



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

In the Matter of the Dealer Bond Claim against
Sherman Auto Empire, LLC

Case No: DOT-24-0008

Claimant: [REDACTED]

FINAL DETERMINATION

On November 9, 2023, a claim was made against the motor vehicle bond of Sherman Auto Empire, LLC (Dealer) with the Wisconsin Department of Transportation (Department) by Centennial Casualty Company.

On Wednesday, December 13, 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 26 to inform other persons who may have claims against the Dealer to file them with the Wisconsin Department of Transportation (Department) by February 12, 2024.

On December 19, 2023, [REDACTED] (Claimant) filed a claim against the Dealer's bond, which constituted the second such claim. On January 2, 2024, Renae Wallace filed a third claim against the Dealer's bond. The initial bond claim (Case No. DOT-23-0035) and the third bond claim (DOT-24-0009) are addressed in separate decisions.

On June 25, 2024, a Preliminary Determination on [REDACTED] claim was issued 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:

Sherman Auto Empire, LLC,
6310 N. Sherman Blvd.
Milwaukee, WI 53209-3524

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

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

FINDINGS OF FACT

1. Sherman Auto Empire LLC (Dealer) is licensed by the Department as a motor vehicle dealer. The Dealer's facilities are located at 6310 Sherman Blvd., Milwaukee, Wisconsin 53209-3524.
2. The Dealer has had a continuous bond in force since November 1, 2022 (Bond # SC400466 by Hudson Insurance Company) in the amount of \$50,000.
3. On March 6, 2023, the Claimant purchased a 2009 Nissan Maxima (VIN [REDACTED]) from the Dealer for \$3,250, inclusive of title and registration fees.
4. The dealer did not provide the Claimant with a Wisconsin Buyer's Guide, purchase contract, title, or registration for the vehicle.
5. On December 19, 2023, the Claimant filed a complaint with the Department against the Dealer. The Department was able to get the title issued to the Claimant, but the Department's investigator discovered that the vehicle had a salvage brand on the title and therefore could not be registered. The investigator could not reach the Dealer.
6. On January 30, 2024, the Claimant submitted a claim against the surety bond of the Dealer with the Department. The Bond Claim set forth a claim for \$3,250, which is the amount the Claimant paid for the vehicle plus title and registration fees.
7. The claim arose on March 6, 2023 the date the Claimant purchased the vehicle from the Dealer. The Claimant filed a bond claim within three years of the ending date of the period the Hudson Insurance Company bond was in effect and it is, therefore, a timely claim.
8. On or about February 1, 2024, the Department forwarded the bond claim to the Division of Hearings and Appeals for hearing.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth in Wis. Admin. Code ch. Trans 140, subch. II. Specifically, Wis. Admin. Code § Trans 140.21 provides in relevant part:

(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.

Accordingly, to allow the claim filed against the surety bond of the Dealer, 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. Wis. Stat. § 342.16(1). The statutes require a dealer to process and mail the application of title to the Department within seven business day of the sale. Wis. Stat. § 342.16(1). In this case, the Dealer did not process the title application of the Claimant's purchase. Because the Claimant is unable to lawfully operate the vehicle, he is entitled to a refund of \$3,250 the amount he paid for the vehicle.

CONCLUSIONS OF LAW

1. [REDACTED] claim arose on March 6, 2024, the day [REDACTED] purchased the vehicle from the Dealer.
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. [REDACTED] loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. [REDACTED] has submitted documentation to support a claim in the amount of \$3,250. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.

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.

ORDER

The claim filed by [REDACTED] against the motor vehicle dealer bond of Sherman Auto Empire, LLC, is APPROVED in the amount of \$3,250.00. Hudson Insurance Company shall pay Taurus [REDACTED] this amount for his loss attributable to the actions of Sherman Auto Empire, LLC.

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

Dated at Madison, Wisconsin on August 2, 2024.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone:(608) 266-7709
FAX:(608) 264-9885

By: /s/
Reisha Mitchell
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.