

**Licence
Appeal
Tribunal**

12th Floor
1 St. Clair Ave. W.
Toronto ON M4V 1K6

Telephone: (416) 314-4260
1-800-255-2214

Fax: (416) 314-4270
(416) 314-6307
1-800-720-5292

**Tribunal
d'appel en
matière de permis**

12^e étage
1 av St. Clair O
Toronto ON M4V 1K6

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1-800-255-2214

Télécopieur : (416) 314-4270
(416) 314-6307
1-800-720-5292



October 6, 2006

MEMORANDUM

Re: *Santec Enterprises Inc. and Sajid Hussain*
v.
Registrar, Motor Vehicle Dealers Act

Enclosed herewith please find a copy of the Reasons for Decision and Order of the Licence Appeal Tribunal with respect to this matter.

DISTRIBUTION LIST:

Santec Enterprises Inc., Applicant
Sajid Hussain, Applicant
Douglas C. Gosbee, Counsel for the Applicants (on April 3-5, 2006)
A. Michael Rothe, Counsel for OMVIC

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SANTEC ENTERPRISES INC. AND SAJID HUSSAIN

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER
THE *MOTOR VEHICLE DEALERS ACT*

TO REVOKE REGISTRATIONS

TRIBUNAL: JANE WEARY, Vice-Chair

APPEARANCES: DOUGLAS C. GOSBEE, Counsel, representing the Applicants

A. MICHAEL ROTHE, Counsel, representing the Registrar, *Motor Vehicle Dealers Act*

DATES OF HEARING: April 3, 4, 5 and June 19, 2006

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This appeal arises from a Notice of Proposal (the "Proposal") dated August 12, 2005 issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) to revoke the registrations of Santec Enterprises Inc. (the "Dealer") as a motor vehicle dealer and of Sajid Hussain ("Hussain") as a motor vehicle salesperson.

The Registrar furnished the reasons supporting his Proposal as follows:

The intention and objective of the Act is to protect the public interest. The requirements of the Act include that Registrants be financially responsible in the conduct of business and that Registrants carry on business in accordance with the law and with integrity and honesty. The Registrant's past conduct is inconsistent with the intention and the objective of the Act, and therefore warrants disentanglement to registration under the Act.

The Particulars as provided by the Registrar were as follows:

1. Santec Enterprises Inc. has been registered as a motor vehicle dealer since on or about February 15, 2002.

2. Sajid Hussain is registered as a motor vehicle salesperson and is an officer and director of Santec Enterprises Inc.
3. The Registrar's office has received numerous complaints about the dealer. The complaints relate to issues of financial responsibility. In particular the dealer takes money from consumers to purchase a vehicle for the consumer. The dealer fails to deliver the vehicle and fails to return money to the consumer.
4. The dealer has failed to comply with the *Motor Vehicle Dealers Act*, Regulation 801, section 16.
5. Following an inspection conducted on or about May 17, 2005, by a representative of the Registrar's office, the dealer was asked to provide certain banking records. To date, the dealer has failed to provide the complete records requested by a representative of the Registrar's office.

On the 22nd of December 2005, the Registrar issued a Notice of Further and Other Particulars in support of his Proposal. These were:

1. Hussain has had numerous convictions pursuant to the *Highway Traffic Act* and the *Compulsory Automobile Insurance Act*.
2. Hussain has had his driver's licence suspended a number of times for unpaid fines.
3. The Dealer has failed to comply with the requirements of the *Retail Sales Tax Act*.

On the 23rd day of March, 2006 the Registrar issued a second Notice of Further and Other Particulars, which alleged:

1. On or about February 7, 2006 Santec Enterprises Inc. (the "Dealer") and Sajid Hussain ("Hussain") were suspended by order of the Licence Appeal Tribunal until the hearing of the matter. Attached hereto as schedule "A" is true copy of said Order of the Licence Appeal Tribunal.
2. The Dealer and Hussain have breached the February 7, 2006 Order of the Licence Appeal Tribunal by engaging in the purchase and/or sale of motor vehicles without being registered to do so under the *Motor Vehicle Dealers Act*.

While the Applicants were, by motion, granted an initial adjournment in order to allow for the presence of an interpreter, following the first day of hearing evidence they advised the Tribunal that they were dismissing the interpreter. The Applicants explained the dismissal as a consequence of finding the services costly, and the Tribunal procedure and evidence sufficiently comprehensible such that the interpreter was not necessary.

ISSUE:

The question to be decided by the Tribunal is whether the Registrar has reasonable grounds upon which to revoke the registrations of Santec Enterprises Inc. and Hussain based on their past conduct affording reasonable grounds for the belief that they will not carry on business with law, integrity and honesty as set out in section 5 of the Act.

THE EVIDENCE:Jennifer Andrew

Ms. Andrew was calm, clear and consistent in her testimony. She struck the Tribunal as a credible witness. She testified that she has been an inspector with the Ontario Motor Vehicle Industry Council (OMVIC) for six years. Her duties include enforcement of the Act and other related legislation. In this capacity she arranged by telephone to meet with the Applicant Hussain at the Santec Enterprises Inc. dealership to inspect the premises, books and records for compliance on May 6, 2005. On arrival at the premises she was met by a consumer who contacted Mr. Hussain by mobile telephone. Ms. Andrew spoke with the individual who said he was Mr. Hussain, who explained he was unwell and thus not able to keep the appointment. An alternative date was set for the inspection and, again, Mr. Hussain did not attend. Exhibit #6, tab 8 is a letter dated May 9th sent to Mr. Hussain by Ms. Andrew's employer, setting a third inspection date of May 17th and specifying the documents to be produced. On this date Mr. Hussain was available and requested Ms. Andrew take his documents for review as he was late for an appointment.

