



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

In the Matter of Claims Against the Dealer Bond of
One Way Auto Exchange, LLC

Case No: DOT-24-0001

FINAL DETERMINATION

On July 21, 2023, a Public Notice to File Dealer Bond Claims was published in the Daily Reporter, a newspaper published in Milwaukee, Wisconsin, pursuant to Wis. Admin. Code § Trans 140.26 in response to the submission of a separate bond claim against the motor vehicle bond of One Way Auto Exchange, LLC (Dealer). The notice informed other persons who may have claims against the Dealer to file them with the Wisconsin Department of Transportation (Department) by September 19, 2023. On August 24, 2023, a second claim was filed against the Dealer's bond.

Then, on November 7, 2023, [REDACTED] (Claimant) filed an additional claim, the claim at issue here, against the Dealer's bond. The total amount of all claims does not exceed the value of the bond. The initial bond claim (Case No. DOT-23-0015) and the second bond claim (Case No. DOT-23-0030) are addressed in separate determinations.

A Preliminary Determination on [REDACTED] claim was issued on April 17, 2024 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:

One Way Auto Exchange, LLC (Dealer)
7016 N. 76th St.
Milwaukee, WI 53223-5006

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (Claimant)

[REDACTED]
[REDACTED]

Hudson Insurance Company
100 William St. 5th Floor
New York, NY 10038

FINDINGS OF FACT

1. One Way Auto Exchange, LLC (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's license expired on September 30, 2023. The Dealer's facilities were located at 7016 N 76th St, Milwaukee, WI 53223.

2. The Dealer had a continuous surety bond in force in the amount of \$50,000 satisfying the requirements of Wis. Stat. § 218.0114(5) beginning July 23, 2021, which expired August 13, 2023 (Bond # 10125622 from Hudson Insurance Company).

3. On July 18, 2023, the Claimant, [REDACTED] purchased a 2000 Chrysler Town & Country (Vehicle) with a vehicle identification number of [REDACTED] from the Dealer. The purchase price of the Vehicle was \$1,999.00, and the Claimant was also charged \$312.00 for title and registration fees. The title and registration fees actually totaled \$249.50. The Dealer overcharged the Claimant \$62.50 for these title and registration fees.

4. At the time of sale, the salesperson promised the Claimant that the Dealer would replace the alternator and a window switch for the front passenger window before delivery of the Vehicle. The Claimant paid for the Vehicle and came back for the Vehicle the next day after the repairs were supposed to be completed.

5. Following the purchase, the Claimant learned that the repairs were not done, and she had also not received her title and license plate, only a temporary plate registration. She brought the Vehicle into the Dealer within a few weeks of purchase and the salesperson directed her to a mechanic to pick up a part for the window. She kept inquiring, and eventually, the Dealer stopped responding to the Claimant.

6. On October 10, 2023, the Claimant submitted a dealer complaint to the Department because the window and alternator remained unaddressed and she still did not have the title and registration for her Vehicle. The Department investigator, [REDACTED] subsequently reached out to the Claimant and the Dealer.

7. On October 11, 2023, Investigator [REDACTED] inspected the Vehicle and found several visible issues. There was an oil leak visible from the valve cover of the engine, and a substantial amount of oil had leaked down to the lower block and undercarriage covering the lower block and frame. The frame, sub floor, and fenders were severely rusted and there were numerous large and small pieces of each missing around the vehicle. The most severe rust damage was near the middle of the vehicle behind the front tires. The rust damage rendered the frame and subfloor not legal according to the standards in the Wisconsin Administrative Code, Ch. Trans 305.

8. The Wisconsin Buyer's Guide provided to the Claimant at the time she purchased the Vehicle did not accurately disclose the condition of the Vehicle's frame, undercarriage, fenders and floor pan.

9. On October 13, 2023, Investigator [REDACTED] contacted the dealer that previously owned the Vehicle and the Greater Rockford Auto Auction for records of the Vehicle. The Vehicle was appraised at \$500, and was noted, "Good AC, rust bucket," and included pictures of the rust. The photos confirmed that the rust damage was present before the Claimant's purchase of the Vehicle and that the Dealer knew or should have known of the rust damage.

10. The Department Investigator also contacted the Department's Agent Partnership Unit for assistance titling the Vehicle to the Claimant.

11. On October 27, 2023, the Claimant submitted a claim against the surety bond of the Dealer with the Department. The claim seeks damages in the amount of \$2,061.50, which was the amount the Claimant paid for the Vehicle plus the \$62.50 overpayment she was charged for title and registration fees.

12. The claim arose on July 18, 2023, which is the date the Claimant purchased the vehicle. The bond claim was filed within three years of the ending date the bond issued by Hudson Insurance Company was in effect.

13. Prior claims were filed on June 12, 2023 (approved in the amount of \$6,926.05 in Case No. DOT-23-0015) and on August 24, 2023 (approved in the amount of \$3,487.50 in Case No. DOT-23-0030). The total amount of all claims is less than the full amount of the bond.

14. On or about December 28, 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 \$2,061.50, which is the purchase price of the Vehicle plus the overpayment of title and registration fees.

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).

In the present matter, the evidence demonstrates that the Dealer failed to transfer the title within seven business days and failed to disclose the Vehicle's condition. Wis. Stat. § 342.16(1); Admin. Code § Trans 139.04(5)(a).

Specifically for the title, the statutes require a dealer to process and mail the application of title to the Department within seven business days of the sale. Wis. Stat. § 342.16(1). In this case, the Dealer did not mail the title application to the Department, and the Claimant had still not received the title three months after the sale.

Regarding required disclosures, the code requires:

Dealer and salespersons shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6). This disclosure shall include whether or not the condition of a vehicle for sale is such that it can be legally operated at all times in accordance with ch. 347, Stats., and ch. Trans 305. Disclosure of information shall be that which the dealer can find using reasonable care.

Wis. Admin. Code § Trans 139.04(5)(a). In this case, the rust damage was present when the Vehicle was sold to the Dealer at auction. The Dealer knew, or should have known, of the damage both from the paperwork and from a reasonable inspection. The significant damage was easily visible to the Department Inspector when he viewed the Vehicle, yet the Dealer did not disclose the condition of the Vehicle to the Claimant at the time of her purchase.

Because the above violations occurred as a result of a vehicle sale, they constitute 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.

CONCLUSIONS OF LAW

1. [REDACTED] claim arose on July 18, 2023, which is the date that the Vehicle was purchased from the Dealer. The continuous surety bond issued to the Dealer by Hudson Insurance Company covers the period commencing on July 23, 2021 and expired August 13, 2023. The claim arose during the period covered by the surety bond.

2. On November 7, 2023, [REDACTED] 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) and 139.04(5)(a), 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 wholesale dealer license. The Claimant has supplied documentation that the Dealer knew or should have known through a reasonable inspection about the defects with the Vehicle that were not disclosed as part of the sale to the Claimant, and the Claimant then experienced issues with the Vehicle as a result of the defects. Additionally, the Dealer failed to timely process the application for title.

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 One Way Auto Exchange, LLC is APPROVED in the amount of \$2,061.50. Hudson Insurance Company shall pay the Claimant [REDACTED] this amount for her loss attributable to the actions of One Way Auto Exchange, LLC.

The Department and Hudson Insurance Company may take further action at their discretion to take possession of the Vehicle.

Dated at Madison, Wisconsin on June 13, 2024.

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

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.