

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

In the Matter of Claims Against the Dealer
Bond of Negotiable Vehicles, LLC

Case No: DOT-20-0008

FINAL DECISION

On January 14, 2020, Khari Terry filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Negotiable Vehicles, 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 Milwaukee Daily Reporter, 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 May 18, 2020. No additional claims were filed. Mr. Terry's claim was forwarded by the Department to the Division of Hearings and Appeals. On July 9, 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:

Khari Terry
1351 Oxford Lane, Apt. 103
Round Lake, IL 60073

Negotiable Vehicles, LLC
3846 West Wisconsin Ave. #114
Milwaukee, WI 53208-3175

Ericka North
4719 North 18th Street
Milwaukee, WI 53209-6430

Western Surety Company
101 South Reid Street
Sioux Falls, SD 57209-6430

Findings of Fact

1. Negotiable Vehicles, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a wholesale motor vehicle dealer. The Dealer's facilities were located at 3846 W. Wisconsin Avenue, #114, Milwaukee, Wisconsin. The Department revoked the Dealer's license effective December 18, 2019.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5)(c) since October 17, 2018 (Bond # 63841422 Western Surety Company).

3. On October 31, 2019, Khari Terry (Terry) purchased a 2008 Chevrolet Malibu, vehicle identification number 1G1ZH57B984214888, from the Dealer. Terry is a retail buyer of the vehicle.

4. Terry did not receive a title or registration for the vehicle. On November 5, 2019, Terry filed a complaint with the Department's Dealer Section against the Dealer. The investigator obtained the documentation for the sale from the Dealer. The transaction records are convoluted, but it is apparent that the Dealer unlawfully sold the vehicle to Terry as a retail sale. Because of incomplete and possibly fraudulent completion of title documents by the Dealer, Terry has been unable to title and register the vehicle in his name. The investigator attempted to mediate a resolution to Terry's complaint by having the Dealer buy back the vehicle from Terry.

5. The investigator was unable to resolve the complaint and on January 14, 2020, Terry filed a claim against the surety bond of the Dealer. The claim is in the amount of \$1,500.00, which Terry states was the purchase price of the vehicle.¹

6. Pursuant to Wis. Admin. Code § Trans 138.027(2), a wholesale dealer is prohibited from selling a motor vehicle to a retail buyer. As a result of the Dealer's violation of Wis. Admin. Code § Trans 138.027(2), Terry has not received a title or registration for the vehicle he purchased and, therefore, is unable to lawfully operate or sell the vehicle.

7. Terry sustained a loss as a result of the Dealer's violation of Wis. Admin. Code § Trans 138.027(2). The loss sustained by Terry was caused by an act of the Dealer that would be grounds for the suspension or revocation of his wholesale motor vehicle dealer license. Accordingly, the claim is allowable.

8. Terry's claim arose on October 31, the date he purchased the vehicle from the Dealer. Because he is unable to lawfully operate or sell the vehicle, Terry is entitled to a refund of the amount he paid for the vehicle. Terry has stated this amount is

¹ In her report, the investigator states that Terry presented a bill of sale showing he paid \$1,500.00 for the vehicle, but that Terry stated he actually paid \$2,500.00 for the vehicle. There is no documentation of the purchase price in the file forwarded by the Department. Terry states that the purchase price was \$1,500.00 in his bond claim. There is no basis to find the purchase price of the vehicle was any other amount.

\$1,500.00. Terry 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:

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 Terry, the Dealer violated Wis. Admin. Code § Trans 138.027(2). A violation of Wis. Admin. Code § Trans 138.027(2), in turn, constitute a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale of a motor vehicle). Wis. Stat. §§ 218.0116(1)(gm) 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. Terry sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Khari Terry's claim arose on October 31, 2019, the date he 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 October 17, 2019. The claim arose during the period covered by the surety bond.

2. On January 14, 2020, Khari Terry 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. Khari Terry's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Khari Terry has submitted documentation to support a claim in the amount of \$1,500.00. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable. Because he is being reimbursed the purchase price of the vehicle, it would constitute unjust enrichment to allow Mr. Terry to also retain possession of the vehicle. Accordingly, he will be required to surrender possession of the vehicle to the Western Surety Company.

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

ORDER

The claim filed by Khari Terry against the motor vehicle dealer bond of Negotiable Vehicles, LLC, is APPROVED in the amount of \$1,500.00. Western Surety Company shall pay Khari Terry this amount for his loss attributable to the actions of Negotiable Vehicles, LLC. Upon receipt of the payment, Khari Terry shall surrender possession of the vehicle to Western Surety Company.

Dated at Madison, Wisconsin on August 13, 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
4822 Madison Yards Way, Room S922
P.O. Box 7910
Madison, WI 53707-7910

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.