

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

In the Matter of Claims Against the Dealer
Bond of Autotude, LLC

Case No: DOT-20-0007

FINAL DECISION

On November 27, 2019, Natasha Normand filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Autotude, 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 La Crosse Tribune, a newspaper published in La Crosse, 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. Ms. Normand's claim was forwarded by the Department to the Division of Hearings and Appeals. On May 7, 2020, a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(4)(a) was issued. 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:

Natasha Normand
953 Lemonweir Parkway
Tomah, WI 54660

Autotude, LLC
c/o Thomas La Beff
1747 Rose Street, #25
La Crosse, WI 54603-2188

Capitol Indemnity Corporation
1600 Aspen Commons
Middleton, WI 53562

Findings of Fact

1. Autotude, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 2612 South Avenue, La Crosse, Wisconsin. The Department placed the Dealer out of business effective June 28, 2018.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) beginning September 13, 2012 (Bond #A190019990 by Capitol Indemnity Corporation).

3. On September 30, 2017, Natasha Normand (Normand) purchased a 2008 Audi A4 automobile, vehicle identification number WAUDF78E48A140807, from the Dealer. According to the Wisconsin Title and License Plate Application form the purchase price for the vehicle was \$7,000.00.

4. Immediately after Normand took delivery of the vehicle, she noticed a gas smell and the check engine light (CEL) came on. Normand took the vehicle back to the Dealer. The Dealer cleaned some sensors and reset the CEL. After driving between 75 and eighty miles, the CEL came back on. Normand asked the Dealer to buy back the vehicle, but the Dealer refused. Normand contacted Zimbrick Audi in Madison (Zimbrick) and on October 6, 2017, took the vehicle there to have the CEL diagnosed. Zimbrick discovered a significant oil leak on the vehicle. Normand was charged \$60.35 for the diagnosis and instructed by the technicians to drive the vehicle for a while to discover the precise location of the leak.

5. Normand took the vehicle back to Zimbrick on October 23, 2017. During this appointment, the oil pan seal was replaced to repair the oil leak, the exhaust gasket was replaced, and the fuel sending unit was replaced. Normand paid \$1,048.06 for these repairs. After driving between 75 and eighty miles, the CEL came back on. On January 4, 2018, Normand took the vehicle back to Zimbrick. During this appointment Zimbrick technicians replaced injectors and the thermostat and resealed the oil pan. Normand paid \$1,936.22 for these repairs.

6. After driving between 75 and eighty miles, the CEL came back on. On January 25, 2018, Normand took the vehicle back to Zimbrick. Zimbrick kept the vehicle for 47 days checking various items but was unable to resolve the concerns. Normand paid \$585.01 for this visit. On April 12, 2018, Normand took the vehicle back to Zimbrick due to continuing oil leaks and the engine RPMs fluctuating. On this visit, Zimbrick replaced the torque converter. Normand paid \$1,398.93 for this repair. After this repair the CEL was still on. Zimbrick recommended the engine be replaced. The estimate to have the engine replaced is \$6,306.79.

7. On November 27, 2019, Normand filed a claim against the surety bond of the Dealer with the Department. The claim is in the amount of \$11,335.36, the amount

Normand paid to have the oil leaks repaired and CEL issues addressed plus the estimate to have the engine replaced.

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. There is not a copy of the Wisconsin Buyers Guide that was displayed on the vehicle at the time Normand purchased it; however, it is reasonable to assume that if the Wisconsin Buyers Guide displayed had disclosed oil leaks and engine problems Normand would not have purchased the vehicle. Normand discovered the existence of oil leaks and various issues that caused the CEL to be on immediately after purchasing the vehicle. It is also reasonable to assume that these defects should have been discovered during a reasonable presale inspection. The oil leak and engine problems are significant defects 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.

10. The Dealer's failure to conduct a reasonable presale inspection of the vehicle and/or disclose significant existing defects 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). Normand sustained a loss as the result of these violations.

11. Normand filed a bond claim within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and it is, therefore, a timely claim. Normand sustained a loss 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. Normand submitted documentation to support a claim in the amount of \$11,335.36, the amount she paid to have the oil leaks repaired and CEL issues addressed plus the estimate to have the engine 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 Normand, 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. Normand sustained a loss as a result of the violations.

CONCLUSIONS OF LAW

1. Natasha Normand's claim arose on September 30, 2017, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Capitol Indemnity Corporation covers a one-year period commencing on September 13, 2017. The claim arose during the period covered by the surety bond.

2. On November 27, 2019, Natasha Normand 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. Natasha Normand's loss was caused by acts of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Natasha Normand has submitted documentation to support a claim in the amount of \$11,335.36. 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 Natasha Normand against the motor vehicle dealer bond of Autotude, LLC, is APPROVED in the amount of \$11,335.36. Capitol Indemnity Corporation shall pay Natasha Normand this amount for her loss attributable to the actions of Autotude, LLC.

Dated at Madison, Wisconsin on June 11, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone:(608) 266-7709
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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 ensure 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 ensure strict compliance with all its requirements.