



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Claims Against the Dealer Bond  
of Eau Claire Auto Mall, LLC

Case No. TR-10-0048

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FINAL DECISION

On September 13, 2010, Eric Moss filed a claim with the Wisconsin Department of Transportation (Department) against the against the motor vehicle dealer bond of Eau Claire Auto Mall, 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 Leader-Telegram, a newspaper published in Eau Claire, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 24, 2011. Mr. Moss' claim and another claim were forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination on these claims on January 27, 2011. No objection to the Preliminary Determination with respect Mr. Moss' claim was received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination with respect to the claim filed by Mr. Moss 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:

Dietta Doris Behm  
Eau Claire Auto Mall, LLC  
738 3<sup>rd</sup> Avenue NW  
Valley City, ND 58072

Eric Moss  
504 West School Street  
Thorp, WI 54771

Auto Owners Insurance Company  
P.O. Box 30660  
Lansing, MI 48909

## FINDINGS OF FACT

1. Eau Claire Auto Mall, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 1936 Hallie Road, Chippewa Falls, Wisconsin, 54729. The dealership is out of business.
2. The Dealer has had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force since October 15, 2009. (Bond #09772366066951 from Auto Owners Insurance Company).
3. On February 13, 2010, Eric Moss gave the Dealer \$1000.00 as a deposit on the purchase of a 1999 Mitsubishi Eclipse, vehicle identification number JA3AM84J1XY002232. Approximately a week later, Mr. Moss contacted the Dealer and was informed that the vehicle had been sold to someone else. The Dealer did not return Mr. Moss' deposit to him.
4. On September 13, 2010, Eric Moss filed a claim against the surety bond of the Dealer in the amount of \$1000.00, the amount of the deposit he gave to the Dealer.
5. The Dealer's failure to refund Eric Moss' deposit to him constitutes a violation of Wis. Admin Code § Trans 139.05(3). Wis. Admin Code § Trans 139.05(3) requires a motor vehicle dealer to return by the next business day any down payment or deposit made by a prospective retail purchaser to the prospective purchaser if the offer to purchase was not accepted. A violation of Wis. Admin. Code § Trans 139.05(3) is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution or financing of motor vehicles). The loss sustained by Eric Moss was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.
6. Eric Moss submitted documentation to support a bond claim of \$1000.00. 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. 218.01 (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.

Accordingly, to allow the claim filed against the surety bond of the Dealer, 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. With respect to Mr. Moss' claim, the Dealer violated Wis. Admin Code § Trans 139.05(3). A violation of Wis. Admin Code § Trans 139.05(3), in turn, constitute a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is one of the provisions identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Mr. Moss sustained a loss as a result of this violation.

#### CONCLUSIONS OF LAW

1. Eric Moss' claim arose on the day the Dealer sold the vehicle on which Mr. Moss had put down a deposit and then failed to return the deposit to Mr. Moss. The exact date is not in the record; however; it is sometime around February 20, 2010. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on October 15, 2009. The claim arose during the period covered by the surety bond.

2. Mr. Moss filed a claim against the motor vehicle dealer bond of the Dealer on September 13, 2010. 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. Mr. Moss sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Mr. Moss has submitted documentation to support a claim in the amount of \$1,000.00.

4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Eric Moss against the motor vehicle dealer bond of Eau Claire Auto Mall, LLC, is APPROVED in the amount of \$1,000.00. Auto Owners Insurance Company shall pay Mr. Moss this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on March 4, 2011.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

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.