Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of a Claim Against the Dealer Bond of Preferred Auto

Case No. 99-H-1121

FINAL DECISION

On December 29, 1998, Reinhard Peter, d/b/a Heinz Service Auto Center, filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Preferred Auto. The claim along with documents gathered by the Department in its investigation of the claim was referred to Division of Hearings and Appeals for hearing. On April 19, 1999, a Public Notice of Time to File Dealer Bond Claim was published in The News, a newspaper published in the City of Plymouth, Sheboygan County. The notice informed other persons who may have claims against Preferred Auto to file them with the Department by June 14, 1999, and scheduled a hearing on the claims for July 2, 1999. No additional claims were filed.

By letter dated June 15, 1999, the Administrative Law Judge cancelled the hearing and instructed the parties to file any additional materials that they wished to have considered in making the Preliminary Determination by July 2, 1999. No additional information was filed. A Preliminary Determination based on the documentation contained in the file and required by sec. Trans 140.26(4)(a), Wis. Adm. Code, was issued on September 13, 1999. On October 12, 1999, Patrick Bradford of Preferred Auto filed an objection to the Preliminary Determination pursuant to sec. Trans 140.26(5)(b), Wis. Adm. Code. Pursuant to due notice a hearing under sec. Trans 140.26(6), Wis. Adm. Code, was conducted in this matter on December 3, 1999 in Sheboygan, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Reinhard Peter, d/b/a Heinz Service Auto Center
7575 North Port Washington Road
Milwaukee, WI 53217

Patrick Bradford
3716 South 17th Place
Sheboygan, WI 53081

Heritage Mutual Insurance Company
P. O. Box 58
Sheboygan, WI 53081-0058

The Preliminary Determination awarded Reinhard Peter $2037.50. The award was based on Mr. Peter's allegation that no Wisconsin Buyers Guide was displayed on the vehicle at the time of purchase. At the hearing Patrick Bradford produced a completed Wisconsin Buyers Guide for the vehicle with the signature of Robert Peter, Reinhard Peter's brother (Exh. 12). Robert Peter admitted that the signature on the Wisconsin Buyers Guide is his. (Although the vehicle was titled in the name Reinhard Peter, d/b/a Heinz Service Auto Center, the testimony at the hearing was that the vehicle was purchased for Robert Peter's use.) On the Wisconsin Buyers Guide, the Dealer indicated he was aware of no problems with any of the inspected components of the vehicle and that all the vehicle equipment inspected was legal. The Wisconsin Buyers Guide further indicated that the vehicle was being sold "As Is—No Warranty." The issue in this claim, accordingly, has changed from the Dealer's failure to make a disclosure to whether the defects alleged by Mr. Peter were present at the time the Dealer sold the vehicle should have been discovered by the Dealer after a reasonable inspection.

At the hearing the Dealer argued that the repairs listed in Mr. Peter's claim were not for defective components, but rather an effort to unreasonably improve the condition of the vehicle at the Dealer's expense. A dealer is only required to disclose whether the inspected components of the vehicle are safe and legal for operating on public highways and is only required to disclose defects that are discoverable after a reasonable inspection. The repair invoices submitted by Mr. Peter were all for repairs made at his own shop. There is no objective evidence of the condition of the vehicle in the record. This claim comes down to a credibility question. Patrick Bradford's disclosure on the Wisconsin Buyers Guide that the inspected components of the vehicle were safe and legal for operating on public highways at the time the vehicle was sold versus Reinhard Peter's invoices indicating that the respective components were unsafe and needed to be repaired.

There is no incentive for Reinhard Peter to replace or repair parts of the vehicle that were not unsafe. Accordingly, it is found that repairs made by Reinhard Peter were necessary. All the repairs were made within three weeks of the date Mr. Peter purchased the vehicle; therefore, it is reasonable to assume that the defects were present when the vehicle was sold and could have been discovered during a reasonable presale inspection. The claimant has the burden of proof. Based on the evidence in the record, I am satisfied that the repairs made were necessary to safely operate the vehicle. A second issue raised by the Dealer is the cost of the repairs. The Dealer argued that Mr. Peter spent more than necessary on the repairs because he wanted to show the vehicle in auto shows. (For example, Mr. Peter had rear springs custom made for the vehicle, when he could have purchased springs already made.) Unfortunately, there are no other estimates in the record for these repairs. Once it is accepted that the repairs were necessary, the only evidence of the cost of the repairs is Mr. Peter's invoices. The Findings of Fact from the Preliminary Determination have been amended to reflect that the Dealer did complete a Wisconsin Buyers Guide for the vehicle. The Conclusions of Law and Order following are unchanged from the Preliminary Determination.

