



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

In the Matter of Claims Against the Dealer Bond
of LJ Auto Repair and Services, LLC

Case No: DOT-20-0033

FINAL DETERMINATION

Leon Hortman, Jr. filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of LJ Auto Repair and Services, 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 Milwaukee Journal Sentinel, a newspaper published in Milwaukee, Wisconsin, on December 8, 2020. The notice informed other persons who may have claims against the Dealer to file them with the Department by February 8, 2021. No additional claims were filed. A Preliminary Determination was issued on April 7, 2021 under Wis. Admin. Code § Trans 140.26(4)(a). No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § 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:

LJ Auto Repair and Services, LLC
7928 W. Clinton Ave.
Milwaukee, WI 53223-4532

John Sams, Jr.
3725 N. 93rd St.
Milwaukee, WI 53222-3510

Leon Hortman
6811 W. Lisbon Ave., Apt. 1
Milwaukee, WI 53210

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

FINDINGS OF FACT

1. LJ Auto Repair and Services, LLC, (“Dealer”) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer’s facilities were last located at 7928 W. Clinton Avenue, Milwaukee, Wisconsin.

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 March 4, 2016 until its cancellation effective March 4, 2020 (Bond # 6269747 from Western Surety Company Corporation).

3. On July 17, 2019, Leon Hortman, Jr. (“Hortman”) purchased a 1995 GMC Sonoma truck, vehicle identification number 1GTDT19W5S8528191 (“the Vehicle”) from the Dealer. According to Hortman’s bond claim form, Hortman agreed to pay \$1,000.00, cash, for the Vehicle.

4. The MV11-1 title and license application identifies the Dealer as seller and Hortman as purchaser. It is dated July 22, 2019. Hortman also paid \$234.00 for the license and registration of the Vehicle.

5. Hortman did not receive the title or license plates for the Vehicle.

6. Hortman received the following citations from the City of Milwaukee for ordinance violations related to the Vehicle:

- a) Citation #118487666 for \$20 was issued on December 5, 2019 for violation of the city’s winter restricted parking. The initial fine of \$20 increased to \$35.
- b) Citation #118692350 was issued on December 18, 2019 for the Vehicle not being registered. The initial fine of \$60 increased to \$65.
- c) Citation #119186804 was issued on January 16, 2020 for the Vehicle not being registered. The initial fine of \$60 increased to \$75.

7. The Vehicle was towed by the City of Milwaukee because of the outstanding citations. Hortman contacted the tow lot, but the lot would not release the Vehicle to Hortman because the Vehicle was not titled in Hortman’s name.

8. On February 23, 2020, Hortman filed a complaint with the Department’s Dealer Section against the Dealer. As part of its investigation, on March 5, 2020, the Department researched the history of the Vehicle and determined that Hortman was not the titled owner.

9. On March 6, 2020, the Milwaukee Tow Lot informed the Department that the Vehicle had been collected and recycled.

10. On or about November 18, 2020, the Department referred Hortman’s bond claim to the Division of Hearings and Appeals for a declaratory ruling pursuant to Wis. Admin. Code § Trans 140.26(1). The Department recommended that the claim be paid in the amount of \$1,499.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth in the Transportation Chapter 140, Subchapter II, of the Wisconsin Administrative Code.

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.

Wis. Admin Code § Trans 140.21(1).

Licensed motor vehicle dealers are required by Wis. Stat. § 342.16(1)(a) to process title transfer within seven business day of a vehicle's sale.

...

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.

...

Wis. Stat. § 342.16(1)(a) (emphasis added).

Accordingly, to allow Leon Hortman Jr.'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 violated section 218.0116(1)(gm) of the Wisconsin Statutes, which requires compliance with “any law relating to the sale, lease, distribution or financing of motor vehicles.” The Dealer failed to properly submit the title application and valid payment to the Department as necessary to process the title and registration for Hortman’s Vehicle, in violation of Wis. Stat. § 342.16(1)(a), which is a violation of Wis. Stat. § 218.0016(1)(gm).

As a result of the Dealer’s failure to process the title application and registration associated with the Vehicle, Hortman sustained a loss when he received citations by the city for improper or lack of registration of the Vehicle and when his car was towed, and he was unable to retrieve the Vehicle from the tow lot because it was not titled to him.

Hortman’s bond claim form submitted in this matter listed the total amount of the claim as \$1,499; however, this amount included \$265.00 in citations, some of which are duplicative and some of which are not the result of any act of the Dealer or any violation by the Dealer. Hortman is entitled to a total of \$140 related to the citations. This is because citations, #118692350 and #119186804, stemmed from the Vehicle’s lack of or improper registration for \$65 and \$75, respectively. Those citations are attributable to the Dealer. However, citation #118487666 stemmed from Hortman’s violation of the city’s winter restricted parking, which is not attributable to the Dealer.

Therefore, the dealer bond claim in this matter is allowed, in part, in the amount of \$1,374.00. This represents the actual loss incurred by Hortman for violations of the applicable laws set forth above in the amount of the purchase price of the Vehicle (\$1,000.00), the cost of title and registration (\$234.00), and the attributable citations (\$65 + \$75).

CONCLUSIONS OF LAW

1. Leon Hortman Jr.’s claim arose on July 22, 2019, the day he purchased the vehicle that is the subject of his claim against the surety bond of the Dealer. The continuous surety bond issued to the Dealer by Western Surety Company Corporation covers the period commencing March 4, 2016 and continuing to March 4, 2020. The claim arose during the period covered by the surety bond.

2. Leon Hortman Jr. filed a claim against the motor vehicle dealer bond of the Dealer following the investigation by the Department, which concluded on March 26, 2020. The bond claim was filed on or about November 2020, 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. Stat. § 342.16(1)(a), which constitutes a violation of Wis. Stat. § 218.0116(1)(gm).

4. Leon Hortman Jr.’s loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Hortman has supplied documentation to support a claim in the amount of \$1,374.00. Pursuant to Wis. Admin. Code §

Trans 140.21(1)(c) and (4), the claim is allowable, in part, in the amount of \$1,374.00; but not the full amount of \$1,499.00 identified in the Bond Claim form submitted by Hortman.

5. The Division of Hearings and Appeals has authority to issue the following order. Wis. Stat. §§ 227.43(1)(br) and 227.41(1) and Wis. Admin. Code § Trans 140.26(1).

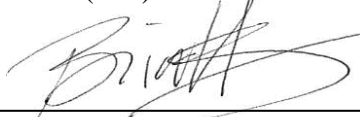
ORDER

The claim filed by Leon Hortman Jr. against the motor vehicle dealer bond of LJ Auto Repair and Services, LLC, is APPROVED in the amount of \$1,374.00. Western Surety Company shall pay Leon Hortman Jr. this amount for his loss attributable to the actions of LJ Auto Repair and Services, LLC.

Dated at Madison, Wisconsin on May 14, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Brian K. Hayes
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