



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

In the Matter of the Claim Against the Dealer
Bond of Saint Benito, LLC,

Case No. TR-08-0016

FINAL DECISION

On November 26, 2007, Jessica Renley filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Saint Benito, LLC. On April 18, 2008, the claim along with documents gathered by the Department was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on June 26, 2008. 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:

Jessica Renley
1617 4th Street NW, Apt. 104
Rochester, MN 55901

Saint Benito, LLC,
219 North Fair Oaks Avenue
Madison, WI 53714

Western Surety Company
P.O. Box 5077
Sioux Falls, SD 57117-5077

FINDINGS OF FACT

1. Saint Benito, LLC, (the Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 219 North Fair Oaks Avenue, Madison, Wisconsin.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5)(a) in force continuously from November 29, 2005. (Bond #70009322 from Western Surety Company).

3. On April 23, 2007, Jessica Renley purchased a 2005 Toyota Corolla, vehicle identification no. 2T1BR32E25C424382, from the Dealer. The purchase price of the vehicle was \$10,723.57, including tax and registration fees.

4. The Dealer purchased the 2005 Toyota Corolla that it sold to Ms. Renley from an online auto auction run by Copart. The vehicles Copart sells on its online site include motor vehicles that have been acquired by insurance companies. The motor vehicle purchased by Ms. Renley was last titled in Massachusetts. The Dealer did not receive the Massachusetts certificate of title when it purchased the vehicle from Copart.

5. On April 27, 2007, the Dealer submitted a completed form MV-11 to the Wisconsin Department of Transportation Division of Motor Vehicles (DMV) to apply for a Wisconsin certificate of title in its name for the vehicle purchased by Ms. Renley. In support of the application, the Dealer submitted a note explaining why it did not have a certificate of title for the vehicle, a list of repair costs for the vehicle, a copy of the Wisconsin Buyers Guide it prepared for the vehicle, a printout of the NADA value guide for the vehicle, and checks to cover the applicable fees. Along with the MV-11, the Dealer submitted a form seeking to reassign the title to Jessica Renley.

6. By letter dated July 6, 2007, the DMV denied the application for a Wisconsin certificate of title for the vehicle purchased by Ms. Renley. The reason the DMV gave for denying the application was because the Dealer did not submit the Massachusetts title along with the application. Before it would issue a Wisconsin certificate of title for the vehicle, the DMV required the Dealer to submit the original Massachusetts title with the titled owner's release of interest, bills of sale from all owners to complete the chain of ownership from the Massachusetts titled owner to the Dealer, a signed statement from Safety Insurance Group clarifying that the vehicle was not sold as salvage or junk, and a DMV form MV4060 completed by a Wisconsin State Patrol officer confirming that the vehicle is legal for on road use.

7. The Dealer requested a hearing before the Division of Hearings and Appeals (the DHA) to review the DMV's denial of the application for a Wisconsin certificate of title for the motor vehicle purchased by Ms. Renley. That request for hearing was assigned Case No. TR-07-0037 by the DHA. The final result in Case No. TR-07-0037 was that the DHA directed the DMV to issue a title for the vehicle conditioned upon the Dealer obtaining a title bond for the vehicle pursuant to Wis. Stat. § 342.12(3)(b). The decision in Case No. TR-07-0037 was issued on May 6, 2008. As of June 23, 2008, the undersigned Administrative Law Judge has not been informed that the Dealer has obtained the requisite title bond so that a Wisconsin certificate of title can be issued for the subject motor vehicle.

8. On November 26, 2007, Ms. Renley filed a claim against the surety bond of the Dealer. The basis for the claim is that Ms. Renley was never issued a title for the vehicle she purchased from the Dealer. The amount of the claim is itemized as follows:

Vehicle price	\$10,723.57
Toyota Smart Motors inspection	\$99.17

Floor mats, manual, paint	\$149.05
Tire balance, trim repair, and air filter	\$141.96
Interest accrued on car loan	<u>\$182.17¹</u>
Claim total	\$11,295.92

9. Wis. Stat. § 342.16(1)(a) requires a motor vehicle dealer to process the application for a certificate of title within seven business days of the sale of a motor vehicle and to mail or deliver the application for a title to the DMV within the next business day after processing the application. The Dealer did deliver a timely application for a Wisconsin certificate of title for the vehicle purchased by Ms. Renley to the DMV. After the DMV refused to issue a Wisconsin certificate of title or registration for the vehicle, the Dealer continued to make good faith efforts to obtain a title and registration for Ms. Renley, including requesting an administrative hearing to review the DMV's denial. However, the Dealer ultimately failed to obtain a title for the vehicle and refused to repurchase the vehicle from Ms. Renley after it failed to do so.

