealer received multiple notices regarding the need to prevent unregistered salespersons from trading in motor vehicles is not to be overlooked. However, in this case, the Dealer has taken full responsibility for their actions and advised that steps have been taken to ensure it does not happen again. OMVIC indicated that the Dealer has never been cautioned for, nor is aware of, any instances of the Dealer employing unregistered salespeople previously.

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. 2345824 Ontario Inc o/a Subaru of Niagara (the "Dealer") was first registered as a motor vehicle dealer in or around November 2012.
2. Markus Falkenberg ("Falkenberg") was first registered as a motor vehicle salesperson in or around June 1984. At all material times, Falkenberg was a director of the Dealer.
3. Alexander Digenis ("Digenis") was first registered as a motor vehicle salesperson in or around May 1987. At all material times, Digenis was a director, as well as the person in charge of the day to day activities, of the Dealer.
4. Devin Kaulback ("Kaulback") was first registered as a motor vehicle salesperson in or around May 21, 2010. At all material times, Kaulback was a sales manager at the Dealer.
5. On or about May 18, 2010 Kaulback successfully completed the Automotive Certification course (the "Course").
6. On or about March 11, 2013, Digenis successfully completed the Course.

7. Included in the Course syllabus is the requirement for salespeople to be registered under the Act.

Publications:

8. Since the Dealer was registered in 2012, OMVIC has issued the following publications reminding dealers of their obligations to ensure their salespeople are registered under the Act:
 - a. September 2013: OMVIC bulletin
 - b. May 2014: OMVIC bulletin
 - c. 2014: Issue 3: Dealer Standard publication
 - d. Winter 2014: Dealer Standard publication

Consumer complaint:

9. Salesperson A was registered to trade in motor vehicles on behalf of the Dealer from on or about December 21, 2012 until his registration terminated on or about June 1, 2018 when he failed to renew it.
10. On or about April 1, 2021, Salesperson A sold a consumer a 2021 Subaru Forrester (VIN JF2SKEFC0MH435756) on behalf of the Dealer while not registered to do so. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.
11. After signing the bill of sale, the consumer discovered that Salesperson A was not registered.
12. On or about April 21, 2021, the consumer contacted OMVIC to complain about Salesperson A having sold a motor vehicle while not being registered to do so.

Salesperson A application:

13. On or about April 7, 2021, Salesperson A submitted an application to again be registered. The application was not approved until on or about June 10, 2021.
14. On the following dates, Kaulback and/or Digenis were reminded, on behalf of the Dealer, that Salesperson A was prohibited from trading in motor vehicles until such time as his registration application was approved:

- a. April 23, 2021
- b. April 26, 2021
- c. April 29, 2021
- d. May 3, 2021
- e. May 4, 2021
- f. May 5, 2021
- g. May 6, 2021
- h. May 10, 2021
- i. May 20, 2021

OMVIC investigation:

- 15. On or about June 4, 2021, an OMVIC investigator visited the Dealer, while posing as a member of the public, and observed Salesperson A engaging in trade with customers.
- 16. The investigator made inquiries about a Subaru Outback (VIN 4S4B1HKD1M3219242).
- 17. Salesperson A, on behalf of the Dealer, discussed the vehicle's price with the OMVIC investigator. As such, Salesperson A was engaging in trade on behalf of the Dealer without being registered. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.
- 18. The Dealer has since advised they will be designating a different individual at the Dealer to be primarily responsible for the Dealer's to day compliance with the Act and Regulations, and they will require this person to successfully complete the Automotive Certification course.

Falkenberg's, Digenis', and Kaulback's contravention of the Code of Ethics:

- 19. In allowing Salesperson A to act as an unregistered salesperson on behalf of the Dealer, Falkenberg, Digenis, and Kaulback, have personally breached sections 6 and 9 of the Code of Ethics.

It is thereby agreed that Falkenberg, Digenis, and Kaulback have contravened 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.

Professionalism

It is thereby agreed that Falkenberg, Digenis, Kaulback, and the Dealer have contravened the following section of the Code of Ethics, as set out in Regulation 333/08.

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.

Additional written submissions from OMVIC

OMVIC provided the following information in an additional submission:

- The Dealer has not been to discipline previously. The consumer's complaint was strictly due to the salesperson's registration status, not that they were unhappy with their purchase.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$2,500 no later than **March 31, 2022.**
2. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. Falkenberg, Digenis, Kaulback, 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 Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer, Falkenberg, Digenis, and Kaulback 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:

1. The Dealer is ordered to pay a fine in the amount of \$2,500 no later than **March 31, 2022.**
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. Falkenberg, Digenis, Kaulback, 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



Paul Burroughs, Chair