



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

In the Matter of Claims Against the Dealer Bond
of Isaacs Kar Enterprises, LLC

Case No: DOT-20-0027

FINAL DETERMINATION

On September 24, 2020, Marilyn Goudy filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Isaacs Kar Enterprises, 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 Daily Reporter, a newspaper published in Milwaukee, Wisconsin, on October 21, 2020. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 21, 2020. No additional claims were filed. On March 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:

Isaacs Kar Enterprises, LLC
4735 N. 76th St.
Milwaukee, WI 53218-4732

Isaac McCovery
6701 N. 54th St.
Milwaukee, WI 53223-5927

Marilyn Goudy
P. O. Box 250232
Milwaukee, WI 53225

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

FINDINGS OF FACT

1. Isaacs Kar Enterprises, LLC, is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were last located at 4735 N. 76th Street, Milwaukee, Wisconsin.

2. The Dealer has had a continuous surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since September 16, 2016 (Bond # 71815444 from Western Surety Company Corporation).

3. On March 3, 2020, the Dealer purchased a 2018 Nissan Murano SL (VIN 5N1AZ2MH0JN132519) from Bemis Auto Sales at the Fox Valley Auto Auction.

4. On March 3, 2020, Marilyn Goudy (Goudy) purchased the 2018 Nissan Murano SL automobile ("the Vehicle") along with a second vehicle from the Dealer with a cashier's check made payable to the Dealer in the amount of \$39,558.00, which the Dealer deposited with its bank the same date.

5. No Wisconsin Buyers Guide was displayed on the Vehicle at the time of the March 3, 2020 sale.

6. The Dealer did not have Goudy execute a used motor vehicle purchase contract on March 3, 2020. Instead, the Dealer had Goudy execute a bill of sale on March 4, 2020, which listed the purchase price for the Vehicle as \$21,000.

7. Immediately after purchasing the Vehicle, Goudy began to experience problems with it and took it to Ruby Isle Auto for an evaluation on March 9, 2020 followed by John Amato Nissan on March 12, 2020. On the March 12, 2020 date, John Amato Nissan reported heavy white smoke coming from the Vehicle.

8. On March 16, 2020, Goudy met with the Dealer's agent, Isaac McCovery, during which she made the Dealer aware of the Vehicle's problems.

9. On March 16, 2020, the Dealer had Goudy complete the MV11, a motor vehicle purchase contract, a plate application, and the Wisconsin buyer's guide to title and register the Vehicle. According to the purchase contract, Goudy paid \$21,975.00, including tax and registration fees for the Vehicle.

10. The March 16, 2020 Wisconsin Buyers Guide for the Vehicle does not identify any defects with the Vehicle's condition.

11. Goudy repeatedly had the Vehicle evaluated at John Amato Nissan (Nissan) on March 18, April 3, and April 29, 2020 for ongoing problems related to the Vehicle's oil consumption. Nissan eventually informed Goudy that its inspection revealed engine damage due to improper maintenance due to the prior owner not having regular oil changes.

12. Nissan informed Goudy that the Vehicle was not eligible for warranty repair due to the lack of proper maintenance.

13. The Vehicle's operation and maintenance history prior to sale to Goudy identified oil changes on October 15, 2018, when the vehicle's mileage was reported as 14,168, and a subsequent oil change on November 29, 2019 when the vehicle's mileage was reported as 43,703. According to the Vehicle's operation and maintenance history, the prior owner reported smoke coming from the exhaust on November 29, 2019.

14. On September 24, 2020, Goudy filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$21,975.00, the purchase price for the Vehicle.

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 Marilyn Goudy'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.

Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04 to disclose “significant existing mechanical defects” prior to execution of purchase contracts. Specifically, Wis. Admin. Code § Trans 139.04(4), (5)(a) and (6)(a) provide as follows:

(4) USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE. Dealer and salespersons shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6). This disclosure shall include all significant existing mechanical, electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor pan, frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can find using reasonable care.

(5) USED MOTOR VEHICLE EQUIPMENT REQUIREMENTS AND DISCLOSURE.

(a) Dealer and salespersons shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6). This disclosure shall include whether or not the condition of a vehicle for sale is such that it can be legally operated at all times in accordance with ch. 347, Stats., and ch. Trans 305. Disclosure of information shall be that which the dealer can find using reasonable care.

...

(6) WISCONSIN BUYERS GUIDE.

(a) Except as provided in pars. (c) and (d), each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department. The guide shall be prepared by an authorized employee of either the dealer, another dealer having the same majority ownership as the dealer, or a predecessor dealer at the same location as the dealer. The guide shall be completed in duplicate and contain the printed names of the vehicle inspector and the records inspector. The dealer or a salesperson, prior to separating the copy for display, shall sign the original guide. Except as provided in par. (d), the copy shall be displayed within the vehicle, attached to a window if possible, shall be readable from the outside of the vehicle, and shall become the possession of the purchaser upon acceptance of delivery. The original shall be signed by the purchaser prior to delivery of the motor vehicle...

