



IN THE MATTER OF THE *MOTOR DEALER ACT R.S.B.C. 1996 C. 316* and the *MOTOR DEALER CUSTOMER COMPENSATION FUND REGULATION B.C. REG. 102/95, O.C. 271/95*

FILED BY:

Brian Gordon MacDonald

Claimant

INVOLVING:

**A & A Auto Sale Limited
Dealer License 31027/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On December 1, 2017, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Brian Gordon MacDonald (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been approved for \$3,380.00, which will be paid to the claimant from the Fund.

Claim summary

[3] This claim is for \$3,380.00 and is based on the transaction between the claimant and A & A Auto Sale Limited (the "A & A Auto") on August 16, 2014, in which the claimant purchased a 2005 Acura MDX (the "Acura").

[4] The claimant and A & A Auto agreed on the in-house financing for the Acura and the agreed interest rate was 15%. As per the Motor Vehicle Purchase Agreement dated August 16, 2014, payment for the Acura was to be made in 14 equal monthly installments of \$338.00 each. The Acura was registered in both names - the claimant and A & A Auto.

[5] After the purchase, the A & A Auto salesperson notified the claimant of an error that was made regarding the payment term. As a result, the number of payments for the Acura needed to be increased from 14 to 24 installments. The change was only made on the in-house financing papers, while the original purchase agreement remained unchanged indicating 14 months payment term.

[6] The claimant has made payments for 24 months, which totaled \$8,112.00. The claimant believes that the interest rate was higher than promised at the time of the transaction and he should have only made payments for 14 months, totaling \$4,732.00.

[7] The claim is for reimbursement for additional 10 payments made by the claimant, in the amount of \$3,380.00.

Legislative authority and the Board's findings

[8] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5(1)(a)(iii) of the *Motor Dealer Customer Compensation Fund Regulation* (the "Regulation") which stipulates that the loss with respect to "the dishonest conduct of the motor dealer or the misappropriation of wrongful conversion of money or other property entrusted to the motor dealer" is eligible for compensation from the Fund.

[9] The Board reviewed the documents on file, copies of which were provided to the claimant and to the motor dealer at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included the Claim Application and the Investigation Report.

[10] The Board found that the Motor Vehicle Sale or Purchase Agreement dated August 16, 2014 clearly specified that the claimant had to pay for the Acura in 14 equal monthly installments of \$338 each. As per the claimant's statement, A & A Auto subsequently changed the payment term from 14 to 24 months. The change was made on A & A Auto's in-house finance documents, copies of which were not provided to the claimant. A & A Auto failed to produce documents explaining the error in calculating the payment term.

[11] In determining the amount of compensation, the Board found that the compensation equals \$3,380.00 representing the amount of the additional 10 payments of \$338.00 each that the claimant had to make as a result of the misrepresentation of the payment term by A & A Auto.

Compensation payment to claimant

[12] We will send the claimant a cheque in the amount of \$3,380.00 within 60 days from the date of the hearing, i.e., on or before January 30, 2018.

[13] If the Board decides to reconsider its decision before that time, the payment will be withheld until completion of the reconsideration procedures.

If additional compensation received by the claimant

[14] According to Section 20 of the *Motor Dealer Act* (the "MDA"), the claimant has an obligation to advise the Vehicle Sales Authority of BC (the "VSA") if the claimant receives additional compensation from another source for the loss paid from the Fund. For instance, if an insurance company also awards the claimant compensation for the same loss paid from the Fund, the claimant must advise the VSA immediately about that compensation. Failure to repay the Fund may be a cause of legal action against the claimant for the amount unrepaid.

Investigation cost recovery by the VSA

[15] Pursuant to section 22(b) of the MDA, costs incurred in investigating claims against the Fund must be paid from the Fund.

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[16] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #16118-1. The Board approved the invoiced investigation costs in the amount of \$1,375.40 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the motor dealer

[17] According to Section 24 of the MDA, if a claim is paid out of the Fund, the motor dealer who caused the claim must reimburse the Compensation Fund for the amount paid out of the Fund for the claim and for the investigation costs. The Registrar of Motor Dealers may cancel the dealer license of the motor dealer who caused the claim if the Fund is not repaid.

[18] The VSA Licensing Department will take the required action regarding repayment to the Fund by A & A Auto.

Finality of decision

[19] Decisions of the Board cannot be appealed. According to Section 16(2) of 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".

[20] Reconsideration: According to Sections 16(2), 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 in writing within 30 days of the decision.

[21] 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: December 19, 2017



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

DH/ag