



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

In the Matter of the Claim Against the Dealer
Bond of Crestview Auto Sales,

Case No. TR-10-0055

FINAL DECISION

On October 22, 2010, Mary Gilbert filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Crestview Auto Sales. On December 13, 2010, the claim along with documents gathered by the Department was referred to the Division of Hearings and Appeals. A Preliminary Determination based on the documentation contained in the file and required by Wis. Admin. Code, § Trans 140.26(4)(a) was issued on January 13, 2011. On February 11, 2011, Frank Gleichsner filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to due notice a hearing under Wis. Admin. Code § Trans 140.26(6) was conducted in this matter on February 24, 2011, in Janesville, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

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

Mary Gilbert
1320 Hackett Street
Beloit, WI 53511

Frank B. Gleichsner
Crestview Auto Sales
907 4th Street
Beloit, WI 53511

Capitol Indemnity Corporation
Bond Claim Department
P. O. Box 5900
Madison, WI 53705-0900

The Preliminary Determination issued in this matter found that the Dealer failed to disclose several material problems with the vehicle purchased by Mary Gilbert. At the hearing Mr. Gleichsner stressed that Ms. Gilbert purchased the vehicle “As Is –No Warranty.” There is no dispute that Ms. Gilbert purchased the vehicle “As Is.” However, even if one purchases a vehicle “As Is,” a licensed motor vehicle dealer is still required to disclose any defects or

problems with the vehicle that were or should have been discovered during a reasonable presale inspection of the vehicle. The only problem with the vehicle that the Dealer disclosed was “No Heat.” As set forth in the Preliminary Determination, when Ms. Gilbert attempted to have the heating problem repaired, several additional problems with the vehicle were discovered. Based on the Department of Transportation’s investigation these problems should have been discovered during a reasonable presale inspection. No evidence was presented at the hearing that would allow the Preliminary Determination to be modified. The Preliminary Determination is adopted as the final Decision in this matter.

FINDINGS OF FACT

1. Crestview Auto Sales (the Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer’s facilities are located at 907 4th Street, Beloit, Wisconsin, 53511.

2. The Dealer has a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since May 30, 2009 (Bond # 60079562 from Capitol Indemnity Corporation).

3. On March 2, 2010, Mary Gilbert purchased a 1999 Chevrolet Venture, vehicle identification number 1GNDX03E9XD265353, from the Dealer. According to the purchase contract, Ms. Gilbert paid \$2,495.00 including tax and registration fees for the vehicle. At the time of the sale, the Dealer disclosed to Ms. Gilbert that there was a problem with the heating system of the vehicle. This information was included on a Wisconsin Buyers Guide completed by the Dealer. No other problems were disclosed on the Wisconsin Buyers Guide.

4. After taking delivery of the vehicle, Ms. Gilbert took the vehicle to Bliss Automotive Center to have the vehicle’s heating system repaired. At Bliss Automotive Center the thermostat was replaced to fix the heating problem. After the thermostat was replaced, the heating problem still existed and the repair technician conducted a further investigation. It was discovered that the vehicle had a blown head gasket. The charge to replace the thermostat was \$270.77. Ms. Gilbert took the vehicle back to the Dealer and advised him of the blown head gasket. The Dealer refused to take any responsibility for this problem. Ms. Gilbert then filed a complaint against the Dealer with the Department.

5. An investigator for the Department contacted the Dealer. The Dealer again refused to do anything about the problems Ms. Gilbert was having with the vehicle. The investigator then arranged to have the vehicle inspected at Burtness Chevrolet in Orfordville, Wisconsin. Another investigator from the Department performed a visible inspection of the vehicle at Burtness Chevrolet and discovered that, in addition to a possible head gasket leak, the sway bar links were broken on both sides of the vehicle, the sway bar was cracked and broken, the engine was leaking oil, the vehicle’s unibody had significant rust holes on the left side, and the rear tires had excessive wear. All these problems were discovered during a visible inspection of the vehicle and should have been disclosed on the Wisconsin Buyers Guide.

