



**IN THE MATTER OF THE *MOTOR DEALER ACT R.S.B.C. 1966 C. 316* and the *MOTOR DEALER CUSTOMER COMPENSATION FUND REGULATION B.C. REG. 102/95, O.C. 271/95***

FILED BY:

**Leah Ter Hart**

Claimant

INVOLVING:

**1028461 B.C. Ltd. dba Everyday Motor Centre  
40197/Cancelled**

Motor Dealer

**DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD**

By way of written submissions.

[1] On August 9, 2017, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Leah Ter Hart (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

**Decision**

[2] This claim has been denied.

**Claim summary**

[3] This claim is for \$6,104.27 and is based on the transaction between the claimant and Everyday Motor Centre ("Everyday Motor"), in which:

- (a) on April 15, 2017, the claimant attended Everyday Motor to test drive a 2008 Nissan Pathfinder ("Nissan") that the claimant found online.
- (b) On April 18, 2017, the claimant's father attended Everyday Motor and paid \$9,518 by TD Bank Draft for the Nissan. A receipt was issued for the payment but no purchase documentation was provided. He was told that the Nissan could be picked up the following week after detailing by Everyday Motor. When the claimant later joined her father at Everyday Motor, they were informed that a warranty was offered for the Nissan. On Everyday Motor's website they offered a 3 day/300km exchange on all Certified Pre-Owned vehicles which also came with an extended warranty and a roadside assistance package.
- (c) On April 24, 2017, around 7:30 p.m., the claimant's father drove by Everyday Motor and saw that Everyday Motor's lot was empty.
- (d) On April 25, 2017, around 9:30 a.m., the claimant went to Everyday Motor and found that all the vehicles on the lot were repossessed by NetGear Capital Financing ("NetGear"), including the claimant's Nissan. The claimant met with the owner of Everyday Motor, Ian Fraser ("Fraser"), to obtain the purchase documentation required for negotiations with NetGear. The claimant was provided the purchase agreement, APV9T vehicle transfer form, CarProof Vehicle History Report and an inspection checklist.

- (e) On April 26, 2017, the Nissan was returned to the claimant by NetGear.
- (f) On April 27, 2017, while the claimant was driving to work, approximately 12 kilometers from home, the check engine and 4Wdr warning lights came on. The Nissan lost in power drive and did not accelerate. The claimant immediately contacted Fraser knowing that all Everyday Motor vehicles have a roadside assistance package. After not receiving a response the claimant took the Nissan to Burt's Automotive ("Burt's") for diagnostics. Burt's found the transmission oil was black and the Nissan had transmission failure and required an overhaul. The estimated cost was \$5,900 for a used transmission and \$7,300 for a remanufactured one. Burt's also found that the ignition switch was faulty.
- (g) On April 29, 2017, the claimant contacted Fraser and asked that Everyday Motor either pay for the repairs or take the Nissan back for a full refund to the claimant.
- (h) On May 1, 2017, the claimant paid \$122.65 to Burt's for diagnostics, replacement of the ignition switch and fuse, and \$125.83 to Totem Towing to tow the Nissan from Burt's to the claimant's residence.
- (i) On May 4, 2017, the claimant authorized Bullfrog Transmission to repair the transmission since no resolution was achieved with Everyday Motor. The repair was completed on May 8, 2017, and the cost was \$5,855.79.
- (j) On June 9, 2017, the claimant submitted a Compensation Fund claim in the amount of \$6,104.27, which consists of \$122.65 diagnostic cost, \$125.83 towing cost and \$5,855.79 repair cost.

#### **Legislative authority and the Board's findings**

[4] In conducting the initial eligibility assessment of the claim, the Board reviewed the Claim Application and the File Note by the VSA Consumer Services Officer.

[5] The Board applied section 4 of the *Motor Dealer Customer Compensation Fund Regulation* (the "Regulation") and found that the claim met 3 of the 4 required initial eligibility criteria:

- (i) the claim application has been filed within 2 years of the refusal or failure of the motor dealer to pay the amount claimed;
- (ii) the claimant is an individual; and
- (iii) the claimant purchased the motor vehicle in a transaction with a licensed motor dealer.

Eligibility criterion (iv) requiring that the vehicle is purchased primarily (at least 51%) for personal or family use and not business purposes was not met.

[6] The Board found that:

- (a) the claimant indicated on the Claim Application that the Nissan was intended to be used 73% for business purposes in the claimant's capacity of a sales representative, specifically to "conduct business at accounts throughout the Greater Victoria Region"; and
- (b) the claimant insured the Nissan for business use, as stated on the ICBC Owner's Certificate of Insurance and Vehicle Licence dated April 26, 2017.

[7] Based on the above, the Board determined that the claimant purchased the Nissan primarily for business purposes. Should the Nissan not have had mechanical issues, the claimant's intention was to use it primarily for work and to earn employment income. This makes the claim not eligible for compensation from the Fund.

[8] The Board noted that even if the Nissan was purchased primarily for personal use and the claim met all the initial eligibility criteria, the Board would have applied section 7(a) of the Regulation which provides that any loss that is based on the cost, quality or value of the motor vehicle received is not eligible for compensation from the Fund. The claim is for an unliquidated amount which is outside the jurisdiction of the Board and, therefore, not compensable from the Fund.

[9] The Board has jurisdiction to assess claims which fall within the specific terms of the Regulation only. Claimants may have other legal remedies available to them and are encouraged to do their own investigations into, or speak with a lawyer about, other possible remedies. Attached is the Vehicle Sales Authority of BC (the "VSA") Fact Sheet *Where to go for help*.

