

Licence Tribunal  
Appeal d'appel en  
Tribunal matière de permis



DATE: 2014-11-14  
FILE: 8931/MVDA  
CASE NAME: 8931 v. Registrar, *Motor Vehicle Dealers Act 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B – dated June 25, 2014 to Revoke Registrations

Hasba Enterprises LTD o/a Sam's Auto Sales,  
Hassan Najem

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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**CONSENT ORDER**

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## CONSENT ORDER

Upon the application to the Tribunal by Hasba Enterprises LTD o/a Sam's Auto Sales, Hassan Najem, the Appellants, and the Registrar, under the *Motor Vehicle Dealers Act, 2002* for issuance of a Consent Order of the Tribunal without a hearing pursuant to section 4.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22; and

Having reviewed the written settlement signed by the Appellant and the Registrar, *Motor Vehicle Dealers Act, 2002* as to the disposition of these proceedings which is filed and attached hereto as Schedule "A";

NOW THEREFORE, upon consent of the parties, this Tribunal orders that the proceedings in this matter are concluded and disposed of without a hearing on the basis of the terms set out in the said Schedule "A", which are incorporated into and made part of this Order.

LICENCE APPEAL TRIBUNAL



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Gary Yee, Associate Chair

*RELEASED: November 14, 2014*

# SCHEDULE 'A'

TO: Licence Appeal Tribunal  
530 - 20 Dundas Street West  
Toronto ON M5G 2C2

FROM: The Registrar  
*Motor Vehicle Dealers Act, 2002*  
Ontario Motor Vehicle Industry Council  
65 Overlea Blvd., Suite 300  
Toronto ON M4H 1P1

AND FROM: Hasba Enterprises Ltd.  
o/a Sam's Auto Sales  
1157 Lorne Street  
Sudbury ON P3C 4R1

AND FROM: Hassan Ali Najem  
1157 Lorne Street  
Sudbury ON P3C 4R1

Pursuant to subsection 6(2) of the *Motor Vehicle Dealers Act, 2002* (the "MVDA"), HASBA ENTERPRISES LTD. o/a SAM'S AUTO SALES ("the Dealer"), HASSAN ALI NAJEM ("Najem") and the Registrar, *Motor Vehicle Dealers Act, 2002*, ("the Registrar"), in accordance with section 4.1 of the *Statutory Powers Procedure Act*, do hereby waive the requirements of a hearing and consent to an Order of the Licence Appeal Tribunal based upon the following terms and conditions:

## REGISTRATION

1. The Dealer and Najem will comply with all requirements of the MVDA and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time. Najem, on behalf of the Dealer, further agrees to read all correspondence and bulletins issued by the Ontario Motor Vehicle Industry Council (OMVIC).
2. The Dealer and Najem will provide the Registrar with notice in writing within five (5) days of any substantive changes to the Dealer's business plan, or the information that was provided in obtaining the Dealer and Najem's registrations, pursuant to section 31 of Ontario Regulation 333/08.
3. The Dealer and Najem agree to notify the Registrar within five (5) days of any change in partners or owner, person(s) in charge, and signing authority for the Dealer. The Dealer and Najem further agree not to effect such changes without first obtaining the Registrar's prior approval, in writing.
4. The Dealer and Najem acknowledge that "trade" refers to buying, selling, leasing, advertising or exchanging an interest in a motor vehicle, or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle, as defined in the MVDA and pursuant to section 36 through to and including section 51 of Ontario Regulation 333/08, and is not limited to the signing of contracts. The Dealer and Najem further acknowledge that this includes attendance at auction on behalf of the Dealer.



5. The Dealer and Najem will ensure that their registrations will not be used to trade in motor vehicles where Najem, on behalf of the Dealer, knows, or ought to know, that trading motor vehicles will facilitate an illegal or unethical practice.
6. The Dealer and Najem will ensure that all personnel, agents, assignees or anyone acting on behalf of the Dealer or Najem are informed of the Terms and Conditions contained in this document to the extent necessary to ensure compliance with these Terms and Conditions.
7. The Dealer and Najem will ensure that all personnel, agents, assignees or anyone acting on behalf of the Dealer or Najem to trade motor vehicles will be registered as a salesperson to the Dealer.
8. The Dealer and Najem will not conduct business with any person acting as a motor vehicle dealer and trading in motor vehicles without first confirming that the person is registered as a motor vehicle dealer in accordance with the MVDA.

**PREMISES**

9. The Dealer and Najem will operate exclusively from the location approved by the Registrar and will not invite the public to trade at a place other than the approved location, pursuant to section 28 of Ontario Regulation 333/08.
10. The Dealer and Najem will maintain a sign at the Dealer's registered premise that is visible to the public, pursuant to section 30 of Ontario Regulation 333/08.
11. The Dealer and Najem will ensure that all advertisements placed by or on behalf of the Dealer will identify the registered name, address and phone number of the location approved by the Registrar, pursuant to section 36(2) of Ontario Regulation 333/08.
12. The Dealer and Najem agree not to change the location approved by the Registrar without first obtaining the Registrar's approval, in writing, pursuant to section 31 of Ontario Regulation 333/08. The Dealer and Najem will then provide the Registrar with notice in writing within five (5) days of any such change of the location.

**BOOKS AND RECORDS**

13. The Dealer and Najem will maintain all books and records at the Dealer's registered premises in accordance with the MVDA and pursuant to section 52 through to, and including, section 60 of Ontario Regulation 333/08.
14. The Dealer and Najem will maintain books and records which accurately record the true nature of transactions involving their trade of motor vehicles. The Dealer and Najem will not be involved in the creation of books and records which are false or misleading as to the true nature of a transaction involving their trades of motor vehicles.
15. The Dealer and Najem will provide free access to the Dealer's books and records to an authorized representative of the Registrar in accordance with section 15 of the MVDA.
16. The Dealer and Najem will maintain a garage register in accordance with section 60(1) of the *Highway Traffic Act* ("HTA") and pursuant to section 57 of Ontario Regulation 333/08.



