



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

In the Matter of Claims Against the Dealer Bond
of American Auto Madison, LLC

Case No: DOT-20-0029

FINAL DECISION

On October 8, 2020, Ericka Busjahn and Darling Vargas (Claimants) filed a bond claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of American Auto Madison, 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 Wisconsin State Journal, a newspaper published in Madison, Wisconsin, on November 16, 2020. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 15, 2021. No additional claims were filed. A Preliminary Determination was issued on March 18, 2021 pursuant to Wis. Admin. Code § Trans 140.26(4)(a). On March 25, 2021 the Dealer filed an objection to the Preliminary Determination and requested an evidentiary hearing pursuant to Wis. Admin. Code § Trans 140.26(5)(c) and (6). Following due notice a contested hearing was held in person at the Hill Farms State Office Building on April 19, 2021, administrative law judge Kristin P. Fredrick presiding. Representatives from the Department and the Dealer participated in the hearing.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

American Auto Madison, LLC, by
1894 E. Washington Avenue
Madison, WI 53704

George P. Boyer, Jr.
6302 Milwaukee Street
Madison, WI 53718

West Bend Mutual Insurance Company
1900 S. 18th Avenue
West Bend, WI 53095

Ericka Busjahn and Darling Vargas
310 Superior St.
Fond du Lac, WI 54935-4851

FINDINGS OF FACT

1. American Auto Madison, LLC (Dealer), is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 1894 E. Washington Avenue, Madison, Wisconsin.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since February 12, 2018 (Bond # 2376880 from West Bend Mutual Insurance Company). (Hearing testimony of Tristan Kloss; Exhibits 3 and 4)

3. On December 9, 2019, Ericka Busjahn and Darling Vargas (Claimants) purchased a 2011 Hyundai Sonata automobile, vehicle identification number 5NPEC4AC0BH115264, from the Dealer. The claimants paid \$4,751.50, plus tax and registration fees for the vehicle for a total amount of \$5,200.32. (Exhibits 7 and 8)

4. Prior to selling the 2011 Hyundai Sonata with VIN 5NPEC4AC0BH115264 to the Claimants, the Dealer had replaced the vehicle's engine with an engine recovered from another 2011 Hyundai Sonata with VIN 5NPEC4AC9BH143791 that the Dealer had purchased at auction as a salvage vehicle. (Hearing testimony of George Boyer; Exhibit 13)

5. The Wisconsin Buyer's Guide provided to the Claimants at the time of the sale did not check any boxes disclosing any problem items and, specifically, did not disclose that the engine had been "changed or modified from original manufacturer specification." Instead, the form merely stated "as is condition" in the explanation section of the form. (Exhibit 9)

6. Two weeks after purchasing the vehicle, the Claimants experienced issues with the vehicle when shifting. The Claimants took the vehicle back to the Dealer for inspection. When the vehicle broke down again, the Claimants requested that the Dealer repair the vehicle or refund them their money; however, the Dealer refused. (Boyer hearing testimony; hearing testimony of Brandon Wilbik; Exhibit 6)

7. On February 20, 2020, the Claimants filed a complaint with the Department's — Dealer Section against the Dealer. The investigator for the Department assigned to the complaint advised the Dealer that he should have disclosed the vehicle's engine replacement on the Buyer's Guide because the Department considers swapping out a vehicle's original engine with an engine from a salvage vehicle a material change under Wis. Admin. Code § Trans 134.04(4) and (6). (Wilbik hearing testimony; Exhibit 6)

8. The Claimants forwarded to the Department a repair estimate from Mike's Automotive Repair in Sun Prairie dated September 14, 2020, which estimated the cost to repair or replace the vehicle's engine would be \$6,588.48. (Exhibit 12)

9. On October 8, 2020, Claimants filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim listed in the Bond Claim form was for \$5,200.32. (Exhibit 5)

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.

Under Wis. Stat. §218.0116(1), a license may be denied, suspended or revoked on any of the following grounds:

- ...
- (gm) Having violated any law relating to the sale, lease, distribution or financing of motor vehicles.

Under Wis. Admin. Code § Trans 139.04(4) and (6), a dealer and salesperson is required to inform prospective purchasers of used vehicles of all existing significant mechanical, electrical and electronic damage on the vehicle and to disclose those conditions in writing. Further, the Dealer is required to provide a copy of the written disclosure, or Wisconsin Buyer's Guide, to the purchaser at the time of sale. Wis. Admin. Code §§ Trans 139.04(4) and 139.04(6).

