



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

In the Matter of the Dealer Bond Claim against
State Fair Motors, LLC

Case No: DOT-21-0010

FINAL DETERMINATION

On April 20, 2020, Wisconsin Department of Transportation, Dealer and Agent Section (Department) filed a claim against the motor vehicle dealer bond of State Fair Motors, 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 March 22, 2021. The notice informed other persons who may have claims against the Dealer to file them with the Department by May 21, 2021. No additional claims were filed. A Preliminary Determination was issued on June 28, 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:

State Fair Motors, LLC
7821 W. Greenfield Ave.
West Allis, WI 53214-4526

Prentice Stith
9531 W. Parkland Ct.
Milwaukee, WI 53224-3344

Marques Kirk
10918 Langlade St.
Milwaukee, WI 53225-1319

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

Wisconsin Department of Transportation
Dealer Section
PO Box 7909
Madison, WI 53707-7909

FINDING OF FACT

1. State Fair Motors, LLC (Dealer) was previously licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were last located at 7821 W. Greenfield Avenue, West Allis, Wisconsin; however, the Dealer went out of business on November 13, 2018.
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 June 5, 2017 until its cancellation effective July 17, 2019 (Bond # 71916474 from Western Surety Company).
3. From late 2017 through 2018, the Dealer sold 20 vehicles but failed to complete the processing of the title and registration for each of these vehicles sold, in part, by failing to submit all the necessary fees to process the title application to the Department of Transportation, Dealer and Agent Section (Department).
4. Between July 12, 2018 and December 19, 2019, the Department received 20 complaints regarding the Dealer's failure to process the title and registration for vehicles sold.
5. On April 20, 2020, the Department submitted a claim against the surety bond of the Dealer in the amount of \$4,120.00, which was the amount required for the Department to title, register, and process the motor vehicles sold by the Dealer.
6. On or about February 25, 2021, the Department referred the bond claim to the Division of Hearings and Appeals for a declaratory ruling pursuant to Wis. Admin Code § Trans 140.26(1).

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).

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 20 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. 20 complaints were filed with the Department because of the Dealer's failure to process the title applications and registration associated with the vehicles sold. As a result of the Dealer's failure and refusal to submit the necessary payments, the Department sustained a loss by having to process the title and registration for each vehicle without having been reimbursed for the requisite fees.

CONCLUSIONS OF LAW

1. The Department's claim arose between July 12, 2018 and December 19, 2019, when it received 20 complaints from customers who purchased vehicles from the Dealer in late 2017 and in 2018 and failed to receive a title for their vehicle. The continuous surety bond issued to the Dealer by Western Surety Company covers the period commencing on June 5, 2017 and continuing to July 17, 2019. 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 April 20, 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 \$4,120.00. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c) and (4), the claim is allowable in the amount of \$4,120.00.

4. 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 the Wisconsin Department of Transportation against the motor vehicle bond of State Farm Motors, LLC, is APPROVED in the amount of \$4,120.00. Western Surety Company shall pay the Wisconsin Department of Transportation Dealer and Agent Section this amount for the loss attributable to the actions of State Farm Motors, LLC.

Dated at Madison, Wisconsin on August 6, 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: _____
Angela Chaput Foy
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 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.