

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

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In the Matter of Claims Against the Dealer  
Bond of American Motor Group, Inc.

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Case No: DOT-20-0006

FINAL DECISION

On November 18, 2019, Valerie Allen filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of American Motor Group, 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 Southwest Now, a newspaper published in West Allis, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by April 20, 2020. No additional claims were filed. Valerie Allen'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:

Valerie Allen  
14759 West Hidden Creek Court  
New Berlin, WI 53151

American Motor Group, Inc.,  
6030 West Greenfield Avenue  
West Allis, WI 53214

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

FINDINGS OF FACT

1. American Motor Group, Inc., (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 6030 W. Greenfield Avenue, West Allis, Wisconsin.

2. The Dealer has a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since June 26, 2018 (Bond #63702488 by Western Surety Company).

3. On August 17, 2019, Valerie Allen (Allen) purchased a 2012 Nissan Versa automobile, vehicle identification number 3N1CN7APXCL934647, from the Dealer. The file includes a copy of only a portion of the purchase contract and that portion is unreadable. However, in her complaint, Allen states she paid \$2,804.00 for the vehicle, including the title fee, sales tax, and a 3.5% fee for a credit card transaction. 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.<sup>1</sup>

4. The vehicle began jerking violently and the engine revving high immediately after Allen took delivery of it. Allen contacted the Dealer who directed her to have it checked at National Car Care. A mechanic at National Car Care advised Allen to take the vehicle to a transmission specialist. On August 22, 2019, Allen took the vehicle to Gordie Boucher Nissan to have it diagnosed. The mechanic diagnosed the problem as transmission failure and recommended that the transmission be replaced. Allen contacted the Dealer and demanded that the Dealer either pay for the transmission replacement or buy back the vehicle. The Dealer refused to offer any assistance to resolve the vehicle's transmission problem.

5. On August 28, 2019, Allen filed a complaint with the Department's Dealer Section against the Dealer. On September 16, 2019, Allen had the transmission replaced at Redline Garage. The charge for the replacement was \$2,686.82. The investigator assigned to Allen's complaint against the Dealer was unable to resolve her complaint and on November 18, 2019, she filed a claim against the surety bond of the Dealer. The claim is in the amount of \$2,686.82, the amount she paid to have the transmission replaced.

6. 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. Allen discovered the defective transmission immediately after taking delivery of the vehicle. The investigator contacted National Car Care and spoke to the mechanic who diagnosed the transmission problem with Allen's vehicle. The mechanic's opinion was that the transmission problem was "probably always there." The transmission problem 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.

7. 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

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<sup>1</sup> The file includes a Wisconsin Buyers Guide that states the vehicle had a shifting problem. The Department's investigator determined that the Wisconsin Buyers Guide was altered after the purchase. The copy of the Wisconsin Buyers Guide Allen was given does not disclose a shifting problem.

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). Allen sustained a loss as the result of these violations.

8. Allen 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. Allen 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. Allen submitted documentation to support a claim in the amount of \$2,686.82, the amount she paid to have the transmission replaced.

### 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 Allen, 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. Allen sustained a loss as a result of the violation.

#### CONCLUSIONS OF LAW

1. Valerie Allen's claim arose on August 17, 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 June 26, 2019. The claim arose during the period covered by the surety bond.

2. On November 18, 2019, Valerie Allen 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. Valerie Allen sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Valerie Allen has submitted documentation to support a claim in the amount of \$2,686.82. 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 Valerie Allen against the motor vehicle dealer bond of American Motor Group, Inc., is APPROVED in the amount of \$2,686.82. Western Surety Company shall pay Valerie Allen this amount for her loss attributable to the actions of American Motor Group, Inc.

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  
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.