

## 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 -

AUTOTEK CAR SALES & SERVICE (1996) LTD o/a AUTOPRICE CANADA /  
APPROVAL HUB CANADA/BEEBA BOYS MOTORCLUB

- AND -

RAMZI DIAB

- AND -

JOSEPH DIAB

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**Date of Hearing:** December 7, 2022

**Date of Decision:** December 7, 2022

**Findings:**

Ramzi Diab – Three (3) Breaches of Section 6 and Three (3) Breaches of Section 9 of the Code of Ethics under Ontario Regulation 332/08

Joseph Diab – Three (3) Breaches of Section 6 and Three (3) Breaches of Section 9 of the Code of Ethics under Ontario Regulation 332/08

Autotek Car Sales & Service (1996) Ltd o/a Autoprice Canada/ Approval Hub – Three (3) Breaches of Section 7 and Three (3) Breaches of Section 9 of the Code of Ethics under Ontario Regulation 332/08

**Order:**

1. The Dealer agrees to pay a fine in the amount of \$15,000. \$5,000 will be paid no later than December 31, 2022, and the remaining balance (\$10,000) will be paid no later than **June 30, 2023.**
2. Ramzi agrees to pay a fine in the amount of \$2,500 no later than **February 28, 2023.**
3. Joseph agrees to pay a fine in the amount of \$2,500 no later than **February 28, 2023.**
4. Ramzi and Joseph agree to successfully complete the Georgian College Automotive Certification Course (the "Course") no later than **February 28, 2023.**
5. Ramzi and Joseph agree to review the OMVIC June 2015 Disclosure webinar no later than **December 31, 2022.**
6. Ramzi and Joseph agree to review the OMVIC October 2015 Consumer Protection Act and Sale of Goods Act webinar no later than **December 31, 2022.**
7. The Dealer agrees to offer all current and future sales staff the opportunity to complete Course. Current sales staff will be offered the Course no later than **December 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 *Motor Vehicle Dealers Act, 2002.*
8. The Dealer, Ramzi, and Joseph agree to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

**Introduction**

This hearing was held virtually via video conference. The Respondents were represented by counsel, Justin Jakubiak. Ms. Andrea Korth was present on behalf of the OMVIC Registrar and joined by OMVIC's counsel, Mr. Hussein Panju. Independent Legal Counsel (ILC) to the Panel was Ted Marrocco.

This matter proceeded by way of an Agreed Statement of Facts (ASF), and Joint Submission on Penalty (JSOP).

The Notice of Complaint along with a Notice of Further Particulars was marked as Exhibit 1. The ASF was marked as Exhibit 2. The signed JSOP is attached to Exhibit 2 at pages 6-8. With leave of the Panel, the parties were permitted to speak to both the ASF and the JSOP at the same time. The Panel made inquiries of the Respondents'

counsel and was satisfied that all admissions contained in the ASF made on behalf of both the Registrants and the Dealer were voluntary, informed, and unequivocal.

The Panel was satisfied that the facts as set out in the ASF constituted breaches of the Code of Ethics. In particular, the Dealer was found to have engaged in three breaches of sections 7 and 9, and the Registrants each engaged in three breaches of sections 6 and 9 of the Code of Ethics as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002* (the "Act").

The Panel was satisfied, for the reasons below, that the JSOP contained in Exhibit 2 was commensurate with the seriousness of the above breaches and would not undermine the publicly perceived integrity of the Tribunal.

An order was made on the record consistent with the terms of the JSOP before the conclusion of the hearing. These are the reasons for the Panel's decision.

### **Agreed Statement of Facts**

The ASF states as follows:

Autotek Car Sales & Service (1996) Ltd o/a Autoprice Canada /Approval Hub Canada have breached the following:

Sections 7 and 9 of the Code of Ethics, Regulation 332/08

Ramzi Diab and Joseph Diab have breached the following:

Sections 6 and 9 of the Code of Ethics, Regulation 332/08

### **Summary of Agreement**

#### **Background**

1. Autotek Car Sales & Service (1996) Ltd o/a Autoprice Canada / Approval Hub Canada (the "Dealer") was first registered as a motor vehicle dealer in or around February 1997.
2. Ramzi Diab ("Ramzi") was first registered as a motor vehicle salesperson in or around March 1988. At all material times, Ramzi was an officer as well as a person in charge of the day-to-day activities of the Dealer.
3. Joseph Diab ("Joseph") was first registered as a motor vehicle salesperson in or around March 1993. At all material times, Joseph was an officer as well as a person in charge of the day-to-day activities of the Dealer.

#### **OMVIC Publications:**

#### **Material Fact Disclosure:**

4. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their obligations to disclose the fact that a vehicle was a former daily rental and/or has been previously registered out of province, in writing on the bill of sale. The publications are referenced in the attached Schedule "A" and continue to be available on OMVIC's website.

**Credit and Lease disclosure:**

5. In June 2010, OMVIC issued a bulletin advising dealers of their credit and lease disclosure obligations.
6. In the summer of 2010 OMVIC issued a Dealer Standard publication which further reminded dealers of their credit and lease disclosure obligations.

**Direct correspondence with Dealer:**

7. During an inspection of the Dealer on or about November 30, 2016, representatives of OMVIC reminded Joseph of the Dealer's obligation to ensure the proceeds of warranty sales are permitted to the warranty provider within seven days of the date of sale. Joseph was also reminded to ensure any fees the Dealer charges consumers for arranging financing must be included in the annual percentage rate ("APR").
8. On or about September 30, 2019, representatives of OMVIC advised Joseph of the Dealer's obligation to ensure all material facts about a vehicle are disclosed in writing on the bill of sale. Joseph was again reminded any fees the Dealer charges consumers for arranging financing must be included in the annual percentage rate ("APR").

**Consumer complaint:**

9. On or about July 30, 2020, Consumer A purchased a 2015 Audi Q3 (VIN WA1GFEFS4FR014386) from the Dealer. Consumer A traded in a vehicle towards the purchase of the Audi. The bill of sale failed to indicate which vehicle was being traded in, contrary to section 43 of ON Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
10. On or about September 16, 2020, Consumer A contacted OMVIC, alleging issues with regarding to the Audi's condition.
11. On approximately six occasions, OMVIC representatives requested Ramzi and/or Joseph to provide documents regarding the vehicle's reconditioning history as well as the loan payment on Consumer A's trade in vehicle.
12. Ramzi and Joseph failed to provide the OMVIC representatives with the requested documentation. This is contrary to sections 6 and 9 of the Code of Ethics.

**Current non-compliance:**

13. During an inspection of the Dealer which commenced on or about June 7, 2021 and was completed on or about June 9, 2021, the following areas of non-compliance were found:

**Non-compliant bills of sale:**

14. Between on or about April 22, 2021 and on or about May 27, 2021, the Dealer sold numerous vehicles and arranged financing for the purchasers of those vehicles. The Dealer charged the purchasers of these vehicles' fees between \$699 and \$1,499 for arranging their vehicle financing but failed to include these fees in the loan "cost of borrowing" and APR calculations. This is contrary to section 63 of ON Regulation 17/05 of the *Consumer Protection Act*, 2002, as well as sections 7 and 9 of the Code of Ethics.
15. On or about May 5, 2021, the Dealer purchased a 2018 Hyundai Elantra (VIN KMHD84LF2JU568340), declared as being a former daily rental unit. On or about May 8, 2021, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of

sale of the vehicle's former daily rental history. This is contrary to sections 42(7) and 42(25) of ON Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

16. On or about May 21, 2021, the Dealer sold a 2016 BMW 5 series (VIN WBA5A7C50GG145668). This vehicle was previously registered in Quebec. The Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicle's previous out of province registration. This is contrary to sections 42(22) and 42(25) of ON Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
17. On or about May 5, 2021, the Dealer purchased a 2018 Hyundai Elantra (VIN KMHD84LFXJU626159), which was declared as being a former daily rental unit. On or about May 22, 2021, the Dealer sold this vehicle without providing the purchaser with written disclosure in the bill of sale of the vehicle's former daily rental history. This is contrary to sections 42(7) and 42(25) of ON Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

**Consumer B:**

18. On or about October 2, 2021, Consumer B purchased a 2016 Nissan Rogue. Consumer B was not provided a copy of the bill of sale she signed at the time of purchase. This is contrary to section 40(2) of ON Regulation 333/08, as well as section 9 of the Code of Ethics.
19. Consumer B intended to finance this purchase through TD Bank.
20. Shortly thereafter and prior to taking delivery of the vehicle, Consumer B determined she no longer wanted to go through with her purchase and requested that the contract be cancelled.
21. The Dealer charged Consumer B approximately \$1,800 to cancel the contract, citing expenses incurred as a result of the cancellation ("liquidated damages"). The Dealer failed to provide Consumer B with an itemized list of the liquidated damages allegedly incurred. This is contrary to section 9 of the Code of Ethics.
22. On or about October 14, 2021, Consumer B contacted OMVIC to file a complaint against the Dealer for its failure, as of that date, to cancel the financing contract with TD Bank.
23. The Dealer cancelled the financing contract with TD Bank in or around late December 2021.
24. By email dated February 9, 2022, an OMVIC representative requested the Dealer provide the following documents with respect to Consumer B's complaint:
  - a. Consumer B's bill of sale.
  - b. The cancellation agreement between the Dealer and Consumer B.
25. By email dated February 18, 2022, the OMVIC representative requested the Dealer provide the following documents with respect to Consumer B's complaint:
  - c. Consumer B's bill of sale.
  - d. The cancellation agreement between the Dealer and Consumer B.
  - e. The TD finance contract.
  - f. The Dealer's list of liquidated damages and supporting documents regarding said damages.
  - g. Any documentation concerning the re-sale of vehicle, if applicable.
26. On or about February 22, 2022, the OMVIC representative again requested the above referenced documents because they had not yet been provided.
27. On or about March 8, 2022, the OMVIC representative again requested the above referenced documents.

