



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Claims Against the Dealer Bond
of C C Auto, Inc.

Case No. TR-13-0022

FINAL DECISION

On June 10, 2013, Michael Halling filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of C C Auto, Inc., (Dealer). On July 26, 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 (ALJ) issued a Preliminary Determination in this matter on September 17, 2013. On October 30, 2013, Michael Halling filed an objection to the Preliminary Determination. Pursuant to due notice an evidentiary hearing under Wis. Admin. Code § Trans 140.26(6) was conducted in this matter on December 4, 2013, in Eau Claire, Wisconsin. Mark F. Kaiser, Administrative Law Judge (ALJ), presiding.

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

Michael Halling
N6305 North Kirk Road
Arkansaw, WI 54721

Charles Christensen
C C Auto, Inc.
8063 North Road
Eau Claire, WI 54701

Nicholas Christensen
C C Auto, Inc.
3625 London Road
Eau Claire, WI 54701

Pekin Insurance Company
Bond Department
2505 Court Street
Pekin, IL 61558

The Preliminary Determination issued in this matter found that Michael Halling sustained a loss as the result of a the Dealer's violation of Wis. Stat. §§ 218.0116(1)(c) and (cm). In the Preliminary Determination Mr. Halling's claim for reimbursement for the premium he paid to the Dealer for an extended warranty, his claim for reimbursement for the purchase price of the vehicle was denied, and his claim for reimbursement for repairs to defective items on the vehicle at the time he purchased the vehicle was denied because of insufficient documentation.

At the hearing, Mr. Halling presented credible testimony that the items on the estimate from Pepin Auto Center were all defective at the time he purchased the vehicle. These repairs would have either been covered by the extended warranty or would have been performed by the Dealer at no cost to Mr. Halling. The Preliminary Determination is amended to also allow the portion of the claim for the estimated cost of the repairs. In all other respects, the Preliminary Determination is adopted as the Final Decision in this matter.

FINDINGS OF FACT

1. C C Auto, Inc., (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 3624 Mall Drive, Eau Claire, Wisconsin. The dealership was placed out of business effective September 7, 2011.
2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from March 15, 2010, until it was cancelled effective March 11, 2012. (Bond #B170585 from Pekin Insurance Company)
3. On June 16, 2011, Michael Halling (Halling) purchased a 2001 Chevrolet Silverado truck, vehicle identification number 1GCHK23G31F161295, from the Dealer. According to the purchase contract, Halling paid \$14,538.56, including taxes and registration fees, for the vehicle. At the same time, Halling also executed a contract to purchase an extended warranty covering the vehicle. The term of the extended warranty was 24 months or 30,000 miles. The extended warranty purchased by Halling was administered by DriverZEdge, a company with headquarters in Henderson, Nevada. Halling purchased the extended warranty policy through the Dealer. It cost \$1099.00.
4. Halling did pay to the Dealer the \$1099.00 premium for the extended warranty. Halling subsequently received a letter from DriverZEdge stating that the company had not received payment for the extended warranty and the warranty was cancelled.
5. After Halling purchased the vehicle from the Dealer, he did not receive a title and registration for the vehicle. Halling filed a complaint against the Dealer with the

Department. The investigator assigned to the complaint did cause a title and plates for the vehicle to be issued to Halling. The investigator also contacted DriverZEdge and confirmed that the company received a check from the Dealer for Halling's extended warranty that was returned for insufficient funds. Consequently, the warranty was never put into effect.

6. On June 10, 2013, Halling filed a claim against the Dealer's surety bond. The amount of the claim is \$21,331.38. The claim is itemized as follows:

- | | |
|-----------------------------------------------------|-------------|
| 1) Extended warranty | \$1099.00 |
| 2) Repairs needed | \$5,693.82 |
| 3) Vehicle, taxes, registration, and processing fee | \$14,438.56 |

7. The Dealer's retention of the premium Halling paid for the extended warranty to DriverZEdge constitutes violations of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer) and Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer). This loss sustained by Michael Halling was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

8. Michael Halling's claim for the purchase price of the vehicle is presumably based on the Dealer's failure to submit an application for a title and registration for the vehicle to the Department. According to the Consumer Investigation Report, an investigator for the Department had a title and plates for the vehicle issued to Halling. If so, this part of Halling's complaint has been resolved and there is no longer any basis to reimburse him for the purchase price of the vehicle.

9. Halling's claim also included an amount for "repairs needed" to the vehicle. The documents submitted to support the claim include an estimate from the Pepin Auto Center for various repairs to the vehicle. Halling testified that he had problems with a door lock, the remote starter was inoperable, the radio did not work, fog light on the driver's side was missing, the vehicle seemed to start wandering, and he was stopped by law enforcement and warned of an illegal exhaust sometime after he purchased the vehicle. Halling contacted the Dealer and was told to bring the vehicle back after he returned from a vacation to Canada and these items would be repaired. When the Dealer was scheduled to return, Halling was in Florida on vacation. When Halling returned from Florida, the Dealer was out of business. The cost of these repairs is a loss sustained by Halling as a result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

10. Michael Halling submitted documentation to support a bond claim of \$6,792.82, the amount he paid for the extended warranty plus the estimate for the cost to repair the items that were defective at the time the truck was purchased. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Pekin Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)].*

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to Michael Halling's claim, the Dealer's actions constitute a violation of Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm). Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm) are both identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Michael Halling sustained a loss as a result of these violations.

CONCLUSIONS OF LAW

1. The claim of Michael Halling arose on June 16, 2011, the date he purchased an extended warranty through the Dealer and the Dealer failed to submit the premium paid by Michael Halling to DriverZEdge. The surety bond issued to the Dealer

by Pekin Insurance Company covers a one-year period commencing on March 15, 2011. The claim arose during the period covered by the surety bond.

2. Michael Halling filed a claim against the motor vehicle dealer bond of the Dealer on June 10, 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. Michael Halling sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Michael Halling has submitted documentation to support a claim in the amount of \$6,792.82.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Michael Halling against the motor vehicle dealer bond of C C Auto, Inc., is APPROVED in the amount of \$6,792.82. Pekin Insurance Company shall pay Michael Halling this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on December 23, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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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.