

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: Ottofact Inc. and Khasan Aripov v. Registrar, *Motor Vehicle Dealers Act, 2002*,
2018 ONLAT-MVDA 11502

Date: 2018-11-29
File Number: 11502/MVDA

Appeal from a Notice of Proposal of the Registrar, *Motor Vehicle Dealers Act, 2002*,
S.O. 2002, c. 30, Sch. B to Refuse Registration.

Between:

Ottofact Inc. and Khasan Aripov

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

CONSENT ORDER

Order Made by: Stephen Scharbach

Date of Hearing: November 27, 2018

Ottofact Inc. and Khasan Aripov (“appellants”), requested a hearing by the Tribunal of the respondent’s proposal to refuse registration as a motor vehicle dealer and salesperson respectively under the *Motor Vehicle Dealers Act, 2002* (“MVDA”).

The parties have advised me that they resolved the issues in dispute and waive the requirements of a hearing. They have requested that I issue an order on consent disposing of this proceeding.

The parties filed with the Tribunal a written agreement signed by the parties on November 19, 2018 which sets out the terms of their resolution and the order requested. That agreement is attached to this order and marked as Schedule “A”.

Under that agreement, the Registrar agrees to register Ottofact Inc. as a motor vehicle dealer and to register Khasan Aripov as a motor vehicle salesperson with specified conditions attached to both registrations.

Given the parties’ agreement and on their consent, pursuant to s. 9(5) of the *Motor Vehicle Dealers Act, 2002* and s. 4.1 of the *Statutory Powers Procedure Act, R.S.O., 1990, c S.22*, **I substitute my opinion for that of the Registrar and order as follows:**

The Registrar is directed to register Ottofact Inc. as a motor vehicle dealer and to register Khasan Aripov as a motor vehicle salesperson. The following conditions shall be attached to both registrations:

1. Ottofact Inc. and Khasan Aripov (“Appellants”) will comply with all requirements of the MVDA and Ontario Regulation 333/08, the Code of Ethics in Ontario Regulation 332/08, and the Ontario Motor Vehicle Industry Council (“OMVIC”) Standards of Business Practice, 2010, as may be amended from time to time. The appellants shall read all correspondence and bulletins from OMVIC as they are released.
2. The appellants will provide the Registrar with notice in writing, within five (5) days, of any substantive changes to their business plan or information provided in obtaining registration, pursuant to section 31 of Ontario Regulation 333/08.
3. The appellants will ensure that all personnel, agents, assignees, or anyone acting on behalf of Ottofact Inc. (Ottofact”) to trade in motor vehicles are registered as a salespersons to Ottofact.
4. The appellants will ensure that all personnel, agents, assignees or anyone acting on behalf of the appellants are informed of the conditions contained in this document to the extent necessary to ensure compliance with these conditions

5. The appellants 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 and its regulations.

Class Restrictions

6. The appellants will ensure that Ottofact is registered solely under the broker class and that Ottofact is compliant with all obligations of that class under the MVDA and its regulations.
7. The appellants shall only facilitate a trade where the vehicle that is involved is a new motor vehicle, pursuant to the MVDA and its regulations. Ottofact shall not facilitate a trade in a used motor vehicle unless it has obtained the prior written consent of the Registrar.
8. The appellants shall not take possession or control of a motor vehicle that is currently, may reasonably be expected to be, or has been the subject of a trade facilitated by Ottofact.
9. The appellants shall not take a property interest in a motor vehicle that is currently, may reasonably be expected to be, or has been the subject of a trade facilitated by Ottofact.
10. The appellants will ensure that Ottofact acts solely on the behalf of customers who are not registrants and that Ottofact does not represent the interests of any person other than that of the customer, pursuant to section 20 of Ontario Regulation 333/08.

Payments, Deposits, and Trusts

11. The appellants will ensure that Ottofact does not take, hold, or accept a deposit related to a trade in a motor vehicle. Ottofact shall not process or facilitate the transfer of a deposit through an online service.
12. The appellants will ensure that Ottofact does not take or handle any funds that may be used to pay for a trade in a motor vehicle where Ottofact is acting on behalf of a customer.
13. The appellants will ensure that Ottofact does not take or handle any funds that either are or ought to have been put into trust under the MVDA and its regulations.

