



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:

William Montgomery

Claimant

INVOLVING:

**Everyday Motor Centre
Dealer License 40197/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On February 14, 2018, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by William Montgomery (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 \$7,695.44 and is based on the transaction between the claimant and Everyday Motor Centre ("Everyday Motor").

[4] According to the claimant's submission, the claimant originally purchased from Everyday Motor a 2005 Hyundai Santa Fe (the "Hyundai"). After the transmission broke down within a week of the purchase of the Hyundai, the claimant was given a refund for the Hyundai and on or about January 4, 2016, the claimant purchased from Everyday Motor a 2009 Dodge Journey (the "Dodge").

[5] The Dodge was priced at \$9,999.00. Since the claimant lost the vehicle which was originally traded towards the purchase of the Hyundai, the claimant's understanding was that Everyday Motor was going to (i) decrease the price of the Dodge to \$7,500.00 and (ii) not charge the claimant for the Lubrico extended warranty for the Dodge.

[6] Months after the purchase, the claimant discovered that the extended warranty policy for the Dodge had the wrong vehicle price and mileage, which made the extended warranty null and void.

[7] At the time when the claimant contacted Scotiabank regarding the payout of the loan, the claimant found out that he owed more than \$14,000.00. At that time the claimant also discovered that Everyday Motors charged the claimant for the extended warranty, and

that none of the amounts on the loan documents were the same as the claimant originally saw and signed.

Legislative authority and the Board's findings

[8] In reviewing the eligibility of the claimant's alleged 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. Pursuant to section 5(1)(a), only liquidated amounts are compensable in relation to the purchase of a vehicle. In addition, section 7(a) of the Regulation stipulates that a claim based on cost, quality or value of a motor vehicle received is not eligible for compensation from the Fund.

[9] 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, the Motor Dealer Response to VSA Consumer Complaint, and the Investigation Report.

[10] The Board found that:

- (i) The Scotia Bank Scotia Dealer Advantage Credit Agreement dated January 4, 2016, shows the cost of financing of the Dodge. It also lists the cost of warranty in the amount of \$1,495.00 as included in the price for the Dodge. The Credit Agreement is signed by the claimant.
- (ii) In the absence of the purchase agreement, there are no documents to support that the price of the Dodge was misrepresented to the claimant at the time of the purchase.
- (iii) While the warranty was registered with the incorrect mileage, that could have been corrected had the claimant made any claims inside the warranty period.

[11] The Board concluded that that the claimant had not established a liquidated amount which would be eligible for compensation under section 5(1) of the Regulation. The general industry practice is that the vehicle pricing numbers in the purchase agreement and in the financing agreement are the same. In the absence of the documentary evidence, the claimant's alleged loss due to the misrepresentation by the motor dealer of the terms of the transaction requires an opinion or assessment of damages for which the Board has no jurisdiction. The loss claimed is for an unliquidated amount and relates to the cost, quality and value of the motor vehicle.

[12] Therefore, the claim is not eligible for compensation from the Fund and is **denied**.

[13] 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*.

Investigation cost recovery by the VSA

[14] Pursuant to section 22(b) of the *Motor Dealer Act* (the "MDA"), costs incurred in investigating claims against the Fund must be paid from the Fund.

[15] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #17354-1 for \$708.54. The Board approved the invoiced investigation costs in the amount of \$708.54 for recovery by the VSA from the Compensation Fund.

[16] Pursuant to section 24(2)(b) of the MDA, if a claim is paid out of the Fund, the motor dealer who caused the claim must pay the Registrar the costs of investigating the claim. Since this claim is denied, the investigation costs will not be charged to Everyday Motor.

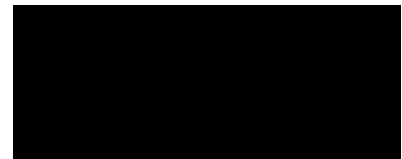
Finality of decision

[17] 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".

[18] 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.

[19] 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 28, 2018



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

Attachment
DH/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.