



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

In the Matter of Claims Against the Dealer Bond
of Mad City Sales Inc.

Case No: DOT-21-0002

FINAL DETERMINATION

On December 15, 2020, Claimants Matthew O'Neil and Shirley Miller (Claimants) filed a bond claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Mad City Sales Inc. (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 Wisconsin State Journal, a newspaper published in Dane County, Wisconsin, on January 20, 2021. The notice informed other persons who may have claims against the Dealer to file them with the Department by March 22, 2021. No additional claims were filed. On June 17, 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:

Mad City Sales Inc.
920 Ann Street
Madison, WI 53713

Steven Ganser
5211 Lincoln Road
Oregon, WI 53575

Auto-Owners Insurance Company
6101 Ana Capri Blvd
Lansing, MI 48917

Patrick McNamur
273 Bergamont Blvd
Oregon, WI 53475

Matthew O'Neil and Shirley Miller
801 Prospect Ave.
Portage, WI 53901

FINDINGS OF FACT

1. Mad City Sales Inc. (Dealer) was previously licensed by the Wisconsin Department of Transportation as a motor vehicle dealer, but the Dealer license was placed out of business on September 8, 2020. The Dealer's facilities were last located at 920 Ann Street, Madison, Wisconsin.

2. The Dealer has had a continuous bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since June 8, 2012 (Bond # 66134438 from Auto-Owners Insurance Company).

3. On February 22, 2019, the Dealer sold a 2014 Ford F150 truck, vehicle identification number 1FTFW1ET6EFA02910 (the vehicle) to Claimants, Matthew O'Neil and Shirley Miller.

4. At the time of purchase on February 22, 2019 the vehicle's odometer read 55,394 and the vehicle qualified for the Dealer's 30 year/300,000 extended warranty program, which covers vehicles less than six model years old and with less than 100,000 odometer miles and covers repair and replacement of powertrain (engine) components.

5. On September 1, 2020, the vehicle engine experienced a mechanical breakdown due to a cracked engine block. At that time, the vehicle odometer read 87,559 miles.

6. From September 1, 2020 to September 4, 2020 the Claimants attempted to contact the Dealer pursuant to the vehicle warranty but were unsuccessful at reaching anyone and no one from the Dealer returned their calls or emails.

7. The Dealer's license was placed out of business on September 8, 2020.

8. The Dealer failed to repair the Claimant's vehicle pursuant to the written warranty issued with the purchase of the Claimant's vehicle.

9. On September 8, 2020, the Claimants filed a complaint with the Department's — Dealer Section against the Dealer.

10. On December 8, 2020, the Claimants incurred \$12,399.77 to have the vehicle repaired, including replacement of the vehicle's engine, at Blystone Towing & Radiator, Inc.

11. On December 15, 2020, the Claimants filed a bond claim against the surety bond of the Dealer with the Department of Transportation. The Bond Claim form set forth a claim for \$12,399.77 for the cost of the parts and labor to repair and replace the vehicle engine.

12. The Claimants' claim arose on September 1, 2020, the day that they attempted to seek coverage and repair under the Dealer's warranty for the automobile that is the subject of this 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 the Auto-Owners 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.

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

...

(cm) Willful failure to perform any written agreement with any retail buyer, lessee or prospective lessee.

Pursuant to Wis. Admin. Code § Trans 139.06(10)(a), "[i]t is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service contract."

The Claimants in the present matter have asserted a loss associated with purchasing a vehicle that suffered an engine block crack requiring complete replacement of the engine. The vehicle repair should have been covered under the Dealer's warranty, but the Dealer went out of business before a repair could be completed. 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. Under Wis. Admin. Code § Trans 139.04(10), it is an unfair trade practice for a dealer to refuse or fail to repair a vehicle covered under a warranty. Similarly, a willful failure to perform on a written agreement, such as a warranty, with a retail buyer is grounds for license sanction under Wis. Stat. § 218.0116(1)(cm).

The Claimants in the present matter purchased the vehicle, a 2014 Ford F150 truck with only 55,394 miles, on February 22, 2019. At the time of the purchase the Dealer offered a 30 year/300,000 mile warranty. The warranty covered repairs and replacement of powertrain (engine) components on vehicles less than six model years old and with less than 100,000 odometer miles. Just over eighteen months after purchasing the 2014 vehicle, on September 1, 2020 the vehicle suffered a cracked engine block necessitating a complete engine replacement. At the time of the engine breakdown the vehicle had only 87,559 miles on the odometer. Thus, the vehicle and the engine were covered under the Dealer's written warranty. The Claimants were unable to contact the Dealer and could not take advantage of the warranty due to the Dealer going out of business. The Dealer's failure to honor the warranty and repair the vehicle constitutes a violation under Wis. Admin. Code § Trans 139.06(10)(a) and Wis. Stat. § 218.0116(1)(cm). Wis. Stat. § 218.0116(1)(cm) is identified under Wis. Admin. Code § Trans 140.21(1)(c)1. Claimants Matthew O'Neil and Shirley Miller sustained a loss because of these violations, which is the cost of parts and labor to repair the vehicle in the amount of \$12,399.77.

CONCLUSIONS OF LAW

1. The claim of Matthew O'Neil and Shirley Miller arose on September 1, 2020, the day they sought to have the vehicle repaired pursuant to the Dealer's warranty. The surety bond issued to the Dealer by Auto-Owners Insurance Company covers a one-year period commencing on June 8, 2020. The claim arose during the period covered by the surety bond.

2. Matthew O'Neil and Shirley Miller filed a claim against the motor vehicle dealer bond of the Dealer on December 15, 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. Matthew O'Neil and Shirley Miller'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 Claimants have supplied documentation to support a claim in the amount of \$12,399.77. 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 Matthew O'Neil and Shirley Miller against the motor vehicle dealer bond of Mad City Sales Inc., is APPROVED in the amount of \$12,399.77. Auto-Owners Insurance Company shall pay Matthew O'Neil and Shirley Miller this amount for their loss attributable to the actions of Mad City Sales Inc.

Dated at Madison, Wisconsin on July 29, 2021.

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

By: _____
Kristin P. Fredrick
Administrative Law Judge

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 Division. 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 Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. 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. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
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 insure strict compliance with all its requirements.