



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

In the Matter of Claims Against the Dealer Bond
of JM1 Autosales, Inc.

Case No: DOT-24-0003

FINAL DETERMINATION

On or about November 15, 2023, Centennial Casualty Company (Claimant) filed a claim against the motor vehicle bond of JM1 Autosales, Inc. (Dealer) with the Wisconsin Department of Transportation (Department).¹ On January 31, 2024, a Preliminary Determination was issued denying the bond the claim pursuant to Wis. Admin. Code § Trans 140.26(4)(a). On February 27, 2024, the Claimant filed an objection to the Preliminary Determination. The undersigned Administrative Law Judge held a prehearing conference on March 21, 2024, at which time [REDACTED] [REDACTED] appeared on behalf of the Claimant. No other party appeared for the prehearing conference.

Pursuant to due notice, the contested case hearing was held on April 22, 2024 by remote video conference. The Claimant appeared by [REDACTED] [REDACTED] Testimony was heard from [REDACTED] [REDACTED] and [REDACTED] No other party appeared. The hearing was digitally recorded. The record consists of the digital recording and Exhibits 1 through 2.

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

Centennial Casualty Company
[REDACTED] [REDACTED]
2200 Woodcrest Place, Suite 200
Birmingham, AL 35209

¹ The Claimant also filed a previous bond claim against the Dealer based on similar allegations on July 28, 2023 (Division of Hearings and Appeals case number DOT-23-0022). Public notice of the July 28, 2023 claim was published, pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, on September 8, 2023 in the DeForest Times-Tribune. The notice informed other persons who may have claims against the Dealer to file them with the Department by November 7, 2023. No additional timely claims were filed. A Preliminary Determination was issued in case DOT-23-0022 on January 11, 2024. No objections were received to the Preliminary Determination in case DOT-23-0022. The Claimant's allegations in that case are therefore not being considered for purposes of this Final Determination.

JM1 Autosales Inc.
101 Skyline Dr., #1 W315
Arlington, WI 53911-9520

██████████
841 Emerald Park Dr.
Winterville, NC 28590-3403

Atlantic Specialty Insurance Company
77 Water St., Fl. 17
New York, NY 10005-4401

FINDINGS OF FACT

1. JM1 Autosales, Inc. (Dealer) is licensed by the Department as a motor vehicle dealer. The Dealer's facilities are located at 101 Skyline Dr., #1 W315, Arlington, Wisconsin 53911-9520. The Dealer's mailing address is in North Carolina. (Ex. 1)
2. The Dealer has had a continuous bond in force since December 19, 2022 (Bond # 810014117 by Atlantic Specialty Insurance Company) in the amount of \$25,000. (Ex. 1)
3. On June 7, 2023, the Dealer purchased the following six vehicles online through Carolina Auto Auction for a total purchase price of \$74,360 (including fees):
 - a. A 2022 Hyundai for \$16,370 (VIN KMHRC8A38NU168101).
 - b. A 2020 Kia Rio S for \$15,565 (VIN 3KPA24AD7LE285282).
 - c. A 2018 Kia Soul+ for \$10,445 (VIN KNDJP3A55J7536205).
 - d. A 2017 Toyota Corolla for \$9,335 (VIN 5YFBURHE4HP675627).
 - e. A 2018 Toyota Corolla for \$8,330 (VIN 5YFBURHE9JP745306).
 - f. A 2014 Ford Explorer for \$14,365 (VIN 1FM5K7F81EGA36134).

(██████████ Testimony; Ex. 2, pp. 48-59)
4. The Dealer never took possession of the vehicles and never paid Carolina Auto Auction for the vehicles. Carolina Auto Auction contacted the Dealer several times to obtain payment but never received a response. At no point did the Dealer explain why it failed to pay for or pick up the vehicles. (██████████ Testimony)
5. Carolina Auto Auction paid the selling dealers for the vehicles and later resold the vehicles at auction to subsequent buyers for a total sale price of \$46,100 (including fees):
 - a. The 2022 Hyundai was resold on July 19, 2023 for \$13,800.
 - b. The 2020 Kia Rio S was resold on September 13, 2023 for \$8,500.
 - c. The 2018 Kia Soul+ was resold on September 13, 2023 for \$4,200.
 - d. The 2017 Toyota Corolla was resold on July 26, 2023 for \$6,200.
 - e. The 2018 Toyota Corolla was resold on July 12, 2023 for \$6,400.
 - f. The 2014 Ford Explorer was resold on July 12, 2023 for \$7,000.

