



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:

Dian Greene

Claimant

INVOLVING:

**Affordable Auto Sales and Services Inc.
Dealer License #40114/issued**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On October 21, 2020, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Compensation Fund") filed by Dian Greene (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been denied.

Claim and proceedings summary

[3] This claim is for \$5,421.61 and is based on the transaction between the claimant and Affordable Auto Sales and Services Inc. ("Affordable Auto") on July 29, 2019, in which the claimant purchased a 2006 Nissan Frontier (the "Frontier") from Affordable Auto relying on the representations by the salesperson and dealer principal of Affordable Auto that the Frontier only sustained a minor collision and was in good mechanical condition. At the time of the purchase, Affordable Auto agreed to pay for certain repairs and did not make all those repairs.

[4] It was later determined that the Frontier was a rebuilt vehicle that came from Alberta and had prior damage exceeding \$2,000.00.

[5] On October 4, 2019, the claimant made a consumer complaint to the Vehicle Sales Authority of BC (the "VSA"). In the course of the investigation for the claimant's consumer complaint to the VSA, it was determined that a Hearing by the Registrar was warranted to address the claimants dispute with Affordable Auto and the conduct by the VSA licensees related to the transaction with the claimant.

[6] The Registrar conducted the hearing by way of written submissions and on March 13, 2020, the decision in the matter of the complaint by the claimant was rendered to

- (i) award the claimant \$10,930.00 to be payable by the respondents;
- (ii) require the claimant to transfer ownership of the Frontier to Affordable Auto upon receipt of the award; and
- (iii) hold a separate hearing to address a compliance action against Affordable Auto and the investigation costs.

[7] On May 22, 2020, after multiple attempts to collect the Registrar's award from Affordable Auto, the claimant followed the recommendation by the VSA and made an application for compensation from the Compensation Fund in the amount of \$14,928.14, consisting of

- (i) \$10,930.00 awarded by the Registrar that the claimant was unable to collect from Affordable Auto, and
- (ii) the amount of compensation that was sought in the consumer complaint, but not awarded by the Registrar.

[8] On June 11, 2020, the claimant notified the VSA of

- (i) accepting compensation from Affordable Auto in the amount of \$10,930.00 as per the Registrar's decision,
- (ii) transferring the Frontier to Affordable Auto, and
- (iii) the intent to proceed with the amended Compensation Fund claim that was not covered by the Registrar's decision of March 13, 2020.

[9] On August 12, 2020, the Registrar conducted the hearing to address the VSA's compliance action against Affordable Auto. As part of the compliance action, Affordable Auto was ordered to pay the VSA the cost of investigating the complaint by the claimant.

[10] On August 25, 2020, the claimant submitted

- (i) the amendment to the claim application to confirm that the claim amount was amended from \$14,928.14 to \$5,421.61; and
- (ii) the receipts and invoices for the vehicle expenses that are part of this claim.

Legislative authority and the Board's findings

[11] In reviewing the eligibility of the claimant's loss for compensation from the Compensation Fund, the Board applied Section 5 of the *Motor Dealer Customer Compensation Fund Regulation (the "Regulation")* outlining losses that may be compensable from the Compensation Fund.

[12] The Board reviewed the documents on file, copies of which were provided to the claimant and to Affordable Auto at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included:

- (i) the Hearing Affidavit by the VSA Compliance Officer with attachments (including the consumer complaint application),
- (ii) the Registrar's Decision dated March 13, 2020,
- (iii) the Demand to Motor Dealer,

- (iv) the claimant's letter to the Compensation Fund Board dated July 8, 2020,
- (v) the Registrar's Decision dated August 12, 2020,
- (vi) the Claims Manager's File Note, and
- (vii) the claim application.

[13] The Board identified that the claimant sought compensation for two distinct losses that needed to be considered separately:

- (i) compensation for the vehicle expenses incurred by the claimant due to the misrepresentation of the material facts about the vehicle by the motor dealer; and
- (ii) compensation for emotional distress and grief.

[14] In reviewing the portion of the claim seeking compensation for the vehicle expenses incurred by the claimant due to the misrepresentation of the material facts about the Frontier by Affordable Auto, the Board relied on the findings of facts conveyed in the Registrar's decision dated August 12, 2020, paragraph 36, establishing that the claimant was harmed by the actions of Affordable Auto and that the amount of harm was \$10,930.00.

[15] The Board found sufficient evidence that on June 11, 2020, the claimant notified the VSA of accepting compensation from Affordable Auto in the amount of \$10,930.00 as per the Registrar's decision. Therefore, the Board found that the claimant was fully compensated for the harm and no further compensation can be awarded from the Compensation Fund for that harm.

[16] In reviewing the portion of the claim seeking compensation for emotional distress and grief, the Board applied Section 5(1) of the *Regulation* which outlines the losses eligible for compensation from the Compensation Fund. Section 5(1)(a) of the Regulation outlines compensable losses with respect to the purchase of a motor vehicle and specifically stipulates the general requirement for such losses to be for a liquidated amount.

[17] A liquidated amount is a fixed amount or an amount that can be made certain by mere mathematical calculation. Where the amount of loss must be investigated beyond mere arithmetic and determined by opinion or an assessment of what is reasonable in the circumstances, it is not a liquidated amount. The Board has no jurisdiction over unliquidated losses. The Board found that the amount of claimant's loss caused by emotional distress and grief is not liquidated and, therefore, is not compensable from the Compensation Fund.

[18] The Board has jurisdiction to assess claims which fall within the specific terms of the *Regulation* only. The 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

[19] 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".

[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: November 13, 2020

"Original is signed"

William W. 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.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.

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