



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

In the Matter of Claims Against the Dealer Bond
of Velp Avenue Motors LLC

Case No: DOT-23-0005

FINAL DETERMINATION

On February 13, 2023, [REDACTED] (Claimant) filed a claim against the motor vehicle bond of Velp Avenue Motors 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 Green Bay Press-Gazette, a newspaper published in Green Bay, Wisconsin on April 14, 2023. The notice informed other persons who may have claims against the Dealer to file them with the Department by June 1, 2023. No additional claims were filed. A Preliminary Determination was issued on July 18, 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:

Velp Avenue Motors LLC
1006 Velp Avenue
Green Bay, WI 54303

[REDACTED]
[REDACTED]
[REDACTED]

Western Surety Company
101 South Reid Street, Suite 300
Sioux Falls, SD 57103

[REDACTED]
[REDACTED]
[REDACTED]

FINDINGS OF FACT

1. Velp Avenue Motors LLC (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 1006 Velp Avenue, Green Bay, Wisconsin.
2. The Dealer has a continuous surety bond in force in the amount of \$50,000 satisfying the requirements of Wis. Stat. § 218.0114(5) beginning October 1, 2019 (█████ # █████ from Western Surety Company).
3. On or about August 17, 2022, the Dealer purchased a 2004 Hyundai (Vehicle) with a vehicle identification number of █████ at the Manheim Auto Auction. According to the Bill of Sale, the Vehicle had structural damage.
4. On August 29, 2022, █████ (Claimant) purchased the Vehicle from the Dealer for \$4,300, plus an additional \$1,495.09 to cover taxes, title, processing fees, etc. The Vehicle's structural damage was not disclosed on the Wisconsin Buyers Guide.
5. On October 28, 2022, the Vehicle broke down. The Claimant took the Vehicle to a repair shop and learned that the Vehicle's frame was fully rusted, the frame broke, and the engine dropped.
6. On November 3, 2022, the Claimant contacted the Dealer. The Dealer offered to repair the Vehicle for 50% cost.
7. On November 11, 2022, the Claimant picked up a loaner vehicle from the Dealer, but it had warning lights on the dashboard and inadequate traction for winter driving.
8. On or about December 14, 2022, the Dealer returned the Vehicle to the Claimant, and the Claimant paid Dealer \$422 for the Vehicle's repairs. However, the Claimant then stopped payment on the check for the repairs.
9. On January 23, 2023, the Department received a complaint from the Claimant regarding the Vehicle.
10. On January 30, 2023 and February 1, 2023, the Department investigator discussed the complaint with the Dealer. The Dealer indicated that it did not have the funds to buy the Vehicle back from the Claimant.
11. On February 13, 2023, the Claimant submitted a claim against the surety bond of the Dealer with the Department. The claim seeks damages in the amount of \$9,280.55, which the Claimant indicates is for the purchase price of the vehicle (\$4,300), lender fees, tax, title processing fees, and Gap insurance (\$1,495.09), cost of repairs (\$341.82), rental car expenses (\$946.84), loss of work (\$1,950.00) and interest paid on the Vehicle's loan (\$246.80).

12. The claim arose on August 17, 2022, which is the date the Claimant purchased the Vehicle. The bond claim was filed while the bond issued by Western Surety Company was in effect.
13. On or about February 27, 2023, 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 \$7,083.75.

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.

In the present matter, the evidence demonstrates that the Dealer failed to disclose a material issue with the Vehicle, its structural damage, to the Claimant. A dealer is required to clearly disclose all of a vehicle's material history on the Wisconsin Buyers Guide. Wis. Admin. Code § Trans 139.04(6)(a)1. "Material" means that a reasonable person would attach importance to its existence or a seller knows or had reason to know that a buyer would regard it as

important.” Wis. Admin. Code § Trans 139.02(10). This structural damage was known to the Dealer because it was disclosed to the Dealer at the time it purchased the Vehicle at auction. This damage also was required to be disclosed to the Claimant at the time she purchased the Vehicle.

Because the above violations occurred as a result of a vehicle sale, it constitutes a violation of Wis. Stat. § 218.0116(1)(gm), which specifies that a license may be denied, suspended or revoked for having violated any law relating to the sale of motor vehicles. Therefore, the claim is allowable pursuant to Wis. Admin. Code § Trans 140.21(1)(c)5.

The Claimant sustained a loss because of the Dealer’s failure to disclose a material issue, which resulted in her overpaying for a damaged vehicle that then broke down shortly after she purchased it. As a result, she is entitled to reimbursement in the amount of \$5,795.09, which represents the price to purchase the Vehicle. Additionally, the Department recommends reimbursement for \$341.82 in repairs to the Vehicle and \$946.84 in rental car costs.

The Claimant’s bond claim form submitted in this matter lists the total amount of the claim as \$9,280.55; however, this amount includes claims for interest and lost income or wages, which are not allowed under Wis. Admin. Code § Trans 140.21(2). Thus, the Claimant’s actual loss is limited to \$7,083.75, which consists of the cost of the vehicle, repairs, and rental car fees.

CONCLUSIONS OF LAW

1. [REDACTED] claim arose on August 29, 2022, 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 October 1, 2019. The claim arose during the period covered by the surety bond.

2. On February 13, 2023, [REDACTED] filed a claim against the motor vehicle dealer bond of the Dealer. The bond claim was filed within period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. The record contains sufficient evidence that [REDACTED] sustained a loss that was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license.

4. 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, [REDACTED] against the motor vehicle dealer bond of Velp Avenue Motors LLC is APPROVED in the amount of \$7,083.75. Western Surety Company shall pay the Claimant [REDACTED] this amount for her loss attributable to the actions of Velp Avenue Motors LLC. The Department and Western Surety Company may take further action at their discretion regarding possession of the vehicle.

Dated at Madison, Wisconsin on September 1, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: /s/
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.