The Claimants in the present matter asserted a loss associated with purchasing a vehicle whose engine was replaced with an engine from another used salvage vehicle and which was not fully disclosed to the Claimants in writing by the Dealer or in the Wisconsin Buyer Guide at the

time of purchase. To allow the 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 Claimants did not appear or participate in the contested hearing in this matter. The Dealer testified at the hearing that he informed the Claimants prior to purchase that the vehicle's engine had been replaced even showing them the vehicle from which the replacement engine had been recovered. (Boyer hearing testimony) However, there is no dispute that the engine replacement is not disclosed on the Wisconsin Buyer's Guide. (Exhibit 9) In addition, it is not disputed that the replacement engine was taken from another 2011 Hyundai Sonata, which was purchased by the Dealer at auction as a salvage vehicle. The Claimants began experiencing problems with the vehicle just weeks after they purchased it from the Dealer in December 2020, and it became inoperable by the time the Claimants filed a complaint with the Department in February 2021.

The Department investigator, Brandon Wilbik, testified at the hearing about a dealer's disclosure obligations under the Department regulations, including the requirement that dealers disclose in writing the material condition history of used vehicles prior to sale. Wis. Admin. Code § Trans 139.04(4). Dealers are required to disclose known defects or defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. Wis. Admin. Code § Trans 139.04(6). The Wisconsin Buyers Guide in the present matter did not check any boxes disclosing any vehicle conditions. (Exhibit 9) In particular, the Dealer did not disclose that the engine had been "changed or modified from original manufacturer specification." (*Id.*) The Dealer asserts that because he replaced the Claimant's vehicle engine with an engine from an identical vehicle, he does not believe that he would need to disclose or check the box that the engine was changed or modified from original manufacturer specification, because the engines would be identical.

Not only is it undisputed that the Dealer did not disclose the engine swap in writing or on the Buyer's Guide at the time it was offered for sale to the Claimants, but it is also uncontested that the Claimants experienced problems with the vehicle engine shortly after purchasing the vehicle. A reasonable person considering a vehicle purchase would likely attach importance to whether the vehicle's engine was replaced with an engine from a salvage vehicle even if the engine came from a vehicle from the same make, model, and year. Thus, the fact that a vehicle's original engine was replaced with an engine from a salvage vehicle, regardless of whether the vehicles are identical in year and make, is *material* as defined under Wis. Admin. Code § Trans 139.02(10). Because it felt that the engine replacement in this matter was material, the Department concluded that the Dealer violated the code by not disclosing it in writing on the Wisconsin Buyers Guide. The Dealer does not believe that he was required to disclose the engine swap because he used the same or similar components to those of the vehicle that was sold. However, the condition of the replaced engine, particularly the material fact that it was taken from a used salvage vehicle, would have been important for the buyer to know prior to purchase and thus should have been disclosed in writing. See Wis. Admin. Code § Trans 139.02(10).

The Dealer's failure to disclose the engine replacement on the Wisconsin Buyers Guide, including that the replacement engine came from a salvage vehicle, constitutes violations of Wis.

Admin. Code §§ Trans 139.04(4) and (6)(a)1. A violation of these sections, in turn, constitutes 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. The Claimants purchased the vehicle for \$5,200.32. The estimated cost to repair and/or replace the vehicle's engine exceeds the purchase price paid for the vehicle. Thus, the Claimants sustained a loss because of the Dealer's violations. Therefore, the Claimants are entitled to be reimbursed for the amount paid for the vehicle. However, the vehicle should be returned to the Dealer.

CONCLUSIONS OF LAW


1. The claim of Ericka Busjahn and Darling Vargas arose on December 9, 2019, the day they purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by West Bend Mutual Insurance Company covers a one-year period commencing on March 1, 2019. The claim arose during the period covered by the surety bond.
2. The Claimants filed a claim against the motor vehicle dealer bond of the Dealer on October 8, 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 Claimants' loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. The Claimants have supplied documentation to support a claim in the amount of \$5,200.32. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Ericka Busjahn and Darling Vargas against the motor vehicle dealer bond of American Auto Madison, LLC, is APPROVED in the amount of \$5,200.32. West Bend Mutual Insurance Company shall pay Ericka Busjahn and Darling Vargas this amount for their loss attributable to the actions of American Auto Madison, LLC. The Claimants shall return the 2011 Hyundai Sonata VIN 5NPEC4AC0BH115264 to American Auto Madison, LLC.

Dated at Madison, Wisconsin on May 14, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4833 Madison Yards Way
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 
Brian K. Hayes, Administrator