



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Claims Against the Dealer Bond
of Auto and Truck Brokers

Case No. TR-14-0034

FINAL DECISION

On July 29, 2014, Michael Brody filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Auto and Truck Brokers (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Daily Jefferson County Union, a newspaper published in Jefferson County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by February 17, 2015. No additional claims were filed. Michael Brody's claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on April 9, 2015. 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:

Jontae L Wynder
Auto and Truck Brokers
2637 Alexandria Place
Janesville, WI 53548-3365

Michael S. Brody
9 Highland Terrace
Prescott AZ 86305

Platte River Insurance Company
PO Box 5900
Madison WI 53705

FINDINGS OF FACT

1. Auto and Truck Brokers (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 646 North Rail, Jefferson, Wisconsin. The Dealer was put out of business effective November 27, 2013.

2. The Dealer had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force from March 1, 2012, until it was cancelled effective March 1, 2014 (Bond #41242589 from Platte River Insurance Company).

3. On July 10, 2013, Michael Brody (Brody) purchased a 2003 Lincoln Aviator SUV, vehicle identification number 5LMEU78H53EJ52684, from the Dealer. According to the purchase contract, Brody paid \$4,200.00 for the vehicle. Brody also paid a \$69.50 title fee to the Dealer.

4. Brody saw the vehicle advertised on craigslist. The Dealer advertised the vehicle as all-wheel drive (AWD). After purchasing the vehicle, Brody drove it home to Prescott, Arizona. When he got the vehicle home, Brody noticed some oil leaks. While investigating the oil leaks, Brody discovered that the front driveshaft was missing on the vehicle. A missing front driveshaft meant the vehicle was not AWD.

5. Brody installed a used driveshaft in the vehicle, but when he did so he heard "loud, snapping, metallic noises." Using Kelly Blue Book as a reference, Brody estimated the difference between the vehicle the Dealer advertised (an AWD vehicle) and what he purchased (a two wheel drive vehicle (2WD)) is \$1000.00. Brody also never received a title for the vehicle.

6. On October 15, 2013, Brody filed a complaint against the Dealer with the Department. The investigator contacted Jontae Wynder (Wynder), the owner of the dealership, about Brody's complaint. Wynder told the investigator that he was going out of business and would not do anything to resolve the complaint. The investigator submitted a Wisconsin Title and License Application (form MV11) to the Department's Division of Motor Vehicles (DMV) for processing. A Wisconsin title to the vehicle was issued to Brody without the receipt of any fees.

7. On June 20, 2014, Brody obtained a small claims judgment of \$1000.00 plus costs against Wynder from the Rock County Circuit Court. The judgment is not described, but presumably it is for the difference in value of the vehicle as advertised by the Dealer and the vehicle purchased by Brody. On July 29, 2014, Brody filed a claim against the Dealer's surety bond. The amount of the claim is \$1,169.50 and is itemized as follows:

- | | |
|-------------------------------------|------------|
| 1) Difference in Value – AWD to 2WD | \$1000.00; |
| 2) Replacement Driveshaft | \$100.00; |
| 3) Unrefunded Title Fees | \$69.50; |

8. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose “significant existing mechanical defects” in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. The Dealer should have been discovered the missing front driveshaft during an inspection of the vehicle and should have disclosed that fact on the Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale. Either the Dealer failed to perform a reasonable pre-sale inspection of the vehicle and discover this defect or, if a reasonable pre-sale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

9. The Dealer’s failure to conduct a reasonable pre-sale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a pre-sale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(b). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Brody sustained a loss as the result of this violation.

10. The Dealer collected the title fee from Brody but did not submit the application for processing. Since Brody is not a resident of Wisconsin, there is no apparent reason to apply for a Wisconsin title for the vehicle. However, when Brody attempted to obtain an Arizona title for the vehicle he was told to get a Wisconsin title for the vehicle first. Brody initially tried to contact the Dealer about getting a Wisconsin title. When he was unsuccessful in contacting the Dealer, Brody contacted the investigator. Although the Dealer collected a title fee from Brody and did not submit the fee and an MV11 to the DMV, ultimately Brody needed a Wisconsin title for the vehicle and obtained one without paying the fee a second time. The DMV sustained a loss as the result of the Dealer’s actions, not Brody.

11. The other item on Brody’s initial claim, “replacement driveshaft,” was not clearly caused by the actions of the Dealer. If the installation of the driveshaft had restored the AWD capability of the vehicle, the loss of value component of Brody’s claim would have become moot. A bond claim can be based on the difference in value between how the Dealer represented a vehicle and the actual condition of the vehicle or the expense of bringing the vehicle up to the condition represented by the Dealer, but not both. Additionally, Brody did not submit any documentation to support this portion of his claim.

12. Michael Brody sustained a loss as a result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Brody has submitted documentation in the form of a small claims judgment to support a claim in the amount of \$1000.00.¹ The bond claim was filed within three years of the

¹ There is no indication that Jontae Wynder has satisfied this judgment. The assumption is that the small claims judgment is based on the same loss, the difference in value of a AWD vehicle compared to a 2WD

ending date of the one-year period the bond issued by the Platte River Insurance Company 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 Brody's claim, the Dealer's failure to accurately disclose the condition of the vehicle purchased by Brody violated Wis. Admin Code § Trans 139.04. A violation of Wis. Admin Code § Trans 139.04, 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). Wis. Stat. § 218.0116(1)(gm) is

version of the same vehicle, as this bond claim. If the small claims judgment has been satisfied then the bond claim must be denied. Brody is not entitled to collect twice for the same loss.

identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Brody sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Michael Brody's claim arose on July 10, 2013, the day he purchased the vehicle from the Dealer. The surety bond issued to the Dealer by Platte River Insurance Company covers a one-year period commencing on March 1, 2013. The claim arose during the period covered by the surety bond.
2. Michael Brody filed a claim against the motor vehicle dealer bond of the Dealer on July 29, 2014. 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 Brody sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license. Michael Brody has submitted documentation to support a claim in the amount of \$1000.00.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Michael Brody against the motor vehicle dealer bond of Auto and Truck Brokers is APPROVED in the amount of \$1000.00. Platte River Insurance Company shall pay Mr. Brody this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on June 25, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
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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.