

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 -

MILLER-HUGHES FORD SALES LIMITED

- AND -

SHAWN MALONEY

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: February 2, 2022

Findings: Breach of Sections 4, 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 **May 31, 2022.**
2. Maloney is ordered to successfully complete the MVDA KEY Elements course no later than **May 31, 2022.**
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive certification course (the "Course"). Current sales staff will be offered the Course no later than **May 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.
4. The Dealer and Maloney 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.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. Miller-Hughes Ford Sales Limited (the "Dealer") was first registered as a motor vehicle dealer since in or around January 1983.
2. Shawn Maloney ("Maloney") was first registered as a motor vehicle salesperson in or around July 1987. At all material times, Maloney has been an officer, as well as the person in charge of the day-to-day activities of the Dealer.

OMVIC registrant education re: all-in pricing

3. Since the Act was proclaimed, OMVIC has issued the following publications and webinars reminding dealers of their obligation to advertise all-inclusive vehicle prices ("all-in pricing"). The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC's website.

Direct correspondence with Dealer:

4. During an inspection on or about March 9, 2018, the all-in pricing regulation was discussed with Maloney.
5. By email dated July 29, 2020, Maloney was reminded of the Dealer's all-in pricing obligations.

Dealer's current non-compliance

6. On or about July 8, 2021, OMVIC investigators made inquiries about a 2018 Ford Escape (Stock #21033A), while posing as members of the public. This vehicle was advertised with a selling price of \$20,888 exclusive of tax and licensing fees.
7. A representative of Dealer advised the OMVIC investigators that the above referenced advertised vehicle price was not inclusive of a mandatory \$399 "registration fee". As such, the advertised price was not all-inclusive. This is contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Maloney's non-compliance:

8. Maloney has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus has personally contravened section 6 of the Code of Ethics.

Generally:

9. The Dealer has since agreed to ensure all sales staff review the OMVIC advertising webinar shortly, in addition to adjusting their dealer management software to prevent further pricing discrepancies.

It is thereby agreed that the Dealer has contravened the following section of the Code of Ethics, as set out in Regulation 332/08.

Disclosure and marketing

4 (2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

Professionalism

It is thereby agreed that the Dealer has contravened the following section of the Code of Ethics, as set out in Regulation 332/08.

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 Maloney has 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.

Additional written submission from the Parties

1. The parties have not been to discipline previously.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$2,500 no later than **May 31, 2022.**
2. Maloney agrees to successfully complete the MVDA KEY Elements course no later than **May 31, 2022.**
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive certification course (the "Course"). Current sales staff will be offered the Course no later than **May 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.
4. The Dealer and Maloney 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 has breached subsection 4(2) and 9(3) and that Maloney has breached subsection 6(2) 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 **May 31, 2022**.
2. Maloney is ordered to successfully complete the MVDA KEY Elements course no later than **May 31, 2022**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive certification course (the "Course"). Current sales staff will be offered the Course no later than **May 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.
4. The Dealer and Maloney 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