FINDINGS OF FACT

1. Preferred Auto (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. Dealer's facilities were located at 701 Forest Avenue, Sheboygan Falls, Wisconsin, 53085.

2. Preferred Auto had a bond in force from July 18, 1995 to November 3, 1998. (Bond #SO1953 from Heritage Mutual Insurance Company, Sheboygan, Wisconsin). Dealer went out of business on September 25, 1998.

3. On August 10, 1998, Reinhard Peter, d/b/a Heinz Service Auto Center, purchased a 1937 Jaguar Kit Car, Vehicle Identification Number P181028176FA, from the Dealer for $3,800.00 plus sales tax and registration fees. No Wisconsin Buyers Guide was displayed on the vehicle at the time of purchase; however, the Dealer did subsequently complete a Wisconsin Buyers Guide for the vehicle. The Dealer disclosed on the Wisconsin Buyers Guide that he was aware of no problems with any of the inspected components of the vehicle and that all the vehicle equipment inspected was legal. The Wisconsin Buyers Guide was shown to Reinhard Peter as evidenced by the signature of Robert Peter, the brother of Reinhard Peter.

4. The Department of Transportation (Department) issued a title to Reinhard Peter, d/b/a Heinz Service Auto Center, for the vehicle on November 30, 1998. The documents submitted by the Department do not indicate when the Dealer submitted the title and application for title to the Department; however, based on the date the Department issued the title it is unlikely the title and application for title was submitted within seven business days as required by sec. 342.16, Stats.

5. After purchasing the vehicle, Reinhard Peter discovered several problems with the vehicle. None of these problems was disclosed by the Dealer on the Wisconsin Buyers Guide completed for the vehicle. On December 29, 1998, Reinhard Peter filed a claim against the Dealer's motor vehicle dealer bond. The claim seeks reimbursement for the repairs made to the vehicle. The claim is itemized as follows:

Rear Leaf Springs Suspension	$ 285.12
Exhaust System – Muffler/Tailpipe	$ 131.74
Window Repair Sides	$ 79.20
Brakes, Shocks, Radiator, Trans, Lower Ball Joints	$1657.38
Claim Total	$2153.44

6. If the problems with the vehicle had been disclosed on the Wisconsin Buyers Guide as required, Reinhard Peter would have been aware of these problems and he likely would not have purchased the vehicle or would have negotiated a lower purchase price for the vehicle taking into account the cost of making these repairs. Of the total itemized on the bond claim, $115.94 is for replacing two rear shock absorbers. A dealer is not required to disclose the condition of shock absorbers on the Wisconsin Buyers Guide. This portion of the claim is not allowable. Accordingly, only $2037.50 of the amount of the bond claim resulted from the

Dealer's failure to disclose the condition of the vehicle at the time of sale on the Wisconsin Buyers Guide.

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

8. The Dealer's failure to properly disclose the condition of the vehicle at the time of sale on the Wisconsin Buyers Guide constitutes a violation of sec. Trans 139.04(4) Wis. Adm. Code. A violation of sec. Trans 139.04(4) Wis. Adm. Code, is, in turn, a violation of sec. 218.01(3)(a)4 or 14, Stats. A violation of sec. 218.01(3)(a)4 or 14, Stats. is grounds for the suspension or revocation of a motor vehicle dealer's license. $2037.50 of the loss sustained by Reinhard Peters, d/b/a Heinz Service Auto Center Reinhard Peters, d/b/a Heinz Service Auto Center was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, this amount of the claim is allowable.

CONCLUSIONS OF LAW

1. Reinhard Peter's claim arose on August 10, 1998, the date he purchased the subject vehicle from Preferred Auto. The surety bond issued to Preferred Auto by Heritage Mutual Insurance Company covers a one-year period commencing on July 18, 1998. The claim arose during the period covered by the surety bond.

2. Mr. Peter filed a claim against the motor vehicle dealer bond of Preferred Auto on December 29, 1998. 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. Adm. Code, the claim is timely.

3. Mr. Peter's loss was caused by an act of Preferred Auto that would be grounds for suspension or revocation of its motor vehicle dealer license. Mr. Peter has submitted documentation to support a claim in the amount of $2037.50. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable.

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

ORDER

The claim filed by Reinhard Peter against the motor vehicle dealer bond of Preferred Auto is APPROVED in the amount of $2037.50. Heritage Mutual Insurance Company shall pay Mr. Peter this amount for his loss attributable to the actions of Preferred Auto.

Dated at Madison, Wisconsin on January 14, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By _____
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

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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 Division. This notice is provided to insure compliance with sec. 227.48, Stats., 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 Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

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 secs. 227.52 and 227.53, Stats. 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. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.