



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

In the Matter of Claims Against the
Dealer Bond of Naz Auto, LLC

Case No: DOT-20-0009

FINAL DECISION

On March 6, 2020, Cobey Huish filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Naz Auto, 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 Poynette Press, a newspaper published in Columbia County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by May 24, 2020. No additional claims were filed. Mr. Huish'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:

Cobey Huish
2094 Balmoral Place
Costa Mesa, CA 92627

Naz Auto, LLC
101 Skyline Drive #1 W013
Arlington, WI 53911-9521

Fatima Iqbal
12736 Gettysburg Circle
Orlando, FL 32837-5010

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

Findings of Fact

1. Naz Auto, LLC, (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a wholesale motor vehicle dealer. The Dealer's facilities are located at 101 Skyline Drive #1 W013, Arlington, Wisconsin. Fatima Iqbal is the owner of the Dealer.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5)(c) since December 12, 2018 (Bond # 64447702 Western Surety Company). The face amount of the bond is \$25,000.00 for each twelve-month period.

3. On October 9, 2019, Cobey Huish (Huish) purchased a 2002 Mercedes G500 SUV, vehicle identification number WDCYR49E22X131126, from the Dealer. The vehicle was advertised for sale on eBay as being sold by Farhan Iqbal who is the brother of Fatima Iqbal. Farhan Iqbal holds a buyer's license with the Dealer. The vehicle was physically located in Florida and had a Florida title. A vehicle history shows the Dealer purchased the vehicle on September 28, 2019 and sold it to Huish as a retail transaction. The vehicle was delivered to Huish in California. Huish reported that he paid the Dealer \$25,499.00 for the vehicle plus \$1,000 to have it transported to California.

4. Immediately after accepting delivery of the vehicle, Huish discovered various mechanical problems with the vehicle rendering it undriveable. Huish had the vehicle inspected by two automobile repair companies, Star European Service & Repairs and Five Star Autocare, Inc. Both repair companies are located in Costa Mesa, California. The total of the estimates to repair the vehicle was \$24,754.00.

5. On December 16, 2019, Huish filed a complaint with the Department's Dealer Section against the Dealer. The investigator was unable to resolve the complaint and on March 5, 2020, Huish filed a claim against the surety bond of the Dealer. The claim is in the amount of \$25,000.00, which is the face amount of the Dealer's surety bond.

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), Huish was not protected by any of the presale inspection and disclosure requirements with which retail motor vehicle dealers licensed by the Department must comply. Huish purchased a vehicle that requires repairs to make it drivable which essentially equal the purchase price of the vehicle.

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

8. Huish's claim arose on October 9, 2019, the date he purchased the vehicle from the Dealer. Huish is entitled to a refund of the amount he paid for the vehicle. Huish has reported this amount as \$25,499.00 for the vehicle plus \$1,000.00 to have it transported

to California. Huish 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 Huish, 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. Huish sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Cobey Huish's claim arose on October 9, 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 December 12, 2018. The claim arose during the period covered by the surety bond.

2. On March 5, 2020, Cobey Huish 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. Cobey Huish's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of her wholesale motor vehicle dealer license. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable. Cobey Huish has submitted documentation to support a claim in the amount of \$26,499.00. This amount exceeds the face amount of the surety bond. Accordingly, the payment to Mr. Huish will be reduced to \$25,000.00, the face amount of the bond. Because he is being reimbursed the purchase price of the vehicle, it would constitute unjust enrichment to allow Mr. Huish 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 Cobey Huish against the motor vehicle dealer bond of Naz Auto, LLC, is APPROVED in the amount of \$25,000.00. Western Surety Company shall pay Cobey Huish this amount for his loss attributable to the actions of Naz Auto, LLC. Upon receipt of the payment, Cobey Huish shall surrender possession of the vehicle to Western Surety Company.

Dated at Madison, Wisconsin on September 8, 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 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.