

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:

Brady Maycock

Claimant

INVOLVING:

**0879246 B.C. Ltd. dba Up North Motors
[31060/Cancelled]**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On April 27, 2016, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Brady Maycock (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 based on the transaction between the claimant and 0879246 B.C. Ltd. dba Up North Motors ("Up North Motors") in which:

- (a) On May 5, 2015, the claimant purchased a 2010 Ford F-150 (the "Ford") from Up North Motors. As part of the transaction, the claimant also purchased a Lubrico extended warranty (the "warranty") for \$1,500.
- (b) The claimant took the Ford to Alberta after purchase, and soon noted a number of mechanical problems, including repairs required for the brakes. Lubrico advised the claimant that the warranty is not in effect since the premium paid by the claimant to Up North Motors was never forwarded to Lubrico.
- (c) On July 10, 2015, after not being able to afford to repair the Ford, the claimant agreed to voluntarily surrender it to the creditor, CTL Corp.
- (d) On April 1, 2016, Lubrico agreed to honor the warranty in accordance with the terms and conditions of coverage.

[4] This claim is for \$5,825.68 which includes the payment of a \$2,000 initial down payment; two vehicle payments of \$574.86 each, totaling \$1,149.72; registration, plate, enrolment fee and two insurance payments totaling \$300.96; Lubrico warranty premium of \$1,575; and \$800 for a brake repair.

Legislative authority and the Board's findings

[5] The Board reviewed the documents on file, namely the Claim Application, the VSA Compliance Officer's Investigation Report, and the claimant's response to the Investigation Report, copies of which were provided to the claimant and to Up North Motors at the pre-hearing stage and to which both parties had an opportunity to respond. The Board found that the claim is for several losses and considered them separately.

Loss of the premium paid for the extended warranty

[6] In reviewing the eligibility of the claimant's loss for compensation from the Fund, the Board applied section 5(1)(b) of the Motor Dealer Customer Compensation Fund Regulation (the "Regulation") which stipulates that "with respect to the purchase of an extended warranty or service plan, the loss of the unexpired portion of the warranty or plan resulting from the bankruptcy, insolvency, receivership or other failure of the motor dealer" is eligible for compensation from the Fund.

[7] Pursuant to section 5(1)(b) of the Regulation, for a loss related to the purchase of an extended warranty to be compensable from the Fund, a loss must be (i) the loss of unexpired portion of a warranty, and (ii) be the result of a prescribed failure of the motor dealer. The Board concluded that while there is evidence that Up North Motors failed to remit warranty premium paid by the claimant, there is no loss of unexpired portion of the warranty because Lubrico agreed to honor the warranty. Should the claimant still have the ownership of the Ford, the coverage would be in effect. Therefore, the claim for the loss of the cost of warranty is not eligible for compensation from the Fund pursuant to section 5(1)(b) of the Regulation.

Loss of the down payment; two vehicle payments; registration, plate and enrollment fees; two insurance payments and cost of brakes repairs

[8] In reviewing the eligibility of the claim for the above captioned losses, the Board applied section 5(1) of the Regulation which outlines the losses eligible for compensation from the Fund with respect to the purchase of a motor vehicle and section 7(a) of the Regulation providing that the claims based on cost, quality or value of a motor vehicle received are not eligible for compensation from the Fund.

[9] The Board considered all circumstances of the transaction described in the documents under review and found that the above captioned losses are not eligible for compensation from the Fund pursuant to section 5(1) of the Regulation. Section 7(a) of the Regulation excludes compensation for losses stemming from cost, value or quality of the vehicle received.

[10] 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

[11] Decisions of the Board cannot be appealed. According to Section 16(2) of the *Motor Dealer Act*, "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".

[12] Reconsideration: 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. The Board's policy requires that an application for reconsideration be made within 30 days of the decision.

[13] 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: May 17, 2016



Darlene Hyde
Chair, Motor Dealer Customer Compensation Fund Board

Attachment
DH/af/ag



Where to go for help...

...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.legalaid.bc.ca.

Multilingual Legal Website

A new online resource that provides legal information in a variety of languages, such as Arabic, Chinese, English, French, Korean, Persian, Punjabi, Spanish, and Vietnamese. Search publications at www.multilingolegal.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 mediation. 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.

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