



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

In the Matter of Claims Against the Dealer Bond
of D and F Auto Group Inc.

Case No: DOT-20-0023

FINAL DETERMINATION

On August 24, 2020, the Wisconsin Department of Transportation, Dealer and Agent Section (Department) submitted a bond claim against the motor vehicle dealer bond of D and F Auto Group Inc. (Dealer). Pursuant to Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Daily Reporter, a newspaper published in Milwaukee, Wisconsin, on September 21, 2020. The notice informed other persons who may have claims against the Dealer to file them with the Department by November 20, 2020. No additional claims were filed. On February 2, 2021 a Preliminary Determination was issued under 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:

D and F Auto Group, Inc.,
5730 W. Lincoln Avenue
West Allis, WI 53219

SureTec Insurance Company
P. O. Box 5008
Woodland Hills, CA 91365

Department of Transportation
Office of General Counsel
HFSOB, 9th Floor, Rm S922
Madison, WI 53705

Sherrilyn Harris-Simmons
1915 W. Mineral Street, BSMT
Milwaukee, WI 53204

Florencio Mondragon Velarde Cruse
310 South 61st Street
Milwaukee, WI 53214

FINDINGS OF FACT

1. D and F Auto Group, Inc. (Dealer) was previously licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were last located at 5730 W. Lincoln Avenue, West Allis, Wisconsin; however, the Dealer went out of business on July 15, 2019.
2. The Dealer had a continuous surety bond in force in the amount of \$50,000 satisfying the requirements of Wis. Stat. § 218.0114(5) from October 3, 2017 until its cancellation effective January 17, 2020 (Bond # 3366613 from SureTec Insurance Company).
3. Between February 21, 2018 and March 22, 2019, the Dealer sold 51 vehicles but failed to complete the processing of the title and registration for each vehicle sold, in part, by failing to submit all of the necessary fees to process the title application, including increased license plate registration fees to the Department of Transportation, Dealer and Agent Section (Department).
4. Between January 3, 2019 and April 10, 2020, the Department received 51 complaints regarding the Dealer's failure to process the title and registration for vehicles sold.
5. On August 10, 2020, the Department submitted a claim against the surety bond of the Dealer in the amount of \$17,936.00, of which \$12,200.50 was associated with the amount required for the Department to title, register, and process the motor vehicles sold by the Dealer. The remaining \$5,735.50 of the claim included fees incurred by the Department of Revenue for checks returned for insufficient funds.
6. Licensed motor vehicle dealers are required by Wis. Stat. § 342.16 to process an application for certificate of title within seven business days following a sale. In addition, dealers are required to mail or deliver the original title application and related materials to the Department within the next business day after processing the application.
7. The Dealer's failure to submit a valid application for certificate of title with proper payment to the Department as necessary to process and effectuate the transfer of title for each vehicle sold constitutes a violation of Wis. Stat. § 342.16. Violations of this section, in turn, constitute a violation of Wis. Stat. § 218.0116(1)(gm). The Department sustained a loss as the result of these violations by not having been reimbursed for the title transfer, registration fees, and dealer processing fees that should have been received in order to process the title and registrations for each vehicle sold by the Dealer.

8. The Department's claim arose between February 21, 2018 and July 15, 2019, which are the dates during which the Dealer failed to properly submit the applications for titles and valid payment to the Department to process the title application and registration for the 51 vehicles sold and which are the subject of the Department's claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the one-year period the bond issued by SureTec Insurance Company 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(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.

However, under Wis. Admin. Code § Trans. 140.21(2), some claims shall be disallowed, including, in part, the following claims:

...

(c) Any claim arising from activities of the licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for rent, mortgage payments, wages,

commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle.

...

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

...

Under Wis. Stat. § 342.16, Transfer to or From Dealer:

Within 7 business days following the sale or transfer, the dealer shall process the application for certificate of title, and within the next business day after processing the application, the dealer shall mail or deliver the original application for certificate and all associated materials required by the department to the department.

Accordingly, to allow the Department'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 in this matter failed to properly submit the title applications and valid payment to the Department as necessary to process the title and registration for each of the 51 vehicles sold. The Dealer's actions constitute a violation of Wis. Stat. § 342.16. A violation of this section, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is a section identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Fifty-one (51) complaints were filed with the Department due to the Dealer's failure to process the title applications and registration associated with vehicles sold. As a result of the Dealer's failure and refusal to submit the necessary payments, the Department sustained a loss in having to process the title and registration for each vehicle without having been reimbursed for the requisite fees.

The Department's Bond Claim form submitted in this matter listed the total amount of the claim as \$17,936; however, this amount included unpaid checks and overdraft fees in the amount of \$5,735.50 incurred by the Department of Revenue for checks returned for insufficient funds that were issued by a representative of both the Dealer and a separate entity, D & F Cleaning Service. The Department of Revenue did not submit its own bond claim. Moreover, the documents submitted do not clearly establish an allowable claim against the dealer bond of SureTec Insurance Company issued on behalf of the Dealer under Wis. Admin. Code § Trans 140.21(1). In addition, it is also unclear whether the amount of the returned checks listed by the Department of Revenue are duplicative of the amounts already claimed by the Department. The Department has not established that a claim by a separate government agency, let alone bounced checks and/or overdraft fees can form the basis for an allowable claim against the dealer bond. Therefore, under Wis. Admin. Code § Trans 140.21(4), the dealer bond claim in this matter is allowed, in part, in the amount of \$12,200.50, which represents the actual loss incurred by the Department of Transportation for violations of the applicable laws as set forth above.

CONCLUSIONS OF LAW

1. The Department's claim arose between February 21, 2018 and July 15, 2019, which is when the Dealer failed to submit the title application and registration fees associated with 51 vehicle sales. The continuous surety bond issued to the Dealer by SureTec Insurance Company covers the period commencing on October 3, 2017 and continuing to January 17, 2020. The claim arose during the period covered by the surety bond.
2. The Department filed a claim against the motor vehicle dealer bond of the Dealer on August 24, 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. The Department's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. The Department has supplied documentation to support a claim in the amount of \$12,200.50. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c) and (4), the claim is allowable, in part, in the amount of \$12,200.50; but not the full amount of \$17,936.00 identified in the Bond Claim form dated August 24, 2020.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by the Department against the motor vehicle dealer bond of D and F Auto Group is APPROVED in the amount of \$12,200.50. SureTec Insurance Company shall pay the Wisconsin Department of Transportation Dealer and Agent Section this amount for its loss attributable to the actions of D and F Auto Group Inc.

Dated at Madison, Wisconsin on March 16, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Brian K. Hayes
Division Administrator