

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:

Letty Demerchant

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 Letty Demerchant (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 March 28, 2015, the claimant purchased a 2001 Volkswagen Beetle (the "Beetle") from Up North Motors. As part of the transaction, the claimant was charged \$649.95 for a 2 year Lubrico extended warranty (the "warranty") that the claimant paid to Up North Motors.
- (b) On May 22, 2015, the Beetle was in an accident, in which the air bags did not deploy. The person in the Beetle had head and face injuries, as well as a broken arm. The Beetle was written off due to extensive damage to the front end.
- (c) The claimant later contacted Lubrico and initially was told that the warranty was not in effect since the premium paid by the claimant to Up North Motors was not forwarded to Lubrico. However, on March 11, 2016, Lubrico agreed to honor the claimant's warranty in accordance with the terms and conditions of the coverage.

[4] This claim is for \$649.95 representing the amount paid by the claimant to Up North Motors for the extended warranty, i.e. \$619.00 plus \$30.95 GST.

Legislative authority and the Board's findings

[5] 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. Section 5(1)(b) of the Regulation 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.

[6] The Board reviewed the documents on file, namely the Claim Application and the VSA Compliance Officer's 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 evidence that on March 11, 2016, Lubrico agreed to honor the claimant's warranty in accordance with the terms and conditions of the coverage chosen.

[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 to Lubrico, there is no loss of unexpired portion of the warranty. Should the claimant still have the ownership of the Beetle, the balance of the warranty coverage would be in effect. Therefore, the claim is not for a loss eligible for compensation from the Fund pursuant to section 5(1)(b) of the Regulation.

[8] 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

[9] 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".

[10] **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.

[11] 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.