



IN THE MATTER OF THE *MOTOR DEALER ACT R.S.B.C. 1996 C. 316* and the *MOTOR DEALER CUSTOMER COMPENSATION FUND REGULATION B.C. REG. 102/95, O.C. 271/95*

FILED BY:

Patrick Bolger

Claimant

INVOLVING:

**Everyday Motor Centre
Dealer License 40197/Cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On June 8, 2018, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Patrick Bolger (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been approved for \$20,000, which will be paid to the claimant from the Fund.

Claim summary

[3] This claim is for \$20,800 and is based on the transaction between the claimant and Everyday Motor Centre (the "EMC") on March 30, 2017, in which the claimant traded his 2011 Hyundai Santa Fe (the "2011 Santa Fe") towards a 2016 Hyundai Santa Fe (the "2016 Santa Fe") at the EMC. The EMC was to pay out the lien on the 2011 Santa Fe to the lienholder.

[4] The claimant noticed that after he had traded the 2011 Santa Fe, the payments for it continued to come out of the claimant's account. After several attempts to contact the EMC, in May 2017 the claimant drove to the EMC and found out the EMC was no longer in business.

[5] The claim is for \$20,800 representing the amount of the lien payout as stated on the Motor Vehicle Purchase Agreement between the EMC and the claimant.

Legislative authority and the Board's findings

[6] In reviewing the eligibility of the claimant's loss for compensation from the Fund, the Board applied Section 5(1)(a)(iii) of the *Motor Dealer Customer Compensation Fund Regulation* (the "*Regulation*") which stipulates that "the dishonest conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer" is eligible for compensation from the Fund.

[7] The Board reviewed the documents on file, copies of which were provided to the claimant and to the motor dealer at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included the claim application, the response to the claim provided by Burnside Auto, the Affidavit by the VSA Compliance Officer dated January 10, 2018, the Registrar's hearing Decision dated March 7, 2018, and the Compliance Order dated March 9, 2018.

[8] The Board found evidence that

- (i) the claimant traded his 2011 Santa Fe to EMC towards the purchase of the 2016 Santa Fe with the expectation that the EMC will pay out the lien on the 2011 Santa Fe to the lienholder;
- (ii) after the trade-in, the claimant no longer had possession of the 2011 Santa Fe;
- (iii) the lien on the 2011 Santa Fe remains unpaid.

Therefore, the Board found that the claimant's loss is eligible for compensation from the Compensation Fund.

[9] In determining the amount of compensation, the Board found that the claimant's loss equals \$22,126.04 being the amount required to clear the lien on the 2011 Santa Fe. Pursuant to Section 9 of the *Regulation*, the maximum amount of compensation that may be awarded from the Fund is \$20,000 per loss. Therefore, the amount of compensation for this claim equals \$20,000.

Compensation payment to claimant

[10] We will send the claimant a cheque in the amount of \$20,000, payable to the claimant, within 60 days from the date of the hearing, i.e., on or before August 7, 2018.

[11] If the Board decides to reconsider its decision before that time, the payment will be withheld until completion of the reconsideration procedures.

If additional compensation received by the claimant

[12] According to Section 20 of the *Motor Dealer Act* (the "MDA"), the claimant has an obligation to advise the Vehicle Sales Authority of BC (the "VSA") if the claimant receives additional compensation from another source for the loss paid from the Fund. For instance, if an insurance company also awards the claimant compensation for the same loss paid from the Fund, the claimant must advise the VSA immediately about that compensation. Failure to repay the Fund may be a cause of legal action against the claimant for the amount unrepaid.

Reimbursement to the Fund by the motor dealer

[13] According to Section 24 of the MDA, if a claim is paid out of the Fund, the motor dealer who caused the claim must reimburse the Compensation Fund for the amount paid out of the Fund for the claim. The Registrar of Motor Dealers may cancel the dealer license of the motor dealer who caused the claim if the Fund is not repaid.

[14] The VSA Licensing Department will take the required action regarding repayment to the Fund by the EMC.

Finality of decision

[15] Decisions of the Board cannot be appealed. According to Section 16(2) of the MDA, "A decision, order or ruling of the Board ... is final and conclusive and is not open to question or review in court except on a question of law or excess of jurisdiction".

[16] Reconsideration: According to Sections 16(2), 18.1 and 18.2 of the MDA, the Board may, at its discretion, reconsider its decision. The Board will consider a request for reconsideration from a party to a claim, provided that the request is made in writing and includes relevant evidence that was not previously considered by the Board and was not known or available to the party before the hearing. All parties to a claim will be notified if the Board decides to reconsider its decision. An application for reconsideration must be made in writing within 30 days of the decision.

[17] Judicial Review: The Board's decision may be challenged on a question of law or excess of jurisdiction in the BC Supreme Court pursuant to the *Judicial Review Procedure Act*. According to Section 57 of the *Administrative Tribunals Act*, an application for judicial review must be made within 60 days of the date the decision is issued. We suggest contacting a lawyer to obtain legal advice regarding this option.

Date: June 25, 2018



William Kwok
Chair, Motor Dealer Customer Compensation Fund Board

BK/ag