28. On or about March 11, 2022, the OMVIC representative again requested the above referenced documents.
29. On or about March 21, 2022, the OMVIC representative again requested the above referenced documents.
30. On or about March 29, 2022, an OMVIC representative again requested the above referenced documents.
31. On or about April 6, 2022, an OMVIC representative again requested the above referenced documents.
32. On or about April 22, 2022, an OMVIC representative again requested the above referenced documents.
33. The Dealer has since agreed to refund Consumer B the \$1,800 she was charged for cancelling her purchase.
34. The Dealer agrees that upon receipt of, or becoming aware of, a complaint from any of its customers, it will use its best efforts to respond to and assist the customer with their complaint withing a reasonable amount of time.
35. The Dealer has since appointed Joseph as its chief compliance officer, responsible to ensure compliance with the Act and the regulations thereunder. Specifically, Joseph shall be responsible to ensure that that the Dealer's bills of sale provide cost of borrowing disclosure, as well as APR calculations, which are compliant with section 63 of Ontario Regulation 17/05 of the *Consumer Protection Act, 2002*, as amended.
36. The Dealer has since appointed Ramzi as the dealer contact for all OMVIC matters, including consumer complaints. Ramzi shall undertake to respond to all OMVIC inquiries within 3 business days (unless otherwise agreed).

**Generally:**

37. By failing to ensure that the Dealer conducted its business in compliance with the law, both Ramzi and Joseph have personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following sections of the *Consumer Protection Act, 2002* and *Motor Vehicle Dealers Act, 2002*:

*Consumer Protection Act, 2002:*

Regulation 17/05

Initial disclosure statement, fixed credit agreement

63. (1) The initial disclosure statement for a credit agreement for fixed credit shall be in writing and, for the purpose of subsection 79 (2) of the Act, shall disclose the following information, in addition to the information required under subsection 78 (1) of the Act:

- 0.1 The outstanding principal balance as at the beginning of the term of the credit agreement.
  1. The total of the advances to be made to the borrower.
  2. If more than one advance is to be made to the borrower, the nature, timing and amount of each advance.
  3. The length of the term of the credit agreement.

4. The cost of borrowing.
5. The length of the term of the amortization period, if different from the length of the term of the credit agreement.
6. The interest rate payable by the borrower under the credit agreement, if the rate will not change during the term of the credit agreement.
7. If the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement,
  - i. the initial interest rate payable by the borrower under the credit agreement,
  - ii. the manner of determining the annual interest rate at any time during the term of the credit agreement, and
  - iii. unless the amount of the scheduled payments is adjusted to account for changes in the interest rate, the lowest interest rate at which the scheduled payments would not cover the interest that would accrue between consecutive scheduled payments based on the outstanding principal balance as at the beginning of the term of the credit agreement.
8. The date on which interest begins to accrue under the credit agreement.
9. The circumstances under which interest is compounded under the credit agreement.
10. For each element of the cost of borrowing, other than interest, the nature of the element and amount payable by the borrower.
11. The details with respect to grace periods under the credit agreement.
12. The annual percentage rate for the credit agreement.
13. Subject to subsection (2), the optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate any optional service of a continuing nature and the manner of exercising that right.
14. The total of all payments the borrower is required to make in connection with the credit agreement and the timing and amount of each payment, including, without limitation, any down payment, trade-in allowance, balloon payment and final payment.
15. If the credit agreement does not require the borrower to make scheduled payments,
  - i. the circumstances under which the outstanding balance or a portion of it is required to be paid by the borrower, or
  - ii. the provisions of the credit agreement that set out those circumstances.
16. The method used to apply each payment by the borrower against the accumulated cost of borrowing and against the outstanding principal balance.
17. The prepayment rights, charges and penalties that apply to the credit agreement.
18. The method of calculating the amount that the lender is required to refund or credit to the borrower under subsection 76 (2) of the Act and section 60 of this Regulation, if the borrower prepays the full outstanding balance under the credit agreement.
19. The default charges under the credit agreement.
20. If the borrower is giving a security interest in personal property to secure the borrower's indebtedness under the credit agreement, a description of the property that will be subject to the security interest.
21. If the credit agreement requires the borrower to purchase insurance,
  - i. that the borrower may purchase the insurance from any insurer who may lawfully provide that type of insurance and may purchase the insurance directly from the insurer or through an agent of the borrower's choice, and
  - ii. if the credit agreement gives the lender the following right, that despite subparagraph i, the lender has the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

