



IN THE MATTER OF THE *MOTOR DEALER ACT R.S.B.C. 1996 C. 316* and the *MOTOR DEALER CUSTOMER COMPENSATION FUND REGULATION B.C. REG. 102/95, O.C. 271/95*

FILED BY:

Harj Gill

Claimant

INVOLVING:

**GN Motors Sales "N" Rentals Limited
Dealer License 10734/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On December 1, 2017, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Harj Gill (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been approved for \$12,407.71, which will be paid to the claimant from the Fund.

Claim summary

[3] This claim is for \$12,407.71 and is based on the transaction between the claimant and GN Motors Sales "N" Rentals Limited (the "GN Motors").

[4] On September 23, 2013, the claimant was introduced to a 2009 Mercedes ML350 (the "Mercedes") by the Manager of GN Motors and paid \$3,000 deposit.

[5] On September 26, 2013, the claimant was presented a Carproof report showing no damage or lien on the Mercedes.

[6] On September 27, 2013, the claimant signed the paperwork for the Mercedes and paid \$25,000 with a bank draft.

[7] On October 17, 2013, the claimant paid the remaining \$6,000 with a bank draft. The claimant did not receive copies of the purchase documents from GN Motors.

[8] The claimant was contacted by GN Motors every year in November to renew the insurance until November 2016. This was when the claimant found out from an insurance agent that there was a lien on the Mercedes registered by First West Leasing.

[9] On December 2, 2016, the claimant filed a Consumer Complaint with the Vehicle Sales Authority of BC (the "VSA").

[10] On December 27, 2016, the claimant filed the MDCCF claim application after the VSA informed him that GN Motors' license was cancelled by the Registrar of Motor Dealers.

Legislative authority and the Board's findings

[11] 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.

[12] 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.

[13] The Board found that:

- (i) the claimant entered into a cash sale transaction with GN Motors and purchased the Mercedes having paid for the vehicle in full;
- (ii) at the time of the transaction, GN Motors misrepresented the terms of the transaction. The Mercedes was placed into the name of a leasing company (First West Leasing), GN Motors was named as the lessee, and the claimant was kept completely off any of the sales or ownership documentation;
- (iii) after the transfer of the Mercedes from GN Motors (the lessor) to First West Leasing (the lessee), the lien was registered in the BC Personal Property Security Registry with the creditor listed as First West Leasing;
- (iv) the Mercedes was repossessed from the claimant on December 2, 2016;
- (v) the claimant paid \$12,407.71 representing the outstanding lien on the Mercedes and the costs required to have the Mercedes returned to the claimant;
- (vi) the lien on the Mercedes was discharged on December 23, 2016.

[14] In determining the amount of compensation, the Board found that the compensation equals \$12,407.71 that the claimant paid to have the lien discharged and the Mercedes returned to the claimant.

Compensation payment to claimant

[15] We will send the claimant a cheque in the amount of \$12,407.71 within 60 days from the date of the hearing, i.e., on or before January 30, 2018.

[16] 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

[17] 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.

Investigation cost recovery by the VSA

[18] Pursuant to section 22(b) of the MDA, costs incurred in investigating claims against the Fund must be paid from the Fund.

[19] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #16018-1. The Board approved the invoiced investigation costs in the amount of \$255.83 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the motor dealer

[20] According to Section 24 of the MDA, if a claim is paid out of the Fund, the motor dealer who caused the claim must reimburse the Compensation Fund for the amount paid out of the Fund for the claim and for the investigation costs. The Registrar of Motor Dealers may cancel the dealer license of the motor dealer who caused the claim if the Fund is not repaid.

[21] The VSA Licensing Department will take the required action regarding repayment to the Fund by GN Motors.

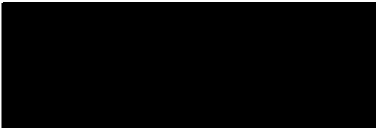
Finality of decision

[22] 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".

[23] Reconsideration: According to Sections 16(2), 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 in writing within 30 days of the decision.

[24] 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: December 19, 2017



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