



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

In the Matter of the Dealer Bond Claim against
Affordable Auto Sales of America, LLC

Case No: DOT-22-0027

FINAL DETERMINATION

On August 26, 2022, Chelsea Kaminsky (Claimant) filed a claim against the motor vehicle bond of Affordable Auto Sales of America LLC (Dealer) with the Wisconsin Department of Transportation (Department). 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 Kenosha News, a newspaper published in Kenosha, Wisconsin on October 20, 2022. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 20, 2022. No additional claims were filed. A Preliminary Determination was issued on February 16, 2023 pursuant to Wis. Admin. Code § Trans 140.26(4)(a). 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:

Affordable Auto Sales of America, LLC
c/o David P. Prill
1118 60th Street
Kenosha, WI 53140

Western Surety Company
101 South Reid St. #300
Sioux Falls, SD 57103

Chelsea Kaminsky
412 High Street
Racine, WI 53402

FINDINGS OF FACT

1. Affordable Auto Sales of America, LLC (Dealer), owned by David Prill, was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 1118 60th Street, Kenosha, Wisconsin. The Dealer went out of business on or about October 23, 2021.

2. The Dealer had a continuous bond in force beginning June 17, 2016. (Bond # 71778626 by Western Surety Company). On September 1, 2021, the bond company provided notice that it cancelled this policy.

3. On April 24, 2021, the Claimant, Chelsea Kaminsky, purchased a 1998 Chevrolet S-10 (Vehicle) with a vehicle identification number of 1GCCS1942W8193300 from the Dealer for \$2,000.

4. On January 2, 2022, the Claimant filed a small claims complaint against the Dealer in Kenosha County Circuit Court, Case No. 22-SC-25. The complaint alleged that after purchasing the Vehicle from the Dealer, the Claimant was unable to obtain title to the Vehicle despite repeated attempts to contact the Dealer. When she could not obtain title, she was unable to secure license plates and legally drive the Vehicle.

5. On June 23, 2022, a judgment was granted in favor of the Claimant and against the Dealer in Kenosha County Circuit Court, Case No. 22-SC-25 in the total amount of \$2,134.50, which was comprised of the \$2,000 requested by the Claimant for the cost of the Vehicle, \$94.50 in filing fees, and \$40.00 in service fees.

6. On August 26, 2022, the Claimant submitted a claim against the surety bond of the Dealer with the Department. The claim seeks damages in the amount of \$2,000, which is the amount the Claimant paid for the Vehicle on April 24, 2021, and in the amount of \$134.50, which are the court fees the Claimant incurred in the small claims action against the Dealer.

7. The claim arose on April 24, 2021, which is the date the Claimant purchased the Vehicle. Western Surety Company provided notice to the Department of its intent to cancel the Dealer's bond on September 1, 2021. The bond claim arose when the bond issued by Western Surety Company was still in effect.

8. On or about December 13, 2021, the Department referred the Claimant's bond claim to the Division of Hearings and Appeals for a declaratory ruling pursuant to Wis. Admin. Code § Trans 140.26(1). The Department recommended that the claim be paid in the amount of \$2,000.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth in the Transportation Chapter 140, Subchapter II, of the Wisconsin Administrative Code.

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.

Wis. Admin. Code § Trans 140.21(1).

Accordingly, to allow the Claimant'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.

Under Wis. Admin. Code § Trans 140.26(4)(b), the Department is required to "give full faith and credit to applicable findings of fact and judgments entered by a court in an action involving the claim in which the claimant and the licensee were opposing parties." In the present matter, the Kenosha County Circuit Court, Case No. 22-SC-25, entered a judgment in favor of the Claimant against the Dealer on June 23, 2022. The Claimant's circuit court complaint alleged that the Dealer failed to transfer the Vehicle's title in violation of Wis. Stat. § 342.16(1)(a).

Licensed motor vehicle dealers are required by Wis. Stat. § 342.16(1)(a) to process title transfer within seven business day of a vehicle's sale.

...

Within 7 business days following the sale or transfer, the dealer shall process the application for certificate of title, and within the next business day after processing the application, the dealer shall mail or deliver the original application for certificate and all associated materials required by the department to the department.

...

Wis. Stat. § 342.16(1)(a).

The Dealer in this matter failed to properly submit the title application as necessary to process the title and registration for the Vehicle. The Dealer's actions constitute a violation of Wis. Stat. § 342.16. A violation of this section, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is a section identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The Claimant sustained a loss because of the Dealer's failure to transfer the title of the Vehicle after her purchase. As a result, the Claimant is entitled to reimbursement.

The Kenosha County judgment awarded the Claimant judgment in the amount of \$2,134.50. However, part of the judgment, \$134.50, was for filing and service fees. Any claim for legal costs is not allowed under Wis. Admin. Code § Trans 140.21(2)(e). Thus, the

Claimant's reimbursable claim is limited to \$2,000, which is the amount she paid the Dealer for the purchase of the Vehicle.

CONCLUSIONS OF LAW

1. Chelsea Kaminsky's claim arose on April 24, 2021, which is the date that the Vehicle was purchased from the Dealer. The continuous surety bond issued to the Dealer by Western Surety Company covers the period commencing on June 17, 2016. Notice of the bond's termination was given to the Department on September 1, 2021. The claim arose during the period covered by the surety bond.

2. On August 26, 2022, Chelsea Kaminsky filed a claim against the motor vehicle 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. The Dealer violated Wis. Stat. § 342.16(1)(a) during a vehicle sale, which constitutes a violation of Wis. Stat. § 218.0116(1)(gm).

4. Chelsea Kaminsky's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. The Claimant supplied documentation that she paid \$2,000 for a vehicle, and then the Dealer failed to transfer the title to the vehicle, representing an actual loss sustained under Wis. Admin. Code § Trans 140.21(1)(c).


5. The Division of Hearings and Appeals has authority to issue the following order. Wis. Stat. §§ 227.43(1)(br) and 227.41(1) and Wis. Admin. Code § Trans 140.26(1).

ORDER

The claim filed by the Claimant, Chelsea Kaminsky, against the motor vehicle dealer bond of Affordable Auto Sales of America LLC is APPROVED in the amount of \$2,000. Western Surety Company shall pay the Claimant Chelsea Kaminsky this amount for the loss attributable to the actions of Affordable Auto Sales of America LLC.

Dated at Madison, Wisconsin on March 28, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (414) 227-4025
FAX: (608) 264-9885

By: 
Angela Chaput Foy
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 ensure 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 served and 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
Wisconsin Department of Transportation
4822 Madison Yards Way, 9th Floor South
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 ensure strict compliance with all its requirements.