



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

In the Matter of Claims Against the Dealer Bond
of HD Motorsports, LLC

Case No: DOT-19-0031

FINAL DECISION

On October 31, 2019, Michelle Hamilton filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of HD Motorsports, 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 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 March 17, 2020. No additional claims were filed. Ms. Hamilton's claim was forwarded by the Department to the Division of Hearings and Appeals. On March 27, 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:

Michelle Hamilton
509 South Linn Street
Dodgeville, WI 53533

HD Motorsports, LLC
1619 South Stoughton Road
Madison, WI 53716

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

Findings of Fact

1. HD Motorsports, LLC (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 1619 South Stoughton Road, Madison, Wisconsin.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) with Western Surety Company since January 30, 2019 (Bond #64459777).

3. On August 30, 2019, Michelle Hamilton (Hamilton) purchased a 2003 Oldsmobile Alero automobile, vehicle identification number 1G3NL52E83C333228, from the Dealer. According to the purchase contract, Hamilton paid \$2,452.00, including taxes and registration fees, for the automobile. The Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale by the Dealer indicated no problems with the vehicle and that all equipment was legal.

4. The check engine light of the vehicle came on immediately after Hamilton took delivery of the vehicle. The next day additional warning lights came on and the vehicle's engine overheated. Hamilton noticed that the vehicle was leaking coolant. Hamilton contacted the Dealer and was told to bring the vehicle back to the dealership. The Dealer told Hamilton that the lower intake manifold gasket needed to be replaced. The Dealer agreed to perform the repair at no labor charge if Hamilton paid \$80.00 for parts. Hamilton paid the Dealer \$80.00 towards the repair. When she picked up her vehicle after it was repaired, the coolant leaked out again after she drove a short distance.

5. Hamilton again contacted the Dealer. The Dealer agreed to refund the purchase price for the vehicle and the \$80.00 repair charge she had paid. Hamilton had the vehicle towed to the Dealer's facilities on September 14, 2019. The Dealer failed to refund the purchase or the repair charge to Hamilton.

6. On September 27, 2019, Hamilton filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint made multiple attempts to compel the Dealer to follow through with the agreement to refund the purchase price for the vehicle and the \$80.00 repair charge to Hamilton but was unsuccessful. The investigator also discovered that the vehicle had never been titled in Hamilton's name.

7. The investigator was unable to resolve Hamilton's complaint and on October 31, 2019, she filed a claim against the surety bond of the Dealer. The claim is in the amount of \$2,532.00, the purchase price of the vehicle plus the repair charge.

8. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose significant existing mechanical defects in a vehicle offered for sale that can be discovered during a reasonable presale inspection. Hamilton discovered the coolant leak immediately after taking delivery of the vehicle. The leak is a significant defect that existed at the time the vehicle was offered for sale and should have been discovered by the Dealer. The Dealer either failed to conduct a reasonable presale inspection of the vehicle or disclose defects discovered during the presale inspection on the Wisconsin Buyers Guide.

9. The Dealer's failure to conduct a reasonable presale inspection of the vehicle and/or disclose a significant existing defect on the Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(4) and (6). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Hamilton sustained a loss as the result of these violations.

10. Alternatively, Wis. Stat. § 342.16(1) 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. The Dealer violated this

regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Hamilton has not received a title or registration for the vehicles she purchased and, therefore, is unable to lawfully operate or sell the vehicles. Hamilton also sustained a loss as the result of this violation.

11. Hamilton 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. Hamilton sustained a loss of as a result of acts of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Hamilton submitted documentation to support a claim in the amount of \$2,532.00, the purchase price of the vehicle plus the repair charge.

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:
 - 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 the claim filed by Hamilton, the Dealer violated Wis. Admin. Code §§ Trans 139.04(4) and (6). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat. §§ 218.0116(1)(bm) and (gm) are identified in 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. Hamilton sustained a loss as a result of the violations.

Alternatively, the Dealer's failure to submit the application for a title and registration to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to Hamilton constitutes a violation of Wis. Stat. § 342.16(1). As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Hamilton has not received a title or registration for the vehicle she purchased and, therefore, is unable to lawfully operate or sell the vehicle. A violation of Wis. Stat. § 342.16(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(bm). Wis. Stat. § 218.0116(1)(bm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1 as a violation upon which a claim against a motor vehicle dealer's bond can be based. Hamilton also sustained a loss as the result of this violation.

CONCLUSIONS OF LAW

1. Michelle Hamilton's claim arose on August 30, 2019, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on January 30, 2019. The claim arose during the period covered by the surety bond.

2. On October 31, 2019, Michelle Hamilton 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. Michelle Hamilton's loss was caused by acts of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Michelle Hamilton has submitted documentation to support a claim in the amount of \$2,532.00. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable. Because she is being reimbursed the purchase price of the vehicle as a result of the Dealer's actions, it would constitute unjust enrichment to allow Ms. Hamilton to also retain possession of the vehicle. Accordingly, if she has possession of the vehicle, she will be required to surrender possession of it to the Western Surety Company.¹

4. The Division of Hearings and Appeals has authority to issue the following order.


¹ The file provided by the Department includes a statement indicating that Hamilton has already surrendered possession of the vehicle to the Dealer prior to filing her claim.

ORDER

The claim filed by Michelle Hamilton against the motor vehicle dealer bond of HD Motorsports, LLC, is APPROVED in the amount of \$2,532.00. Western Surety Company shall pay Michelle Hamilton this amount for her loss attributable to the actions of HD Motorsports, LLC. Upon receipt of the payment, if she has possession of the vehicle, Michelle Hamilton shall surrender possession of it to the Western Surety Company.

Dated at Madison, Wisconsin on April 30, 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 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
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.