14. The appellants shall not take a hold on a customer's credit card, or similar instrument, unless it can readily demonstrate that all of the following conditions were met:
 - (i) The customer was informed that a hold would be taken to use Ottofact's services, and the maximum amount of that hold;
 - (ii) Ottofact has provided the Registrar with notice, in writing, of any change in the maximum hold that it may take, pursuant to section 31 of Ontario Regulation 333/08;
 - (iii) The customer was informed under what situations Ottofact would be entitled to process the hold to Ottofact's benefit or refuse to release the hold;
 - (iv) The customer was informed under what circumstances the customer would be entitled to the release of the hold and that the release would be in full;
 - (v) For all of the above, the customer had been so informed before the customer and Ottofact had entered into an agreement or contract to facilitate a trade;
 - (vi) For the purposes of this section, "informed" includes full disclosure by Ottofact that has been made in a clear, comprehensive, and prominent manner.

15. The appellants shall only process a hold to Ottofact's benefit, or refuse to release a hold, if all of the following conditions have been met:
 - (i) Ottofact has notified the customer that it has matched the customer to an offer from a registered motor vehicle dealer that meets all of the client's instructions;
 - (ii) Ottofact has allowed the customer to view all such offers and allowed a reasonable timeframe to elapse for the customer to consider their decision;
 - (iii) After all of the above, the customer makes the decision to not complete the trade;
 - (iv) Ottofact is not in breach or contravention of the MVDA, its regulations, this Order, or any other applicable law in relation to the trade.

16. The appellants shall ensure that any contract Ottofact enters into to facilitate a trade in a motor vehicle on behalf of a customer who is not a registered motor vehicle complies with section 49(1) of Ontario Regulation 333/08.

Return of Funds

17. Ottofact shall immediately return all financial contributions or financing that Khasan has provided or may be providing to Ottofact, either directly or indirectly. The appellants will further supply the Registrar, in writing, with clear proof that these funds have been returned in full by their respective financial institutions, including bank records, within 30 days of registration.
18. The appellants will ensure that Khasan does not provide any further monies or financing to Ottofact for two (2) years from the appellants' date of registration.

Restricted Persons

19. The appellants shall ensure that Uktam Aripov does not have any interest, control, or involvement in the business of Ottofact.
20. The appellants shall ensure that Shakhlo Askarova does not have any interest, control or involvement in the business of Ottofact.

Books and Records

21. The appellants will maintain all books and records at Ottofact's registered premises in accordance with the MVDA and pursuant to section 52 through to and including section 60 of Ontario Regulation 333/08.
22. In the event the appellants' books and records are lost, stolen or destroyed in whole or in part, they shall advise the Registrar in writing, within five (5) days of the event pursuant to section 55 of Ontario Regulation 333/08; and will include all relevant documentation. The documentation will include, but is not limited to, police reports, insurance claims and affidavits. The appellants shall make all reasonable efforts to reconstitute the lost, stolen or damaged records.
23. The appellants will obtain a receipt prior to the removal of any records by a government or professional agency; or any other person or entity, from the registered premise. Such receipt will include the recipient's name, address, telephone number, description of records taken, the time of return and signature of recipient. The appellants shall provide the receipt to OMVIC when requested by the Registrar.

Terms of Use Agreements

24. The appellants will deliver terms of use agreements to each party to a trade in advance of Ottofact entering into any agreement or contract to facilitate the trade.

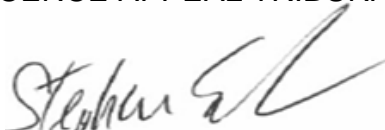
25. The appellants will ensure any terms of use agreement entered into by Ottofact to facilitate a trade in a motor vehicle on behalf of a customer is compliant with section 49 of Ontario Regulation 333/08, including that disclosures be displayed in a clear, comprehensible, and prominent manner.
26. The appellants will deliver its terms of use agreement to the customer, by default, to all of the following locations:
 - (i) any e-mail account that the customer has registered with Ottofact, as applicable;
 - (ii) any inbox, or similar, that the customer has with Ottofact's messaging service(s);
 - (iii) via Ottofact's online platform, such as an electronic terms of use agreement.
27. The appellants will ensure that the Registrar is notified and provided with, in writing, a copy of Ottofact's standard terms of use agreements, as would be delivered to each party to a trade, within 60 days of registration.
28. The appellants will not trade in a motor vehicle until these terms of use agreements have been fully completed, provided to the Registrar, and are ready to be disseminated to the parties of a trade as part of the appellants' ordinary course of business.

