



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

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In the Matter of Claims Against the Motor Vehicle  
Bond of Bortz Sales, LLC, d/b/a Wild Goose Auto

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Case No: DOT-15-0018

FINAL DECISION

On March 26, 2015, Colin and Luanne Runck filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Bortz Sales, LLC, d/b/a Wild Goose Auto, (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 Dodge County Independent News, a newspaper published in Dodge County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by October 19, 2015. No additional claims were filed. The Runcks' 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 December 3, 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:

Colin and Luanne Runck  
112B Industrial Drive, Apt. #405  
Beaver Dam, WI 53916

Gary and Deborah Bortz  
Bortz Sales, LLC  
W5905 State Road 33  
Horicon, WI 53032

Auto-Owners Insurance Company  
P.O. Box 30660  
Lansing, Michigan 48909-8160

### Findings of Fact

1. Bortz Sales, LLC, d/b/a Wild Goose Auto (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at W5905 State Road 33, Horicon, Wisconsin. The Dealer is no longer in business.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since June 23, 2013 (Bond # 66161726 from Auto Owners Insurance Company).

3. On October 17, 2014, Colin and Luanne Runck (Runcks) purchased a 2003 Chevy Trail Blazer truck, vehicle identification number 1GNET16S236169022, from the Dealer. According to the purchase contract, the Runcks paid \$6,785.00 for the vehicle. They traded in a 2002 Ford F350 pick-up truck as part of the transaction. The Dealer gave them \$8,285 as a trade-in allowance for their pick-up truck. The Dealer agreed to give the Runcks \$1,336.00 when he sold the truck they traded-in.

4. The Runcks did not immediately receive a title or registration for the vehicle. On October 24, 2014, the Runcks filed a complaint with the Department's Dealer Section against the Dealer. According to the investigation report, the items listed in the complaint were that the Runcks did not receive a title and registration for the vehicle, they had not received the amount that they were owed for their trade-in, and they spent \$500 on rear brakes and other repairs on the vehicle they purchased from the Dealer.

5. As of November 17, 2014, the Dealer was out of business. The investigator assigned to the complaint was able to process an application for a title and registration for the vehicle and it is now presumably titled in the Runcks' name.

6. The investigator was unable to resolve the other items in the Runcks' complaint and on March 26, 2015, the Runcks filed a claim against the surety bond of the Dealer. The claim is in the amount of \$9,283.91 and is itemized as follows:

Return 2003 Chevy Trail Blazer	\$6,785.00
2002 Ford Truck trade difference	\$1,500.00
Third brake light repair	\$527.50
Alternator and belt	\$346.56
Safety check inspection	\$52.75
Rear wiper arm and blade	<u>\$71.91</u>
Claim total	\$9,283.72

7. There is no documentation that the Dealer sold the Runcks' 2002 Ford pick-up truck; however, the Dealer's dealership is now closed and presumably the vehicle has been disposed of in some manner. At the time ownership of the truck was transferred the payment to the Runcks included in the purchase contract became due. The Dealer's failure to make the

payment constitutes a violation of Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer).

8. The Runcks have not supplied documentation for the other items in their claim. As part of their claim, the Runcks are asking to return the vehicle they purchased from the Dealer. Wis. Admin Code § Trans 140.21(1)(a) provides that a claim shall be for monetary damages in the amount of an actual loss suffered by a claimant. If the investigator had been unable to obtain a title and registration for the vehicle for the Runcks, rescinding the transaction may have been appropriate. However, once they obtained a title and registration for the vehicle, the Runcks are only eligible for monetary damages. The other item the Runcks are claiming is reimbursement for repairs. The investigator's report mentions a problem with the rear brakes; however, the Runcks submitted receipts for replacing a tailgate, a safety inspection, an alternator and belt, and a windshield wiper. There is no documentation that these items were defective at the time the vehicle was purchased or, if they were, that the Dealer knew or should have known that they were defective.

9. The Runcks filed a bond claim within three years of the ending date of the period the Auto-Owners Insurance Company bond was in effect and it is, therefore, a timely claim.

10. The Runcks sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by the Runcks was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. The Runcks supplied documentation to support a claim in the amount of \$1,336.00, the amount that was payable to them when the Dealer sold the vehicle they traded-in.

## 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. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(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 surety 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 the Runcks' claim, the Dealer violated Wis. Stat. § 218.0116(1)(cm). Wis. Stat. § 218.0116(1)(cm) is listed in Wis. Admin. Code § Trans 140.21(1)(c)1 as one of the violations upon which a claim against a motor vehicle dealer's bond can be based. The Runcks sustained a loss as a result of this violation.

#### CONCLUSIONS OF LAW

1. Colin and Luanne Runck's claim arose on the date the Dealer disposed of the 2002 Ford pick-up truck they traded in and failed to make the payment to the Runcks provided in the purchase contract. The exact date is unknown, but presumably it was sometime between October 17, 2014 (the date the Runcks executed the purchase contract) and November 17, 2014 (the date the Department's investigator discovered the Dealer had closed the dealership). The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on June 23, 2014. The claim arose during the period covered by the surety bond.

2. On February 2, 2015, Colin and Luanne Runck filed a claim against the motor vehicle dealer bond of the Dealer. 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. Colin and Luanne Runck's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Colin and Luanne Runck have submitted documentation to support a claim in the amount of \$1,336.00. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.

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

ORDER

The claim filed by Colin and Luanne Runck against the motor vehicle dealer bond of Bortz Sales, LLC, d/b/a Wild Goose Auto, is APPROVED in the amount of \$1,336.00. Auto Owners Insurance Company shall pay Colin and Luanne Runck this amount for their loss attributable to the actions of Bortz Sales, LLC, d/b/a Wild Goose Auto.

Dated at Madison, Wisconsin on February 1, 2016.

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.