

## DISCIPLINE DECISION

REVIEWING PANEL: Paul Burroughs, Registrant  
Sherry Darvish, Public Member  
Stuart Sherman, Registrant

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR VEHICLE  
DEALERS ACT, 2002, S.O. 2002, c.30, Sch. B

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

-AND-

AUTO RESALE INC

-AND-

DAVID DOWLING

-AND-

BARRY SHACTER

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Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing 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:

**Date of Decision:** July 4, 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 \$750 no later than **September 30, 2022.**

2. Shacter is ordered to pay a fine in the amount of \$750. The fine payment schedule will be fulfilled as follows:
  - a. \$150 due no later than July 31, 2022.
  - b. \$150 due no later than August 31, 2022.
  - c. \$150 due no later than September 30, 2022.
  - d. \$150 due no later than October 31, 2022.
  - e. \$150 due no later than November 30, 2022.
  
3. 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 **September 30, 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 or who are otherwise required to do so pursuant to the Act.
  
4. The Dealer, Dowling, and Shacter agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

## **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.

### **Background:**

Pursuant to section 14(4)4 of the Motor Vehicle Dealers Act, 2002 (the "MVDA"), a Notice of Complaint was issued on December 14, 2021 by the Registrar, MVDA against Auto Resale Inc. and David Dowling and Barry Shacter for violating the Code of Ethics. as set out in Ontario Regulation 332/08.

The Notice of Complaint was referred to the Discipline Committee to hear and determine whether the aforementioned parties failed to comply with the Code of Ethics.

Pursuant to section 4.1 of the Statutory Powers Procedure Act and Rule 1.07 of the Discipline Committee's Rules of Practice, the Parties wish to dispose of this proceeding without a hearing, according to the following Agreed Statement of Facts and Penally.

### **Agreed Statement of Facts**

1. David William Dowling o/a Auto Resale ("Dowling") was first registered as a motor vehicle dealer in or around January 1989.

2. Auto Resale Inc (the “Dealer”) was first registered as a motor vehicle dealer in around August 2017.
3. At all material times, Dowling has been the sole director, as well as the person in charge of the day-to-day activities of the Dealer.
4. Barry Shacter (“Shacter”) was first registered as a motor vehicle salesperson in around April 2000. At all material times Shacter was employed in this capacity at the Dealer.

**Consumer A:**

5. On or before April 7, 2021, Consumer A spoke to Shacter about purchasing a 2009 Toyota Rav 4 (VIN 2T3BF33V69W003686) from the Dealer. Consumer A gave the Dealer a \$2,000 deposit for the vehicle. No bill of sale was executed. Shortly thereafter, Consumer A determined that he did not want to purchase the vehicle and requested a refund of his deposit.
6. Shacter, on behalf of the Dealer, refunded only \$1,900 of Consumer A’s deposit and refused to refund the remainder. This is contrary to section 38 of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics.
7. On or about April 26, 2021, Consumer A contacted OMVIC to complain about the Dealer refusing to return his entire deposit.
8. The OMVIC complaint handler advised Dowling, that deposits must be returned in full when the customer has not executed a bill of sale.
9. After OMVIC became involved in the complaint, the Dealer returned the outstanding \$100 to Consumer A.

**Consumer B:**

10. On or about October 5, 2021, Consumer B spoke to Shacter about purchasing a 2010 Town and Country (VIN 2A4FF6DX8AR222732) from the Dealer. Consumer B gave the Dealer a \$500 deposit for the vehicle. No bill of sale was executed. Shortly thereafter, Consumer B determined that he did not want to purchase the vehicle and requested a refund of his deposit.
11. Shacter, on behalf of the Dealer, failed to return Consumer B’s deposit after she indicated she was no longer interested in purchasing the vehicle. This is contrary to section 38 of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics.
12. On or about October 22, 2021, Consumer B contacted OMVIC to complain about the Dealer failing to return her deposit.

13. The OMVIC complaint handler again advised Dowling, that deposits must be returned in full when the customer has not executed a bill of sale.
14. On or about October 31, 2021, Shacter, on behalf of the Dealer, returned \$435 of Consumer B's deposit, stating they would be retaining \$65 for "advertising fees". This is contrary to section 38 of Ontario Regulation 333/08, as well as section 9 of the Code of Ethics.
15. After OMVIC became involved in the complaint second time, the Dealer returned the outstanding \$65 to Consumer B.
16. Shacter has since successfully completed the MVDA Key Elements course on or about April 26, 2022.

**Generally:**

17. The Dealer failed to ensure its sales staff conducted business in accordance with the Act and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics.
18. Dowling and Shacter failed to ensure the Dealer conducted business in accordance with the Act and Code of Ethics, thus personally contravening sections 6 and 9 of the Code of Ethics.

It is thereby agreed that Dowling and Shacter have breached the following section of the Code of Ethics, ON 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, Dowling, and Shacter have breached the following section of the Code of Ethics, ON 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.*

**Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$750 no later than **September 30, 2022.**
2. Shacter agrees to pay a fine in the amount of \$750. The fine payment schedule will be fulfilled as follows:
  - a. \$150 due no later than July 31, 2022.

- b. \$150 due no later than August 31, 2022.
  - c. \$150 due no later than September 30, 2022.
  - d. \$150 due no later than October 31, 2022.
  - e. \$150 due no later than November 30, 2022.
3. 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 **September 30, 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer, Dowling, and Shacter agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

### **Decision of the Reviewing Panel**

Having reviewed and considered the Agreed Statement of Facts, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer, Dowling and Shacter have breached subsection 9 and Dowling and Shacter have breached subsection 6 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The reviewing panel also agrees with the Parties' Joint Submission on Penalty and determines that the settlement is in the public interest, Accordingly, the Reviewing panel makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$750 no later than **September 30, 2022**.
2. Shacter is ordered to pay a fine in the amount of \$750. The fine payment schedule will be fulfilled as follows:
  - a. \$150 due no later than July 31, 2022.
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4. The Dealer, Dowling, and Shacter 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

A handwritten signature in black ink, appearing to read 'Paul Burroughs', with a horizontal line underneath it.

Dated: July 4, 2022

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*Paul Burroughs, Chair*  
On behalf of  
*Sherry Darvish, Member*  
*Stuart Sherman, Member*