Restricted Activities

29. The appellants will not involve Ottofact in the financing process, negotiation of same, or in the sale of any additional products, warranties, service plans, or similar that is currently, may reasonably be expected to be, or has been the subject of a trade facilitated by Ottofact.
30. The appellants will ensure that any messaging service offered by Ottofact, either directly or indirectly, only passively delivers messages between the parties to a trade. For clarity, all communications between the customer and participating dealer about a trade in a motor vehicle must be solely between these parties.

31. The appellants will ensure that if their client does not provide instructions on the maximum mileage of the vehicle that Ottofact discloses to the customer that the mileage shall be set at no more than 400 kilometers. Ottofact must further clarify this mileage does not negate that the vehicle is a new motor vehicle, if applicable.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read "Stephen Scharbach", is written over a horizontal line. The signature is cursive and somewhat stylized.

Stephen Scharbach, Member

Released: November 29, 2018

Schedule "A"

TO: Licence Appeal Tribunal
Safety, Licensing Appeals
& Standards Tribunals Ontario (SLASTO)
77 Wellesley Street West
Box 250
Toronto, ON M7A 1N3

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

AND FROM: Ottofact Inc. (Applicant)

AND FROM: Khasan Aripov (Applicant)

Pursuant to subsection 6(2) of the *Motor Vehicle Dealers Act, 2002* (the "MVDA"), Ottofact Inc. ("Ottofact") and Khasan Aripov ("Khasan"), together referred to as the "Applicants", and the Registrar, *Motor Vehicle Dealers Act, 2002* ("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 conditions of registration:

1. The Applicants will comply with all requirements of the MVDA and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, and the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010, as may be amended from time to time. The Applicants further agree to read all correspondence and bulletins from OMVIC as they are released.
2. The Applicants will provide the Registrar with notice in writing, within five (5) days, of any substantive changes to their business plan or information provided in obtaining registration, pursuant to section 31 of Ontario Regulation 333/08.
3. The Applicants 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, and is not limited to the signing of contracts.
4. The Applicants recognize that a "trade" may also occur through other personnel, agents, assignees, or anyone acting on behalf of the Applicants. This includes the positions that are commonly known as Sales Manager, Finance Manager, Branch Manager, or General Manager, or any other person that has a supervisory capacity over salespersons.
5. The Applicants will ensure that all personnel, agents, assignees, or anyone acting on behalf of Ottofact to trade in motor vehicles is registered as a salesperson to Ottofact.
6. The Applicants will ensure that all personnel, agents, assignees or anyone acting on behalf of the Applicants are informed of the Terms and Conditions contained in this document to the extent necessary to ensure compliance with these Terms and Conditions

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7. The Applicants 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 and its regulations.

Class Restrictions

8. The Applicants will ensure that Ottofact is registered solely under the broker class and that Ottofact is compliant with all obligations of that class under the MVDA and its regulations.
9. The Applicants acknowledge that Ottofact shall only facilitate a trade where the vehicle that is involved is a new motor vehicle, pursuant to the MVDA and its regulations. Ottofact shall not facilitate a trade in a used motor vehicle unless it has obtained the prior written consent of the Registrar, which is not to be unreasonably withheld.
10. The Applicants shall not take possession or control of a motor vehicle that is currently, may reasonably be expected to be, or has been the subject of a trade facilitated by Ottofact.
11. The Applicants shall not take a property interest in a motor vehicle that is currently, may reasonably be expected to be, or has been the subject of a trade facilitated by Ottofact.
12. The Applicants will ensure that Ottofact acts solely on the behalf of customers who are not registrants and that Ottofact does not represent the interests of any person other than that of the customer, pursuant to section 20 of Ontario Regulation 333/08.

Payments, Deposits, and Trusts

13. The Applicants will ensure that Ottofact does not take, hold, or accept a deposit related to a trade in a motor vehicle. The Applicants further acknowledge that this restriction prohibits Ottofact from processing or facilitating the transfer of a deposit through an online service.
14. The Applicants will ensure that Ottofact does not take or handle any funds that may be used to pay for a trade in a motor vehicle where Ottofact is acting on behalf of a customer.
15. The Applicants will ensure that Ottofact does not take or handle any funds that either are or ought to have been put into trust under the MVDA and its regulations.
16. The Applicants shall not take a hold on a customer's credit card, or similar instrument, unless it can readily demonstrate that all of the following conditions were met:
 - a. The customer was informed that a hold would be taken to use Ottofact's services, and the maximum amount of that hold;
 - b. Ottofact has provided the Registrar with notice, in writing, of any change in the maximum hold that it may take, pursuant to section 31 of Ontario Regulation 333/08;
 - c. The customer was informed under what situations Ottofact would be entitled to process the hold to Ottofact's benefit or refuse to release the hold;
 - d. The customer was informed under what circumstances the customer would be entitled to the release of the hold and that the release would be in full;
 - e. For all of the above, the customer had been so informed before the customer and Ottofact had entered into an agreement or contract to facilitate a trade;

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f. For the purposes of this section, "informed" includes full disclosure by Ottofact that has been made in a clear, comprehensive, and prominent manner.

