



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Max Motors, LLC

Case No.: TR-13-0014

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FINAL DECISION

On January 15, 2013, an employee of the Division of Motor Vehicles, Department of Transportation filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Max Motors, LLC. On May 28, 2013, the claim along with documents gathered by the Department during its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on June 13, 2013. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Transportation  
Division of Motor Vehicles  
Revenue Accounting  
P.O. Box 7336  
Madison, WI 53707-7336

Jesus Soto  
Max Motors, LLC  
3418 West Scott Street  
Milwaukee, WI 53215

Western Surety Company  
P.O. Box 5077  
Sioux Falls, SD 57117

## FINDINGS OF FACT

1. Max Motors, LLC, (the Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation (Department) pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 4440 West Forest Home Avenue, Milwaukee, Wisconsin. The Dealer was put out of business effective November 22, 2012.

2. The Dealer has had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force commencing on February 18, 2010 (Western Surety Company Bond No. 70878617).

3. During the time period from June through September of 2012, the Dealer submitted to the Department's Division of Motor Vehicles (the DMV) twenty Wisconsin Title and Registration Applications (MV-11s) for motor vehicles that the Dealer had sold to retail customers. The Dealer submitted three Automated Clearing House (ACH) payments to cover the required fees to process the applications. The ACH transactions were submitted on October 31 (\$164.50), November 6 (\$618.00), and November 7, 2012 (\$2,372.50).

4. The three ACH payments were denied due to insufficient funds in the Dealer's account. On December 7, 2012, the DMV sent a letter to the Dealer requesting payment of the required fees plus a \$20.00 service charge for each denied ACH payment. The DMV received no response to the letter from the Dealer.

5. On January 15, 2013, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$3,215.00. The amount of the bond claim represents the sum of the unpaid fees and service charges for the twenty MV-11s submitted to the DMV.

6. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

7. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$3,215.00.

8. The DMV's claims arose during the time period between October 31 and November 7 of 2012, the dates the three denied ACH payments were submitted. The bond claims were filed within three years of the ending date of the one-year period that a surety bond issued by Western Surety Company was in effect and is, therefore, a timely claim.

### CONCLUSIONS OF LAW

1. The DMV's claim arose during the time period between October 31 and November 7 of 2012. Western Surety Company issued a one year surety bond to the Dealer covering a one-year period commencing on February 18, 2012. The claim arose during the period covered by the surety bond.
2. The DMV filed claim against the motor vehicle dealer bond of the Dealer on January 15, 2013. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$3,215.00.
4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of Max Motors, LLC, is APPROVED in the amount of \$3,215.00. Western Surety Company shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of Max Motors, LLC.

Dated at Madison, Wisconsin on July 30, 2013.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
Mark F. Kaiser  
Administrative Law Judge

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel  
4802 Sheboygan Avenue, Room 115B  
Wisconsin Department of Transportation  
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.