*Motor Vehicle Dealers Act, 2002:*  
Regulation 333/08:

40(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

1. The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39(2).

39(2)(10) For each contract mentioned in subsection (2) into which the registered motor vehicle dealer enters, the dealer shall ensure that,

- (a) the contract is signed by the parties;
- (b) if a registered salesperson is acting on behalf of the dealer respecting the sale, the contract is signed by the salesperson; and
- (c) the purchaser receives a copy of the contract immediately after signing it.

42(7) If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the Motor Vehicle Dealers Act or the Motor Vehicle Dealers Act, 2002,
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.

42(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.

It is thereby agreed that the Dealer has breached the following section of the Code of Ethics, ON Regulation 332/08:

*Compliance*

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

It is thereby agreed that the Dealer, Ramzi, and Joseph 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 Ramzi and Joseph have 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.*

### **Joint Submission on Penalty**

The JSOP states that:

1. The Dealer agrees to pay a fine in the amount of \$15,000. \$5,000 will be paid no later than December 31, 2022 and the remaining balance (\$10,000) will be paid no later than **June 30, 2023.**
2. Ramzi agrees to pay a fine in the amount of \$2,500 no later than **February 28, 2023.**
3. Joseph agrees to pay a fine in the amount of \$2,500 no later than **February 28, 2023.**
4. Ramzi and Joseph agree to successfully complete the Georgian College Automotive Certification Course (the "Course") no later than **February 28, 2023.**
5. Ramzi and Joseph agree to review the OMVIC June 2015 Disclosure webinar no later than **December 31, 2022.**
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7. The Dealer agrees to offer all current and future sales staff the opportunity to complete Course. Current sales staff will be offered the Course no later than **December 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.
8. The Dealer, Ramzi, and Joseph agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

### **Reasons for Decision**

There were numerous allegations admitted in this matter. During the hearing, the Panel expressed concern about the sheer number of inaccurate bills of sale detailed in the ASF. There were concerns with the number of transgressions arising in such a short period of time as well as concerns that the Dealer wasn't properly disclosing material facts that would enable consumers to make informed purchase decisions. The parties were invited to provide further submissions to address these concerns. With the benefit of the parties' further submissions, the Panel ultimately accepted the joint submission.

In the end, the Panel understands that all the issues arising in paragraph 14 of the ASF were the result of a software malfunction that was cured on or about May 27, 2021. The Panel also understands that policies, procedures, and practices at the Dealer were overhauled to address other matters arising in the Notice of Complaint including the failure to provide complete vehicle registration histories and failures to respond to OMVIC requests for documentation. Mr.

Jakubiak, counsel for the Registrants, advised the Panel that the individual respondents, Joseph Diab and Ramzi Diab, have assumed distinct and individual roles of responsibility in the Dealer focused on oversight to ensure that these types of situations do not recur. OMVIC counsel concurred with this submission.

The Panel was also specifically assured that the penalty contained in the JSOP had been crafted to advert to the matters raised by the individual identified as "Consumer B". Counsel submitted, without breaching settlement privilege, that the proposed fine amounts had been elevated in contemplation of that incident. Ordinarily the Panel would not require this level of detail in submissions but given that it was offered jointly and without objection, the Panel accepted it.

The Dealer has been in business for over 20 years and the Panel understands it has no prior discipline history. The Panel was taken to other decisions which showed that the penalty sought in the within matter was commensurate with other decisions, even some where the respondent had been before the Discipline Committee on multiple occasions.

As a result of the additional submissions, the Panel was satisfied that all concerns had been addressed.

The Panel held that the JSOP addresses the appropriate objectives of penalty including specific and general deterrence, remediation, and public protection. The Panel was satisfied that the JSOP was consistent with the public interest and did not jeopardize the publicly perceived integrity of the Tribunal.

Ontario Motor Vehicle Industry Council  
Discipline Committee

A handwritten signature in cursive script, appearing to read "Deb Mattina", is written over a horizontal line.

*Deb Mattina, Chair*  
*Chris Pinelli, Vice Chair*  
*Stuart Sherman, Vice Chair*