



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

In the Matter of Claims Against the Dealer Bond
of C4 Sims Auto, LLC

Case No: DOT-21-0018

FINAL DETERMINATION

On June 16, 2021, Aleczonder Crosby (Claimant) filed a claim against the motor vehicle bond of C4 Sims Auto, LLC (Dealer) with the Wisconsin Department of Transportation (Department). 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 July 29, 2021. The notice informed other persons who may have claims against the Dealer to file them with the Department by September 27, 2021. No additional claims were filed. On November 3, 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:

C4 Sims Auto, LLC,
6310 N. Sherman Blvd.
Milwaukee, WI 53209

Jimmie Sims
2945 N. 29th Street
Milwaukee, WI 53210

Western Surety Company
101 South Reid Street, Suite 300
Sioux Falls, SD 57103

Aleczonder Crosby
4311 N. 21st Street
Milwaukee, WI 53209-6713

FINDINGS OF FACT

1. C4 Sims Auto, LLC (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The license was revoked on September 27, 2020. The Dealer's facilities were located at 6310 N. Sherman Blvd, 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) beginning March 1, 2019 (Bond # 64511658 from Western Surety Company). The bond was cancelled on July 22, 2021.
3. On August 6, 2020, the Claimant, Aleczynder Crosby, purchased a 2012 Chevrolet Malibu (vehicle) with VIN 1G1ZA5EU5CF295751 from the Dealer for \$4,010. Claimant paid Dealer a down payment of \$2,000 and then made multiple installments of \$350 to Dealer. After paying off the vehicle, Claimant was told by Dealer that he would receive a title. However, Claimant never received a title.
4. On May 13, 2021, the Claimant submitted a complaint to the Department.
5. Based upon the Department's investigation it was discovered that the Dealer had purchased the vehicle at auction on April 14, 2020, and that the vehicle was branded as a "junked vehicle" on April 8, 2020. The junked brand was disclosed to Dealer in the bill of sale at the time Dealer purchased the vehicle at auction.
6. The Dealer failed to disclose to the Claimant that it was a junk vehicle, and as a result would not be eligible to be retitled to Claimant or operated on roadways.
7. On June 16, 2021, the Claimant filed a bond claim with the Department regarding the purchase of the vehicle. The amount of damages set forth in the bond claim is \$4,010, which is the total amount the Claimant paid for the vehicle.
8. The Claimant's claim arose on August 6, 2020, which is the date the Claimant purchased the vehicle. The bond claim was filed within three years of the ending date the bond issued by Western Surety Company was in effect.

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.

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(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).

Accordingly, to allow the Claimant'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. A license may be denied, suspended, or revoked for "having violated any law relating to the sale, lease, distribution or financing of motor vehicles." Wis. Stat. § 218.0116(1)(gm).

Licensed motor vehicle dealers are required to disclose on motor vehicle purchase contracts if a vehicle is a "junk vehicle" pursuant to Wis. Admin. Code § Trans 139.04(5).

If because of the condition of the vehicle at the time of sale it meets the definition of a junk vehicle or a salvage vehicle, the dealer and salespersons shall make one of the following disclosures conspicuously on the motor vehicle purchase contract prior to its execution:

1. If the vehicle is a junk vehicle: "WARNING! Sold as junk vehicle. This vehicle may never be retitled." The dealer shall notate the title as "Junk Vehicle" and forward the title to the department within 10 days after determining that the vehicle is a junk vehicle.

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Wis. Admin. Code § Trans 139.04(5)(c):

The Dealer in this matter failed to disclose to Claimant that the vehicle had been deemed a junk vehicle based upon the Dealer's prior purchase of the vehicle. This failure constitutes a violation of Wis. Admin. Code § Trans 139.04(5)(c). A violation of this section, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). The Claimant did not receive title to the vehicle purchased from the Dealer and the Department has advised Claimant that a junk vehicle cannot be registered. Thus, the Claimant sustained a loss as the result of the Dealer's violations.

CONCLUSIONS OF LAW

1. Aleczonder Crosby's claim arose on August 6, 2020, which is the date that the vehicle was purchased from the Dealer and when the Dealer failed to disclose that the vehicle was a Junk Vehicle. The continuous surety bond issued to the Dealer by Western Surety Company covers the period commencing on March 1, 2019, until the bond was cancelled on July 22, 2021. The claim arose during the period covered by the surety bond.

2. On June 16, 2021, Aleczonder Crosby filed a claim against the motor vehicle dealer bond of the Dealer. 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(5)(c), which constitutes a violation of Wis. Stat. § 218.0116(1)(gm).

4. Aleczonder Crosby'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 Claimant has supplied documentation to support a claim in the amount of \$4,010. Because he is being reimbursed the purchase price of the vehicle as a result of the Dealer's actions, he will be required to surrender possession of it to the Western Surety Company.

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 the Claimant, Aleczonder Crosby against the motor vehicle dealer bond of C4 Sims Auto, LLC is APPROVED in the amount of \$4,010. Western Surety Company shall pay the Claimant Aleczonder Crosby this amount for his loss attributable to the actions of C4 Sims Auto, LLC. Upon receipt of payment, Aleczonder Crosby shall surrender possession of the Vehicle to the Western Surety Company.

Dated at Madison, Wisconsin on December 20, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Angela Chaput Foy
Administrative Law Judge