

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

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In the Matter of Claims Against the Dealer  
Bond of Motor 1 USA, LLC

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Case No: DOT-20-0005

FINAL DECISION

On November 20, 2019, Donald Yahn filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Motor 1 USA, 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 Northwoods River News, a newspaper published in Minocqua, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by April 21, 2020. No additional claims were filed. Donald Yahn's claim was forwarded by the Department to the Division of Hearings and Appeals. On April 30, 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:

Donald Yahn  
W3910 Musser Drive  
Phillips, WI 54555

Motor 1 USA, LLC,  
c/o Brad Sturm  
7545 Tree Lane #303  
Madison, WI 53717-2614

Motor 1 USA, LLC,  
c/o Judd Sturm  
4296 Shepard Lake Road  
Rhineland, WI 54501-8582

Motor 1 USA, LLC,  
c/o Mark Sturm  
4355 Moon Valley Road  
Rhineland, WI 54501

West Bend Mutual Insurance Company  
1900 South 18<sup>th</sup> Avenue  
West Bend, WI 53095

#### FINDINGS OF FACT

1. Motor 1 USA, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 1900 N. Stevens Street, Rhinelander, Wisconsin. The Department placed the Dealer out of business effective June 13, 2018.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) beginning July 9, 2017 (Bond #2291024 by West Bend Mutual Insurance Company). The bond was cancelled effective July 10, 2019.

3. On August 11, 2017, Donald Yahn (Yahn) purchased a 2009 GMC Sierra pick-up truck, vehicle identification number 3GTEK23319G128984, from the Dealer. According to the purchase contract, Yahn paid \$18,775.00 for the vehicle. Yahn also purchased a 36-month service contract covering the vehicle through the Dealer. The service contract was administered by a company called Gold Standard Automotive Network. The premium for the service contract was \$1,795.00.

4. Yahn did pay to the Dealer the \$1,795.00 premium for the service contract. By form dated September 11, 2019, Yahn cancelled the service contract. Gold Standard Automotive Network calculated the refund Yahn was entitled to for the unused portion of the service contract from the administrator was \$155.07 and Yahn was entitled to an additional refund of \$303.17 from the Dealer. Yahn received the refund owed from the Gold Standard Automotive Network, but did not receive the refund owed from the Dealer.

5. On November 2, 2019, Yahn filed a complaint against the Dealer with the Department. The investigator assigned to the complaint was unable to resolve the complaint because the Dealer is out of business. On November 20, 2019, Yahn filed a claim against the surety bond of the Dealer in the amount of \$303.17, the amount of the unrefunded premium for the cancelled service contract owed by the Dealer.

6. The Dealer's failure to submit the refund on the Dealer's portion of the premium for cancelled service contract to Yahn constitutes a violation of Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer). The loss sustained by Yahn was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

7. Yahn submitted documentation to support a bond claim of \$303.17, the amount of the unrefunded premium for the cancelled service contract owed by the Dealer.

However, the claim arose after the bond issued by the West Bend Mutual Insurance Company was cancelled and, therefore, is not allowable.

## 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. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

(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 security 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 described above, the Dealer violated Wis. Stat. § 218.0116(1)(cm). Wis. Stat. § 218.0116(1)(cm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Yahn sustained a loss as a result of this violation. However, the claim arose after the effective date of the cancellation of the bond and is, therefore, not allowable.

CONCLUSIONS OF LAW

1. The claim of Donald Yahn arose on September 11, 2019, the date he cancelled the service contract purchased through the Dealer and the Dealer failed to refund the portion of the premium for service contract owed by the Dealer. The surety bond issued to the Dealer by West Bend Mutual Insurance Company was cancelled effective July 10, 2019. The claim did not arise during a period covered by the surety bond.

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

ORDER

The claim filed by Donald Yahn against the motor vehicle dealer bond of Motor 1 USA, LLC, did not arise until after the surety bond issued by West Bend Mutual Insurance Company was effectively cancelled. Accordingly, the claim must be DISALLOWED.

Dated at Madison, Wisconsin on June 3, 2020.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
4822 Madison Yards Way, Fifth Floor  
Madison, Wisconsin 53705  
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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.