Ms. Andrew testified that various cheques and bank statements were missing from the records provided such that she called Mr. Hussain requesting he furnish her with particular information by June 1st when he agreed to attend her offices to collect his business documents. He did not appear on that day, but did appear a week later with only one of the missing cheques requested. At that time he agreed that he would have the information to her by June 17th. He did not do so. She sent him a letter on June 28th requesting he provide the information by July 8th (Exhibit #6, tab 5). Ms. Andrew in cross-examination did acknowledge she eventually received copies of all fifteen cancelled cheques she had requested in her letter of June 28th, although at the time of the issuance of the Registrar's Notice of Proposal, she had only received eleven.

Consumer #1

Consumer #1 appeared forthright and responsive. The Tribunal found him to be a cooperative and credible witness. He stated he was referred to Mr. Hussain's dealership in May 2005 by a friend when he had expressed an interest in purchasing a specific model vehicle. On expressing his requirements to Mr. Hussain the latter invited him to attend the auction with him, which he did. He there viewed the model he wanted but it was not bid on at that time.

Mr. Hussain advised he would return the very next day and purchase the car if Consumer #1 supplied him with the necessary funds to do so. Consumer #1 thereupon provided the funds to the Applicant - \$1,000.00 in cash and \$7,000.00 in a money order. Mr. Hussain later advised the consumer he had purchased the vehicle but would provide a safety check prior to releasing it to Consumer #1. In response to Consumer #1's queries the first week, Mr. Hussain advised he'd had no time to perform the safety. In the second week, Mr. Hussain told Consumer #1 the vehicle had proven to have serious frame damage such that he was required to return it to the auction and would get Consumer #1 his funds back. What followed was in Consumer #1's words "...a run-around...always a story always believable...". It included Mr. Hussain not answering his phone, not being at the dealership when arrangements had been made to meet, and Consumer #1 taking time off work to hang around Santec Enterprises Inc. but Mr. Hussain was never there. Finally, sometime in August, Consumer #1 filed a complaint with the Better Business Bureau.

It was not until he called the police in November that Mr. Hussain finally paid up some of the funds to Consumer #1. The witness testified he is still owed \$4,600.00 out of his original \$8,000.00.

At the conclusion of Salesperson #1's testimony, Consumer #1 was recalled by the Registrar to give evidence as to efforts made by Mr. Hussain two months prior to this hearing whereby the Applicant (Hussain) requested Consumer #1 not to testify against him. Consumer #1 refused the request.

Consumer #2

Consumer #2 gave his testimony in a forthright and detailed manner. He was candid and careful in his words and struck the Tribunal as a credible witness. Consumer #2 stated he had been recommended to Mr. Hussain and Santec Enterprises Inc. by a friend and, like Consumer #1, had attended the auction on the invitation of Mr. Hussain. There he had seen a car he wanted to purchase. On the advice of Mr. Hussain Consumer #2 provided Hussain with a \$500.00 deposit in late December 2004 on the understanding that Mr. Hussain would purchase the car and provide some necessary service to the gearbox component. After the first week passed Consumer #2 was informed by Mr. Hussain that the vehicle was still with the mechanic; at the end of the second week Mr. Hussain told the purchaser a new engine was required at a further cost of \$800.00. Consumer #2 supplied the further funds. Mr. Hussain kept telling him the vehicle would be ready tomorrow, but it never was. After two weeks Consumer #2 found out the name of the mechanic and went there only to be told that Mr. Hussain had not supplied the mechanic a replacement engine as promised. The mechanic was upset and wanted the vehicle removed from his lot. After further weeks passed Mr. Hussain supplied Consumer #2 with two cheques, however, Consumer #2 determined from the bank that the cheques were not good and complained by letter to Mr. Hussain which he copied to OMVIC (Exhibit #6, tab 28). Eventually Consumer #2 received the full deposit monies.

Consumer #3

Consumer #3's testimony was not entirely consistent. It became apparent that he was acting for his brother who had initiated much of the direct dealings with the Applicants, albeit using Consumer #3's monies given for the purpose and calling in Consumer #3 to assist when dealings went wrong. In effect the witness' testimony was that in April 2005 a vehicle had been purchased by Mr. Hussain at the auction using funds supplied by Consumer #3 for that purpose. Consumer #3 testified that Mr. Hussain advised the car had been bought but never received any documentation to that effect. After some six weeks of waiting for delivery and listening to a myriad of reasons why the delivery had not yet occurred, Consumer #3 demanded the return of his money. The cheque supplied to him by Mr. Hussain on May 18th was returned by the Applicants' bank marked "insufficient funds". After numerous phone calls, replacement vehicles returned as unsatisfactory, and loaner vehicles resulting in some rental costs to Consumer #3, some attempts were made by Mr. Hussain to pay back the funds. However it was the witness' evidence that a further \$4,800.00 remains owing to him for which he has filed a Small Claims Court action against the Applicants.

Salesperson #1

Salesperson #1, originally from the same city in Pakistan as Mr. Hussain, had recently received his salesperson's licence and needed a dealer to employ him so he was pleased when Mr. Hussain offered him a salesperson's job with Santec Enterprises Inc. in May 2005. Mr. Hussain offered to get Salesperson #1 a vehicle at 50% its actual cost and requested \$13,000.00 for the purchase. Salesperson #1 gave his employer \$1,000.00 in cash and a money order for \$12,000.00 (Exhibit #6, tab 20, pages 2 and 4); Mr. Hussain promised possession within two weeks.

