

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:

Sharon Schepkowski

Claimant

INVOLVING:

**ATD Holdings Inc. dba All The Details
40052/Cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On June 2, 2017, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Sharon Schepkowski (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 \$2,000.37 representing the costs and expenses incurred by the claimant as well as the estimates of costs that the claimant needs to incur to restore the condition of the 1997 Ford Taurus (the "Taurus") with respect to the transaction with All The Details in April 2015, in which:

- (a) The claimant entered into an agreement with Steven Bede ("Bede") of All The Details under which the claimant allegedly consigned her Taurus to All The Details. There was no written consignment agreement drafted.
- (b) In October 2015, the claimant requested Bede to return the Taurus. Bede notified the claimant that he no longer had possession of the Taurus and did not know where it was. Bede advised the claimant that he would be able to get the Taurus back and return it to the claimant.
- (c) In November 2015, the claimant contacted the RCMP and ICBC regarding the loss of the Taurus. ICBC informed the claimant that they were no longer the registered owner of the Taurus as of September 19, 2015. The registered ownership was subsequently transferred back into the claimant's name.

(d) The claim is for the following costs and expenses with respect to the Taurus:

- i. \$1,326.15 in impound fees to North River Towing (2004) Ltd.
- ii. \$500 in towing fees to Turn + Burn hauling company
- iii. \$79.35 for accommodation in Knights Inn/Bar in Barriere, B.C. in order to
- iv. inspect the Taurus
- v. \$94.87 for Greyhound bus tickets to and from Barriere, B.C. to inspect the Taurus
- vi. approximately \$150 for a mechanical inspection of the Taurus to determine if it had any damage
- vii. approximately \$100 to replace a jack, jumper cables, and gas cans that were in the Taurus
- viii. approximately \$40 to repair the left front tire of the Taurus

Legislative authority and the Board's findings

[4] 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 losses eligible for compensation from the Fund. Pursuant to section 5(1)(c) of the Regulation, losses with respect to the delivery of a motor vehicle to a licensed motor dealer for sale by the motor dealer as an agent on commission, may be eligible for compensation from the Fund where such losses are caused by the prescribed failures by the motor dealer, including the refusal remit the sales proceeds, the inability to return the vehicle, or the wrongful conversion of property by the dealer.

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

- (a) the claimant's Claim Application,
- (b) the File Note by the VSA Consumer Services Officer regarding the correspondence between the claimant, the claimant's legal counsel and the Registrar of Motor Dealers regarding the eligibility of the claimant's application for compensation from the Fund,
- (c) the Investigation Report by the VSA Compliance Officer, and
- (d) the claimant's response to the Investigation Report.

[6] The Board found that there was no conclusive evidence to establish that the claimant consigned the Taurus to All The Details. As the Board found the transaction between the claimant and All the Details with respect to the Taurus was not a consignment, the claimant's loss with respect to the recovery of the Taurus and future expenses to restore the condition of the Taurus is not a compensable loss pursuant to section 5(1) of the Regulation. In the alternative, if the Taurus was consigned by the claimant to All The Details, the claim is not for an eligible loss pursuant to section 5(1)(c) of the Regulation. All The Details did not sell the Taurus. The Taurus was returned to the claimant, and there was no evidence of wrongful conversion by All The Details. Therefore, the claim 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*.

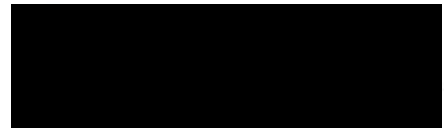
Finality of decision

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

[9] Reconsideration: According to Sections 16(3), 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 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: June 26, 2017



Darlene K. Hyde
Chair, Motor Dealer Customer Compensation Fund Board

Attachment
DH/af/ag



Where to go for help...

...if you're looking for **translation services**:

[Society of Translators and Interpreters of British Columbia](#)
[Mosaic BC](#)
[The Yellow Pages](#) (under 'Translators and Interpreters')

...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 phone at 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 legal information, education and help in a variety of languages. Available online at <http://www.clicklaw.bc.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.

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.