

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:

Matt Beck

Claimant

INVOLVING:

**Pinnacle Car Sales and Leasing Ltd. *dba* Pinnacle Motors
Dealer License 30793/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On August 7, 2019, the Motor Dealer Customer Compensation Fund Board (the "Board") continued the hearing in the matter of the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Matt Beck (the "claimant").

Decision

[2] This claim has been denied.

Claim summary

[3] This claim is for \$3,600.00 and is based on the transaction between Matt Beck (the "claimant") and Pinnacle Car Sales and Leasing Ltd. *dba* Pinnacle Motors ("Pinnacle Motors").

[4] According to the claimant's submission, in January 2016, the claimant was looking for a vehicle in Vancouver, BC for purchasing and exporting to the United States.

[5] The claimant went to Pinnacle Motors and spoke to a salesperson, Thomas Rayson ("Rayson"). Rayson offered help with exporting a vehicle in the US for a small fee, if the claimant were to find a vehicle.

[6] The claimant found a 2012 Kia Optima (the "Kia") on the Craigslist. On February 26, 2016, the claimant purchased the Kia privately for \$13,500. Rayson provided the claimant with a contact at a Brown Bros. dealership in Yakima, WA, who was to help the claimant with exporting the Kia to the US.

[7] The claimant was later informed by the contact at Brown Bros. in Yakima that since the Kia was made in Korea, the claimant would not be able to get the required road and safety compliance letter, and, therefore, the claimant could not bring the Kia into the US.

[8] Rayson offered to help the claimant with selling the Kia. The claimant brought the Kia to Pinnacle Motors.

[9] In mid-March 2016, Rayson informed the claimant that there was a buyer for the Kia and that the claimant would receive \$1,600 more than what he paid to buy the Kia. No buyer/seller agreement of any kind was provided to the claimant.

[10] On March 18, 2016, the claimant received the proceeds for the sale of the Kia - a cheque in the amount of \$12,750. Rayson informed the claimant that Pinnacle Motors ran the sale through a processing company and they charged \$2,000. \$2,000 CAD or an equivalent in USD is part of the claimed amount.

[11] Rayson told the claimant he would resolve the issue by going to an auction in Calgary and purchasing a vehicle for export to the United States. The claimant provided Rayson with \$8,000 for the purchase. The claimant stated that a Ford Fusion (the "Ford") was purchased but he was unable to export the vehicle due to a check engine light. Rayson could not recall purchasing the Ford Fusion.

[12] Rayson returned all but \$1,600 of the money he received from the claimant for the Ford. \$1,600 CAD or an equivalent in USD is part of the claimed amount.

[13] The Board held the initial hearing in the matter of this claim on April 3, 2019. The Board found that additional information is required to adjudicate the claim. The claim hearing was adjourned.

Legislative authority and the Board's findings

The Board established that the claim is for the losses related to two vehicles and reviewed those losses separately.

1. 2012 Kia Optima (the "Kia")

[14] The Board reviewed the claim documents including the claim application, the Investigation Report by the VSA Compliance Officer, the claimant's response to the Investigation Report, and the Amendment to the Investigation Report by the VSA Compliance Officer.

[15] The Board established that:

1. In addition to Pinnacle Motors, another dealership was involved in the consignment of the Kia transaction, namely, Pioneer Garage Limited *dba* Pioneer Chrysler Jeep (the "Pioneer Chrysler Jeep"). Neither Pinnacle Motors, nor Pioneer Chrysler Jeep are licensed for consignment sales.
2. The amount of the claimant's loss related to the consignment of the Kia is \$2,000.00.
3. On May 16, 2019, Pioneer Chrysler Jeep offered the claimant \$2,000.00 in resolution of the claimant's dispute. This offer has been accepted by the claimant.

[16] Therefore, the part of the claim related to the Kia is resolved.

2. Ford Fusion (the "Ford")

[17] 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 Customer Compensation Fund Regulation* (the "*Regulation*") in effect prior to January 1, 2018, must be applied.

[18] Section 4 of the *Regulation* stipulates that to apply for compensation, all of the following criteria must be met:

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.

[19] The Board reviewed the documents on file, copies of which were provided to the claimant and to Pinnacle Motors 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, the claimant's response to the Investigation Report, and the Amendment to the Investigation Report by the VSA Compliance Officer.

[20] The Board found that the claimant's transaction related to the purchase of the Ford was with an individual, Thomas Rayson, and not with a licensed motor dealer.

[21] Therefore, the claim is denied, since the Board has no jurisdiction over transactions that do not involve licensed motor dealers.

[22] The claimant may have other legal remedies and is encouraged to do their own investigations into, or speak with a lawyer about, other possible remedies. Attached is the Vehicle Sales Authority of BC (the "VSA") Fact Sheet *Where to go for help*.

Investigation cost recovery by the VSA

[23] 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.

[24] The Board reviewed the VSA Investigation Cost Recovery Invoices for this claim:

1. Invoice #18109-1 in the amount of \$755.69, with respect to investigation involving Pinnacle Motors, and
2. Invoice #18109-2 in the amount of \$379.38, with respect to investigation involving Pioneer Chrysler Jeep.

The Board approved both above-captioned invoices for the full amounts invoiced for recovery by the VSA from the Fund.

Reimbursement to the Fund by the motor dealer

[25] 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.

[26] Since this claim is denied, the investigation costs will not be charged to Pinnacle Motors or Pioneer Chrysler Jeep.

Finality of decision

[27] 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".

[28] 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.

[29] 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: August 23, 2019

/originally 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.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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