Salesperson #1 testified that Mr. Hussain came to him on May 26 tense and upset. After confiding he was low on cash he requested his salesman contribute \$19,000.00 for the purchase of auction vehicles; in return Mr. Hussain would give Salesperson #1 50% of the profit from the sale of those vehicles. Salesperson #1 complied with the request (Exhibit #6, tab 20, page 3). Santec Enterprises Inc. then purchased a 2005 Nissan Altima at the auction. Salesperson #1 testified that Mr. Hussain used the Altima and never attempted to sell it. Despite many requests and threat of legal action against him, Mr. Hussain did not return his money, nor provide Salesperson #1 with a vehicle. In July, Salesperson #1 complained to OMVIC whereupon Mr. Hussain gave him a Bill of Sale for the Altima. Dated June 9, 2005 it discloses a total price of \$12,650 (Exhibit #6, tab 20, page 1) and is written in the name of Salesperson #1. Salesperson #1 claims he is still owed \$6,350.00.

Salesperson #1 claims Mr. Hussain continues to owe him the original \$13,000 he paid for a vehicle he never received. He retained a paralegal firm in mid July 2005, which wrote to the Applicants on his behalf demanding the return of the \$13,000.00 owed. There was no response nor did Mr. Hussain answer phone calls.

At the end of August another demand letter was sent (Exhibit #6, tab 18) for the return of the full amount, without success. In September Salesperson #1 filed a Small Claims Court action against both Applicants for the \$10,000 maximum recoverable (Exhibit #6, tab 18). According to Salesperson #1, Mr. Hussain stated he was not scared of the court action as his own lawyer would ensure he did not face any judgement. He also advised Salesperson #1 that he had not served him properly with the court documents and his action would consequently fail. Finally, after much perseverance Salesperson #1 received two Small Claims Court judgements against the Applicants, one for \$10,000.00; the other for \$6,575.00 (Exhibit #10). Mr. Hussain has not complied with either court order; the property in which he lives is under his brother's name and the assets of the corporate Applicant appear from Salesperson #1's research to be immune to sheriff seizure.

In cross-examination Salesperson #1 denied he had ever threatened Mr. Hussain. He stated he had gone to OMVIC in July because he realized that Mr. Hussain was not a dealer for whom he wished to work and wanted his licence to the dealership terminated because he feared later problems. Salesperson #1 testified he had only just received his Canadian citizenship in 2005 and would not act in any way to threaten that. Despite repetitive questioning, his responses remained consistent and his manner patient and cooperative. He disclosed both his earlier trucking business affairs as well as other financial dealings with the Applicants in a forthright and entirely credible manner such that the Tribunal has no reason to doubt the truthfulness of his evidence and testimony before it. In this regard it notes that Salesperson #1 testified that Mr. Hussain had told him two days before the hearing that he would transfer vehicles to him if he, Salesperson #1, refused to testify against him at this hearing.

Jennifer Brake

Ms. Brake testified she was a Field Collections Officer and Investigator with the Ministry of Finance for the Province of Ontario. She has been in this position for fifteen years. She first met Mr. Hussain in March 2005 when he met with her regarding his company's failure to file earlier Provincial Sales Tax (PST) forms. She counselled he file for 2004, given that he had not purchased Santec Enterprises Inc. until that year. In September 2005, the corporation's accountant, "Mitch" called Ms. Brake who confirmed receipt of his filing a return for January-April, 2005. It disclosed low sales and tax collection such that the file was sent to Ms. Brake for further review. She requested supporting documentation and records, which were not received. When the Applicants' return for the period ending June 2005 was sent with no payment six months late in December, 2005, an outstanding balance of \$7,971.25 was calculated owing. It has not been repaid and, with penalty and interest, now stands at \$8,044.92 (Exhibit #7, tab 6). Ms. Brake testified that this record of poor compliance in filing tax returns constitutes a failure of the Applicants to pay public trust funds. She noted that Mr. Hussain never contacted her department to enquire as to how he could make good on his payments, nor attempted to show any good faith in trying to meet his company's trust fund obligations.

In cross-examination, Ms. Brake testified that, whilst small businesses may sometimes have difficulty understanding and thus complying with the tax requirements, in this case she had met with both Mr. Hussain as well as his corporate accountant to explain the situation as it pertained to Santec Enterprises Inc. back in March, 2005.

Michael Razo

Mr. Razo testified he was a complaints handler for OMVIC and in this position had counselled a consumer complainant against the Applicants. He supplied documents he identified as pertaining to the file in Exhibit #6, tab 28. It was Mr. Razo's testimony that the consumer had called OMVIC after he had been unable to get reimbursement for a failed vehicle purchase from the Applicants. After advising the consumer to attend at the corporate address proved to be unsuccessful, Mr. Razo suggested a registered letter be directed to the corporation. This too, the consumer complained had no result. Consequently, Mr. Razo himself called Mr. Hussain directly, whereupon a certified cheque for the refund was received by the consumer.

