



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:

Ivanco Keremelevski

Claimant

INVOLVING:

**Bero Investments Ltd. *dba* King George Nissan
Dealer License 8933/issued**

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 Ivanco Keremelevski (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been denied.

Claim summary

[3] This claim is for \$27,500.00 and is based on the transaction between the claimant and Bero Investments Ltd. *dba* King George Nissan (the "King George Nissan"), in which on May 3, 2017 the claimant purchased a 2017 Nissan Versa Note (the "Versa Note").

[4] The claim is based on the alleged misrepresentation of the Versa Note by King George Nissan, breach of contract by King George Nissan and failure by King George Nissan to return all money received from the claimant.

[5] The claimant's allegations are that the claimant's purchase agreement with King George Nissan did not meet the required standard of the agreement, that King George failed to abide by the federal, provincial & municipal laws, the Dealer & New Dealer Act, the Sales of Goods & Services Act, the Business Practices & Consumer Protection Act ("*BPCPA*"), and many other rules and regulations.

[6] The claimant alleges that due to the breach of contract by King George Nissan, the claimant exercised the right under the *BPCPA* and cancelled the contract within a year. King George Nissan failed to return to the claimant the money received from the claimant with respect to the subject transaction, including the trade-in, down-payment, and all car payments.

[7] The claimant's allegations also are that King George Nissan failed to maintain the standards set in *BPCPA*; failed to disclose material facts; acted recklessly and negligently; intentionally ignored the duty of care and trust; failed to meet customer requirements; and

used excessive pricing which resulted in unjust enrichment for King George Nissan and caused financial distress to the claimant, who is a disabled person.

Legislative authority and the Board's findings

[8] 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 applicant is an individual;
3. the applicant purchased the motor vehicle in a transaction with a licensed motor dealer; and
4. the motor vehicle was used primarily for personal and not business purposes.

[9] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5.1 of the *Regulation* which outlines the losses eligible for compensation from the Fund. Pursuant to Section 5(1)(a), only liquidated amounts are compensable in relation to the purchase of a vehicle. In addition, Section 7(a) of the *Regulation* stipulates that a claim based on cost, quality or value of a motor vehicle received is not eligible for compensation from the Fund.

[10] 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:

1. the claim application,
2. the File Note by the Vehicle Sales Authority of BC (the "VSA") Claims Manager containing the VSA Consumer Complaint Application, the motor dealer response to the complaint, the email from the VSA Compliance Officer to the claimant, and
3. the Investigation Report by the VSA Compliance Officer.

[11] The Board found that:

1. the claimant's allegations of the misrepresentation of the vehicle by the motor dealer are unsupported by the evidence;
2. the loss claimed is for an unliquidated amount and relates to the cost, quality and value of the motor vehicle received by the claimant from the motor dealer; and
3. the Board has no jurisdiction to assess the claimant's damages due to the alleged failure by King George Nissan to abide by the federal, provincial & municipal laws quoted by the claimant, including the *Sale of Goods Act* and the *BPCPA*.

[12] Therefore, the claim is not eligible for compensation from the Fund and is denied.

[13] The Board has jurisdiction to assess claims which fall within the specific terms of the *Regulation* only. Claimants may have other legal remedies available to them and are 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*.

Investigation cost recovery by the VSA

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

[15] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #18334-1. The Board approved the invoiced investigation costs in the amount of \$354.56 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the motor dealer

[16] 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 licence of the motor dealer who caused the claim if the Fund is not repaid.

[17] Since this claim is denied, the investigation costs will not be charged to King George Nissan.

Finality of decision

[18] 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".

[19] 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.

[20] 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.legalaidsociety.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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