



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

In the Matter of Claims Against the Dealer Bond
of Eau Claire Auto Mall, LLC

Case No. TR-10-0047

FINAL DECISION

On September 3, 2010, Michael Peterson filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Eau Claire Auto Mall, LLC, (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 Leader-Telegram, a newspaper published in Eau Claire, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 24, 2011. No additional claims were filed.

A Preliminary Determination based on the documentation contained in the file and required by Wis. Admin. Code, § Trans 140.26(4)(a) was issued on January 27, 2011. On February 8, 2011, Peter Lokken, on behalf of Auto Owners Insurance Company, filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). On March 3, 2011, Mr. Lokken filed a supplementary objection. Pursuant to due notice a hearing under Wis. Admin. Code § Trans 140.26(6) was conducted in this matter on April 5, 2011, in Eau Claire, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Dietta Doris Behm
Eau Claire Auto Mall, LLC
738 3rd Avenue NW
Valley City, ND 58072

Michael D. Peterson
550 Roland Street
Chippewa Falls, WI 54729

Auto Owners Insurance Company, by

Attorney Daneille M. Strong
Weld, Riley, Prens & Ricci, S.C.
P.O. Box 1030
Eau Claire, WI 54702-1030

The Preliminary Determination issued in this matter found that the Dealer failed to forward the contract or the premium paid by Michael Peterson for the extended warranty to Auto Life RX and; therefore, that he paid for a warranty that never went into effect. At the hearing, the attorney for Auto Owners Insurance Company argued that the Dealer had the authority to bind the insurance company and the warranty was in effect. This argument contradicts the express language of the contract which provides that "The Dealer is not an agent of the manufacturer or administrator [of the warranty]." No evidence was presented at the hearing that would show that Auto Life RX considered the warranty paid for by Mr. Peterson to be in effect.

Alternatively, the attorney argued that because Mr. Peterson did not attempt to make a claim on the warranty, he has not suffered an economic loss. This is speculative. Mr. Peterson testified that he was informed that the contract and premium for the extended warranty were not forwarded by the Dealer to Auto Life RX and that the warranty was not in effect. Therefore, he would not have made any claims even if he had had a problem with one of the components of the vehicle covered by the extended warranty. It should also be noted that according to the contract the warranty was not valid unless the AutoLifeRX additive was installed in the cooling system of the covered vehicle. This additive was never delivered to Mr. Peterson. Accordingly, Auto Life RX could deny any claims made by Mr. Peterson. No evidence was presented at the hearing that would allow the Preliminary Determination to be modified. The Preliminary Determination is adopted as the Final Decision in this matter.

FINDINGS OF FACT

1. Eau Claire Auto Mall, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 1936 Hallie Road, Chippewa Falls, Wisconsin, 54729. The dealership is out of business.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since October 15, 2009 (Bond #09772366066951 from Auto Owners Insurance Company).

3. On January 21, 2010, Michael Peterson purchased a 2003 Nissan Maxima, vehicle identification number JN1DA31A03T430298, from the Dealer. Mr. Peterson also purchased an extended warranty covering the vehicle. The extended warranty

purchased by Mr. Peterson was administered by Auto Life RX and cost \$800.00. Mr. Peterson purchased the extended warranty through the Dealer.

4. Michael Peterson did pay to the Dealer the \$800.00 premium for the extended warranty; however, the Dealer never forwarded the contract or the premium for the extended warranty to Auto Life RX. At some point Mr. Peterson discovered that the Dealer had never sent the contract for the extended warranty or the premium to Auto Life RX. On June 4, 2010, Mr. Peterson filed a complaint with the Department against the Dealer. The investigator from the Department reviewed the Dealer's records and confirmed that the contract for the extended warranty was still in the Dealer's files. The investigator also contacted the warranty company and confirmed that it had never received the contract for the extended warranty or the premium.

5. On September 3, 2010, Michael Peterson filed a claim against the surety bond of the Dealer in the amount of \$800.00, the amount he paid for the extended warranty.

6. The Dealer's retention of the premium Michael Peterson paid for the extended warranty and failure to submit the application to Auto Life RX constitutes violations of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer) and Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer). Mr. Peterson sustained a loss as a result of the Dealer's actions. The loss sustained by Michael Peterson was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

7. Michael Peterson submitted documentation to support a bond claim in the amount of \$800.00. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Auto Owners Insurance Company was in effect and is, therefore, a timely claim.

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 the Peterson claim, the Dealer violated Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm). Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm) are both identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Mr. Peterson sustained a loss as a result of these violations.

CONCLUSIONS OF LAW

1. Michael Peterson's claim arose on, January 21, 2010, the date he purchased an extended warranty through the Dealer and the Dealer failed to submit the application for the extended warranty and the premium paid by Mr. Peterson to Auto Life RX. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on October 15, 2009. The claim arose during the period covered by the surety bond.

2. Mr. Peterson filed a claim against the motor vehicle dealer bond of the Dealer on September 3, 2010. 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. Mr. Peterson sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Mr. Peterson has submitted documentation to support a claim in the amount of \$800.00.

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

ORDER

The claim filed by Michael Peterson against the motor vehicle dealer bond of Eau Claire Auto Mall, LLC, is APPROVED in the amount of \$800.00. Auto Owners Insurance Company shall pay Mr. Peterson this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on April 15, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
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By: _____

MARK 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.