Jeff Ross

Mr. Ross is also a complaints handler attached to OMVIC and in this capacity became familiar with the Applicants on March 29, 2005 when a consumer, "U..." came into the office complaining that a refund cheque for a deposit he had given Santec Enterprises Inc. for the purchase of a '97 Toyota was returned NSF by the corporate Applicant's bank. "U..." advised Mr. Ross that after three weeks of his continuous requests for a refund Mr. Hussain suggested instead he provide the consumer with an alternate vehicle, a Honda; "U..." reluctantly agreed, only to discover the Honda was not road worthy. Mr. Ross suggested the consumer request Mr. Hussain complete work documented on the Bill of Sale dated February 19, 2005 (Exhibit #6, tab 27). On April 6th the consumer called to tell Mr. Ross that Mr. Hussain had refused to fix the vehicle and threatened to contact his lawyer who would contest "U..." as the car had been sold "as is". The following day Mr. Ross telephoned Mr. Hussain who repeated his position that the vehicle had been sold to "U..." "as is". In response to questions from Mr. Ross as to why the Bill of Sale included no figures as to price and payment and no dealer signature, Mr. Hussain stated that the document must have been stolen by the consumer. He agreed to fax in to Mr. Ross the original the following day. On the 8th of April Mr. Hussain called Mr. Ross to advise that the consumer must have stolen the documentation when he broke into his corporate offices earlier, but that he had not advised police anything had been stolen, as he had not thought so at the time.

On April 12th Mr. Hussain attended OMVIC offices and met with Mr. Ross. He supplied a Bill of Sale purporting to be his original copy of the Honda transaction with "U...". Unlike "U...s" copy, it is dated the 5th of March and is stamped "SOLD AS IS" (Exhibit #6, tab 25). Mr. Hussain denied any similarity in the writing on the two Bills of Sale although he acknowledged having completed and paid for an emissions test for the vehicle on the 10th of March. He denied there was anything unusual in supplying an emissions test for a vehicle sold "as is".

In cross-examination Mr. Ross acknowledged he was not a handwriting expert and could not judge the veracity between the conflicting stories. He noted however that the Structural Certificate was not provided to the consumer as was required until after the Ministry had become involved in the matter.

Darren Senensky

Mr. Senensky has been a complaints handler for OMVIC since 2003. He had investigated complaints received against the Applicants and essentially corroborated - with documents received and notes he had written - the facts alleged by Consumer #1 (Exhibit #6, tab 14), Consumer #2 (Exhibit #6, tab 15), Consumer #3 (Exhibit #6, tab 16), and Salesperson #1 (Exhibit #6, tab 17). He also testified to a further complainant, H....., who only received ownership documentation from the Applicants 114 days post possession of her purchase and after she had issued a lawyer's letter dated July 22, 2005 and contacted Mr. Senensky who had called the Applicants on August 12, 2005 (Exhibit #6, tab 13).

A sixth consumer complaint, Consumer #4, (Exhibit #6, tab 21) was called in to OMVIC on March 31, 2005 concerning purchase of a 1995 BMW for which the consumer alleged he had paid \$4,700.00 but had not received the vehicle nor any Bill of Sale. The consumer advised that Mr. Hussain had told him the auction would not release the vehicle until he had paid it monies owing and requested Consumer #4 loan him a further \$2,700.00 for which he would supply the consumer a '94 Integra as collateral. The consumer stated he had never received the Integra nor the return of his loan. After numerous delays which the witness' notes demonstrate missed deadlines and illnesses of Mr. Hussain, Mr. Senensky did receive a Bill of Sale from Mr. Hussain for the BMW in early May reflecting a purchase price of \$5,000.00 plus \$750.00 in taxes. Consumer #4 denied ever having seen or signed this Bill of Sale. Although he claimed he was still owed \$2,200.00 he accepted the lesser amount of \$1,850 finally received on June 3, 2005.

A seventh complaint from a Consumer #5 resulted in the consumer advising Ms. Andrew and Mr. Senensky that he had never received a Bill of Sale nor any other writing evidencing his purchase from the Applicants of a vehicle which he later returned and for which he is owed \$2,100.00. Mr. Hussain signed a promissory note for the full amount to be paid to the consumer by August 20th when he and the consumer attended at OMVIC offices on July 25th to discuss the matter. The consumer advised that when he attended at the Applicants' business premises on the 20th, Mr. Hussain had to ask other consumers present at the dealership for loans of cash in order to pay the consumer the amount owing.

In cross-examination Mr. Senensky insisted he spoke often with Mr. Hussain over the telephone and, while he attempted to remain neutral, often concluded that Mr. Hussain was not honest with him when excusing his delays by claiming illness, which Mr. Senensky did not find credible from the tone of the Applicant's voice. He further concluded he often found Mr. Hussain's excuses and rationales "doubtful".

In the case of Salesperson #1, Mr. Senensky determined that the Applicant's position (Hussain) was "convoluted" and "nonsensical" and consequently asked the Applicant in June to explain his stance in writing in order to better grasp Mr. Hussain's reasoning. Such a written explanation was finally provided in part after a further request in late July. It was dated June 26th (Exhibit #6, tab 19) and is incoherent.

Mary Jane South

Ms. South has been Deputy Registrar of OMVIC since January 1997. It is her duty to oversee and enforce the registration of dealers and salespeople under the Act. Since the spring of 2005 she is also indirectly responsible for the supervision of complaint handlers.

