

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 -

EMMANUEL NTIRI o/a EDLAVI MOTORS

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 5, 2015

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$7,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Ntiri is ordered to successfully complete the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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 shall comply with the *Motor Vehicle Dealers Act, 2002* 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

The parties to this proceeding agree that:

1. Emmanuel Ntiri o/a Edlavi Motors (the "Dealer") was first registered as a motor vehicle dealer in or around June 2011. Emmanuel Ntiri ("Ntiri") was first registered as motor vehicle salesperson in or around June 2011, and completed the OMVIC certification course in December 2010. At all material times, Ntiri was the sole proprietor and person in charge of the Dealer.
2. On or about June 20, 2011, the Dealer executed terms and conditions of registration (as a wholesale dealer), a copy of which are attached hereto as schedule "A". As per condition 22, the Dealer agreed to disclose in writing on the bill of sale all material facts about the vehicles it sells to its customers, including but not limited to, accidented and repaired.
3. During an inspection on or about November 17, 2011, a representative of the Registrar reviewed the June 20, 2011 terms and conditions with the Dealer. The Dealer was also reminded of their obligation to disclose all material facts about the vehicles it sells.
4. On or about March 7, 2012, the Dealer executed terms and conditions of registration (as a retail dealer), a copy of which are attached hereto as schedule "B". As per condition 27, the Dealer agreed to disclose in writing on the bill of sale all material facts about the vehicles it sells to its customers, including but not limited to, accidented and repaired. As per condition 36, the Dealer agreed to maintain bank accounts in accordance with section 59 of Regulation 333/08.
5. During an inspection on or about October 31, 2012, a representative of the Registrar reviewed the March 7, 2011 terms and conditions with the Dealer. The Dealer was also reminded of their obligation to disclose all material facts about the vehicles it sells.
6. OMVIC issued the following Dealer Standard publications reminding dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident repair history:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Fall 2013

7. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident repair history:
 - a. September 2012
 - b. December 2013

Material Fact Non-Disclosure:

8. On or about July 17, 2013, the Dealer purchased a 2003 Acura TL (VIN 19UUA56653A806956), with the following declarations:
 - a. Accident Repair \$12,053 – 05/09/2007
 - b. Accident Repair \$11,262 – 12/13/2009
 - c. Structural Damage

On or about July 17, 2013, the Dealer sold this vehicle without providing the purchaser with the required written disclosures above. This is contrary sections 42(10) and 42(19), of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC confirmation that the consumer is now fully aware of the vehicles accident repair history.

9. On or about September 16, 2013, the Dealer purchased a 2004 Chrysler Pacifica (VIN 2C8GF68404R205674), with the following declarations:
 - a. Accident Repair \$3,360 – 08/10/2004
 - b. Accident Repair \$4,920 – 06/16/2008
 - c. Accident Repair – 27/11/2009

On or about September 16, 2013, the Dealer sold this vehicle without providing the purchaser with the required written disclosures above. This is contrary section 42(19), of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC confirmation that the consumer is now fully aware of the vehicles accident repair history.

10. On or about September 17, 2013, the Dealer purchased a 2004 Nissan Maxima (VIN 1N4BA41E24C806181), declared as accident repaired in the amount of \$7,461. On or about September 20, 2013, the Dealer sold this vehicle without providing the purchaser with the required written accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC confirmation that the consumer is now fully aware of the vehicles accident repair history.

11. On or about December 4, 2013, the Dealer purchased a 2006 Nissan Altima (VIN 1N4AL11D86C158635), with the following declarations:
 - a. Accident Repair \$7,170 – 09/03/2010
 - b. Accident Repair \$5,863 – 10/15/2012

On or about December 5, 2013, the Dealer sold this vehicle without providing the purchaser with the required written disclosures above. This is contrary section 42(19), of

Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC confirmation that the consumer is now fully aware of the vehicles accident repair history. The Dealer has subsequently provided OMVIC confirmation that they have attempted to contact the consumer to make them aware of the vehicles accident repair history.

Bank Accounts:

12. Between on or about July 17, 2013, to on or about December 4, 2013, the dealer failed to process all financial transactions relating to the Dealer through the Dealer's bank account, contrary to section 59(3) of Regulation 333/08, as well as section 9 of the Code of Ethics.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Disclosure

42. Additional information in contracts of sale and leases.

(19). If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

(25). Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

Bank account

59. (1) A registered motor vehicle dealer who is not an outside Ontario dealer, lease finance dealer or fleet lessor shall maintain one or more non-trust accounts.

(3)(a) all amounts that the dealer receives in connection with a trade in a motor vehicle are deposited in a non-trust account.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

7. A registrant shall ensure that all documents used by the registrant in the course of trade in a motor vehicle are current and comply with the law.

9. 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 \$7,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Ntiri agrees to successfully complete the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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 agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Ntiri breached subsections 7 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 \$7,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.

2. Ntiri is ordered to successfully complete the OMVIC certification course, in person, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay 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 shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair