



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

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In the Matter of Claims Against the Dealer Bond  
of Foreign Motors, Inc.

Case No: DOT-19-0026

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FINAL DECISION

On October 18, 2019, Patricia Burt, by her attorney Heidi Miller, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Foreign Motors, Inc. (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 MJS-West Now, a newspaper published in Milwaukee, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by February 17, 2020. No other claims were filed. Patricia Burt's claim was forwarded by the Department to the Division of Hearings and Appeals. On February 26, 2020, a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(4)(a) was issued. 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:

Patricia Burts, by

Attorney Heidi Miller  
P.O. Box 26273  
Wauwatosa, WI 53226

Foreign Motors, Inc.  
6535 West Fond du Lac Avenue  
Milwaukee, WI 53218

Ervin Hatillari  
5841 South Illinois Avenue  
Cudahy, WI 53110

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

## FINDINGS OF FACT

1. Foreign Motors, Inc., (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 6535 West Fond du Lac Avenue, Milwaukee, Wisconsin. The Dealer's license expired on July 31, 2019. According to the complaint filed in Milwaukee County Circuit Court, Ervin Hatillari is a principal and the registered agent of the Dealer.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) with Western Surety Company since May 24, 2017, (Bond # 63212701).

3. On August 31, 2018, Patricia Burts (Burts) purchased a 2003 BMW X5 SUV, vehicle identification number 5UXFA53573LV85690, from the Dealer. According to the purchase contract, Burts agreed to pay \$5,961.65, including a service fee, for the vehicle. According to the Wisconsin title and license plate application, Burts also was charged a title fee of \$69.50, a loan filing fee of \$10.00, a license plate fee of \$75.00, and a wheel tax of \$50.00.

4. Apparently the Dealer sold the vehicle to Burts on an installment sale basis. The purchase contract lists payments of \$500.00 on August 24, 2018, \$1500.00 on August 31, 2018, and \$750.00 on September 14, 2018, made by Burts. Although the purchase contract records a payment on September 14, 2018, this payment was not made on that date. In her complaint to the Department, Burts reported that on October 10, 2018, the Dealer "repossessed" her vehicle after she failed to make the payment due on September 14, 2018. Burts subsequently made the \$750.00 payment plus paid the Dealer a \$750.00 "repossession fee" after which the vehicle was returned to Burts. Burts made one additional installment payment in the amount of \$167.00.

5. On November 26, 2018, Burts took the vehicle to the Dealer for an estimate on repairs. On December 8, 2018, she received an estimate for the repairs via a text message. By a separate text message, she was informed that the Dealer intended to repossess her vehicle because she had failed to make an installment payment that was due on November 14, 2018. On December 10, 2018, Burts attempted to make the \$167.00 payment that had been due on November 14, 2018. The Dealer refused to accept the payment and notified her that the vehicle had been "repossessed" on December 9, 2018. The Dealer did not comply with the provisions for a merchant to recover collateral in which he has a security interest set forth in Wis. Stat. chap. 425, Subchapter II, when he repossessed Burts' vehicle.

6. On February 18, 2019, Burts filed a civil lawsuit against the Dealer in Milwaukee County Circuit Court (court) alleging an illegal repossession. On April 16, 2019, Burts filed a complaint with the Department's Dealer Section against the Dealer. Because the complaint alleged a violation of the Wisconsin Consumer Act (Wis. Stat. ch. 425), the complaint was also forwarded to the Wisconsin Department of Finance for investigation.

7. On July 19, 2019, the court issued a default judgment against the Dealer. On September 9, 2019, the court entered a judgment in the amount of \$38,487.00 in favor of Burts. The judgment is itemized as \$7,345.00 "actual" damages, \$21,972.00 punitive damages, and \$9,172.00 attorney's fees. The court also granted Burts injunctive relief rescinding the purchase contract and ordering that Burts did not owe any further obligation under the purchase contract.

On October 18, 2019, Burts filed a claim against the surety bond of the Dealer. The claim is in the amount of \$38,487.00, the amount of the court judgment.

8. The Dealer's unlawful repossession of Burts' vehicle constitutes a violation of Wis. Stat. § 425.206(1). As a result of the Dealer's violation of Wis. Stat. § 425.206(1), Burts lost possession of the vehicle she purchased without reimbursement of any of the payments she made. The loss sustained by Burts 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.

9. Burts' claim arose on December 9, 2018, the day the Dealer unlawfully repossessed her vehicle. Burt submitted documentation to support a claim in the amount of \$3,667.00, the \$2,917.00 in payments she made plus the \$750.00 repossession fee the Dealer assessed. The court judgment listed Burts' actual damages as \$7,345.00; however, this included the \$3,678.00 balance of the purchase price that Burts agreed to pay in installments.<sup>1</sup> No documentation has been provided and Burts has not alleged that she made any additional payments after the vehicle was repossessed (the court expressly rescinded the purchase contract). The other items in the judgement which are the basis of the bond claim are punitive damages and attorney fees. Pursuant to Wis. Admin. Code § Trans 140.21(2)(e), punitive damages and attorney fees are expressly disallowed as claims against a motor vehicle dealer's surety bond. Burts filed a bond claim within three years of the ending date of the period the Western Surety Company bond was in effect and it 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(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:

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<sup>1</sup> Under Wis. Stat. § 425.305(1), Burts is entitled to retain possession of the vehicle without obligation to pay any amount as a remedy for the Dealer's unlawful repossession of her vehicle. However, the unpaid balance of the purchase price of the vehicle is not an actual loss suffered by Burts. Pursuant to Wis. Admin. Code § Trans 140.21(1)(a), only an actual loss is an allowable claim against a motor vehicle dealer's surety bond.

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. With respect to Burts' claim, the Dealer violated Wis. Stat. § 425.206(1). A violation of Wis. Stat. § 425.206(1) is, in turn, a violation of Wis. Stat. § 218.0116(1)(m) (having violated provisions of Wis. Stat. chs. 421 to 427 or 429) which is one of the statutory sections listed at Wis. Admin Code § 140.21(1)(c)1. Burt sustained a loss as a result of this violation.

#### CONCLUSIONS OF LAW

1. Patricia Burts' claim arose on December 9, 2018, the date the Dealer unlawfully repossessed the vehicle she purchased. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on May 24, 2018. The claim arose during the period covered by the surety bond.

2. On October 18, 2019, Patricia Burts filed a claim against the motor vehicle dealer 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. Patricia Burts' loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Patricia Burts has submitted documentation to support a claim in the amount of \$3,667.00. 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.

ORDER

The claim filed by Patricia Burts against the motor vehicle dealer bond of Foreign Motors, Inc., is APPROVED in the amount of \$3,667.00. The Western Surety Company shall pay Patricia Burts this amount for her loss attributable to the actions of Foreign Motors, Inc.

Dated at Madison, Wisconsin on April 2, 2020.

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: \_\_\_\_\_



Mark F. Kaiser  
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 insure 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 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  
4802 Sheboygan Avenue, Room 115B  
Wisconsin Department of Transportation  
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 insure strict compliance with all its requirements.