

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 -

V.I.N TRADING INC. o/a CARDEALSDIRECT

- and –

ALIAKSANDR KALIADA

- and –

ALEXEY MALAKHOV

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 10, 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 \$1,000 no later than **February 28, 2022.**
2. Kaliada is ordered to pay a fine in the amount of \$300 no later than **February 28, 2022.**
3. Malakhov is ordered to pay a fine in the amount of \$300 no later than **February 28, 2022.**

4. Kaliada is ordered to successfully complete the Georgian College Automotive Certification course (the "Course") no later than **February 28, 2022.**
5. Malakhov is ordered to successfully complete the Course no later than **February 28, 2022.**
6. 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 **April 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.
7. The Dealer, Kaliada and Malakhov 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. V.I.N Trading Inc o/a Cardeals Direct (the "Dealer") was first registered as a motor vehicle dealer in around June 2006.
2. Aliaksandr Kaliada ("Kaliada") was first registered as a motor vehicle salesperson in around October 25, 2002. At all material times Kaliada was a person in charge of the day-to-day activities of the Dealer.
3. Alexey Malakhov ("Malakhov") was registered as a motor vehicle salesperson in around June 2006. At all material times Malakhov was a person in charge of the day to day activities of the Dealer.
4. In the fall of 2016, OMVIC issued a Dealer Standard publication which reminded dealers of, among other things, their obligations if a customer cancels a vehicle contract prior to delivery. Dealers were reminded that if they retain a portion of a customer's deposit to cover losses incurred as a result of the cancellation ("liquidated damages"), these must be an accurate amount and be provable. Moreover, if a customer makes a complaint

about a dealer's conduct in this regard, OMVIC will require the dealer to provide proof of its liquidated damages.

Consumer Complaint:

5. On or about April 21, 2020, Consumer A attempted to purchase a 2016 Audi A5 (VIN WAUW2AFR5GA009455) from Malakhov on behalf of the Dealer for \$20,697, including a \$699 "safety package".
6. Consumer A put a \$500 deposit on the vehicle, although no bill of sale was executed on this day.
7. On or about May 9, 2020, Consumer A put a second \$500 deposit on the vehicle. The bill of sale was executed at this time.
8. On this same date (May 9, 2020), Consumer A decided to not take delivery of the vehicle and requested his deposit back.
9. Malakhov, on behalf of the Dealer, refused to refund any portion of Consumer A's deposit, and failed to provide Consumer A with a list of the Dealer's liquidated damages. This is contrary to section 9 of the Code of Ethics.
10. On or about June 9, 2020, Consumer A submitted a complaint about the Dealer's conduct to OMVIC.
11. After an OMVIC complaint handler became involved, Kalinda provided the following accounting of the Dealer's liquidated damages:
 - a. \$ 200 - commission paid
 - b. \$100- extra safety certificate
 - c. \$180 advertising costs
 - d. \$ 80 recleaning the car
 - e. \$ 220 storage costs
 - f. \$ 270 salaries paid to staff -paperwork, licensing, relicensing, moving the car
12. Despite numerous requests from the OMVIC complaint handler, the Dealer failed to provide OMVIC with documentation to support these expenses, contrary to section 9 of the Code of Ethics.
13. The Dealer has since provided OMVIC with an invoice to suggest a \$200 commission was paid.
14. On or about June 5, 2020 Malakhov resold the vehicle on behalf of the Dealer for \$21,697. This was \$1,000 more than the original selling price that was to be charged to Consumer A. Despite the increase in the vehicle's selling price, the Dealer failed to return any portion of Consumer A's deposit, contrary to section 9 of the Code of Ethics.
15. As person[s] in charge of the Dealer, Kaliada and Malakhov failed to ensure that the Dealer conducted its business in compliance with Code of Ethics and have personally breached sections 6 and 9 of the Code of Ethics.
16. The Dealer has since agreed to return Consumer A's deposit.

It is thereby agreed that the Dealer, Kaliada, and Malakhov have breached section 9(2) of the Code of Ethics, as set out in Regulation 332/08:

Professionalism

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

It is thereby agreed that Kaliada and Malakhov have breached section 6(2) of the Code of Ethics, as set out in Regulation 332/08:

Accountability

(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

Additional written submissions from OMVIC

OMVIC provided the following information in an additional submission:

- The Dealer has no prior Discipline record.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$1000 no later than **February 28, 2022.**
2. Kaliada agrees to pay a fine of \$300 no later than **February 28, 2022.**
3. Malakhov agrees to pay a fine of \$300 no later than **February 28, 2022.**
4. Kaliada agrees to successfully complete the Georgian College Automotive Certification course (the "Course"), no later than **February 28, 2022.**
5. Malakhov agrees to successfully complete the Course no later than **February 28, 2022.**
6. The Dealer agrees to offer all current and future sales staff the opportunity to complete 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
7. The Dealer, Kaliada, and Malakhov 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, Kaliada and Malakhov 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: **(with the date adjusted on number 6 to permit time to come into compliance post issuance of the order)**

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2. Kaliada is ordered to pay a fine in the amount of \$300 no later than **February 28, 2022.**
3. Malakhov is ordered to pay a fine in the amount of \$300 no later than **February 28, 2022.**
4. Kaliada is ordered to successfully complete the Georgian College Automotive Certification course (the "Course") no later than **February 28, 2022.**
5. Malakhov is ordered to successfully complete the Course no later than **February 28, 2022.**
6. 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 **April 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.
7. The Dealer, Kaliada and Malakhov 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