



April 29, 2019

By REGULAR MAIL and E-MAIL [email address redacted]

Ivanco Keremelevski

[mailing address redacted]

Dear Ivanco Keremelevski:

Re: Motor Dealer Customer Compensation Fund Claim No. 18-07-090
Filed by: Ivanco Keremelevski
Motor Dealer: Applewood Nissan Inc.
Vehicle: 2017 Nissan Rogue, VIN 5N1AT2MV5HC763103
Reconsideration Determination

On April 3, 2019, the Motor Dealer Customer Compensation Fund Board (the "Board") reviewed your request for reconsideration to determine if reconsideration of your claim is warranted.

Outcome

We regret to inform you that the Board will not reconsider your claim and the original decision to deny your claim remains unchanged.

Process summary

On February 6, 2019, the MDCCF Board heard your claim and denied it for the following reasons:

1. the claim allegations of the misrepresentation of the vehicle by the motor dealer are unsupported by the evidence;
2. the loss claimed is for an unliquidated amount and relates to the cost, quality and value of the motor vehicle that you received from the motor dealer; and
3. the Board has no jurisdiction to assess damages due to the alleged failure by Applewood Nissan to abide by the federal, provincial & municipal laws quoted in your claim application, including the *Sale of Goods Act* and the *Business Practices and Consumer Protection Act*.

On February 26, 2019, the Board's written decision denying your claim was issued and sent to you.

On March 2, 2019, your request for reconsideration of the Board's decision was received.

Legislative authority and the Board's findings

In reviewing your request for reconsideration, the Board applied the following provisions of the *Motor Dealer Act* (the "Act"):

1. Section 16(1), providing that the Board has exclusive jurisdiction to hear and decide claims against the Fund;
2. Section 16(3), providing that "the Board may reconsider [...] its own decisions in respect of matters within its jurisdiction"; and

3. Section 18.2 of the *Act*, providing that while any party to a claim has a right to request a reconsideration, the Board will only consider such requests, 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.

In considering your request for reconsideration, the Board reviewed the following documents:

1. your request for reconsideration,
2. the claim application,
3. the Claims Manager File Note containing the Consumer Complaint Application, the email from the VSA Compliance Office to the claimant,
4. the motor dealer's response to claim, and
5. the Investigation Report by the VSA Compliance Officer.

The Board found that the request for reconsideration did not contain new evidence that was not before the Board when the original decision to deny the claim was made.

Therefore, the Board decided not to exercise its jurisdiction to reconsider its original decision.

Appeal

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

Section 16(3) of the *Act* provides that the Board may, at its discretion, reconsider its own decision. This reconsideration determination exhausts the reconsideration option.

Judicial Review: You may challenge the Board's decision 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 you contact a lawyer and obtain legal advice regarding this option.

Sincerely,

/Original signed/

William Kwok
Chair, Motor Dealer Customer Compensation Fund Board

BK/ag

Suite 280 – 8029 199th Street
Langley, British Columbia
V2Y 0E2

Telephone 604.575.7255
Toll Free 1.877.294.9889
Facsimile 604.575-7080

Email compensationfund@mvsabc.com
Web www.vehiclesalesauthority.com