



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:

Kenneth Rechik

Claimant

INVOLVING:

**D.J. Auto Markets Inc.
Dealer Licence 10543/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On February 6, 2019, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Kenneth Rechik (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been approved for \$20,000.00, which will be paid to the claimant from the Fund.

Claim summary

[3] This claim is for \$58,240.00 and is based on the transaction between the claimant and D.J. Auto Markets Inc. ("D.J. Auto") in which on or about November 6, 2015, the claimant consigned to D.J. Auto the 1998 Ferrari F355 (the "Ferrari"). The claimant had purchased the Ferrari on or about July 28, 2015, for \$58,240.00.

[4] At the time of the consignment, the manager at D.J. Auto informed the claimant that the claimant did not need the storage insurance, as the Ferrari would be covered by the dealership's insurance while on consignment.

[5] On March 2, 2016, there was a fire at 2337 King George Boulevard Hwy, Surrey – at the location of D.J. Auto. The Ferrari was on the D.J. Auto premises at the time of the fire and was burnt.

[6] On April 2, 2016, the claimant was made aware of the fire damage to the Ferrari.

[7] The claimant did not receive any compensation for the damage to the Ferrari from the building owner or insurer.

[8] On January 27, 2018, the claimant sold the Ferrari 'as is' for \$3,600.00.

[9] On March 5, 2018, the claimant contacted the Vehicle Sales Authority of BC (the "VSA") to report his loss with respect to consigning the Ferrari to D.J. Auto. The claimant was provided the information on how to apply for compensation from the Fund.

[10] On March 8, 2018, the claimant's Demand to Motor Dealer was received at the VSA.

Legislative authority and the Board's findings

[11] In assessing the eligibility of the claim, the Board found that since the transaction date to which the claim relates is prior to January 1, 2018, the initial eligibility criteria stipulated in the *Motor Dealer Act* (the "MDA") and *Motor Dealer Customer Compensation Fund Regulation* (the "Regulation") in effect prior to January 1, 2018, must be applied. The Board established that the claim met the initial eligibility criteria:

1. the claim application had been filed within 2 years of the refusal or failure of the motor dealer to pay the amount claimed;
2. the claimant is an individual;
3. the claimant's transaction with respect to the motor vehicle was with a licensed motor dealer; and
4. the subject motor vehicle could reasonably be used primarily for personal and not business purposes.

[12] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5(1)(c)(iii) of the *Regulation* which stipulates that with respect to the delivery of a motor vehicle to the motor dealer for sale on consignment, the loss of the vehicle or the value of the vehicle resulting from "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.

[13] 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, and the Investigation Report by the VSA Compliance Officer. The Board found that:

1. D.J. Auto held Motor Dealer Licence number 10543 issued by the VSA. That licence did not permit D.J. Auto to engage in consignment sales.
2. While not licensed for consignment sales, D.J. Auto accepted the claimant's Ferrari for sale on consignment. There was no written consignment agreement, however there is account of oral agreement supporting the consignment nature of the transaction between the claimant and D.J. Auto.
3. An oral representation was made by D.J. Auto to the claimant that while the Ferrari was consigned to D.J. Auto, there was no requirement for the claimant to purchase insurance for the Ferrari, since the dealer's insurance would cover it. The claimant relied on the expertise of the D.J. Auto's salesperson and cancelled the storage insurance that he had on the Ferrari prior to consigning it to D.J. Auto.
4. The fire in the building that was occupied by D.J. Auto, destroyed the Ferrari beyond repairs.
5. The claimant failed to get compensation for the loss of the Ferrari and its value through the insurance company. It was determined that D.J. Auto was not negligent and the dealer's garage policy did not cover the vehicles not owned by D.J. Auto.

[14] The Board established that the claimant's loss is eligible for compensation from the Fund.

[15] In determining the amount of compensation, the Board considered that:

1. The amount of the claim is \$58,240.00, which equals what the claimant paid for the Ferrari on or about July 28, 2015.
2. After the Ferrari was destroyed by the fire on March 2, 2016, the claimant sold it 'as is' for \$3,600.00.
3. Pursuant to Section 9 of the *Regulation*, the maximum amount of compensation that may be awarded from the Fund is \$20,000.00 per loss.

[16] The Board established that the compensation equals \$20,000.00.

[17] The Board recognized that the awarded compensation is less than the claimed amount. There may be other legal remedies available to the claimant. The claimant is encouraged to do their own investigations into, or speak with a lawyer about, other possible remedies. Attached is the VSA Fact Sheet *Where to go for help*, which has information that may be helpful for the claimant.

Compensation payment to claimant

[18] We will send the claimant a cheque in the amount of \$20,000.00 within 60 days from the date of the hearing - on or before April 8, 2019.

