



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

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In the Matter of the Claim Against the Dealer  
Bond of A and B Auto, Inc., dba Auction Auto  
Sales

Case No. TR-11-0027

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FINAL DECISION

On May 31, 2011, Kenya J. Harris filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of A and B Auto, Inc., dba Auction Auto Sales. On June 22, 2011, 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 December 21, 2011. 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:

Kenya J. Harris  
4901 North 47<sup>th</sup> Street  
Milwaukee, WI 53218

Arthur Banks  
5673 North 90<sup>th</sup> Street  
Milwaukee, WI 53225

Denise Banks  
5675 North 90<sup>th</sup> Street  
Milwaukee, WI 53225

Capitol Indemnity Corporation  
Bond Claim Department  
P. O. Box 5900  
Madison, WI 53705-0900

## FINDINGS OF FACT

1. A and B Auto, Inc., dba Auction Auto Sales, (the Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. Arthur and Denise Banks are the co-owners of A and B Auto, Inc. The Dealer's facilities are located at 5211 West Lisbon Avenue, Milwaukee, Wisconsin, 53210.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since February 9, 2009 (Bond # 60082136 from Capitol Indemnity Corporation).

3. On November 17, 2010, Kenya J. Harris purchased a 1997 Ford Taurus GL, vehicle identification number 1FALP52U1VG228468, from an entity called SS & W Auto Sales that was operating from an unlicensed lot located at 6973 West Fond du Lac Avenue, Milwaukee, Wisconsin. However, it was subsequently determined that the automobile purchased by Mr. Harris was from the inventory of the Dealer. According to the purchase contract, Mr. Harris paid \$1,236.00 including tax and registration fees for the vehicle. Mr. Harris paid \$1,000.00 toward the purchase price on November 17, 2010, and paid the \$236.00 balance on December 18, 2010. No Wisconsin Buyers Guide was displayed on the vehicle at the time of the sale.

4. The name of the salesperson that Mr. Harris purchased the vehicle from was Codey Williamson. At the time Mr. Harris purchased the vehicle, Codey Williamson completed a Wisconsin Title and Application form (form MV-11). According to Mr. Harris, he was told that the MV-11 would be sent to the Department for processing after he paid the balance of the purchase price for the automobile. Codey Williamson gave Mr. Harris a temporary license plate to display on the vehicle until he received a title and plates from the Department. The temporary plate given to Mr. Harris was from the stock of A and B Auto, Inc.

5. On January 18, 2011 (a month after he paid the balance of the purchase price for the automobile), Mr. Harris visited one of the Department's Division of Motor Vehicle offices to check on the status of the title and license plates for the automobile he had purchased. Mr. Harris was told that the automobile was still titled in the previous owner's name. On January 28, 2011, Mr. Harris filed a complaint against the Dealer with the Department. In his complaint, Mr. Harris stated that the remedy he was seeking was a title and license plates for the automobile he had purchased from the Dealer.

6. An investigator for the Department contacted the Dealer. The investigator discovered that Codey Williamson was not a licensed motor vehicle salesperson and was not employed by the Dealer. However, the Dealer did admit to allowing a Jimmie Sims to sell automobiles from the Dealer's inventory from an unlicensed lot. The Dealer resubmitted an MV-11 to the Department for Mr. Harris' automobile. According to Department records, the title to the automobile was transferred to Mr. Harris' name on March 25, 2011.

7. On March 29, 2011, Mr. Harris contacted the investigator and informed him that the automobile was no longer running and that he now wanted a refund of the purchase price he paid for the automobile. Mr. Harris had taken the automobile to a repair shop and was told that the automobile's frame was too rusted to be repaired. On May 31, 2011, Mr. Harris filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$1236.00, the original purchase price of the automobile.

8. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose "significant existing mechanical defects" in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. The rusted frame on the automobile purchased by Mr. Harris should have been discovered during a visible inspection of the vehicle and should have been disclosed on a Wisconsin Buyers Guide displayed on the automobile at the time it was offered for sale. Either the Dealer failed to perform a reasonable presale inspection of the vehicle and discover this defect or, if a reasonable presale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

9. The Dealer's failure to conduct a reasonable presale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a presale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Kenya Harris sustained a loss as the result of this violation. The Dealer also violated Wis. Stats. §§ 218.0114(1) and 218.0116(1), by allowing an unlicensed salesperson to sell the automobile at an unlicensed lot.

10. Kenya Harris' damages are the either the cost to repair the defects that should have been disclosed on a Wisconsin Buyers Guide or to rescind the transaction. Mr. Harris has not submitted any documentation to support the cost of such repairs. However, based on the statement from the repair shop, the automobile is apparently not repairable. Accordingly, Mr. Harris is entitled to reimbursement of the amount he paid for the vehicle, including tax and registration fees. The purchase price of the vehicle was \$1,236.00.

11. Kenya Harris' claim arose on November 17, 2010, the day he purchased the automobile that is the subject of his claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the period the bond 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 Kenya Harris' 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 automobile purchased by Kenya Harris from the Dealer had frame damage that was not repairable. The Dealer either failed to perform a reasonable pre-sale inspection of the vehicle or to accurately disclose the results of the pre-sale inspection on the Wisconsin Buyers Guide. Either way the Dealer's actions constitute a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). A violation of either of these sections, in turn, constitutes a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat. §§ 218.0116(1)(bm) and (gm) are both sections identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Kenya Harris' loss resulted directly from this violation.

### CONCLUSIONS OF LAW

1. The claim of Kenya Harris arose on November 17, 2010, the day he purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Capitol Indemnity Corporation covers a one-year period commencing on February 9, 2010. The claim arose during the period covered by the surety bond.
2. Kenya Harris filed a claim against the motor vehicle dealer bond of the Dealer on May 31, 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. Kenya Harris' loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. Kenya Harris has supplied documentation to support a claim in the amount of \$1,236.00. Because Kenya Harris is being reimbursed the purchase price of the vehicle it would constitute unjust enrichment to allow him to also retain ownership of the vehicle. Accordingly, Mr. Harris will be required to surrender the vehicle to Capitol Indemnity Corporation.
4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Kenya Harris against the motor vehicle dealer bond of A and B Auto, Inc., dba Auction Auto Sales, is APPROVED in the amount of \$1,236.00. Capitol Indemnity Corporation shall pay Kenya Harris this amount for his loss attributable to the actions of A and B Auto, Inc. Upon receipt of the payment, Kenya Harris shall surrender possession and title of the vehicle to Capitol Indemnity Corporation.

Dated at Madison, Wisconsin on January 24, 2012.

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