



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:

Austin Holder and Coleen Holder

Claimant

INVOLVING:

**All Roads R.V. Ltd
Dealer Licence 30363/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On June 5, 2019, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Austin Holder and Coleen Holder (the "claimants") 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 \$7,879.48 and is based on the transaction between the claimants and All Roads R.V. Ltd ("All Roads RV") on February 3, 2017, in which the claimants purchased from All Roads RV a 2008 Winnebago Vectra 40TD. As a part of the transaction, the claimants purchased from All Roads R.V. the Western Life Assurance credit life insurance for \$7,879.48.

[4] On December 13, 2018, the claimants called Western Life Assurance to cancel the insurance policy and were informed that All Roads RV never submitted the completed insurance forms and the payment to Western Life Assurance. Therefore, the policy was never put into force.

[5] The claimants attempted to contact All Roads RV and found out that the motor dealer was no longer in business. The claimants then contacted the Vehicle Sales Authority of BC (the "VSA").

[6] On December 28, 2018, the claimants submitted the Demand to Motor Dealer, to which the claimants did not receive any response.

[7] On February 1, 2019, the claimants' Claim Application was received at the VSA.

Legislative authority and the Board's findings

[8] In reviewing the eligibility of the claimants' alleged loss, the Board applied Section 5.1 of the *Motor Dealer Customer Compensation Fund Regulation* (the "*Regulation*") which outlines the losses eligible for compensation from the Fund.

[9] The Board reviewed the documents on file, copies of which were provided to the claimants and to All Roads RV at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included the claim application, the Investigation Report by the VSA Compliance Officer, and the File Note by the VSA Consumer Services Officer.

[10] The Board found that:

- (1) On February 3, 2017, the claimants entered in a binding contract with the Western Life Assurance for a life insurance policy. All Roads RV acted as the agent for Western Life Assurance.
- (2) The claimants paid to All Roads RV the premium for the life insurance in the amount of \$7,879.48.
- (3) When the claimants contacted the Western life Assurance on December 13, 2018, the claimants' purpose of contact was to cancel the life insurance.

[11] Section 18 of the *Insurance Act* requires an insurer to honor an insurance policy regardless if their agent has remitted premium payment. The Board found that:

- (1) All Road RV failed to remit to Western Life Insurance the premium that the claimants paid to All Roads RV.
- (2) Despite All Roads RV not remitting the payment, Western Life Assurance offered the claimants the refund of \$1,188.38 per the policy calculation.
- (3) The claimants rejected this offer, since they expected to receive the refund of the premium in full.
- (4) Should the premium for the policy be remitted by All Roads RV, the claimants would have been offered the same amount of the refund, not the entire premium.

[12] In light of the above, the Board found no evidence that the claimants suffered a loss and, therefore, denied the claim.

[13] The Board has jurisdiction to assess claims which fall within the specific terms of the *Regulation* only. If the claimants are dissatisfied with the refund calculation used by Western Life Assurance, the claimants should be addressing this with the insurance company. The 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 *Motor Dealer Act* (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 #18165-1. The Board approved the invoiced investigation costs in the amount of \$215.09 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 All Roads RV.

Finality of decision

[18] Decisions of the Board cannot be appealed. According to Section 16(2) of the *Motor Dealer Act* (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: June 24, 2019

Original signed

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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