

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:

Amarpreet Tut

Claimant

INVOLVING:

**GN Motors Sales "N" Rentals Limited
10734/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 Amarpreet Tut (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been approved in part for \$20,000.00 which will be paid to the claimant from the Fund.

Claim summary

[3] This claim is for \$45,920.00 and is based on the transaction between the claimant and GN Motors Sales "N" Rentals Limited ("GN Motors Sales") in which:

- (a) in October 2014, the claimant paid GN Motors Sales \$55,535.70, representing full payment for a 2015 Toyota Highlander (the "Highlander").
- (b) On January 24, 2015, the claimant met Joginder Khaira, Dealer Principle of GN Motors Sales ("Khaira"), to complete the insurance paperwork and to take possession of the Highlander.
- (c) On December 7, 2016, the claimant was informed that there was a lien on the Highlander. The following day, the claimant called Khaira who did not answer the phone. The claimant drove to GN Motors Sales and found that the dealer's lot was empty and closed.
- (d) On December 12, 2016, the claimant contacted First West Leasing and paid off the lien.

Legislative authority and the Board's findings

[4] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5(1)(a)(iv) of the *Motor Dealer Customer Compensation Fund Regulation* (the "Regulation") which stipulates that the loss "with respect to the failure of the motor dealer to provide clear title to the motor vehicle or to ensure that the motor vehicle was free from a charge or encumbrance, in favour of a third party, that was not declared or known to the buyer at the time the purchase was made" 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 GN Motors Sales at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included the claimant's Claim Application and the Investigation Report by the VSA Compliance Officer.

[6] The Board found that

- (i) GN Motor Sales did not declare to the claimant that the Highlander had a lien at the time of purchase by the claimant; and
- (ii) The claimant paid the outstanding lien amount to the lienholder and the lien was removed.

[7] Therefore, the claim is eligible for compensation from the Fund.

[8] In determining the amount of compensation, the Board found that the claimant paid \$45,920 to First West Leasing to have the lien discharged. Pursuant to Section 9 of the Regulation the maximum amount of compensation payable for a loss is \$20,000. Therefore, the amount of compensation equals \$20,000.

[9] 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*, which has information that may be helpful for you.

Compensation payment to claimant

[10] We will send the claimant a cheque in the amount of \$20,000 within 60 days from the date of the hearing, i.e., on or before August 2, 2017.

[11] If the Board decides to reconsider its decision before that time, the payment will be withheld until completion of the reconsideration procedures.

If additional compensation received by the claimant

[12] According to Section 20 of the *Motor Dealer Act* (the "MDA"), the claimant has an obligation to advise the VSA if the claimant receives additional compensation from another source for the loss paid from the Fund. For instance, if an insurance company also awards the claimant compensation for the same loss paid from the Fund, the claimant must advise the VSA immediately about that compensation. Failure to repay the Fund may be a cause of legal action against the claimant for the amount unrepaid.



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.

Reimbursement to the Fund by the motor dealer

[13] According to the *Motor Dealer Act* (the "MDA"), if a claim is paid out of the Fund, the Registrar of Motor Dealers may cancel the dealer license of the motor dealer who caused the claim (MDA, Section 24(1). If cancelled, the new license may not be issued until the motor dealer has reimbursed the Fund for the amount paid out from Fund for the claim (MDA, Section 24(2).

[14] The VSA Licensing Department will take the required action regarding repayment to the Fund by the motor dealer.

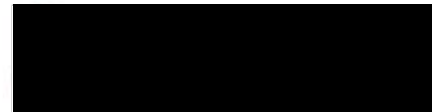
Finality of decision

[15] Decisions of the Board cannot be appealed. According to Section 16(2) of 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".

[16] 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.

[17] 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