



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

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In the Matter of Claims Against the Dealer Bond  
of Porky's Northwoods Auto Traders LLC

Case No: DOT-19-0025

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FINAL DECISION

On July 8, 2019, Maynard Anderson filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Porky's Northwoods Auto Traders 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 The Daily Press, a newspaper published in Ashland, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by May 5, 2020. No additional claims were filed. The Administrative Law Judge issued a Preliminary Determination in this matter on June 17, 2020. No timely 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:

Maynard Anderson  
741 Wisconsin Avenue  
Beloit, WI 53511

Porky's Northwoods Auto Traders LLC  
c/o Sara R. Michael  
516 Hillcrest Drive  
Mellen, WI 54546

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

## FINDINGS OF FACT

1. Porky's Northwoods Auto Traders LLC, (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer previously conducted business at 809 Thomas Street, Mellen, Wisconsin 54546. Upon information and belief, the Dealer ceased operating in July 2019.

2. At all times relevant herein, the Dealer had a continuous bond effective as of September 4, 2017 and satisfying the requirements of Wis. Stat. § 218.0114(5). (Bond # 63268837 by Western Surety Company).

3. On September 11, 2018, Maynard Anderson (Anderson) purchased a 2011 GMC Traverse, vehicle identification number 1GNKVEED7BJ248057, from the Dealer. According to the purchase contract, Anderson paid \$11,949.86 for the vehicle, which included a warranty/service contract valued at \$1,496, plus taxes and title/registration fees.

4. The additional warranty/service contract that Anderson executed contemporaneous to the vehicle purchase on September 11, 2018 stated that the service payment contract price was \$2,160.00; however, this is not the amount documented or itemized in the purchase contract.

5. The Dealer failed to provide Anderson with the vehicle title following the September 11, 2018 sale/purchase.

6. The Dealer willfully failed to submit the warranty/service contract executed and paid by Anderson as part of the September 11, 2018 vehicle purchase to the warranty servicing company, Associates Underwriting Limited, LLC/A.U.L. Corp. As a result, the vehicle that Anderson purchased was not covered by any extended warranty service contract.

7. On February 19, 2019 a new purchase contract was executed between the Dealer and Anderson. The new purchase contract stated that the purchase price was \$11,968.80, which itemized a service contract cost in the amount of \$1,495, plus taxes and title/registration fees. Also executed on February 19, 2019 was a Wisconsin Title & License Plate Application form MV11-1, which itemized the title and registration fee of \$164.50.

8. The Dealer never submitted the MV11-1 title application form to the Department and once again failed to provide Anderson with the vehicle title.

9. On July 8, 2019, Anderson filed a complaint against the Dealer with the Department's Dealer Section. Anderson alleged that he had not received the title to the vehicle and requested his title and all warranty information that were paid in full at the time of purchase.

10. The investigator assigned to the complaint contacted the Dealer on behalf of Anderson. Based upon the records received and his investigation, the investigator discovered that the Dealer had failed to submit the necessary application form to the Department to obtain the

vehicle title and had also failed to submit the paperwork to effectuate the warranty. In addition, the Dealer stated that it was unable to reimburse Anderson for the costs of the warranty or title.

11. The investigator requested that the Department process the title and registration for the vehicle Anderson purchased from the dealer.

12. On October 7, 2019, Anderson filed a claim against the surety bond of the Dealer. Anderson's claim requested reimbursement in the amount of \$2,160 for the value of the extended warranty included in the purchase price of the vehicle.

13. The Department's investigator concluded that the Dealer violated Wis. Stat. §342.16, which requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer.

14. Anderson filed a timely bond claim within three years of the ending date of the period the Western Surety Company bond was in effect.

15. Anderson sustained a loss as a result of the Dealer's failure to submit the application for title to the Department and the Dealer's failure to provide a warranty/service contract per the terms of the purchase contract despite Anderson having paid for same.

16. The actual loss suffered by Anderson is in the amount of \$1,496.00, which is the amount of the purchase contract associated with the warranty service contract that Anderson paid on September 11, 2018.

## DISCUSSION

The procedure for determining claims against dealer bonds is set forth within the Wisconsin Administrative Code, Chapter Trans 140, Subchapter II. Wis. Admin. Code § Trans 140.21(1) provides in relevant part:

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 motorcycle dealer license, in the case of a secured salesperson or motor motorcycle 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.

Pursuant to the relevant portions of Wis. Stat. § 218.0116(1), grounds for suspension or revocation of a dealer's license may include the following:

- (c) Willfully defrauding any retail buyer, lessee or prospective lessee to the buyer's, lessee's or prospective lessee's damage.
- (cm) Willful failure to perform any written agreement with any retail buyer, lessee or prospective lessee.
- ...
- (gm) Having violated any law relating to the sale, lease, distribution or financing of motor vehicles.
- ...

*Id.* 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) as identified in Wis. Admin. Code § Trans 140.21(1)(c)1. In addition, the violation must cause the loss claimed.

In the present matter, the Dealer failed to process the application for title and failed to submit and provide the warranty/service contract that Anderson signed and paid for pursuant to the vehicle purchase contract. The Dealer's willful non-performance of the written agreement and failure to provide either the title or warranty/service contract despite receipt of payment from Anderson for the cost of same constitute violations under Wis. Stat. § 218.0116(1)(c)(willfully defrauding any retail buyer...to the buyer's...damage) and Wis. Stat. § 218.0116(1)(cm)(Willful failure to perform any written agreement with any retail buyer...). Wis. Stat. §§ 218.0116(1)(c) and (cm) are both listed under Wis. Admin. Code § Trans 140.21(1)(c)1 as violations upon which a claim against a motor vehicle dealer's bond can be based.

The Dealer also violated Wis. Stat. § 342.16(1), which in turn, also constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Under Wis. Stat. § 342.16(1)(a), a dealer is required to process an application for certificate of title within seven days of the sale and provide the Department with the original application for certificate within one business day of processing the application. Anderson sustained a loss as a result of these violations. In his bond claim form Anderson seeks recovery of \$2,160, which is the listed value of the warranty/service contract that the Dealer never submitted. However, according to the September 11, 2018 purchase contract and purchase price

paid by Anderson, he was only charged \$1,496 for the warranty/service contract. Therefore, that it is the actual loss sustained as a result of the Dealer's violations set forth above.

### CONCLUSIONS OF LAW

1. Maynard Anderson's claim arose on September 11, 2018, the day he purchased the vehicle from the Dealer. The surety bond issued to the Dealer by the Western Surety Company was a continuous bond effective September 4, 2017. The bond company has not submitted evidence that the bond was terminated. As the claim arose during the subsequent bond year, it is covered by the surety bond commencing on September 4, 2018.
2. Maynard Anderson filed a claim against the motor vehicle dealer bond of the Dealer on October 7, 2019. 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's failure to process the title application with the Department constitutes a violation of Wis. Stat. § 342.16(1). A violation of Wis. Stat. § 342.16(1) is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm).
4. The Dealer's failure to provide a warranty/service contract to Anderson despite Anderson having paid for same as part of the vehicle purchase price constitutes a violation of Wis. Stat. §§ 281.0116(1)(c) and (cm).
5. Anderson sustained a loss as a result of the Dealer's violations of Wis. Stat. §§ 218.0116(1)(c), (cm) and (gm) and Wis. Stat. § 342.16. The loss sustained is the value of the warranty service contract paid by Anderson in the amount of \$1,496.00.
6. The loss sustained by Anderson was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable.
7. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Maynard Anderson against the motor vehicle dealer bond of Porky's Northwoods Auto Traders LLC, is APPROVED in the amount of \$1,496.00. The Western Surety Company shall pay Maynard Anderson this amount for his loss attributable to the actions of Porky's Northwoods Auto Traders LLC.

Dated at Madison, Wisconsin on July 28, 2020.

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By: \_\_\_\_\_



Kristin P. Fredrick  
Administrative Law Judge