10. Because of the Dealer's actions, Ms. Renley is paying for a vehicle that is not titled in her name and that she can not register with the Department. Until she is able to register the vehicle, Ms. Renley can not lawfully operate the vehicle on the public roads. Unless Ms. Renley is able to obtain a title for the vehicle and register it in her name, she is entitled to a refund of the amount she paid for the vehicle.

11. Jessica Renley's claim arose on April 23, 2007, the day she purchased the vehicle from the Dealer. She has submitted documentation to support a bond claim in the amount of \$11,208.79, the \$10,723.57 purchase price plus \$485.22, the amount she spent on repairs and an inspection for the motor vehicle. Ms. Renley is also claiming the amount of interest she has paid on the loan she obtained to purchase the vehicle. Pursuant to Wis. Admin. Code § Tran 140.21(2)(e), interest is expressly disallowed in a claim against a motor vehicle dealer's surety bond. Accordingly, the interest claimed by Ms. Renley is not reimbursable. The bond claim was filed within three years of the ending date of the one-year period the bond issued by Western Surety 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.

¹ Ms. Renley subsequently provided documentation showing additional interest payments in the amount of \$292.12 for the time period from October 1, 2007 to March 31, 2008.

(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. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

(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.

To allow Ms. Renley's claim, 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 an economic loss. In this case, the Dealer technically violated Wis. Admin. Code § 138.04(1)(a), which requires motor vehicle dealers to have proof of ownership and a certificate of ownership in its records for all vehicles that it is offering for sale. If the Dealer had complied with the requirements of Wis. Admin. Code § 138.04(1)(a), Ms. Renley would not be still waiting for a title and registration for a vehicle that she purchased more than a year ago. A violation of Wis. Admin. Code § 138.04(1)(a), is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm).² Wis. Stat. § 218.0116(1)(gm) is one of the provisions identified in Wis. Admin. Code § Trans 140.21(1)(c)1.

Notwithstanding the violation of Wis. Admin. Code § 138.04(1)(a), the Dealer may have reasonably believed that the DMV would eventually issue a Wisconsin certificate of title and registration for the vehicle to Ms. Renley after he sold it to her. Indeed, a process exists, obtaining a title bond, by which a motor vehicle dealer can cause a Wisconsin title to be issued for a motor vehicle for which the dealer does not have documentation of ownership acceptable to the DMV. However, the Dealer has been unable or unwilling to obtain a title bond for the vehicle purchased by Ms. Renley. If, for any reason, the Dealer is unable to ensure that a title to the vehicle is issued to Ms. Renley, the Dealer has an obligation to repurchase the vehicle from her.

The Dealer's failure to either fulfill the requirements that would result in the DMV issuing a title for the vehicle to Ms. Renley or promptly repurchase the vehicle from her constitutes proof of the Dealer's unfitness to operate as a motor vehicle dealer in violation of Wis. Stat. § 218.0116(1)(a). Wis. Stat. § 218.0116(1)(a) is also one of the provisions identified in Wis. Admin. Code § Trans 140.21(1)(c)1. As a result of these violations on the part of the Dealer, Ms. Renley has purchased a motor vehicle she can not lawfully operate on the public

² Wis. Stat. § 218.0116(1)(gm), provides that a motor vehicle dealer license may be denied, suspended, or revoked for the violation "of any law relating to the sale, lease, distribution or financing of motor vehicles."

roads. The inability to lawfully operate the vehicle on public roads constitutes an economic loss to Ms. Renley.

CONCLUSIONS OF LAW

1. Jessica Renley's claim against surety bond issued to the Dealer arose on April 23, 2007, the date she purchased the 2005 Toyota Corolla from the Dealer. The surety bond issued to the Dealer by the Western Surety Company covers a one-year period commencing on November 29, 2006. The claim arose during the period covered by the surety bond.
2. Jessica Renley filed a claim against the motor vehicle dealer bond of the Dealer on November 26, 2007. 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. Jessica Renley's economic loss was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Ms. Renley has supplied documentation to support a claim in the amount of \$11,208.79. 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 Jessica Renley against the motor vehicle dealer bond of the Saint Benito, LLC, is APPROVED in the amount of \$11,208.79. The Western Surety Company shall pay Ms. Renley this amount for her loss attributable to the actions of the Dealer. Upon receipt of the payment, Ms. Renley shall surrender possession of the vehicle to the Western Surety Company.

Dated at Madison, Wisconsin on August 8, 2008.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By: _____

MARK J. KAISER
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 insure 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 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
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
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.