



**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:

**Christopher and Michael White**

Claimants

INVOLVING:

**E.J. Klassen Motorcade Ltd.  
Dealer Licence #7983 / cancelled**

Motor Dealer

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

By way of written submissions.

[1] On April 14, 2021, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Christopher and Michael White (the "claimants") 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 claimants from the Fund.

**Claim summary**

[3] This claim is for \$20,000.00 and is based on the transaction between the claimants and E.J. Klassen Motorcade Ltd. ("Klassen Motorcade") in which on December 17, 2019, the claimants traded in a 2011 Chevrolet Silverado (the "Chevrolet") to E.J. Klassen Motorcade Ltd. ("Klassen Motorcade") for a 2018 GMC Sierra 1500 (the "GMC").

[4] Klassen Motorcade added \$26,000.00 to the purchase price of the GMC for payout of the lien held by Scotiabank against the Chevrolet.

[5] The claimants continued to make payments to Scotiabank for the Chevrolet until February 2020. Then, upon refusal by Klassen Motorcade to pay out the lien, the claimants put a stop payment on payments for the Chevrolet to Scotiabank.

[6] In early 2020, Klassen Motorcade's assets were sold to new owners, Applewood Chevrolet Buick GMC ("Applewood Chevrolet"). The claimants were led to believe by Klassen Motorcade that Applewood Chevrolet is responsible for paying out the lien.

[7] On May 28, 2020, the claimants' Legal Counsel contacted Applewood Chevrolet and was advised that

- (i) Applewood Chevrolet only purchased the assets of Klassen Motorcade and, therefore, has no liability for the actions by Klassen Motorcade;
- (ii) The Chevrolet was sold by Klassen Motorcade prior to their assets purchase by Applewood Chevrolet.

[8] On May 28, 2020, the claimants' Legal Counsel was advised by the dealer principal of Klassen Motorcade that

- (i) Klassen Motorcade carried significant operating debt;
- (ii) Payout of the lien on the Chevrolet was delayed;
- (iii) Klassen Motorcade's operating debt was planned to be resolved through a restructuring and a business deal with Applewood Chevrolet, which did not occur as planned;
- (iv) the requested documents pertaining to Klassen Motorcade's transactions with the claimants would be provided after retrieval from archives.

[9] On July 11, 2020, the claimants made a Motor Dealer Customer Compensation Fund Demand to Motor Dealer, to which the claimants did not receive any response.

[10] On August 4, 2020, the claimants made an application for compensation from the Fund.

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

[11] The Board reviewed the documents on file, copies of which were provided to the claimants and to the motor dealer at the pre-hearing stage and to which both parties had an opportunity to respond:

- (i) the claimants' Demand to Motor Dealer;
- (ii) the claimants' Claim Application;
- (iii) the Claim Investigation Report; and
- (iv) the Investigation Costs Recovery Invoice;

[12] The Board established that the criteria established by the *Motor Dealer Customer Compensation Fund Regulation* (the "*Regulation*") required to apply for compensation from the Fund were met:

- (i) the Demand to Motor Dealer was made within 4 years of the transaction that is the subject matter of the claim [*Regulation*, Sections 6(1) and (2)];
- (ii) the claim application was filed within 120 days from the Demand [*Regulation*, Section 8.1(a)];
- (iii) the applicants are individuals [*Regulation*, Section 4)];
- (iv) the applicants purchased the motor vehicle in a transaction with a licensed motor dealer [*Regulation*, Section 4(a)];
- (v) the motor vehicle is used primarily for personal and not business purposes [*Regulation*, Section 4(a)(i)].

[13] In reviewing the eligibility of the claimants' loss for compensation from the Fund, the Board applied Section 5(1)(a)(iii) of the *Regulation* which stipulates that "the dishonest

conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer” is eligible for compensation from the Fund.

[14] The Board found evidence that:

- (i) the claimants traded the Chevrolet to Klassen Motorcade towards the purchase of the GMC;
- (ii) Klassen Motorcade added \$26,000.00 to the purchase price of the GMC;
- (iii) Klassen Motorcade was to pay \$26,000.00 to Scotiabank to pay out the lien on the traded Chevrolet; and
- (iv) the lien on the Chevrolet remains unpaid.

Therefore, the claimants’ loss is eligible for compensation from the Fund.

[15] In determining the amount of compensation, the Board found that the claimants’ loss equals \$26,000.00 being the amount added to the purchase price of the GMC for paying out the lien of the Chevrolet. Pursuant to Section 9 of the *Regulation*, the maximum amount of compensation that may be awarded from the Fund is \$20,000.00 per loss. Therefore, the amount of compensation for this claim equals \$20,000.00.

#### **Compensation payment to claimants**

[16] We will send the claimants a cheque in the amount of \$20,000.00 within 60 days from the date of the hearing - on or before June 14, 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 claimants**

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

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

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

[20] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #20223-1. The Board approved the invoiced investigation costs in the amount of \$282.02 for recovery by the VSA from the Fund.

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

[21] 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 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 licence of the motor dealer who caused the claim if the Fund is not repaid.

[22] The VSA Licensing Department will take the required action regarding repayment to the Fund by E.J. Klassen Motorcade.

**Finality of decision**

[23] 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".

[24] 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.

[25] 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: April 27, 2021

/Original is signed/

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

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