



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

In the Matter of Claims Against the Dealer Bond
of Harley Davidson of Green Bay, Inc., d/b/a
McCoy's Harley Davidson

Case Nos. TR-11-0023

FINAL DETERMINATION

On March 4, 2011, Robert and Ryan Turner filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Harley Davidson of Green Bay, Inc., d/b/a McCoy's Harley Davidson. The claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on March 1, 2012. 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:

Robert and Ryan Turner
12701 Overbrook Road
Leawood, KS 66209

Kenneth L. McCoy
2425 Saint Pats Drive
Suamico, WI 54313-7809

West Bend Mutual
8401 Greenway Blvd., Suite 1100
Middleton, WI 53562

FINDINGS OF FACT

1. Harley Davidson of Green Bay, Inc., d/b/a McCoy's Harley Davidson, (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at Highways 43 and "JJ" in Green Bay Wisconsin, 54311.

2. The Dealer has had a continuous surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since September 30, 2004 (Bond No. 0324590 from the West Bend Mutual Insurance Company).

3. On July 31, 2010, Ryan Turner agreed to purchase a 2007 XL50 Harley Davidson motorcycle, vehicle identification number 1HD1CY3117K400483, from the Dealer. Mr. Turner executed a purchase contract for the motorcycle on August 12, 2010. According to the purchase contract, the purchase price of the motorcycle was \$8,500.00 with a down payment of \$868.00. Robert Turner, Ryan Turner's father, made the down payment in two installments, a check dated August 28, 2010 and a check dated September 13, 2010. Each check was written in the amount of \$434.00. The Dealer executed the purchase contract on September 13, 2010.

4. At the time he executed the purchase contract, Ryan Turner also completed an application for financing. After making the second payment on the down payment, Robert Turner inquired as to when he could pick up the motorcycle for his son. The Dealer told him that he would need to submit a new application for financing. Robert Turner informed the Dealer that his son no longer wanted to buy the motorcycle and asked for the down payment back. The Dealer refused to refund the down payment.

5. On January 13, 2011, Ryan Turner filed a complaint against the Dealer with the Department. The investigator was unable to resolve the complaint and on March 4, 2011, Robert and Ryan Turner filed a claim against the surety bond of the Dealer in the amount of \$868.00, the amount of the down payment Robert Turner paid to the Dealer on behalf of his son.

6 Pursuant to Wis. Admin Code § Trans 139.05(1), Dealers are required to accept or reject an offer to purchase a vehicle within two working hours of the time the offer is made. The Dealer's acceptance of an offer to purchase from a prospective buyer is demonstrated by the Dealer's signature on the purchase contract. If the Dealer does not accept or reject an offer to purchase within two working hours, the offer is voided. In the instant case, the Dealer did not execute the purchase contract for 31 days after it was executed by Ryan Turner. Accordingly, the offer made by Ryan Turner to purchase the motorcycle is void.

7. 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. The Dealer's failure to refund the down payment made by Robert Turner to him constitutes a violation of Wis. Admin Code § Trans 139.05(3). 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). Robert and Ryan Turner sustained a loss and the loss was caused by an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license.

8. Robert and Ryan Turner submitted documentation to support a bond claim of \$868.00. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the West Bend Mutual 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 claims filed against the security 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. In the instant case, the Dealer violated Wis. Admin Code § Trans 139.05(3). A violation of Wis. Admin Code § Trans 139.05(3), in turn, constitutes 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. Robert and Ryan Turner sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Robert and Ryan Turner's claim arose on the day the Dealer refused to refund the down payment Robert Turner had made on behalf of Ryan Turner. The exact date is not in the record; however, it is sometime shortly after September 13, 2010, the date Robert Turner made the second installment on the down payment for the motorcycle. Sometime after September 13, 2010, Robert Turner informed the Dealer that Ryan Turner no longer wanted the motorcycle and asked to have the down payment returned to him. The surety bond issued to the Dealer by West Bend Mutual Insurance Company covers a one-year period commencing on September 30, 2009. The claim arose during the period covered by the surety bond.

2. Robert and Ryan Turner filed a claim against the motor vehicle dealer bond of the Dealer on March 4, 2011. 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. Robert and Ryan Turner 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. The Turners have submitted documentation to support a claim in the amount of \$868.00.

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

ORDER

The claim filed by Robert and Ryan Turner against the motor vehicle dealer bond of Harley Davidson of Green Bay, Inc., d/b/a McCoy's Harley Davidson, is APPROVED in the amount of \$868.00. West Bend Mutual Insurance Company shall pay the Turners this amount for their loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on April 19, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

MARK 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.