Ms. South testified to Ministry searches undertaken by OMVIC (Exhibit #7, tab 4) which demonstrate Santec Enterprises Inc. is operating under the sole direction of Sajid Hussain. She submitted a letter sent to the corporate Applicant by OMVIC acknowledging receipt of its application for registration as a dealer under the Act and requiring it sign Terms and Conditions of registration executed by Mr. Hussain on November 24, 2004 (Exhibit #7, tab 5). She noted the following express conditions thereon:

8. The Registrant agrees to maintain a garage register in accordance with the *Highway Traffic Act* and will maintain all books and records as required by the Act at the Registrant's registered premises. The Registrant further agrees to provide free access to books and registers of the Registrant to any authorized representative of the Registrar.
17. The Registrant agrees not to invite the public to deal at a place other than (sic) its approved location.
20. The Registrant agrees that it is under a positive obligation to disclose **in writing on the bill of sale** all material facts about the vehicles it sells or leases to its customers, whether or not the Registrant agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, disclosure of salvage, previous salvage, accident and repaired, frame damage, theft recovery, unibody damage, previous taxicab, previous police car, previous daily rental, insurance write-off and any other material fact which, in the Registrar's opinion, may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Registrant further agrees to disclose as much detail as possible with respect to the nature and severity of damage. The Registrant agrees to make reasonable efforts to research the history of all the Registrant's vehicles prior to sale to ensure all material facts are disclosed.
26. The Registrant will comply with all aspects of the *Retail Sales Tax Act* with regards to filing and ensuring all tax collections are accurately reported and remitted to the Minister of Finance when due. The Registrant acknowledges that all taxes collected are deemed to be trust funds and will not be used for any other purpose other than remittance to the Minister of Finance.
35. The Registrants will courteously, promptly and honestly respond to all complaints made about them by other dealers, consumers or others.

Ms. South testified that her review of the Applicants disclosed that each of these conditions had been breached: section 8 by the inadequacy of the Applicants' response to Ms. Andrew's repeated requests for missing cheques at the time of her compliance inspection of the Applicants in May, 2005; section 17 by the Applicants repeated invitations to consumers to engage in sale transactions at the auction; section 20 by a number of consumer complaints of frame and other body damage revealing a lack by the Applicants of the due diligence required; section 26 as disclosed by the testimony of Ministry of Finance Investigator, Ms. Brake; and, section 35 by the experiences of both Ross' and Senensky's attempts to resolve consumer complaints.

Ms. South also submitted a computer printout of Mr. Hussain's driving record with the Ministry of Transportation (Exhibit #6, tabs 11 and 12). It revealed nineteen driver suspensions for unpaid fines and sixteen driver convictions between 1980 and December 2005. She testified that the latter were of particular significance with regard to charges for failing to have insurance (2004) as well as permitting an unlicensed driver (2005) and failing to have valid plates (2004); and the former were of concern as it demonstrates the Applicant's lack of financial responsibility.

Ms. South reiterated her concern with the evidence concerning the Applicants' failure to remit retail sales tax as not only a breach of the conditions of registration, but also as indicative of inadequate efforts to act responsibly in the conduct of business finances.

The Deputy Registrar testified that she was extremely concerned that in a very short time of registration under the Act, commencing in September 2004 to June 2005, these Applicants had amassed a significant volume of consumer complaints. She noted that eight complaints had been received by OMVIC, seven of which were before the Tribunal. In cross-examination she described this number of complaints against a registrant so newly licenced as "inordinately high". Together they reveal an ominous pattern of broken promises, absent or inadequate documentation, lack of prompt response to consumer communications, and financial failings which, in sum, establish a record demonstrating evidence of a lack of honesty and integrity in the conduct of business.

Ms. South was present during the hearing into the Motion for an Adjournment conducted in this matter in February, 2006 before William McIntosh, Vice-Chair wherein the Applicants were suspended from operations save for vehicles then in inventory which were specifically ordered to be dealt with in accordance with rules governing suspended registrants under the Act and Regulations. Ms. South testified that during the hearing before Vice-Chair McIntosh she had testified as to what documentation the Registrant was required to submit to the Registrar in order to be given any specific override for such sale transactions. She advised such was necessary to ensure consumers are still protected under the compensation fund set up under the legislation. At no time was her office ever in receipt of any such request or documentation from the Applicants.

Nonetheless, Ministry of Transportation Vehicle Inquiries conducted in March, 2006 reveal that two vehicles were in fact transferred by the Applicants (Exhibit #7, tabs 3 and 4); one on February 7, 2006 at 16:12 and therefore some few hours after the Motion hearing; the other on March 15, 2006. Such obvious contraventions of expressly described conditions indicate a further disrespect of regulatory requirements by the Applicants in their business conduct.

Ms. South is of the opinion that the Applicants are not suitable candidates for continued registration under the Act.

Sajid Hussain

Mr. Hussain introduced himself as a 25 year old who had immigrated to Canada from Pakistan in 1995. He graduated from George Vanier Secondary School in Toronto in 1999 and, his father having a car business in Pakistan as well as his brother owning a dealership here, he naturally was attracted to this line of work. Originally he began as a cleaner working for the previous owner of Santec Enterprises Inc., but when the owner decided to sell the business in the fall of 2004, Mr. Hussain's family agreed to help him finance the purchase.

Mr. Hussain described his business as growing until the Notice of Proposal and subsequent suspension. He testified that he generally had between 18-20 vehicles on his lot for sale at any one time. He surmised he had sold close to 160 cars in 2005 which he broke down as follows: 40% he sold to purchasers outside Canada; 20% he sold to other dealers; 15% he sold to auctions, leaving about 80 cars which he has sold to individual consumers. He bought from various local auctions, including one that specializes in written-off vehicles, and another specializing in lease return vehicles. He does some purchasing through the Internet and United States, although these are all salvaged vehicles, which he obtains for parts-only purposes. Mr. Hussain testified that 99% of his sales were on an "as is" basis. It was his evidence that he shows his customers pictures of any vehicle that has been in an accident because he generally does not provide safety certificates nor emissions certificates. For the 1% of his customers who request such a service, it is his practice to refer them to their own mechanic.

