

**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:

**Barbara Pomroy and Len Sanders**

Claimants

INVOLVING:

**Super Dave's Golden Ears Motors Ltd./Golden Ears Chrysler Dodge Jeep dba  
Maple Ridge Hyundai  
(7356/Cancelled)**

Motor Dealer

**DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD**

By way of written submissions.

[1] On June 24, 2016, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Barbara Pomroy and Len Sanders (the "claimants") 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 \$3,542.51 and is based on the transaction between the claimants and Golden Ears Chrysler Dodge Jeep on July 18, 2009, in which the claimants purchased a 2005 Chrysler P.T. Cruiser (the "Cruiser") with a turbo engine.

[4] Over the years, the claimants experienced serious vehicle conditions causing the Cruiser's engine to jerk, hesitate and lose 40% of its power.

[5] In 2012, the claimants approached Golden Ears Chrysler Dodge Jeep regarding the on-going issues with the Cruiser, but were told that the business was converted to a Hyundai dealership and Chrysler attributed documents were destroyed.

[6] For warranty reasons, in May 2012, the claimant decided to maintain servicing the Cruiser at a Chrysler accredited service center and chose Willowbrook Motors for all maintenance needs and to deal with ongoing concerns with the vehicle.

[7] Over the next several years the Cruiser still acted the same. It was not until a top-end teardown in January 2016 when it was established that the root of the problem was the wrong factory installed non-turbo intake on a turbo engine.

[8] After the problem was identified, the claimants discovered that the cost of replacement of the defective unit would not be covered by the Lifetime Powertrain Warranty that they had purchased in 2009 with the Cruiser. The warranty could not be used as the claimants did not perform vehicle maintenance at the location of purchase or at a Tricor designated facility.

### **Legislative authority and the Board's findings**

[9] In reviewing the eligibility of the claimants' loss for compensation from the Fund, 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 with respect to the purchase of a motor vehicle and section 7(a) of the Regulation providing that claims based on cost, quality or value of a motor vehicle received are not eligible for compensation from the Fund.

[10] The Board reviewed the documents on file, copies 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 Board found that the Cruiser suffered from a manufacturer's defect. There was no evidence to establish that the motor dealer was aware of this defect and/or failed to deliver the vehicle contracted for.

[11] The Board determined that the claim was for reimbursement of expenses related to the identification of the problem with the Cruiser and the estimated cost to replace the defective unit, and as such were not compensable pursuant to Section 7(a) of the Regulation.

[12] 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*.

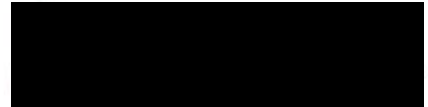
### **Finality of decision**

[13] 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".

[14] **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 requires that an application for reconsideration be made within 30 days of the decision.

[15] 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: July 11, 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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.mediatebc.com).

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