



**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:

**James Murray Todd**

Claimant

INVOLVING:

**Affinity Auto Group Inc. dba Affinity Auto  
Dealer Licence 30471/cancelled**

Motor Dealer

**DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD**

By way of written submissions.

[1] On April 3, 2019, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by James Murray Todd (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 \$43,694.93 and is based on the transaction between the claimant and Affinity Auto Group Inc. dba Affinity Auto ("Affinity Auto") in which on September 16, 2014, the claimant purchased a 2013 Porsche 911 CS Cabriolet (the "Porsche 911"). Prior to finalizing the purchase, the claimant was provided a copy to the BC Online PPRS Search Result showing no liens on the Porsche 911.

[4] The claimant had no further dealings with Affinity Auto.

[5] On September 25, 2018, the Porsche 911 was seized from the claimant by a bailiff due to the outstanding lien on the Porsche 911. The lien was registered in the name of Affinity Auto's dealer principal, who appeared to have made payments to the lienholder for about 4 years after the Porsche 911 was sold to the claimant.

[6] On September 28, 2018, the claimant paid out the lien in full. The total payment made by the claimant to get the Porsche 911 back was \$43,694.93, including the lien payout in the amount of \$42,660.65 and applicable fees.

### **Legislative authority and the Board's findings**

[7] 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* 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 motor vehicle is used primarily for personal and not business purposes.

[8] In reviewing the eligibility of the claimant's alleged loss for compensation from the Fund, the Board applied Section 5(1)(a)(iv) of the *Regulation* which stipulates that "the failure of the motor dealer to provide clear title to the motor vehicle or to ensure that the motor vehicle was free from a charge or encumbrance, in favour of the third party, that was not declared or known to the buyer at the time the purchase was made" is eligible for compensation from the Fund.

[9] 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.

[10] The Board found evidence that:

1. at the time of the purchase of the Porsche 911, the claimant was provided a copy of the BC Online PPRS Search Result showing no liens on the Porsche 911;
2. the Porsche 911 was repossessed from the claimant 4 years after the purchase due to the outstanding lien registered against the vehicle;
3. to get the Porsche 911 back, the claimant paid out the lien balance to the lienholder in full.

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

[11] In determining the amount of compensation, the Board found that the claimant's loss equals the amount of the claimant's payout to the lienholder - \$43,694.93 - being the amount required to get the Porsche 911 back after it was repossessed.

[12] 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. Therefore, the amount of compensation for this claim equals \$20,000.00.

**Compensation payment to claimant**

[13] 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 June 3, 2019.

[14] 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**

[15] 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.

**Investigation cost recovery by the VSA**

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

[17] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #18291-1. The Board approved the invoiced investigation costs in the amount of \$277.86 for recovery by the VSA from the Compensation Fund.

**Reimbursement to the Fund by the motor dealer**

[18] 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.

[19] The VSA Licensing Department will take the required action regarding repayment to the Fund by Affinity Auto.

**Finality of decision**

[20] 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".

[21] 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.

[22] 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: April 29, 2019

Original signed

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William Kwok  
Chair, Motor Dealer Customer Compensation Fund Board

*BK/ag*