



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:

Parvez Tyab

Claimant

INVOLVING:

**Affinity Auto Group Inc. *dba* Affinity Auto
Dealer Licence 30471/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On December 9, 2020, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Parvez Tyab (the "claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

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

Claim summary

[3] This claim is for \$20,000.00 and is based on the transaction between the claimant and Affinity Auto Group Inc. ("Affinity Auto") in which on April 23, 2015, the claimant purchased a 2014 Tesla Model S (the "Tesla") from Affinity Auto. The claimant dealt with the dealer principal at Affinity Auto when completing the transaction.

[4] The terms of the agreement included that:

1. the purchase price of the Tesla would be \$104,000.00 plus applicable taxes; and
2. the claimant would receive a free and clear title to the Tesla.

[5] At the time of the purchase, the claimant was unaware of the active lien registered by the TD Auto Finance (Canada)/Financement Auto TD (Canada) Inc. ("TD") against the Tesla for the loan in the amount of \$137,668.35 plus interest at an annual rate of 4.24%, that was obtained by the dealer principal of Affinity Auto from TD.

[6] In September 2018, TD seized the Tesla from the claimant. The claimant made a demand to TD to return the Tesla which was refused by TD.

[7] In October 2018, the claimant started a civil action against Affinity Auto's dealer principal, Affinity Auto, and TD for the return of the Tesla and damages.

[8] On August 4, 2020, the claimant's legal counsel advised the Vehicle Sales Authority of British Columbia (the "VSA") that the claimant reached a settlement with TD wherein the claimant paid \$32,840.00 to get the Tesla returned to the claimant from TD. Upon receipt of those funds, the lien on the Tesla was discharged and the claimant obtained possession of the Tesla in mid-August.

Legislative authority and the Board's findings

[9] 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.

[10] 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 initial claim application dated May 23, 2018, amended claim application dated September 2, 2020, and the File Note by the VSA Claims manager dated November 12, 2020.

[11] The Board established that all the criteria required to apply for compensation from the Compensation Fund have been met.

[12] In reviewing the eligibility of the claimant's alleged loss for compensation from the Fund, the Board applied Section 5(1)(a)(iv) of the *Regulation* which stipulates that "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 the 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.

[13] The Board found that:

1. at the time of the purchase of the Tesla from Affinity Auto, the claimant was led to believe that the Tesla was free of liens;
2. after over 3 years from the purchase, the Tesla was repossessed from the claimant due to the outstanding lien registered against the Tesla, of which the claimant was unaware of at the time of the purchase; and
3. to get the Tesla back, the claimant paid \$32,840.00 to TD after which TD discharged the lien and the Tesla was returned to the claimant.

[14] Therefore, the Board established that the claimant's loss is eligible for compensation from the Fund.

[15] In determining the amount of compensation, the Board found that the compensation equals \$20,000.00 as claimed, which is less than the amount paid by the claimant to clear the title of the Tesla, \$32,840.00, but is the maximum amount compensable per loss from the Fund pursuant to Section 9 of the *Regulation*.

Compensation payment to claimant

[16] We will send the claimant a cheque in the amount of \$20,000.00 within 60 days from the date of the hearing - on or before February 8, 2021.

[17] 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

[18] 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.

Finality of decision

[19] 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".

[20] 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.

[21] 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 21, 2020

/ Original is signed /

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

BK/ag

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