6. On October 21, 2010, Ms. Gilbert filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$4300 and is itemized as follows:

Overheating Not Disclosed	Head Gasket Replacement	\$1800
Unibody Rust Not Disclosed	Rust Repair	<u>\$2500</u>
	Claim Total	\$4300

In a letter dated October 25, 2010, Ms. Gilbert amended her claim. The amended claim is itemized as follows:

1999 Chevrolet Venture	Purchase price of vehicle	\$2200
Taxes, title and registration		\$174.00
Repair and inspection of vehicle		\$270.77

The sum of these items is \$2644.77.

7. 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. A completed Wisconsin Buyers Guide was signed by Ms. Gilbert at the time she purchased the vehicle from the Dealer. However, the only defect disclosed on the Wisconsin Buyers Guide was the problem with the heater. An investigator for the Department conducted a visual inspection of the vehicle after Ms. Gilbert filed a complaint against the Dealer and identified several additional problems with the vehicle. Either the Dealer failed to perform a reasonable presale inspection of the vehicle and discover these defects or, if a reasonable presale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

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

9. Mary Gilbert’s damages are the either the cost of the repairs necessary to bring the vehicle up to the condition that was disclosed by the Dealer or to rescind the transaction. Ms. Gilbert has not submitted any documentation to support the cost of repairs (her initial bond claim). However, based on the initial itemization she provided, the cost of the repairs appears to exceed the value of the vehicle. Ms. Gilbert’s amended claim appears to be a request to rescind the transaction. Ms. Gilbert is entitled to reimbursement of the amount she paid for the vehicle, including tax and registration fees, plus the amount she paid for repairs to the vehicle. The purchase price of the vehicle was \$2495.00 and the cost of the repairs was \$270.77 for a total of \$2765.77.

10. Mary Gilbert's claim arose on March 2, 2010, the day she purchased the vehicle that is the subject of her claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the period the bond 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 Mary Gilbert's claim against the Dealer's surety bond 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. Mary Gilbert discovered numerous, significant problems with the vehicle immediately after she purchased it from the Dealer. The Dealer either failed to perform a reasonable pre-sale inspection of the vehicle or to accurately disclose the results of the pre-sale inspection on the Wisconsin Buyers Guide. Either way the Dealer's actions constitute a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). A violation of either of these sections, in turn, constitutes a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat. §§ 218.0116(1)(bm) and (gm) are both sections identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Mary Gilbert's loss resulted directly from this violation.

CONCLUSIONS OF LAW

1. The claim of Mary Gilbert arose on March 2, 2010, the day she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Capitol Indemnity Corporation covers a one-year period commencing on May 30, 2009. The claim arose during the period covered by the surety bond.

2. Mary Gilbert filed a claim against the motor vehicle dealer bond of the Dealer on October 22, 2010, and amended on October 25, 2010. 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. Mary Gilbert's loss was caused by an act of the Dealer that 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. Mary Gilbert has supplied documentation to support a claim in the amount of \$2765.77. Because Mary Gilbert is being reimbursed the purchase price of the vehicle and the amount she spent on repairs to the vehicle it would constitute unjust enrichment to allow her to also retain ownership of the vehicle. Accordingly, Ms. Gilbert will be required to surrender the vehicle to Capitol Indemnity Corporation.

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

ORDER

The claim filed by Mary Gilbert against the motor vehicle dealer bond of Crestview Auto Sales is APPROVED in the amount of \$2765.77. Capitol Indemnity Corporation shall pay Mary Gilbert this amount for her loss attributable to the actions of Crestview Auto Sales. Upon receipt of the payment, Mary Gilbert shall surrender possession and title of the vehicle to Capitol Indemnity Corporation.

Dated at Madison, Wisconsin on March 21, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____
MARK J. 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.