As set forth above, Wis. Admin. Code § Trans 139.04 requires dealers to disclose defects that can be discovered using reasonable care during a pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. *Id.* Moreover, the purchaser is to sign the Buyer’s guide “prior to delivery of the motor vehicle.” Wis. Admin. Code § Trans 139.04(6)(a). Under Wis. Admin. Code § Trans 139.05(11), a purchase contract may not be executed until the vehicle has been inspected and findings disclosed under Wis. Admin. Code § Trans 139.04(4) and (5). Finally, the Dealer is also required to execute the purchase contract at the

time the vehicle is purchased, including when the Dealer “accepts a down payment, deposit or title for trade-in unit from a prospective retailer purchaser.” Wis. Admin. Code § Trans 139.05(1)(b).

In the present matter, Goudy began experiencing problems with the Vehicle soon after she purchased and took possession of the Vehicle from the Dealer on March 3, 2020. The Dealer had purchased the Vehicle at the Fox Valley Auto Auction on March 3, 2020, which was the same day the Dealer turned over possession of the Vehicle to Goudy. Even though Goudy had paid the Dealer for the vehicle when she took possession of the Vehicle on March 3, 2020, the Dealer did not have Goudy execute the purchase contract, Buyer’s guide, or other documents to transfer title until March 16, 2020. Not only did the Dealer not provide Goudy with a Wisconsin Buyer’s guide at the time she purchased the Vehicle on March 3, 2020, but the Buyer’s Guide provided to her on March 16, 2020 did not disclose the defects with the Vehicle. There is no evidence that the Dealer even inspected the vehicle prior to Goudy’s purchase and possession of it, let alone that the Dealer disclosed any defects prior to Goudy’s purchase. The problems Goudy experienced with the Vehicle immediately after purchasing it should have been discovered during a reasonable presale inspection of the Vehicle and should have been disclosed on a Wisconsin Buyers Guide displayed on the automobile at the time it was offered for sale. The Dealer failed to perform a reasonable presale inspection of the vehicle that could have led to the discovery of the defects and/or the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide prior to selling the Vehicle to Goudy.

Following her March 16, 2020 meeting with the Dealer when the Vehicle’s defects were discussed, Goudy repeatedly had the Vehicle inspected due to the issues she was experiencing with the Vehicle, including smoke and burning oil smell. John Amato Nissan advised Goudy that the problem was caused from lack of maintenance by the prior owner due to not obtaining regular oil changes resulting in “sludge” in the engine. Nissan further informed Goudy that the Vehicle would not be covered by the vehicle warranty due to the lack of proper maintenance. Documentation obtained by the DOT regarding the Vehicle’s maintenance history, which easily and reasonably could have been obtained and discovered by the Dealer, corroborated the lack of oil change between the Vehicle’s reported mileage of 14,168 on October 15, 2018 and November 19, 2019 when the mileage was reported as 43,703. In fact, the maintenance history reports that the prior owner disclosed that the Vehicle was smoking from the exhaust during the November 19, 2019 inspection. The Vehicle was sold at auction to the Dealer less than four months later and then immediately sold it to Goudy who experienced the same issue reported by the prior owner.

The Dealer’s failure to conduct a reasonable presale inspection of the Vehicle and/or accurately disclose any significant existing defects discovered during a presale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(4), (5)(a) and (6)(a). The Dealer also violated Wis. Admin. Code § Trans 139.05(1)(b) and (11) by not executing a purchase contract with Goudy at the time she paid for it and took possession of it and by not inspecting the Vehicle prior to the execution of the purchase contract. Violation of these sections of the Administrative Code are, in turn, violations of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is an identified section under Wis. Admin. Code § Trans 140.21(1)(c)1. Marilyn Goudy sustained a loss because of these violations in the amount of \$21,975.00, which is the documented purchase price of the Vehicle.

CONCLUSIONS OF LAW

1. Marilyn Goudy's claim arose on March 3, 2020, the day she purchased the automobile that is the subject of his claim against the surety bond of the Dealer. The surety bond issued to the Dealer by Western Surety Company Corporation covers a one-year period commencing on September 16, 2019. The claim arose during the period covered by the surety bond.

2. Marilyn Goudy filed a claim against the motor vehicle dealer bond of the Dealer on September 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 Dealer violated Wis. Admin. Code § Trans 139.04(4), (5)(a) and (6)(a) and § Trans 139.05(1)(b) and (11), which constitute violations of Wis. Stat. § 218.0116(1)(gm).

4. Marilyn Goudy's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Marilyn Goudy has supplied documentation to support a claim in the amount of \$21,975.00. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable.

5. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Marilyn Goudy against the motor vehicle dealer bond of Isaac's Kar Enterprise, LLC, is APPROVED in the amount of \$21,975.00. Western Surety Company shall pay Marilyn Goudy this amount for her loss attributable to the actions of Isaac's Kar Enterprise, LLC.

Dated at Madison, Wisconsin on April 14, 2021.

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: _____


Brian K. Hayes
Division Administrator

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 served and 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
Wisconsin Department of Transportation
4822 Madison Yards Way, 9th Floor South
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.