(██████ Testimony; Ex. 2, pp. 48-59)

6. After reselling the vehicles, Carolina Auto Auction filed a claim with its insurer Centennial Casualty Company (Claimant) based upon the difference in sale price between the two transactions, which was \$28,260. (██████ Testimony)
7. On or about September 21, 2023, the Claimant paid Carolina Auto Auction reimbursement for 80% of the loss, or \$25,479, based upon the terms of its subrogation agreement. (██████ Testimony; Ex. 2, pp. 62-63)
8. On November 15, 2023, the Claimant submitted a claim against the surety bond of the Dealer with the Department. The claim seeks damages of \$28,260 based on the amount of Carolina Auto Auction's loss. If the claim is approved, the Claimant will pay the remaining 20% of the loss, or \$2,781, as additional reimbursement to Carolina Auto Auction. (██████ Testimony)
9. On or about January 4, 2024, the Department forwarded the bond claim to the Division of Hearings and Appeals for hearing.
10. On January 31, 2024, a Preliminary Determination was issued denying the bond claim.
11. The Claimant timely objected to the Preliminary Determination on February 27, 2024, and a prehearing conference was held on March 21, 2024.
12. The contested case hearing in this matter was held on April 22, 2024.

DISCUSSION

The only issue for hearing is whether the Claimant's November 15, 2023 bond claim should be approved under the standards in Wis. Admin. Code ch. Trans 140, subch. II. Pursuant to Wis. Admin. Code § Trans 140.21:

(1) 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 claimant'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.

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).

Here, the bond claim must be denied, as the record does not establish that the Dealer committed a violation which would be grounds for suspension or revocation under the subsections of Wis. Stat. § 218.0116(1) listed in Wis. Admin. Code § Trans 140.21(1)(c)1. Denial of the claim is consistent with the Department's recommendation.

The Claimant is an insurance company, not a consumer. It has established that the Dealer agreed to purchase six vehicles at auction from its insured, which is the auction company Carolina Auto Auction. The auction company then never heard from the Dealer again. The Dealer did not pay for or pick up the vehicles, and the Dealer also never responded to any of the auction company's attempts to contact the Dealer regarding the sale. The auction company then resold the vehicles to subsequent buyers for a lower price and filed a claim with its insurer, the Claimant, based upon the price difference between the two transactions, which was \$28,260. The Claimant then paid 80% of the claim amount, or \$25,479, to the auction company pursuant to the terms of its subrogation agreement.

The Claimant has now filed the instant bond claim against the Dealer seeking damages of \$28,260 based on the amount of the auction company's loss. However, the Dealer's failure to pay for the vehicles at auction is not a proper basis for granting a bond claim, as its conduct is not grounds for action against its motor vehicle dealer license under Wis. Stat. § 218.0116. Many of those provisions are explicitly intended to protect retail/consumer buyers from dealer misconduct. For example, under Wis. Stat. § 218.0116(1)(cm), a dealer is subject to discipline for willfully failing to perform any written agreement with a retail buyer, lessee, or prospective lessee. However, there is no similar provision for a dealer's failure to perform on a written agreement to purchase a vehicle from auction or another dealer. I also do not find that the Dealer's conduct constitutes a violation of law related to the sale of a motor vehicle as contemplated under Wis. Stat. § 218.0116(1)(gm).

The Dealer's actions are also not severe enough to constitute any of the other misconduct listed in the statute, such as proof of unfitness or unconscionable business practices under Wis. Stat. § 218.0116(1)(a) and (f). The Claimant speculates that the Dealer may have been created as a fraudulent business that never intended to do business appropriately. In support of this assertion, the Claimant's witness [REDACTED] stated that he has heard the Dealer's business address was actually an empty warehouse. [REDACTED] [REDACTED] also stated that he assumed the Dealer may have had a

relationship with the sellers in each of the transactions involved in this matter. However, the Claimant provided no non-hearsay or compelling evidence to support any of these assertions. They are based on pure speculation.

Consequently, while the Claimant may be entitled to civil damages, it is not entitled to payment from the Dealer's surety bond. The Claimant has not met its burden to establish that the Dealer committed a violation which would be grounds for action against its dealer license. The claim is therefore not allowable pursuant to Wis. Admin. Code § Trans 140.21(1)(c) and (2) and must be denied.

CONCLUSIONS OF LAW

1. The Claimant's claim arose on or about September 21, 2023 when the Claimant paid \$25,479 to Carolina Auto Auction as reimbursement for its loss.
2. The claim is timely pursuant to Wis. Admin. Code § Trans 140.21(1)(b) and (d), since it arose while the Dealer's surety bond was in effect and was filed within three years of the last day of the period covered by the surety bond.
3. However, the Claimant's loss was not 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)1. and the applicable subsections of Wis. Stat. § 218.0116(1). The bond claim is therefore not allowable pursuant to Wis. Admin. Code § Trans 140.21(1)(c).
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 in this matter against the motor vehicle dealer bond of JM1 Autosales, Inc. is DENIED.

Dated at Madison, Wisconsin on May 15, 2024.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (414) 227-4027
FAX: (608) 264-9885

By: /s/

Andrea Brauer
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.