[19] 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

[20] According to Section 20 of the *MDA*, the claimant has an obligation to 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.

Investigation cost recovery by the VSA

[21] Pursuant to Section 22(b) of the *MDA*, costs incurred in investigating claims against the Fund must be paid from the Fund.

[22] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #18040-1. The Board approved the invoiced investigation costs in the amount of \$1,271.39 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the motor dealer

[23] 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 and for the investigation costs. The Registrar of Motor Dealers may cancel the dealer license of the motor dealer who caused the claim if the Fund is not repaid.

[24] The VSA Licensing Department will take the required action regarding repayment to the Fund by D.J. Auto.

Finality of decision

[25] 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".

[26] 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.

[27] 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: February 26, 2019



William Kwok
Chair, Motor Dealer Customer Compensation Fund Board

Attachment
BK/ag



Where to go for help...

...if you're looking for **translation services**:

Society of Translators and Interpreters of British Columbia: <http://www.stibc.org/>

Mosaic BC: <http://www.mosaicbc.com/>

The Yellow Pages (under 'Translators and Interpreters'): <http://www.yellowpages.ca/>

...if you're looking for **legal advice**:

Access Pro Bono

For those that cannot afford a lawyer, legal advice in most areas of law is given through free clinics held throughout Vancouver. Appointments can be booked by calling 604-878-7400 or 1-877-762-6664, or online at www.accessprobono.ca.

Dial-a-Law

A free service available in English, Chinese and Punjabi that offers general information on a variety of law topics. Publications can be accessed online at www.dialalaw.org. Dial-a-Law can be reached at 604-687-4680 or 1-800-565-5297.

Lawyer Referral

Gives the opportunity to discuss a case with a lawyer for up to 30 minutes for a small fee. The consultation will determine if there is a legal problem. The service operates by telephone and can be reached at 604-687-3221 or 1-800-663-1919.

Clicklaw

Provides access to legal information and offers several options on solving legal problems. It is available online at www.clicklawbc.ca.

Legal Services Society

A non-profit organization that provides legal information and advice for low income families. For general inquiries, call 604-601-6000 or access their website at www.legalaid.bc.ca.

UBC Law Students' Legal Advice Program

UBC law students provide advice under the supervision of a practicing lawyer throughout the Lower Mainland. Call 604-822-5791 to book an appointment or visit their website at <http://www.lslap.bc.ca/main/>.

The Law Centre

The Law Centre provides legal assistance to people in the Greater Victoria area who cannot afford a lawyer. Call 250-385-1221 for further assistance, or visit their website at www.thelawcentre.ca.

Where to go for help...

...if you're looking for **consumer protection information**:

Consumer Protection BC

A non-profit corporation established to strengthen consumer protection in BC. They enforce consumer protection laws (except regarding motor dealers, lawyers and some other professions) and encourage fair business practices. Complaint handling and resource guides are available on their website at www.consumerprotectionbc.ca. They are also accessible at 1-888-564-9963.

Better Business Bureau (BBB)

Includes an accredited business and charity directory, consumer tips, alerts, and guides. Those in the Lower Mainland call 604-682-2711; the rest of BC call toll free at 1-888-803-1222. More information can be found online at www.mbc.bbb.org/consumers.

Canadian Motor Vehicle Arbitration Plan (CAMVAP)

Helps consumers resolve disputes with a manufacturer on vehicle defects or warranty through arbitration. All services are free. To see if you qualify, visit www.camvap.ca or call 1-800-207-0685.

Canadian Consumer Association

Gives information on consumer issues and provides tools and resources. Also offers a step-by-step roadmap on how to make a consumer complaint. Visit them at www.consumerinformation.ca.

Mediate-BC

Specializes in dispute resolution through mediation and offers mediation information and services, as well as a directory of available mediators. They can be contacted by going to their website at www.mediatebc.com.

Civil Resolution Tribunal (CRT)

CRT's online Solution Explorer will diagnose your problem and give you legal information and self-help tools. If the dispute remains unresolved, a formal complaint process can be started. For small claims disputes of \$5,000 and under, the use of the CRT for dispute resolution is mandatory. For more information, visit <https://civilresolutionbc.ca/>.

Office of the Information and Privacy Commissioner for B.C. (OIPC)

Oversees B.C.'s access and privacy acts and works to protect the privacy rights of B.C. residents. They can investigate privacy and access complaints. More information can be found on their website at www.oipc.bc.ca.

Office of the Ombudsperson

Investigate complaints about unfair administrative actions from provincial public authorities. Call them toll-free at 1-800-567-3247 or visit www.bcombudsperson.ca for more information.

Note: This fact sheet provides general information and is not intended to be legal advice.

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