17. The Dealer and Najem will not purchase a vehicle without first ensuring that the vehicle is registered to the seller in the records of the Ontario Ministry of Transportation ("MTO").
18. The Dealer and Najem will ensure that all vehicles purchased will be registered within 6 days in accordance with section 11 of the HTA.
19. The Dealer and Najem will undertake to ensure that all vehicles sold will be registered in the name of the purchaser in the records of the MTO before releasing the vehicle to the purchaser.
20. The Dealer and Najem will undertake that in the event the Dealer's books and records are lost, stolen or destroyed in whole or in part, the Registrar will be advised, in writing, within 5 days of the event pursuant to section 55 of Ontario Regulation 333/08. The report will include all relevant documentation, which will include, but is not limited to, police reports, insurance claims and affidavits. The Dealer and Najem further agree to make all reasonable efforts to reconstitute the lost, stolen or damaged records.

#### DISCLOSURE

21. The Dealer and Najem will ensure that all trades in motor vehicles are completed in accordance with section 30 of the MVDA and pursuant to sections 39, 40, 41, 42 and 43 of Ontario Regulation 333/08 and section 4 of Ontario Regulation 332/08, where applicable.
22. The Dealer and Najem will disclose all material facts about the motor vehicles for purchase or lease to their customers. The Dealer and Najem further agree that, notwithstanding whether or not they consider a fact to be material, the Dealer and Najem will comply with the disclosure obligation. The Dealer and Najem further agree to disclose all material facts on the Bill of Sale, in writing. The Dealer and Najem will ensure compliance with this disclosure obligation notwithstanding whether or not the vehicle has been branded through the MTO. For greater certainty, a material fact is one that if disclosed could affect the decision of a reasonable person to purchase or lease the vehicle or affect the purchase price.
23. In the case of damaged vehicles, the Dealer and Najem further agree to disclose as much detail as possible regarding the nature and severity of the damage.
24. The Dealer and Najem undertake to independently research the history of all the motor vehicles under trade to ensure that all material facts are disclosed.
25. The Dealer and Najem agree not to represent any charges or fees on a Bill Sale as being required by law where the charges or fees are not required by law. For greater clarity, this includes charges or fees such as tax, registration fee or certification.
26. The Dealer and Najem will comply with all requests made by the Registrar in relation to any failure to comply with disclosure obligations. Further, where the Registrar considers any information to be a material fact, the Dealer and Najem will provide compensation to a purchaser concerning a motor vehicle under trade.
27. The Dealer and Najem agree to accept full responsibility for the quality of any repairs or alterations to a motor vehicle completed by the Dealer or Najem's personnel, agents, assignees, affiliated repair facilities or anyone acting on behalf of the Dealer or Najem.



**PROFESSIONALISM**

- 28. The Dealer and Najem acknowledge that, pursuant to section 14 of the MVDA, the Registrar may request information from them in relation to any complaints, and that they are under a duty to reply to the Registrar's request for information as soon as practicable.
- 29. The Dealer and Najem will be courteous, honest and professional in any written or other communication with the Registrar, the Registrar's representatives, other registrants, consumers or others.
- 30. The Dealer and Najem will ensure that all advertisements placed by or on behalf of the Dealer comply with section 36 of Ontario Regulation 333/08, as well as the *Code of Ethics* in Ontario Regulation 332/08, the OMVIC Standards of Business Practice, 2010 and the OMVIC Guidelines, as may be amended from time to time.

**EDUCATION**

- 31. Najem agrees to successfully complete the Ontario Motor Vehicle Industry Council's Automotive Certification Course ("Certification Course") within ninety (90) days of the release of this Order, and to be responsible for all fees in relation to enrolment and completion of the course.

**ACKNOWLEDGMENT AND UNDERTAKING:**


- 32. The Registrar is relying on the accuracy and completeness of all documents, statements or information provided by the Dealer and Najem.
- 33. The documents, information or statements provided to the Registrar are true to the best of the Dealer and Najem's knowledge and belief.
- 34. The Registrar may take further administrative action, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these terms and conditions.

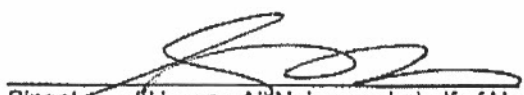


PAGE 5/5 - RCVD AT 11/11/2014 1:35:41 PM [Eastern Standard Time] - SVR:OMVICFAX-B/2 - DNIS:3758 - CSID:7056881931 - DURATION (mm-ss):03-36

35. Independent legal advice has been obtained, or the Dealer and Najem have had the opportunity to obtain independent legal advice, respecting consent to the Terms and Conditions contained in this document.

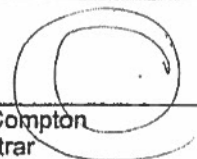
Signed in the City of Sudbury this 11 day of Nov 2014

  
\_\_\_\_\_  
Signature of Appellant  
Hassan Ali Najem

  
\_\_\_\_\_  
Signature of Hassan Ali Najem on behalf of Hasba Enterprises Ltd.  
(I have authority to bind the corporation)

These Terms and Conditions are accepted by the Registrar, *Motor Vehicle Dealers Act, 2002*

Date: Nov 12/14

  
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Carl Compton  
Registrar