

## 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 -

O'NEIL MOTORS INC

- and -

ANDREW O'NEIL

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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 \$3,000 no later than **April 1, 2022.**
2. O'Neil is ordered to successfully complete the Georgian College Automotive Certification course no later than **April 1, 2022.**
3. The Dealer and O'Neil 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. O'Neil Motors Inc (the "Dealer") was first registered as a motor vehicle dealer in or around October 2007. Andrew O'Neil ("O'Neil") was first registered as a motor vehicle salesperson in or around May 2008.
2. O'Neil has been registered as a salesperson at the Dealer since in or around May 2008.
3. Since in or around May 2020, O'Neil has been the sole officer, as well as the person in charge of the day-to-day activities, of the Dealer.

#### ***Failure to provide records:***

4. On or about November 4, 2019, an OMVIC inspector advised O'Neil that an upcoming inspection of the Dealer was to take place on December 4, 2019 ("inspection notice").
5. The inspection notice requested Dealer to have available for the inspection, among other things, its motor vehicle purchase and sale/lease records for the previous 9 months.
6. On or about November 27, 2019, O'Neil emailed the OMVIC inspector and asked if the scheduled inspection could be rescheduled because the Dealer was to be closed for the next several months, and that "business is nonexistent".
7. The OMVIC inspector agreed to cancel the scheduled inspection but directed O'Neil to send to her via email copies of the purchase and sales agreements for the Dealer's 5 most recent trades. These were to be sent within 10 business days.
8. O'Neil and the Dealer failed to send these records to the OMVIC inspector as directed.
9. On or about December 23, 2019, the OMVIC inspector wrote to O'Neil via email and requested that he send to her the outstanding records.

10. On or about February 27, 2020, the OMVIC inspector again wrote to O'Neil via email and requested that he send to her the outstanding records.
11. On or about June 4, 2020, the OMVIC inspector again wrote to O'Neil via email and requested that he send to her the outstanding records.
12. On or about October 26, 2020, the OMVIC inspector again wrote to O'Neil via email and requested that he send to her the outstanding records.
13. On or about November 23, 2020, another OMVIC inspector physically visited the Dealer's registered location. The Dealer did not have a sign posted at this location, contrary to section 30(1) of Regulation 333/08, as well as section 9 of the Code of Ethics.
14. On or about November 24, 2020, the OMVIC inspector followed up with O'Neil regarding the outstanding records the Dealer had yet to provide. Specifically, the inspector requested the purchase and sale agreements for the following motor vehicle trades:
  - a. 2015 Nissan Rogue (VIN 5N1AT2MV2FC779417)
  - b. 2009 Jaguar XF (VIN SAJXA05B29HR03210)
  - c. 2012 Nissan Sentra (VIN 3N1AB6AP5CL737511)
  - d. 2017 Toyota Highlander (VIN 5TDJZRFH7HS399817)
  - e. 2010 Honda Accord (VIN 1HGCS1B85AA801343)
  - f. 2010 Subaru Outback (VIN 4S4BRJLC5A2315629)
15. On or about November 30, 2020, O'Neil provided the OMVIC inspector with copies of the aforementioned purchase agreements, with the exception of the 2017 Toyota Highlander (VIN \*399817). O'Neil failed to provide the Dealer's sale agreements for any of these trades.
16. On or about December 8, 2020, the OMVIC inspector again requested that O'Neil provide the outstanding sales agreements the Dealer had yet to provide.
17. On about January 14, 2021, the OMVIC inspector again requested that O'Neil provide the outstanding sales agreements the Dealer had yet to provide.
18. On or about January 20, 2021, the OMVIC inspector requested that O'Neil provide proof that the Dealer had a sign posted at its registered location, as required by section 30(1) of Regulation 333/08.
19. By letter dated April 7, 2021, the manager of OMVIC's inspection department requested that O'Neil provide the outstanding sales agreements that the Dealer had yet to provide.

20. On or about April 9, 2021, the OMVIC inspector again requested that O'Neil provide the outstanding sales agreements that the Dealer had yet to provide, as well proof that the Dealer had a sign posted at its registered location, as required by section 30(1) of Regulation 333/08.
21. The Dealer failed to provide the inspector with the requested documents, contrary to section 9 of the Code of Ethics.
22. O'Neil failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics, personally contravening sections 6 and 9 of the Code of Ethics.
23. Since the issuance of the Notice of Complaint, the Dealer has provided the inspector with all outstanding documents.

It is thereby agreed that the Dealer and O'Neil 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.

It is thereby agreed that O'Neil has 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.*

**Additional written submissions from OMVIC**

OMVIC provided the following information in an additional submission:

- The dealer has not been to discipline prior and is currently terminated.

**Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$3,000 no later than **April 1, 2022.**
2. O'Neil agrees to successfully complete the Georgian College Automotive Certification course no later than **April 1, 2022.**
3. The Dealer and O'Neil 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 O'Neil 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 **April 1, 2022**.
2. O'Neil is ordered to successfully complete the Georgian College Automotive Certification course no later than **April 1, 2022**.
3. The Dealer and O'Neil 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



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*Paul Burroughs, Chair*