



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

In the Matter of Claims Against the Dealer Bond
of Kingsley Auto Group, LLC, d/b/a Budget
Country Auto and Truck

Case No: DOT-15-0013

FINAL DECISION

On February 2, 2015, Briceyda Trinidad filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Kingsley Auto Group, LLC, d/b/a Budget Country Auto and Truck, (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 Daily Citizen, a newspaper published in Beaver Dam, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by July 3, 2015. No additional claims were filed. Ms. Trinidad's 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 August 19, 2015. 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:

Briceyda Trinidad
818 Oregon Parks Avenue
Oregon, WI 53575

Kingsley Auto Group, LLC, d/b/a Budget Country Auto and Truck, by

Robert Kingsley
Kingsley Auto Group, LLC
4121 County Road V
DeForest, WI 53532

Western Surety Company
PO Box 5077
Sioux Falls, SD 57117

Findings of Fact

1. Kingsley Auto Group, LLC, d/b/a Budget Country Auto and Truck, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 301 South Spring Street, Beaver Dam, Wisconsin. The Dealer was placed out of business effective November 17, 2014.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from December 13, 2012, until it was cancelled effective October 19, 2013 (Bond # 66149575 from Western Surety Company). The Dealer obtained new continuous bond with a beginning date of October 19, 2013 (Bond # 61866232 from Western Surety Company). Bond # 61866232 was cancelled effective October 19, 2014.

3. On June 25, 2014, Briceyda Trinidad (Trinidad) purchased a 2006 Kia Spectra automobile, vehicle identification number KNAFE121865247802, from the Dealer. According to her bond claim, Trinidad paid \$3,500.00 for the automobile plus \$325.00 for taxes and registration fees.

4. Trinidad did not receive a title or registration for the vehicle. On August 25, 2014, Trinidad filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint attempted to contact Robert Kingsley, the owner/manager of the dealership, but was unsuccessful.

5. The investigator was unable to resolve the complaint and on February 2, 2015, Trinidad filed a claim against the surety bond of the Dealer. The claim is in the amount of \$3,825.00, the purchase price of the automobile including taxes and registration fees.

6. Wis. Stat. § 342.16(1), requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer. The Dealer violated this regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Trinidad has not received a title or registration for the vehicle she purchased. Therefore, she is unable to lawfully operate or sell the vehicle. A violation of Wis. Stat. § 342.16(1) 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).

7. Trinidad filed a bond claim within three years of the ending date of the period the Western Surety Company bond was in effect and it is, therefore, a timely claim.

8. Trinidad sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Trinidad was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Trinidad submitted documentation to support a claim in the amount of \$3,825.00, the purchase price, including sales tax and license and registration fees. Because she is unable to lawfully operate or sell the vehicle, Trinidad is entitled to a refund of the amount she paid for the vehicle.

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. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(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 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. With respect to Trinidad's claim, the Dealer violated Wis. Stat. § 342.16(1). A violation of Wis. Stat. § 342.16(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1 as one of the violations upon which a claim against a motor vehicle dealer's bond can be based. Trinidad sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Briceyda Trinidad's claim arose on June 25, 2014, the day she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on December 13, 2013. The claim arose during the period covered by the surety bond.

2. On February 2, 2015, Briceyda Trinidad 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. Briceyda Trinidad's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Briceyda Trinidad has submitted documentation to support a claim in the amount of \$3,825. Pursuant to Wis. Admin. Code § 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 Briceyda Trinidad against the motor vehicle dealer bond of Kingsley Auto Group, LLC, d/b/a Budget Country Auto and Truck, is APPROVED in the amount of \$3,825.00 Western Surety Company shall pay Briceyda Trinidad this amount for her loss attributable to the actions of Kingsley Auto Group, LLC, d/b/a Budget Country Auto and Truck. Upon receipt of the payment, Briceyda Trinidad shall surrender possession of the vehicle to Western Surety Company.

Dated at Madison, Wisconsin on October 5, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
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By: _____
Mark F. 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.