The Applicant stated that he would invite customers as guests to the auction only to observe the vehicles available. They would always leave before the bidding began. He would call them the next day to advise them to attend his premises if he purchased the vehicle that they liked for them. He testified he had in fact only done this on two or three occasions – one being with Consumer #1 who had been referred to him by a friend. Consumer #3 was not recognizable to the Applicant, but he testified that another person with same name as Consumer #3 had also requested to attend the auction, but the Applicant refused as he didn't know the individual and "didn't want the headache".

Mr. Hussain acknowledged that he still owed Consumer #1 \$4,600.00. It was his position that after the consumer had returned the first purchased vehicle due to frame damage, the Applicant had requested he pick up his refund many times, but that it was the customer who insisted Mr. Hussain instead purchase an alternative vehicle for him. In August he did so. Consumer #1 refused it as he didn't like the way it drove and insisted on the return of his money. Mr. Hussain felt this was unfair as he had made the purchases for the customer and had even had the second vehicle painted in anticipation of the sale. The Applicant concluded he had the funds and could make the payment today, but that not only Consumer #1, but also the Ministry of Finance and Salesperson #1 and Consumer #3 have all threatened him and given him a hard time; he has been ill and emotionally distressed and all of this has conspired to cause him not to make the payments he agrees he owes.

Mr. Hussain also testified as to the transactions undertaken with regard to Salesperson #1. It was the Applicant's evidence that the \$13,000.00 initial payment from the customer had been intended as an investment in the Applicants' business. The Bill of Sale was prepared in the Applicants' office at the insistence of Salesperson #1 although no real vehicle was intended. The same day both he and Salesperson #1 attended at the auction where Salesperson #1 advised him which vehicles to purchase and how much to pay. He acquiesced, paying a total of \$27,000.00. As a consequence Salesperson #1 now owes the Applicant \$14,000.00. From the five vehicles purchased, Salesperson #1 wanted only an Altima; the rest including a Focus and a Civic, were to go to the Applicants' repair shop and later Salesperson #1 would sell the vehicles for the Applicants. However when Mr. Hussain picked up the vehicles purchased, the Altima wasn't included. Therefore Salesperson #1 was forced to pay the auction a further \$19,000.00 (\$6,000.00 of which he borrowed from Mr. Hussain) to get the Altima. Mr. Hussain testified that Salesperson #1 had threatened him with this Tribunal proceeding back in February if Mr. Hussain didn't return him his money or transfer all the vehicles to him. He also testified that he had offered to transfer both the Focus and the Civic as well as pay Salesperson #1 \$2,500.00, but that Salesperson #1 had said he didn't want the cars. He denied ever being served with Salesperson #1's Small Claims Court Statement of Claim nor receiving notice of any judgement rendered against him or the corporation.

With regard to Consumer #3, the Applicant admitted he owed the customer \$4,400.00 from the transaction. He had dealt with a different person with same name as Consumer #3. The Applicant testified as to a complex scheme whereby the customer wanted different figures recorded on documents because he didn't have a licence, and needed his mother to be listed as owner to receive a lower insurance rate and various vehicles being returned because they turned out not to be road worthy. Mr. Hussain denied ever receiving the Statement of Claim nor notice of the Court judgments against him.

As concerns the two consumer complaints received by Mr. Senensky, the Applicant testified that he had requested Consumer #4 wait a few weeks for Mr. Hussain to get him the refund of \$2,700.00 for the Integra his wife had returned. In the end he provided \$1,850.00 through Mr. Senensky on June 1st because it was the Applicant's position that the remainder continued to be owed him by the consumer for taxes on the earlier BMW purchase. As concerns the BMW Bill of Sale, Mr. Hussain testified it was sold "as is" to Consumer #4 who signed and initialled the document on the lot in the presence of another salesperson. Since then Consumer #4 has purchased two further vehicles from the Applicants.

Mr. Hussain denied pretending to be ill on the telephone with Mr. Senensky. He also denied pretending not to be at the office.

With regard to Mr. Senensky's evidence concerning Consumer #5, Mr. Hussain advised that, after the interference of OMVIC and Mr. Senensky, he had signed the promissory note and had paid all monies outstanding to the consumer.

The Applicant denied he had written the Bill of Sale submitted by "Mr. U..." which he surmised had been stolen from his business in May. He later admitted that some of the writing was his and stated he had started to draft the document when the consumer paid him a \$500.00 deposit for a Toyota Camry on February 17th, which he later decided not to purchase. However the document does reference a '97 Accord for which Mr. Hussain did complete emissions and Structural Certificates although the latter was not dated until after OMVIC had become involved.

The consumer complaint handled by Mr. Razo was described by the Applicant as another situation where a consumer demanded a refund for a vehicle purchased "as is". No Bill of Sale was submitted into evidence to corroborate his position that the consumer had in fact understood and signed an agreement to this effect. Mr. Hussain further testified that money was in the bank at the time he had given the consumer the cheque but that the consumer didn't cash it and instead complained to OMVIC. Mr. Hussain said he had offered the consumer cash in lieu of the cheque.

Mr. Hussain testified he had sought the original adjournment last February, as he feared he would be disadvantaged without an interpreter. As the proceedings unfolded he quickly realized that the interpreter services were not necessary.

The Applicant explained the transfer of two vehicles after his suspension resulted from sales he had earlier completed and any resulting breach was thus merely technical and not deliberate. Exhibit #11(a) is a Bill of Sale to Santec Enterprises Inc. for a '99 Mercedes. It is dated December 14, 2005 and shows the transaction to be paid in full. Exhibit #11(b) is a Bill of Sale written on the corporate Applicant letterhead for the same vehicle, bearing the same VIN number. It is dated December 19, 2005. Exhibit #12 (a) and (b) demonstrate the second vehicle transferred from the corporate Applicant, after the Suspension Order, was also purchased the January preceding the Order.