### **Finality of decision**

[10] Decisions of the Board cannot be appealed. According to Section 16(2) of the *Motor Dealer Act* (the "MDA"), "A decision, order or ruling of the Board ... is final and conclusive and is not open to question or review in court except on a question of law or excess of jurisdiction".

[11] Reconsideration: According to Sections 16(3), 18.1 and 18.2 of the MDA, the Board may, at its discretion, reconsider its decision. The Board will consider a request for reconsideration from a party to a claim, provided that the request is made in writing and includes relevant evidence that was not previously considered by the Board and was not known or available to the party before the hearing. All parties to a claim will be notified if the Board decides to reconsider its decision. An application for reconsideration must be made within 30 days of the decision.

[12] Judicial Review: The Board's decision may be challenged on a question of law or excess of jurisdiction in the BC Supreme Court pursuant to the *Judicial Review Procedure Act*. According to Section 57 of the *Administrative Tribunals Act*, an application for judicial review must be made within 60 days of the date the decision is issued. We suggest contacting a lawyer to obtain legal advice regarding this option.

Date: August 22, 2017



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Darlene H. Hyde  
Chair, Motor Dealer Customer Compensation Fund Board

*Attachment*  
*DH/af/ag*



## Where to go for help...

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### ...if you're looking for **translation services**:

[Society of Translators and Interpreters of British Columbia](#)  
[Mosaic BC](#)  
[The Yellow Pages](#) (under 'Translators and Interpreters')

### ...if you're looking for **legal advice**:

#### **Access Pro Bono**

For those that cannot afford a lawyer, legal advice in most areas of law is given through free clinics held throughout Vancouver. Appointments can be booked by phone at 604-878-7400 or 1-877-762-6664, or online at [www.accessprobono.ca](http://www.accessprobono.ca).

#### **Dial-a-Law**

A free service available in English, Chinese and Punjabi that offers general information on a variety of law topics. Publications can be accessed online at [www.dialalaw.org](http://www.dialalaw.org). Dial-a-Law can be reached at 604-687-4680 or 1-800-565-5297.

#### **Lawyer Referral**

Gives the opportunity to discuss a case with a lawyer for up to 30 minutes for a small fee. The consultation will determine if there is a legal problem. The service operates by telephone and can be reached at 604-687-3221 or 1-800-663-1919.

#### **Clicklaw**

Provides legal information, education and help in a variety of languages. Available online at <http://www.clicklaw.bc.ca/>

#### **Legal Services Society**

A non-profit organization that provides legal information and advice for low income families. For general inquiries, call 604-601-6000 or access their website at [www.legalaid.bc.ca](http://www.legalaid.bc.ca).

#### **UBC Law Students' Legal Advice Program**

UBC law students provide advice under the supervision of a practicing lawyer throughout the Lower Mainland. Call 604-822-5791 to book an appointment or visit their website at <http://www.lslap.bc.ca/main/>.

#### **The Law Centre**

The Law Centre provides legal assistance to people in the Greater Victoria area who cannot afford a lawyer. Call 250-385-1221 for further assistance, or visit their website at [www.thelawcentre.ca](http://www.thelawcentre.ca).



## Where to go for help...

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...if you're looking for **consumer protection information**:

### **Consumer Protection BC**

A non-profit corporation established to strengthen consumer protection in BC. They enforce consumer protection laws (except regarding motor dealers, lawyers and some other professions) and encourage fair business practices. Complaint handling and resource guides are available on their website at [www.consumerprotectionbc.ca](http://www.consumerprotectionbc.ca). They are also accessible at 1-888-564-9963.

### **Better Business Bureau (BBB)**

Includes an accredited business and charity directory, consumer tips, alerts, and guides. Those in the Lower Mainland call 604-682-2711; the rest of BC call toll free at 1-888-803-1222. More information can be found online at [www.mbc.bbb.org/consumers](http://www.mbc.bbb.org/consumers).

### **Canadian Motor Vehicle Arbitration Plan (CAMVAP)**

Helps consumers resolve disputes with a manufacturer on vehicle defects or warranty through arbitration. All services are free. To see if you qualify, visit [www.camvap.ca](http://www.camvap.ca) or call 1-800-207-0685.

### **Canadian Consumer Association**

Gives information on consumer issues and provides tools and resources. Also offers a step-by-step roadmap on how to make a consumer complaint. Visit them at [www.consumerinformation.ca](http://www.consumerinformation.ca).

### **Mediate-BC**

Specializes in dispute resolution through mediation and offers mediation information and services, as well as a directory of available mediators. They can be contacted by going to their website at [www.mediatebc.com](http://www.mediatebc.com).

### **Civil Resolution Tribunal (CRT)**

CRT's online Solution Explorer will diagnose your problem and give you legal information and self-help tools. If the dispute remains unresolved, a formal complaint process can be started. For small claims disputes of \$5,000 and under, the use of the CRT for dispute resolution is mandatory. For more information, visit <https://civilresolutionbc.ca/>.

### **Office of the Information and Privacy Commissioner for B.C. (OIPC)**

Oversees B.C.'s access and privacy acts and works to protect the privacy rights of B.C. residents. They can investigate privacy and access complaints. More information can be found on their website at [www.oipc.bc.ca](http://www.oipc.bc.ca).

### **Office of the Ombudsperson**

Investigate complaints about unfair administrative actions from provincial public authorities. Call them toll-free at 1-800-567-3247 or visit [www.bcombudsperson.ca](http://www.bcombudsperson.ca) for more information.

**Note:** This fact sheet provides general information and is not intended to be legal advice.