17. The Applicants shall only process a hold to Ottofact's benefit, or refuse to release a hold, if all of the following conditions have been met:
 - a. Ottofact has notified the customer that it has matched the customer to an offer from a registered motor vehicle dealer that meets all of the client's instructions;
 - b. Ottofact has allowed the customer to view all such offers and allowed a reasonable timeframe to elapse for the customer to consider their decision;
 - c. After all of the above, the customer makes the decision to not complete the trade;
 - d. Ottofact is not in breach or contravention of the MVDA, its regulations, this Order, or any other applicable law in relation to the trade,
18. The Appellants shall ensure that any contract Ottofact enters into to facilitate a trade in a motor vehicle on behalf of a customer who is not a registered motor vehicle complies with section 49(1) of Ontario Regulation 333/08.

Return of Funds

19. Ottofact shall immediately return all financial contributions or financing that Khasan has provided or may be providing to Ottofact, either directly or indirectly. The Applicants will further supply the Registrar, in writing, with clear proof that these funds have been returned in full by their respective financial institutions, including bank records, within 30 days of registration.
20. The Applicants will ensure that Khasan does not provide any further monies or financing to Ottofact for two (2) years from the Applicant's date of registration.

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Books and Records

23. The Applicants will maintain all books and records at Ottofact's registered premises in accordance with the MVDA and pursuant to section 52 through to and including section 60 of Ontario Regulation 333/08.
24. The Applicants will undertake that in the event their books and records are lost, stolen or destroyed in whole or in part, the Registrar will be advised, in writing, within five (5) days of the event pursuant to section 55 of Ontario Regulation 333/08; and will include all relevant documentation. The documentation will include, but is not limited to, police reports,

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insurance claims and affidavits. The Applicants further agree to make all reasonable efforts to reconstitute the lost, stolen or damaged records.

25. The Applicants will obtain a receipt prior to the removal of any records by a government or professional agency; or any other person or entity, from the registered premise. Such receipt will include the recipient's name, address, telephone number, description of records taken, the time of return and signature of recipient. The Applicants undertake to provide the receipt to OMVIC when requested by the Registrar.

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 - b. any inbox, or similar, that the customer has with Ottofact's messaging service(s);
 - c. via Ottofact's online platform, such as an electronic terms of use agreement;
29. The Applicants will ensure that the Registrar is notified and provided with, in writing, a copy of Ottofact's standard terms of use agreements, as would be delivered to each party to a trade, within 60 days of registration.
30. The Applicants will not trade in a motor vehicle until these terms of use agreements have been fully completed, provided to the Registrar, and are ready to be disseminated to the parties of a trade as part of the Applicants' ordinary course of business.

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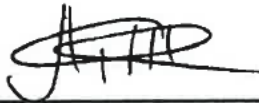
Signed in the City of **TORONTO** this 19 day of **NOVEMBER** 2018



Khasan Aripov (signature)

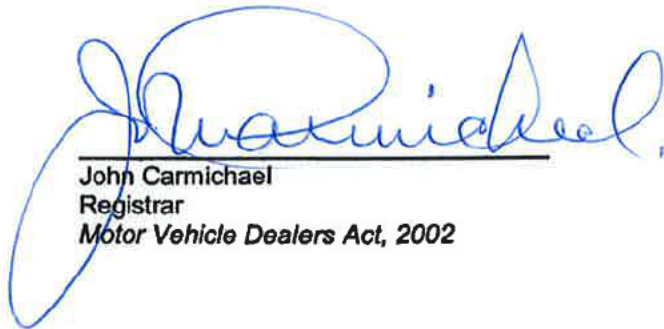


Name of Authorized Representative, Ottofact Inc.



I have authority to bind the dealership. (signature)

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



John Carmichael
Registrar
Motor Vehicle Dealers Act, 2002