Mr. Hussain stated both vehicles were still on his lot on the February motion date, but the one had been transferred that same day based on instructions he had given weeks earlier, and the second was transferred later by the consumer when he advised he could not perform the transfer himself.

Continuation of Suspension Order

At the conclusion of the third day of evidence when it was apparent a fourth day was required to hear further evidence and a date in June was agreed upon by the Parties, Counsel for the Applicants sought the Tribunal's direction as to the appropriateness of continuing the Applicants' suspension contained in Vice-Chair McIntosh's Order. The Tribunal considered the wording of the original Order, being that the Applicants were "...suspended as at the date of this Order until the hearing of the matter". Given that the matter was only partially heard it was the Tribunal's opinion that the suspension should continue. To interpret the Order as posited by Counsel for the Applicants would result in the nonsensical position of the Applicants' suspension terminating upon commencement of the hearing. This Tribunal is entitled to act only within the perimeters of the authority provided to it under the legislation – in this case being the *Motor Vehicle Dealers Act*. The Act provides the Tribunal with authority to act within the confines of the authority granted to the Registrar. In section 6(2) the Registrar is entitled to suspend a registration for any reason that would disentitle the Registrant to registration under section 5. In section 7(5) the Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of the Act. Hence, the Order suspending the registrations of the Applicants was based on such a determination made by the Tribunal at that time. There is no evidence before the Tribunal to demonstrate that there has been any change in circumstances which would lead the Tribunal to conclude that there has been any reduction in the public risk sufficient to remove the suspension. As a consequence the Tribunal does not find it is reasonable for it to do so.

Continuation on June 19, 2006

At the commencement of the June date set for continuing the matter, Counsel for the Applicants advised he was instructed by his client to seek a further adjournment based on his client being too ill to attend. Counsel advised he had sought direction from the Applicants on numerous occasions over the intervening weeks since the Tribunal last sat, but had not received any response until two days prior when on June 17th Mr. Hussain had attended at his law office to request he seek this adjournment. Despite being advised by Counsel that a detailed medical certificate would be necessary in the circumstances, the note provided was sparse and insufficient. It is written on a prescription note from an Emergency Medical Service and states "off work June 13-19/06 inclusive due to medical reasons" and is initialled "IT".

Counsel for the Registrar opposed the request, noting that the Applicants had sufficient time to provide notice of this request, but had not done so, such that no reasonable efforts to avoid the additional cost and inconvenience to the Parties and witnesses and this Tribunal was attempted. Further, Mr. Hussain had been sufficiently well to attend his lawyer's office on June 17th at two different times despite the contents of the note. Citing the legal maxim "justice delayed is justice denied", Counsel further noted that this matter commenced almost one year ago.

Having heard the submissions, the Tribunal agreed with the position of the Registrar and denied the adjournment request. The proceeding continued *ex parte*.

Reply Evidence

Purchasers of both vehicles transferred into their names after the Suspension Order testified. Disclosure of their anticipated evidence had been made to the Applicants by Counsel for the Registrar on May 10, 2006 (Exhibit #13). Their evidence was that the transfers took place at the Ministry with, in the one case on March 15, 2006, Sajid Hussain doing the transfer at the Kingston Road licence office with the consumer present. This location is closest to the corporate Applicant's place of business. In the earlier transfer which took place the day of Vice-Chair McIntosh's Order of Suspension, the consumer testified he had attended with Mr. Hussain at the licence office to have the vehicle transferred into the Applicants' name. Four days later he and his wife re-attended the office while "Saj" had the vehicle transferred into the consumer's wife's name.

Both consumers testified to being given numerous excuses by Mr. Hussain for delays in the completion of the sales and, later, for delayed documentation transfer. The witness who testified concerning the transfer in February stated that he had become so frustrated in his dealings with the Applicants that he had threatened he would go to the police before Mr. Hussain finally transferred the Mercedes ownership. The witness stated that the vehicle was not disclosed as "salvage", nor "as is" at any time. Mr. Hussain had, in fact, told him the opposite: that the vehicle was in good condition and had never been in an accident. When the Bill of Sale was finally signed by his wife prior to her being hospitalized in February, it did not disclose that it had been in an accident; was salvage, or sold "as is" such that the document entered as Exhibit #11(b) was not the document his wife had signed. He was never given a copy of the Bill of Sale by Mr. Hussain. He had never been told the vehicle had been in an accident, nor that it had been designated a "total loss". He paid \$17,040.00 for it. The Ministry of Finance Declaration of February 16, 2006 lists the appraised value of the vehicle as \$5,000.00.

THE LAW:

The *Motor Vehicle Dealers Act* states:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

- ...
- b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty; or ...
 - c) the applicant is a corporation and,
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty;
6. (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.
7. (1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or registrant.
- (4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out the Registrar's proposal or refrain from carrying it out and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

The Retail Sales Tax Act states:

22. (1) Any amount collected or collectable as or on account of tax under this Act by a vendor shall be deemed, despite any security interest in the amount so collected or collectable, to be held in trust for Her Majesty in right of Ontario and separate and apart from the vendor's property and from property held by any secured creditor that but for the security interest would be the vendor's property and shall be paid over by the vendor in the manner and at the time provided under this Act and the regulations.
43. (1) Where a corporation has failed to collect tax or has collected tax and failed to remit the tax or has failed to pay any interest or penalty relating thereto, the directors of the corporation at the time the corporation was required to collect or remit the taxes or to pay the interest or penalty relating thereto, are jointly and severally liable, together with the corporation to pay such amounts.

