

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:

Ronald Orasa

Claimant

INVOLVING:

**Flag Mitsubishi
#5401/Cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On February 15, 2017, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Ronald Orasa (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 \$6,448 and is based on the transaction between the claimant and Flag Mitsubishi in which:

- (a) On May 12, 2012, the claimant purchased a 2006 Mitsubishi Eclipse (the "Eclipse") from Flag Mitsubishi. The claimant was also offered and purchased a Mechanical Breakdown Insurance Policy (the "extended warranty") that was represented as 5 years/100,000 km warranty.
- (b) On May 30, 2016, the claimant drove to California and the Eclipse broke down in Centralia, Washington. The claimant took the Eclipse to a Mitsubishi dealership in Olympia, who informed them two days later that it was an engine issue that would cost \$8,300 USD to repair.
- (c) The claimant informed the dealership in Olympia they had an extended warranty until 2017. However, it appeared that the extended warranty had expired in March 2016, as it commenced on the date when the Eclipse arrived at Flag Mitsubishi and not on the date when the claimant purchased it.

(d) On or about June 2, 2016, the claimant sold the Eclipse to a dismantler for \$148 and declared lost plate (scrapped with car) with ICBC.

Legislative authority and the Board's findings

[4] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5 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. Section 5(1)(b) of the Regulation stipulates that 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 the unexpired portion of a warranty, and (ii) be the result of a prescribed failure of the motor dealer: "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.

[5] 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 and the Investigation Report by the VSA Compliance Officer.

[6] The Board found that on May 12, 2012, at the time of the purchase of the warranty, the claimant entered into the extended warranty with the warranty provider. The warranty policy declaration page clearly stated that the policy expiration date was March 21, 2016. This declaration was acknowledged by the claimant in signing the policy declaration page at the time it was purchased. Therefore, the warranty agreement governs. The Board concluded that the claimant had not established that he had suffered a loss and therefore is not eligible for compensation from the Fund.

[7] 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

[8] 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".

[9] 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.

[10] 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: February 24, 2017



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.

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.