



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

In the Matter of Claims Against the Dealer Bond of
American Motor Group Cars and Sales, LLC

Case No: DOT-23-0007

FINAL DETERMINATION

On April 5, 2023, [REDACTED] (Claimant) filed a claim against the motor vehicle bond of American Motor Group Cars and Sales, 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 Daily Reporter, a newspaper published in Milwaukee, Wisconsin on April 28, 2023. The notice informed other persons who may have claims against the Dealer to file them with the Department by June 29, 2023. No additional claims were filed. On August 25, 2023 a Preliminary Determination was issued under Wis. Admin. Code § Trans 140.26(4)(a). The Dealer submitted a timely objection to the Preliminary Determination and a telephonic prehearing conference was conducted on September 19, 2023. During the September 19th prehearing, the Dealer withdrew its objection to the Preliminary Determination on the record and advised that it did not wish to contest the matter at hearing. Therefore, 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:

American Motor Group Cars & Sales LLC
6030 W. Greenfield Avenue
Milwaukee, WI 53214-5001

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

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

██████████
██████████
██████████

FINDINGS OF FACT

1. American Motor Group Cars & Sales LLC (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer and owned by ██████████ and ██████████. The Dealer's facilities are located at 6030 W. Greenfield Avenue, Milwaukee, Wisconsin.
2. The Dealer has had a continuous surety bond in force in the amount of \$50,000 satisfying the requirements of Wis. Stat. § 218.0114(5) beginning March 3, 2022 (██████████ from Western Surety Company).
3. On or about February 9, 2023, the Claimant, ██████████, purchased a 2016 Kia Sorento with vehicle identification number ██████████ (Vehicle) from the Dealer for \$10,605.50 inclusive of taxes and fees.
4. On February 28, 2023, the Claimant submitted a dealer complaint to the Department alleging that he had not received the title and registration to the Vehicle.
5. Department Investigator ██████████ performed a records check on the Vehicle and discovered that the Vehicle had previously received a salvage brand from the State of Michigan back on October 6, 2021.
6. On October 27, 2022 the Department erroneously issued a new Wisconsin title to the Dealer that failed to identify the Vehicle has having been branded as salvage.
7. On March 1, 2023 ██████████ the Dealer's owner, ██████████ ██████████ to advise the Dealer that they were responsible for disclosing the pre-existing salvage brand to potential buyers despite the Department's title error. The Investigator suggested that the Dealer buy back the Vehicle from the Claimant.
8. On March 27, 2023 Investigator ██████████ met the Dealer's owner and the Claimant at the dealership to complete the buy back of the Vehicle for the amount of \$10,296.00. During the inspection of the Vehicle prior to the buy back, the Vehicle was found to have a damaged piece of trim with an estimated replacement value of \$154.00, thereby reducing the total buyback amount to \$10,142.00.
9. The Dealer issued a check to the Claimant in the amount of \$10,142.00 on March 27, 2023 in exchange for the vehicle.
10. On March 29, 2023 the Claimant informed Investigator ██████████ that the Dealer's check was returned for insufficient funds.
11. The Dealer has failed and/or refused to issue payment to the Claimant to complete the buy back of the Vehicle.

12. On April 5, 2023, the Claimant submitted a bond claim against the surety bond of the Dealer with the Department. The claim seeks damages in the amount of \$10,605, which the Claimant indicated was the purchase price of the vehicle inclusive of the cost of title and registration fees.

13. The claim arose on February 9, 2023, which is the date the Claimant purchased the vehicle. The bond claim was filed during the period of time that the bond issued by Western Surety Company was in effect.

14. On or about April 10, 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).

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. The burden of proof is on the Claimant to prove by a preponderance of the evidence that a violation occurred. *See* Wis. Admin. Code § HA 1.12(3)(b); *see also State v. Hanson*, 98 Wis. 2d 80, 295 N.W.2d 209 (Wis. App. 1980).

A dealer is required to disclose the condition of a vehicle prior to sale, and provide that disclosure in writing to the purchaser. Wis. Admin. Code § Trans 139.04. Specifically, the code requires:

(6) WISCONSIN BUYERS GUIDE.

(a) ... each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department.... The guide shall clearly state in simple and concise language:

1. That the vehicle is used. *All material history, prior use and title brands shall be clearly and specifically disclosed...* Disclosure of history and prior use is not limited to those conditions which require title branding. *Required disclosure of the history, prior use and title brands is limited to that which the dealer could find using reasonable care.*

Wis. Admin. Code § Trans 139.04(6)(a)1 (italicized emphasis added). In this case, contrary to Wis. Admin. Code § Trans 139.04(6)(a)1, the Dealer did not disclose in the Wisconsin Buyer's Guide that the Vehicle had previously been branded as salvage. The Vehicle's prior salvage branding was clearly known to the Dealer at the time it submitted the request for retitling from the Department. The Dealer is required to inspect, identify, and disclose all existing significant issues with the specific vehicle being purchased. However, in the present matter, the Dealer took advantage of the Department's error by selling the Vehicle to an unsuspecting purchaser without prior disclosure of the salvage branding. As a result, the Claimant purchased a vehicle for which he was unable to obtain clean title once the Department discovered and corrected the title error.

Because the above violation 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, in part, pursuant to Wis. Admin. Code §§ Trans 140.21(1)(c) and (4). The Claimant sustained a loss due to the Dealer's failure to disclose that the Vehicle had previously been branded as a salvage. The Claimant's bond claim form submitted in this matter lists the total amount of the claim as \$10,605.00, which represented the purchase price the Claimant paid for the Vehicle inclusive of all taxes and fees.

The Department recommended that the claim be paid in the amount of \$10,142. The Department arrived at the reduced amount of \$10,142 by subtracting the fees for title, registration, and wheel tax, which the Department found the Dealership should not be responsible for presumably due to the Department's titling error. The settlement amount was also reduced by \$154 due to damage sustained on the Vehicle after the Claimant had purchased the Vehicle. Although the Dealer and Claimant had previously agreed to a final buyback price of \$10,142, the Dealer's payment was returned for insufficient funds. Based upon the facts presented, I find that the Claimant is entitled reimbursement for the amount paid for the Vehicle, inclusive of taxes and fees, minus the \$154 of post-purchase damage for a total claim of \$10,451.00. Finally, the Vehicle should be returned to the Dealer.

CONCLUSIONS OF LAW

1. [REDACTED] claim arose on February 9, 2023, 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 March 3, 2022. The claim arose during the period covered by the surety bond.

2. On April 5, 2023, [REDACTED] filed a claim against the motor vehicle bond of the Dealer. The bond claim was filed 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. Admin. Code § Trans 139.04(6)(a)1 during a vehicle sale by failing to disclose the Vehicle had previously been titled with a salvage brand, which constitutes a violation of Wis. Stat. § 218.0116(1)(gm).

4. [REDACTED] loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license under Wis. Admin. Code § Trans 140.21(1)(c). The Claimant has supplied documentation to support an actual loss sustained in the amount of \$10,451.

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, [REDACTED], against the motor vehicle dealer bond of American Motor Group Cars & Sales, LLC is APPROVED in the amount of \$10,451. Western Surety Company shall pay the Claimant [REDACTED] this amount for his loss and the Claimant shall return the 2016 Kia Sorento with vehicle identification number [REDACTED] to American Motor Group Cars & Sales, LLC.

Dated at Madison, Wisconsin on September 26, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way
Madison, Wisconsin 53705
Telephone: (608) 266-2447
Email: Kristin.Fredrick@wisconsin.gov

By: /s/

Kristin P. Fredrick
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 Division. 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 Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. 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. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
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.