

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

AL-HABIB AUTO SERVICES LTD.

- AND -

EFRAN NIDA

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: October 12, 2017

Findings: Breach of Section 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of **\$2,500** and payment shall be provided forthwith. The Dealer is to provide payment by certified funds at the same time as submitting a signed copy of this agreement.
2. Nida is ordered to successfully complete the OMVIC Automotive Certification course (the "course") prior to re-instating his OMVIC salesperson license.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course no later than **30 days after this agreement is made into an Order**. Future sales staff will be offered the course within 90 days of be 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.
4. The Dealer and Nida agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. Al-Habib Auto Services Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around December 2009. Erfan Nida ("Nida") was first registered as a motor vehicle salesperson in or around December 2012. At all material times, Nida was the Director of the Dealer.
2. On or about December 1, 2009, the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply with OMVIC's Code of Ethics, and Standards of Business Practice, as may be amended from time to time. As per condition 9, the Dealer agreed to provide free access to books and record of the Dealer to any authorized representative of the Registrar.
3. On or about January 14, 2013, Nida executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with OMVIC's Code of Ethics, and Standards of Business Practice, as may be amended from time to time. As per condition 10, the Dealer agreed to provide free access to books and record of the Dealer to any authorized representative of the Registrar.
4. During an inspection on or about November 11, 2016, the Dealer was unable to provide the Registrar's representative with the following requested documentation, contrary to section 54 of Regulation 333/08:
 - a) 3 months of the Dealer's bank statements; and
 - b) Current statement of the Dealer's Next Gear floor plan account.
5. During a follow-up inspection on or about November 16, 2016, the Dealer was again unable to provide the Registrar's representative with neither the above-noted documentation nor the following requested documents, contrary to sections 53 and 54 of Regulation 333/08:
 - a) Cancelled cheques;
 - b) Deposit confirmation for various vehicle sales; and
 - c) Dealer's current Harmonized Sales Tax Notice of Assessment.

6. By email dated December 1, 2016, and by telephone on December 6, 2016, the Dealer was again requested to provide the Registrar's representative with the aforementioned documentation.
7. By email dated December 21, 2016, the Dealer was again requested to provide the Registrar's representative with the aforementioned documentation.
8. On or about February 13, 2017, Nida's salesperson registration lapsed. Nida has yet to successfully reinstate this license.
9. By letter dated March 29, 2017, the Dealer was again requested to provide the Registrar's representative with the aforementioned documentation.
10. By letter dated April 12, 2017, the Dealer was again requested to provide the Registrar's representative with the aforementioned documentation.
11. After the Notice of Complaint was issued and on or about June 28, 2017, a representative of the Dealer advised the Registrar's representative that the Dealer would be providing the aforementioned documentation within 10-15 days.
12. To date, the Dealer has failed to provide the Registrar's representative with the aforementioned documentation. This is contrary to sub-section 15(4) of the Act, section 9 of the Dealer's terms and conditions of registration, and section 9 of the Code of Ethics.

It is thereby agreed that the Dealer and Nida have breached the following sections of the Code of Ethics, as set out in 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.

Joint Submission on Penalty

1. The Dealer shall pay a fine in the amount of **\$2,500** and payment shall be provided forthwith. The Dealer is to provide payment by certified funds at the same time as submitting a signed copy of this agreement.
2. Nida shall successfully complete the OMVIC Automotive Certification course (the "course") prior to re-instating his OMVIC salesperson license.

3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course no later than **30 days after this agreement is made into an Order**. 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.
4. The Dealer and Nida agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer breached subsection 4 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1st, 2010, or who are otherwise not required to do so pursuant to the Act.
3. The Dealer is ordered to provide OMVIC with the name and contact information of the person in charge of advertising for the Dealer within 5 business days of the date of the Discipline Committee Order.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and the Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair