



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

In the Matter of Claims Against the Dealer Bond
of Esmar Motors LLC

Case No: DOT-20-0019

FINAL DECISION

On March 6, 2020, Wolfes South Bend Auto Auction LLC filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Esmar Motors 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 Portage Daily Register, a newspaper published in Portage, Wisconsin, on July 13, 2020. The notice informed other persons who may have claims against the Dealer to file them with the Department by September 11, 2020. One additional claim was filed against the Dealer on September 23, 2020, which is addressed through a separate determination. On December 10, 2020, a Preliminary Determination was issued pursuant to Wis. Admin. Code § Trans 140.26(4)(a). 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:

Esmar Motors LLC
101 Skyline Dr #1 Unit W268
Arlington, WI 53911-9520

Alicia Martinez
3619 W. 61st Street
Chicago, IL 60629-3921

Western Surety Company
101 Reid St. #300
Sioux Falls, SD 57103

Wolfes South Bend Auto Auction LLC, by
Attorney David L. Mirkin
Mirkin Law Offices, P.C.
205 W. Jefferson Blvd., Ste. 205
South Bend, IN 46601

FINDINGS OF FACT

1. Esmar Motors LLC (the Dealer) was previously licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 101 Skyline Dr., #1 W268, Arlington, Wisconsin.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since March 29, 2019 (Bond # 64590338 from Western Surety Company Corporation).

3. On or about August 21, 2019, Esmar Motors LLC sought to purchase two vehicles at an auction from Wolfe's South Bend Auto Auction (WSBAA), including a 2008 Dodge Nitro, vehicle identification number 1D8GU28K78W105052, and a 2013 Ford Explorer, vehicle identification number 1FM5K8D89DGC87233, from the Dealer.

4. On September 25, 2019 Esmar Motors LLC issued payment via check number 1026 in the amount of \$6,135.00 payable to WSBAA. The bill of sales for the vehicles identified in paragraph 3 above reflect \$1,475 of the total payment was for the 2008 Dodge Nitro vehicle (BOS #9689) and the remaining \$4,660.00 was payment for the 2013 Ford Explorer (BOS #9741).

5. On September 30, 2019 Esmar Motors LLC check for payment of \$6,135.00 was returned for nonsufficient funds.

6. On December 16, 2019 Wolfe's South Bend Auto Auction filed a civil complaint against Esmar Motors LLC in the St. Joseph County Circuit Court, State of Indiana, Case No. 71C01-1912-CC-004358, seeking three times the actual damages of \$6,135 that Wolfe's South Bend Auto Auction incurred, plus fees pursuant to Indiana Code §§ 34-24-3-1 and 34-43-5-5(a)(1).

7. A copy of Wolfe's South Bend Auto Auction St. Joseph County Circuit Court complaint, Case No. 71C01-1912-CC-004358, was served upon Esmar Motors LLC on January 28, 2020; however, when Esmar Motors LLC failed to file an answer to the Complaint, on March 3, 2020 the St. Joseph Circuit Court entered a Default Judgment against Esmar Motors LLC in the sum amount of \$19,105.00.

8. On March 6, 2020, Wolfe's South Bend Auto Auction filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim sought was \$19,105.00, which is the amount of the Default Judgment entered against Esmar Motors in St. Joseph County Circuit Court Case No. 71C01-1912-CC-004358 for the Dealer's issuance of a worthless check and related failure to pay for the purchased vehicles.

9. Wolfe's South Bend Auto Auction suffered an actual loss and monetary damages in the amount of \$6,135.00 as a result of the Dealer's issuance of a worthless check and failure to issue proper payment for the vehicles purchased as described in paragraphs (3) through (5) above. The Dealer's action is a violation of Indiana law and would similarly constitute a violation of law in the State of Wisconsin, and in turn constitutes a violation of Wis. Stat. § 218.0116(1)(gm).

10. Wolfe's South Bend Auto Auction, LLC's claim arose on September 25, 2019, the day the Dealer issued a worthless check as payment to Wolfe's South Bend Auto Auction, LLC for the vehicles identified in paragraph (3) above in the total amount of \$6,135.00. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Western Surety Company Corporation was in effect and 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 provides in relevant part:

(1) 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 claimant'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.

2. A recreational vehicle dealer license, in the case of a bonded recreational vehicle dealer, pursuant to s. 218.11(6), Stats.

3. A salvage dealer license, in the case of a bonded salvage dealer, pursuant to s. 218.22(3), Stats.

4. An auction dealer license, in the case of a bonded auction dealer, pursuant to s. 218.32(3), Stats.

5. Any other license issued by the department under ch. 218, Stats., in any other case, including that of a bonded manufacturer, distributor, distributor-wholesaler, or trailer dealer, pursuant to s. 218.0116(1), 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.

(2) The following claims shall be disallowed:

...

(e) Any claim for interest or penalties, legal costs, attorney fees, or punitive damages except as otherwise expressly provided in sub (5).

Accordingly, to allow Wolfe's South Bend Auto Auction, LLC's claim against the Dealer's surety bond 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. The Dealer's failure to make payment in full for the vehicles purchased from Wolfe's South Bend Auto Auction, LLC and the Dealer's issuance of a worthless check constituted a violation of law under both Indiana and Wisconsin law. See Wis. Stat. § 943.24; Indiana Code § 35-43-5-5(a)(a). The Dealer's action in issuing a worthless check to purchase vehicles placed for sale during an auction constitute a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Wolfe's South Bend Auto Auction, LLC sustained a loss as a result of the Dealer's issuance of a worthless check in the amount of \$6,135.00. The claimant is not entitled to recover from the bond the full amount of \$19,105.00 entered by the St. Joseph County Circuit Court on default, however. As set forth under Wis. Admin. Code § Trans 140.21(2)(e), a claimant is not entitled to recover from a bond any claim for interest, penalties, legal costs, attorney's fees or punitive damages. Thus, the claim in this matter is limited to recovery of actual losses in the amount of \$6,135.00.

CONCLUSIONS OF LAW

1. The claim of Wolfe's South Bend Auto Auction, LLC arose on September 25, 2019, the day that Esmar Motors LLC issued a worthless check for the purchase of two vehicles from Wolfe's South Bend Auto Auction, LLC. The surety bond issued to the Dealer by Western Surety Company Corporation covers a one-year period commencing on March 29, 2019. The claim arose during the period covered by the surety bond.
2. Wolfe's South Bend Auto Auction, LLC filed a claim against the motor vehicle dealer bond of the Dealer on March 6, 2020. 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. Wolfe's South Bend Auto Auction, LLC loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Wolfe's South Bend Auto Auction, LLC has supplied documentation to support a claim in the amount of \$6,135.00 for actual loss sustained under Wis. Admin. Code § Trans 140.21(1)(c).
4. The claim is not allowable for damages awarded by the St. Joseph County Circuit Court, Case No. 71C01-1912-CC-004358, in excess of the actual loss of \$6,135.00 pursuant to Wis. Admin. Code § Trans 140.21(2)(e).
5. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Wolfe's South Bend Auto Auction, LLC against the motor vehicle dealer bond of Esmar Motors, LLC, is APPROVED in the amount of \$6,135.00. Western Surety Company shall pay Wolfe's South Bend Auto Auction, LLC this amount for its loss attributable to the actions of Esmar Motors, LLC.

Dated at Madison, Wisconsin on February 2, 2021.

STATE OF WISCONSIN
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By: 

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