APPLICATION OF LAW TO FACTS:

The Act is a public protection statute designed to regulate individuals selling vehicles to consumers. It is thus essential that these individuals meet the requirements of registration.

There is no doubt that the Applicants in this case have failed to demonstrate by their cumulative past conduct they are capable of complying with the Act, nor with the regulatory authority set up to administer its provisions.

The Tribunal is persuaded by the demeanour and sincerity of consumers who testified for the Registrar that the Applicants have not demonstrated honesty and integrity in their business dealings. From the testimony of the witnesses, a clear business pattern emerged of incomplete and misleading information, of broken promises and excuses, and financial chaos in administering the sale of used vehicles. Numerous consumers appeared before this Tribunal, all with similar stories of precisely the kind of dealings which the Act is set up to protect against. At least two further similar situations were testified to by able and experienced OMVIC consumer complaints handlers. Mr. Hussain testified that he and his company had sold 160 cars over the 2005 year with 75% going to non-consumers. This results in some forty consumer transactions. At a complaint rate of over 25%, all alleging similar dealings and none of which resulted in remedial efforts by the Applicants until persistent intervention was performed by either OMVIC employees, police or outside players, this Tribunal is convinced the Registrar, as administrator responsible for the regulation of motor vehicle dealers and salespeople under the Act, is justified in acting to issue the Proposal.

Similarly, the Tribunal is unsettled by the evidence of the Applicants on-going refusal to comply with the requirements of the *Retail Sales Tax Act*. The evidence was not disputed that funds were owed; the Applicant's position (Hussain) was that they remained unpaid due to the demands placed upon him and not due to his inability to pay. This Tribunal has had earlier occasions to consider the law in this regard and has held that such funds, once in the hands of the seller are trust funds to be remitted to the Ministry. In not doing so, the Applicants are breaching their trust obligation, which demonstrates financial irresponsibility as well as a lack of honesty and integrity – see *Joseph Fine Cars (2002)* and *New Able Auto and Gary Law (2004)*.

The testimony of Mr. Hussain was self-serving, self-pitying and showed no evidence of regret nor acceptance of responsibility. In all cases, circumstances beyond his control were allegedly at fault. No corroborating evidence was presented to support his position. Such excuses do not indicate responsibility in management of a regulatory business enterprise. Indeed, his actions with respect to the Tribunal proceedings itself demonstrated a lack of concern to comply with the requirements set for him – both as concerns the Order of Vice-Chair McIntosh who had suspended him from dealing and had also issued a cost award which was stipulated to be paid “forthwith” and was not – as well as his efforts to prolong the hearing by seeking a last minute adjournment with little regard for others time and costs.

The evidence was clear, convincing and accepted by the Tribunal that the Applicants have not abided by terms and conditions numbered 20 (disclosure on documentation of material facts pertaining to vehicle sold), 26 (compliance with *Retail Sales Tax Act*) and 35 (prompt and courteous response to consumer complaint) signed at the time of their registration which the Proposal referenced.

In the decision of this Tribunal in 2004 *Tristar Sales and Leasing* a breach of similar terms and conditions contained in a Consent Order were found to have occurred and the Registrar's Proposal to revoke its registration was upheld. On such grounds alone, the Divisional Court dismissed the appeal.

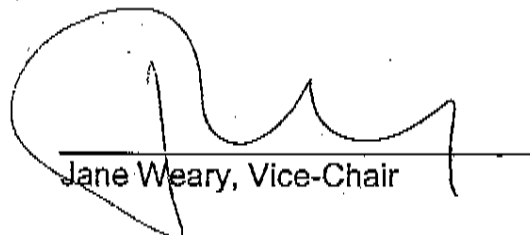
The Tribunal finds that the Applicant Mr. Hussain is clearly the operating mind of the Applicant Santec Enterprises Inc. and indeed such was not disputed. It finds the testimony of Mr. Hussain not believable with regard to the evidence of vehicle transfers after the Suspension Order issued by Vice-Chair McIntosh and prefers the testimony of the consumers who were in all respects credible and forthright. While it may be that the Applicants did not carry on any further sales in light of the Tribunal's Order suspending their operation, the fact remains that they chose to contravene an order of this Tribunal some few hours after it was issued rather than being upfront and direct with the Registrar by openly seeking frank discussion as to how such transfers should legitimately take place. Similar to the Applicants' response to issues arising with the Ministry of Finance, where there was a choice of open and honest dealing, the Applicants chose to attempt dishonest and devious action. Rather than accept responsibility and demonstrate remorse, the Applicant (Hussain) before the Tribunal chose to deny, dispute and place the blame on others.

Based on the totality of the evidence before it, this Tribunal has no hesitation in concluding that the Registrar has reasonable grounds for determining that the Applicants will not carry on business in accordance with the requirements set out in the legislation.

ORDER:

Pursuant to the authority vested in it by section 7 of the *Motor Vehicle Dealers Act*, the Licence Appeal Tribunal directs the Registrar to carry out his Proposal to revoke the registration of Santec Enterprises Inc. as a motor vehicle dealer and to revoke the registration of Sajid Hussain as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL



Jane Weary, Vice-Chair

RELEASED: October 6, 2006

FILE NAME: 3141.mvda.Santec Enterprises Inc. et al.doc

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, will also be posted on the Licence Appeal Tribunal's website www.lat.gov.on.ca in approximately two weeks time. The decision will also be available on Quicklaw at a later date.