

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 -

NIAGARA MOTORS LTD

- and -

DAVID DICK

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 25, 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 \$3,000 no later than **May 31, 2022.**
2. Dick 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 Georgian College Automotive Certification 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. Dick and the Dealer 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. Niagara Motors Ltd (the "Dealer") was first registered as a motor vehicle dealer in or around January 1983.
2. David Dick ("Dick") was first registered as a motor vehicle salesperson in or around March 1983. At all material times, Dick has been the sole Officer as well as the person in charge of the day-to-day activities of the Dealer.

OMVIC publications: unregistered salespeople:

3. Since the Act was proclaimed, OMVIC has issued the following publications reminding dealers of the requirement for all salespeople trading in vehicles on behalf of a dealer to be registered under the Act:
 - a. Dealer Standard: Spring 2010
 - b. Dealer bulletin: September 2013
 - c. Dealer Standard: Fall 2013
 - d. Dealer bulletin: May 2014
 - e. Dealer Standard: 2014: Issue 3
 - f. Dealer Standard: 2014: Issue 4
 - g. Dealer bulletin: March 2019

These publications continue to be available on OMVIC's website.

Retaining an unregistered salesperson:

4. Salesperson A was registered as a salesperson under the Act between in or around August 2001 and in or around September 2015. During his period of registration, Salesperson A was never registered to trade in motor vehicles on behalf of the Dealer.
5. During an inspection of the Dealer on or about October 14, 2021, it was discovered Salesperson A had been employed in this capacity by the Dealer since in or around November 2015. This is contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics.
6. The individual employed by the Dealer to ensure all sales staff maintain registration under the Act has since retired and a new individual has been hired. This new individual

is implementing new administrative processes to ensure this does not occur moving forward.

7. Salesperson A has since successfully obtained registration under the Act.

Dick's violations of the Code of Ethics

8. Dick has failed to ensure the Dealer conducts its business with the Act and Code of Ethics, and thus has personally contravened sections 6 and 9 of the Code of Ethics.

It is thereby agreed that Dick 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.

Professionalism

It is thereby agreed that Dick 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 and there were no complaints regarding the unregistered salesperson, it was discovered during an inspection.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$3,000 no later than **May 31, 2022.**
2. Dick 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 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. Dick 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 and Dick 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 \$3,000 no later than **May 31, 2022**.
2. Dick 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 Georgian College Automotive Certification 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. Dick 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