



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:

Leonora Gaylor

Claimant

INVOLVING:

**Best Import Auto Ltd.
Dealer License 30670/Cancelled by Registrar**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On June 8, 2018, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Leonora Gaylor (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 \$10,000 and is based on the transaction between the claimant and Best Import Auto Ltd. (the "Best Import") on November 10, 2013, in which the claimant purchased a 2010 BMW 128i (the "BMW") from Best Import Auto Ltd.

[4] During that transaction, the claimant was not verbally told that the vehicle had previous accident history and was used as a lease vehicle. The documents related to the sale were passed to the claimant in a quick manner without giving any time for review before signing.

[5] On September 18, 2017, the claimant went to a BMW dealer to purchase another vehicle and to use the BMW as a trade in. At that time the claimant was informed that prior to being purchased by the claimant, the BMW had been in accidents in 2011 and 2012 resulting in damage claims over \$26,000. The BMW was also previously used as a lease vehicle.

Legislative authority and the Board's findings

[6] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5(1) of the *Motor Dealer Customer Compensation Fund Regulation* (the "Regulation") which outlines the losses eligible for compensation from the Fund. Pursuant to section 5(1)(a), only liquidated amounts are compensable in relation to the purchase of a vehicle. In addition, section 7(a) of the Regulation stipulates that a claim based on cost, quality or value of a motor vehicle received is not eligible for compensation from the Fund.

[7] 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, the motor dealer response to the claim, and the Investigation Report.

[8] The Board found that the purchase agreement between the claimant and Best Import dated November 10, 2013, had the declarations about the BMW, duly initialed by the claimant, that:

- (i) the BMW sustained damage exceeding \$2,000,
- (ii) the hand-written notation of the amounts of prior damage claims of \$23,205.19 and \$3,209.80; and
- (iii) the declaration of a previous use of the BMW as a lease vehicle.

In addition, the Board found that the loss claimed is for an unliquidated amount and relates to the cost, quality and value of the motor vehicle received by the claimant from the motor dealer.

[9] Therefore, the Board found that:

- (i) the claimant's allegations of the misrepresentation by the motor dealer of the vehicle history are unsupported by the evidence; and
- (ii) the claimant's alleged loss requires an assessment of damages for which the Board has no jurisdiction. Therefore, the claim is not eligible for compensation from the Fund.

[10] The Board has jurisdiction to adjudicate 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*.

Investigation cost recovery by the VSA

[11] Pursuant to section 22(b) of the *Motor Dealer Act* (the "MDA"), costs incurred in investigating claims against the Fund must be paid from the Fund.

[12] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #17193-1. The Board approved the invoiced investigation costs in the amount of \$510.69 for recovery by the VSA from the Compensation Fund.

[13] Pursuant to section 24(2)(b) of the MDA, if a claim is paid out of the Fund, the motor dealer who caused the claim must pay the Registrar the costs of investigating the claim. Since this claim is denied, the investigation costs will not be charged to Best Import.

Finality of decision

[14] 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".

[15] 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.

[16] 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: June 25, 2018



William Kwok
Chair, Motor Dealer Customer Compensation Fund Board

Attachment
BK/ag



Where to go for help...

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

Society of Translators and Interpreters of British Columbia: <http://www.stibc.org/>

Mosaic BC: <http://www.mosaicbc.com/>

The Yellow Pages (under 'Translators and Interpreters'): <http://www.yellowpages.ca/>

...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 calling 604-878-7400 or 1-877-762-6664, or online at 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. 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 access to legal information and offers several options on solving legal problems. It is available online at www.clicklawbc.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.legalaidsociety.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.

Where to go for help...

...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. 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.

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 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.

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.

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.

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 for more information.

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

Suite 208 - 5455 152nd Street
Surrey, British Columbia
V3S 5A5

Telephone 604.575.7255
Toll Free 1.877.294.9889
Facsimile 604.575.7080

Email consumer.services@mvsabc.com
Web www.vehiclesalesauthority.com