



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

In the Matter of Dealer Bond Claim against First
Choice Auto Sales, LLC

Case No: DOT-24-0010

Claimant: [REDACTED]

FINAL DECISION

On January 22, 2024 [REDACTED] filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of First Choice Auto Sales, LLC, (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in Wisconsin State Journal, a newspaper published in Madison, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by April 29, 2024. No additional claims were filed. [REDACTED] claim was forwarded by the Department to the Division of Hearings and Appeals.

On August 7, 2024, a Preliminary Determination 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:

[REDACTED]
18803 Rosencrans Rd.
Denmark, WI 5408

Platte River Insurance Company
2121 N. California Blvd., Ste. 300
Walnut Creek, CA 94596

First Choice Auto Sales,
1645 Spring St., #210 L23
Beaver Dam, WI 54916-3227

[REDACTED]
[REDACTED]
[REDACTED]

FINDINGS OF FACT

1. At all times relevant herein First Choice Auto Sales, LLC (the Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities have a last known address located at 1645 Spring St., #210 L23, Beaver Dam, Wisconsin.

2. The Dealer has had a surety bond in force in the amount of \$25,000 since May 25, 2023, satisfying the requirements of Wis. Stat. § 218.0114(5) (Bond # PR2747011 from Platte River Insurance Company).

3. On or about October 31, 2023, First Choice Auto Sales LLC placed a bid of \$14,800.00 to purchase a 2016 Chevrolet Silverado (vehicle identification number [REDACTED]) at the Manheim Georgia Auto Auction.

4. According to the Bill of Sale for the 2016 Chevrolet Silverado (vehicle identification number [REDACTED]) dated October 31, 2023, the odometer reading was 276,577 miles. On the same day, First Choice Auto Sales received a Georgia Certificate of Title (title # [REDACTED]), with an odometer reading of 272,522 printed on the front. A Carfax vehicle history report for the vehicle reflected a last reported odometer reading of 276,440.

5. On December 6, 2023, First Choice Auto Sales LLC sold the 2016 Chevrolet Silverado to [REDACTED] (the Claimant) in exchange for payment of \$24,150.00. The mileage reading on the title listed 68,925 when sold to [REDACTED].

6. On December 7, 2023 a representative of the Green Bay Department of Motor Vehicles Field Customer Service Center contacted the Department and reported that the Certificate of Title for the 2016 Chevrolet Silverado had been altered.

7. The Department's investigator spoke to the Dealer, and the Dealer agreed to perform a buyback, but never completed the buyback.

8. On January 22, 2024, [REDACTED] filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim sought is \$24,150 which represents the purchase price plus sales tax [REDACTED] claims he overpaid.

9. [REDACTED] suffered an actual loss and monetary damages as a result of the Dealer's false disclosure and tampering of the odometer reading prior to selling the 2016 Chevrolet Silverado to [REDACTED]. The Dealer's action is a violation of Wis. Stat. §§ 218.0146(3)(b), 342.155(2), 342.155(3), 347.415(1m) and Wis. Admin. Code § Trans 138.027(2), which in turn constitutes a violation of Wis. Stat. §§ 218.0116(1)(gm).

10. [REDACTED] claim arose on December 6, 2023, the day the Dealer sold the 2016 Chevrolet Silverado (vehicle identification number [REDACTED]) to [REDACTED]. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Platte River Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. 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.

2. A recreational vehicle dealer license, in the case of a bonded recreational vehicle dealer, pursuant to s. 218.11(6), Stats.

3. A salvage dealer license, in the case of a bonded salvage dealer, pursuant to s. 218.22(3), Stats.

4. An auction dealer license, in the case of a bonded auction dealer, pursuant to s. 218.32(3), Stats.

5. Any other license issued by the department under ch. 218, Stats., in any other case, including that of a bonded manufacturer, distributor, distributor-wholesaler, or trailer dealer, pursuant to s. 218.0116(1), 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 [REDACTED] 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 tampered with the vehicle's odometer by rolling it back to appear that it had 200,000 fewer miles on it and then intentionally misrepresented the vehicle's odometer reading in the sale of the vehicle to the Claimant. The Dealer's actions constitute multiple violations of law, including the following:

1. Under Wis. Stat. § 218.0146(3)(b), except for motor vehicles obtained by involuntary transfer under s. 342.17, a person required to be licensed under this chapter may not sell, offer for sale or have possession of a motor vehicle if any of the following applies:...the mileage disclosure statement has been altered.
2. Under Wis. Stat. § 342.155(2), no transferor may knowingly make a false statement, including providing an odometer reading that is different from the actual reading on the odometer, in disclosing the vehicle's mileage to a transferee under this section.
3. Under Wis. Stat. § 342.155(3), no transferee, nor any other person, may alter, erase or obliterate any information, including the mileage disclosure, contained on any mileage disclosure statement.
4. Under Wis. Stat. § 347.415(1m), no person may, either personally or through an agent, remove, replace, disconnect, reset, tamper with, alter, or fail to connect the odometer of any motor vehicle, snowmobile, all-terrain vehicle, or utility terrain vehicle with the intent to change or affect the number of miles indicated thereon.

As the Dealer's violations occurred as a result of a vehicle sale, they constitute a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The Claimant sustained a loss because of the Dealer's odometer tampering and misrepresentation, which resulted in him overpaying for a vehicle that had at least 200,000 more miles on it than reported. As a result, he is entitled to reimbursement in the amount of \$9,200 which represents 40% of the purchase price¹.

CONCLUSIONS OF LAW

1. The claim of [REDACTED] arose on December 6, 2023, the day that First Choice Auto Sales LLC sold the 2016 Chevrolet Silverado to [REDACTED]. The surety bond issued to the Dealer by Platte River Insurance Company covers a one-year period commencing on May 25, 2023. The claim thus arose during the period covered by the surety bond.

2. [REDACTED] filed a claim against the motor vehicle dealer bond of the Dealer on January 22, 2024. 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. [REDACTED] loss of \$9,200 was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. [REDACTED] has supplied documentation that he paid \$23,000 for a vehicle with a tampered odometer that misrepresented the actual mileage by more than 200,000 fewer miles representing an actual loss sustained under 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).

¹ See DOT precedent using the lesser of two calculation models, either \$0.06 per rolled-back mile or 40% of the purchase price. DOT-18-0019; DOT-18-0022; DOT-21-0026; DOT-24-0007.

ORDER

The claim filed by [REDACTED] against the motor vehicle dealer bond of First Choice Auto Sales, LLC, is APPROVED in the amount of \$9,200. Platte River Insurance Company shall pay [REDACTED] this amount for its loss attributable to the actions of First Choice Auto Sales, LLC.

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

Dated at Madison, Wisconsin on September 11, 2024.

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

By: /s/

Rachel Pings
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.