



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Claims Against the Dealer Bond
of Lalor Automotive and Auto Sales

Case No.: TR-00-0021

FINAL DECISION

On March 15, 2000, Jennifer and Peter Caravella, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Lalor Automotive and Auto Sales (Dealer). The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals.

By letter dated June 6, 2000, the Administrative Law Judge (ALJ) advised the parties that he would issue a preliminary determination in this matter without a hearing. The parties were given until June 20, 2000, to file any additional documents or information that they wished to have the ALJ consider in issuing the preliminary determination. No additional evidence was filed. The ALJ issued a Preliminary Determination on July 19, 2000. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

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

Jennifer and Peter Caravella
37 Pine Drive
Montello, WI 53949

Western Surety Company
P. O. Box 5077
Sioux Falls, SD 57117-5077

Lalor Automotive and Auto Sales
N2289 Highway 22
Montello, WI 53549

FINDINGS OF FACT

1. Lalor Automotive and Auto Sales (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.10, Stats. The Dealer's facilities are located at N2289 Highway 22, Montello, Wisconsin.
2. The Dealer has had a surety bond in force from September 24, 1993 to the present date. (Bond No. 58596012 from Western Surety Company, Sioux Falls, SD.)
3. On October 26, 1998, Jennifer and Peter Caravella purchased a 1993 Jeep Grand Cherokee, vehicle identification number 1J4GZ58SXPC683688, from the Dealer. The Caravellas paid \$10,405.00 including tax and registration for the vehicle.
4. The Wisconsin Buyers Guide completed by the Dealer and displayed on the vehicle at the time of the sale disclosed the existence of no repaired damage on the vehicle.
5. On October 2, 1999, Ms. Caravella was involved in a minor traffic accident that involved the purchased vehicle. As a result of the accident the front bumper of the purchased vehicle fell off. When the Caravellas took the vehicle to a body shop for an estimate to repair the damage from the accident, the estimator noticed preexisting structural damage to the front, right corner of the vehicle's frame. The Caravellas subsequently obtained an estimate of \$881.72 to repair the preexisting damage.
6. Dealers are required to disclose on a Wisconsin Buyers Guide any damage and evidence of repair to a vehicle's strut tower, trunk, floor pan, frame or structural portion of unibody that can be discovered during a presale inspection using reasonable care. There is no evidence that the structural damage to the right front corner of the frame could have been discovered during a reasonable presale inspection. The damage was only discovered by an auto body specialist after the bumper of the vehicle fell off.

In a statement attached to a complaint they filed with the Department of Transportation against the Dealer, the Caravellas allege that the vehicle had a "poor paint repair job done to the back left part of Jeep (above the wheel) and the corresponding section on the back bumper had a large scrape on it." The poor paint job prompted the Caravellas to ask the Dealer whether the vehicle had been involved in an accident. According to the Caravellas, the Dealer did not respond to the question. Evidence suggesting that a vehicle has been in an accident should lead a Dealer to more thoroughly inspect the condition of the vehicle. However, even assuming these allegations are true, it does not necessarily follow that the existence of a poor paint repair job and other scrapes at the left rear corner of the vehicle should have led the Dealer to discover structural damage to the right front corner of the vehicle behind the bumper. Based on the documentation in the file, there is no basis to find that the Dealer failed to disclose structural damage that should have been discovered during a reasonable presale inspection.

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

8. The loss sustained by the Caravellas was not caused by an act of the dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

CONCLUSIONS OF LAW

1. Jennifer and Peter Caravella's claim arose on October 26, 1998, the date they purchased the subject automobile from Lalor Automotive and Auto Sales. The surety bond issued to Lalor Automotive and Auto Sales by Western Surety Company was in effect at this time. The claim arose during the period covered by the surety bond.

2. The Caravellas filed a claim against the motor vehicle dealer bond of Lalor Automotive and Auto Sales on March 15, 2000. 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. The loss sustained by the Caravellas was not caused by an act of Lalor Automotive and Auto Sales which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, the claim is not allowable.

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

ORDER

The claim filed by Jennifer and Peter Caravella against the motor vehicle dealer bond of Lalor Automotive and Auto Sales is DENIED.

Dated at Madison, Wisconsin on August 22, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

MARK J. 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 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.