



**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:

**Daniel Dubois**

Claimant

INVOLVING:

**Preferred Auto Group Inc. *dba* We Do Salvage  
Dealer License 40298/cancelled**

Motor Dealer

**DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD**

By way of written submissions.

[1] On October 21, 2020, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Compensation Fund") filed by Daniel Dubois (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

**Decision**

[2] This claim has been approved for \$3,000.00, which will be paid to the claimant from the Compensation Fund.

**Claim and proceedings summary**

[3] This claim is for \$3,000.00 and is based on the transaction between the claimant and Preferred Auto Group Inc. *dba* We Do Salvage ("Preferred Auto Group").

[4] On or about August 1, 2017, the claimant responded to the Craigslist advertisement of Ford F-150 (the "Ford") and expressed interest in purchasing the Ford.

[5] On or about August 3, 2017, the claimant paid Preferred Auto Group a refundable deposit in the amount of \$3,000.00 towards the purchase of the Ford.

[6] On August 23, 2017, the claimant informed the dealer principal of Preferred Auto Group that the claimant would not be purchasing the Ford, and requested to refund the deposit, to which the dealer principal agreed. Contrary to the expectations, the claimant did not receive the refund. Due to the family member's health issues, the claimant was unable to follow up with Preferred Auto Group regarding the status of the refund.

[7] In December 2018, the claimant emailed and phoned Preferred Auto Group to follow up on the refund of the deposit but was unable to reach anyone at the dealership. Following that unsuccessful attempt, the claimant contacted the Vehicle Sales Authority of BC ("VSA") and was informed about an option of making a consumer complaint to the VSA.

[8] Following the claimant's enquiry to the VSA in December 2018, the claimant's consumer complaint application was received by the VSA on January 26, 2019.

[9] While the investigation for the complaint and the attempts to facilitate dispute resolution were ongoing, Preferred Auto Group went out of business and their dealer license was cancelled on August 4, 2019.

[10] At this point, the claimant was informed by the VSA about the Compensation Fund claim process. The claimant's Demand to the Motor Dealer was received by the VSA on September 17, 2019 and followed by the submission of the Compensation Fund claim application on October 21, 2019.

[11] It was later determined by the VSA Investigations Team that the investigation for the consumer complaint was not exhausted, and a Hearing by the Registrar of Motor Dealers (the "Registrar") in the matter of the consumer complaint by the claimant and the conduct by Preferred Auto Group was warranted.

[12] The Registrar conducted the hearing by way of written submissions. On June 30, 2020, the Registrar rendered the decision stipulating that the Registrar had no jurisdiction to consider and order remedy for the claimant's complaint due to lack of legal authority, and specifically since the claimant's transaction with Preferred Auto Group presumably involved payment of the deposit for a motor vehicle intended for business use.

[13] Following the Registrar's decision, the claimant advised of their intention to proceed with the Compensation Fund claim. The claimant was provided with an opportunity to make an additional submission to address the Registrar's findings about the presumed business use of the vehicle, and such submission was made.

### **Legislative authority and the Board's findings**

[14] In assessing the eligibility of the claim, the Board found that since the transaction date to which the claim relates is prior to January 1, 2018, the initial eligibility criteria stipulated in the *Motor Dealer Customer Compensation Fund Regulation* (the "Regulation") in effect prior to January 1, 2018, must be applied. Section 4 of the *Regulation* stipulates that to apply for compensation, all of the following criteria must be met:

1. the claim application had been filed within 2 years of the refusal or failure of the motor dealer to pay the amount claimed;
2. the applicant is an individual;
3. the applicant purchased the motor vehicle in a transaction with a licensed motor dealer; and
4. the motor vehicle was used primarily for personal and not business purposes.

[15] The Board reviewed the following claim documentation: Claim Application, Claim Manager's File Note, Hearing Investigation Report, the Registrar's Decision, additional (post-Registrar's hearing) submission by the claimant with clarification about the intended personal use of the Ford, and the claimant's income tax documentation for tax year 2017, 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.

[16] The Board found that the additional documentation submitted by the claimant after the Registrar's hearing supported the statements by the claimant made at the time of the initial complaint application - that the claimant intended to use the Ford F-150 primarily for personal and not business purposes.

[17] The Board established that all the criteria that must be met for an individual to apply for compensation from the Compensation Fund have been met, including the requirement for a primarily intended personal use of the vehicle for which the deposit was paid.

[18] In reviewing the eligibility of the claimant's alleged loss, the Board applied Section 5(1)(a)(ii) of the Regulation which stipulates that with respect to purchase of a motor vehicle, the loss of deposit resulting from "the inability of the motor dealer to deliver the motor vehicle contracted for or return the trade-in, full payment, deposit, down payment or other liquidated amount due to the bankruptcy, insolvency, receivership or other failure of the motor dealer" is eligible for compensation from the Compensation Fund.

[19] The Board found evidence of Preferred Auto Group's inability to execute the agreed upon refund of the deposit to the claimant, due to the closure of the motor dealer and cancelation of their license. Therefore, the Board established that the claimant's loss is eligible for compensation from the Compensation Fund.

[20] In determining the amount of compensation, the Board found that compensation equals the amount of the deposit paid by the claimant to Preferred Auto Group as per the claimant's credit card bank statement, i.e., \$3,000.00.

#### **Compensation payment to claimant**

[21] We will send the claimant a cheque in the amount of \$3,000.00 within 60 days from the date of the hearing - on or before December 21, 2020.

[22] 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**

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

#### **Investigation cost recovery by the VSA**

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

[25] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #18237-1. The Board approved the invoiced investigation costs in the amount of \$412.30 for recovery by the VSA from the Compensation Fund.

**Reimbursement to the Compensation Fund by the motor dealer**

[26] According to Section 24 of the *MDA*, if a claim is paid out of the Compensation Fund, the motor dealer who caused the claim must reimburse the Compensation Fund for the amount paid out of the Compensation 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 Compensation Fund is not repaid.

[27] The VSA Licensing Department will take the required action regarding repayment to the Compensation Fund by Preferred Auto Group.

**Finality of decision**

[28] 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".

[29] 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.

[30] 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: November 13, 2020

"Original is signed"

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William W. Kwok  
Chair, Motor Dealer Customer Compensation Fund Board

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