



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

In the Matter of Claims Against the Dealer Bond
of Metro Chevrolet, Inc.

Case No. TR-06-0057

FINAL DECISION

Joseph C. Poetz filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Metro Chevrolet, Inc. On November 27, 2006, the claim along with documents gathered by the Department during its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge (ALJ) issued a Preliminary Determination in this matter on December 1, 2006. 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:

Joseph C. Poetz
6219 West Stark Street
Milwaukee, WI 53218

Universal Underwriters Insurance Company
N17 W24222 Riverwood Drive, Suite 290
Waukesha, WI 53188-1161

Dealership Liquidations
Attn: Edgardo Soliman
P. O. Box 4357
Troy, MI 48099

General Motors Holding
100 Renaissance Center, 5th Floor
Detroit, MI 4826

FINDINGS OF FACT

1. Metro Chevrolet, Inc., (the Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 8711 West Brown Deer Road, Milwaukee, Wisconsin, 53224. The dealership is out of business.

2. The Dealer has had a bond satisfying the requirements of Wis. Stat. § 218.0114(5)(a) in force from February 3, 2003, and was current at the time of this claim. (Bond #244202 from Universal Underwriters Insurance Company)

3. On June 30, 2003, Joseph C. Poetz purchased a 2000 Chevrolet Silverado, vehicle identification number 2GCEK19T5Y1402289, from the Dealer. Mr. Poetz paid \$23,795.00 plus sales tax and registration fee, for the vehicle. Mr. Poetz also purchased a used vehicle service contract covering the vehicle. The vehicle service contract purchased by Mr. Poetz was administered by Universal Warranty Corporation and cost \$2,149.00. Mr. Poetz purchased the vehicle service contract through the Dealer.

4. Mr. Poetz alleges that after he took possession of the vehicle he noticed that the brakes seemed "soft." He reported the brake problem to the Dealer, but was told that the brakes were fine. Mr. Poetz continued to complain about the brakes when he took the vehicle in for service. The Metro Chevrolet dealership was bought out by Bergstrom Chevrolet (Bergstrom) sometime after Mr. Poetz purchased the vehicle. On September 29, 2004, Bergstrom's service department did perform brake work on the vehicle. The work included machining the front brake rotors and replacing the rear rotors and brake pads.

5. Mr. Poetz previously filed a claim against the Dealer's bond alleging that the Dealer had failed to forward the premium for the vehicle service contract and properly enroll the vehicle in the program with Universal Warranty Corporation. Mr. Poetz withdrew this claim after a representative of Universal Warranty Corporation advised him that his vehicle was enrolled in the program and that the premium for the vehicle service contract had been forwarded to Universal Warranty Corporation. However, the brake work performed on the vehicle is not covered under the vehicle service contract.

6. Mr. Poetz has now filed a claim against the surety bond of the Dealer seeking reimbursement for the cost of the brake repairs. The amount of the claim is \$700.00. The amount of the claim is apparently based on the total invoice from Bergstrom for service to the vehicle on September 29, 2004. However, that invoice also includes an oil change. According to the invoice, the charge for the brake work was \$640.34. With sales tax, the total Mr. Poetz was charged for the work described in his bond claim \$675.56.

7. Mr. Poetz alleges that he was informed that there "was nothing wrong with [the vehicle]" when he purchased it. Although there is no reason to doubt Mr. Poetz's allegation that the brakes felt soft after he took possession of the vehicle, there is insufficient evidence to support a conclusion that the brakes were defective at the time he purchased the vehicle.

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

9. The loss sustained by Joseph Poetz 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.

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 Mr. Poetz's 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 losses claimed. Mr. Poetz alleges that the brakes were defective at the time he purchased the vehicle and that the Dealer failed to disclose this defect.

The brake repairs for which Mr. Poetz is seeking reimbursement were performed more than a year after he purchased the vehicle. Mr. Poetz does allege that the brakes felt "soft" shortly after he took possession of the vehicle. However, there is no evidence that a soft feel to

the brakes is an indication that the brake rotors were damaged or defective. The type of brake repairs performed on the vehicle purchased by Mr. Poetz is usually considered routine maintenance and not evidence of a preexisting defect. There is no evidence that the Dealer committed any disclosure or other violation in its transaction with Mr. Poetz.

CONCLUSIONS OF LAW

1. Joseph Poetz's claim arose on June 30, 2003, the date he purchased the subject vehicle from Metro Chevrolet, Inc. The surety bond issued to Metro Chevrolet, Inc., by Universal Underwriters Insurance Company covers a one-year period commencing on February 3, 2003. The claim arose during the period covered by the surety bond.
2. Mr. Poetz filed a claim against the motor vehicle dealer bond of Metro Chevrolet, Inc. 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. The loss sustained by Mr. Poetz was not caused by an act of Metro Chevrolet, Inc., which would be grounds for the suspension or revocation of its motor vehicle dealer license; therefore, pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is not allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Joseph Poetz against the motor vehicle dealer bond of Metro Chevrolet, Inc., is DENIED.

Dated at Madison, Wisconsin on February 22, 2007.

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 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 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 Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. 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. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400

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.