



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

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In the Matter of Claims Against the Dealer Bond  
of Sharer Cycle Center

Case No. TR-14-0032

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FINAL DECISION

On February 13, 2013, John Pollard filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Sharer Cycle Center (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 Verona Press, a newspaper published in Verona, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 29, 2014. No additional claims were filed. Mr. Pollard'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 February 3, 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:

Lyll Sharer  
24434 Kalish Lane  
Richland Center, WI 53581-5939

John Pollard  
3211 Glacier Ridge Rd  
Middleton, WI 53562

American Hardware Mutual Insurance Company  
471 East Broad Street  
Columbus, OH 43215

### Findings of Fact

1. Sharer Cycle Center (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 7685 Highway PD, Verona, Wisconsin. The Dealer was placed out of business effective May 31, 2012.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since July 10, 2010 (Bond no. 02350320 from American Hardware Mutual Insurance Company).

3. On June 18, 2011, John Pollard (Pollard) purchased a 2006 Triumph Sprint ST motorcycle, vehicle identification number SMT600PK96J258684, from the Dealer. According to the purchase agreement, Pollard paid \$6,657.97, including taxes and registration fees, for the motorcycle.

4. Pollard did not receive a title or plates for the vehicle. On November 20, 2012, Pollard filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint met with the Dealer and determined that the Dealer purchased the motorcycle from a Philip Bottiglero. Mr. Bottiglero had never titled or registered the motorcycle in his name. The individual from whom Mr. Bottiglero had purchased the motorcycle is deceased.

5. The investigator was unable to resolve the complaint and on February 13, 2013, Pollard filed a claim against the surety bond of the Dealer. The claim is in the amount of \$7,602.84, the purchase price of the vehicle plus \$944.87 for parts and repairs Pollard paid for during the time he has owned the motorcycle.

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), Pollard has not received a title, registration or license plates for the vehicle he purchased and, therefore, is unable to lawfully operate or sell the vehicle.

7. Pollard filed a bond claim within three years of the ending date of the period the American Hardware Mutual Insurance Company bond was in effect and it is; therefore, a timely claim.

8. Pollard sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Pollard 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. Pollard submitted documentation to support a claim in the amount of \$6,657.97, the purchase price, including sales tax and license and registration fees. Because he is unable to lawfully operate or sell the vehicle. Pollard is entitled to a refund of the amount he paid for the motorcycle.

9. The remainder of Pollard's claim is for repairs and parts he paid for during the time he has owned the motorcycle. It cannot be determined if these repairs are related to Pollard's use of the vehicle or were defects that existed at the time he purchased the vehicle. If the repairs are related to Pollard's use of the vehicle, the Dealer is not responsible for those repairs. Additionally, Pollard has apparently operated the motorcycle during the 43 months he has owned it. Some allowance should be made for his use of the motorcycle. However, there is insufficient information in the record to calculate an appropriate allowance for Pollard's use of the vehicle. At a minimum he should not be reimbursed for the amount he spent on repairs and parts for the motorcycle.

### 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 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 Pollard'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. Pollard sustained a loss as a result of this violation.

#### CONCLUSIONS OF LAW

1. John Pollard's claim arose on June 18, 2011, the date he purchased the subject motorcycle from the Dealer. The surety bond issued to the Dealer by American Hardware Mutual Insurance Company covers a one-year period commencing on July 10, 2010. The claim arose during the period covered by the surety bond.
2. On February 13, 2013, John Pollard 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 sec. Trans 140.21(1)(d), Wis. Admin. Code, the claim is timely.
3. John Pollard's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Mr. Pollard has submitted documentation to support a claim in the amount of \$6,657.97. 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.

#### PRELIMINARY ORDER

The claim filed by John Pollard against the motor vehicle dealer bond of Sharer Cycle Center is APPROVED in the amount of \$6,657.97. American Hardware Mutual Insurance Company shall pay John Pollard this amount for his loss attributable to the actions of the Dealer. Upon receipt of the payment, John Pollard shall surrender possession of the motorcycle to American Hardware Mutual Insurance Company.

Dated at Madison, Wisconsin on April 10, 2015.

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 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.