



IN THE MATTER OF THE *MOTOR DEALER ACT* RSBC 1996 c 316 and the *MOTOR DEALER CUSTOMER COMPENSATION FUND REGULATION* BC REG 102/95, OC 271/95

FILED BY:

Jesse and Rosanne Winter

Claimants

INVOLVING:

**Kamloops Chrysler Dodge Jeep Ram Ltd.
Dealer Licence 5044/Cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On October 13, 2021, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Jesse and Rosanne Winter (the "Claimants") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been approved for \$1,000.00, which will be paid to the Claimants from the Fund.

Claim summary

[3] This claim is for \$1,000.00 and is based on the transaction between the Claimants and Kamloops Chrysler Dodge Jeep Ram Ltd. ("Kamloops Chrysler") in which on March 15, 2019, the Claimants purchased a 2016 Dodge Ram 1500 (the "Dodge") from Kamloops Chrysler.

[4] The Claimants also purchased an extended warranty for \$1,000.00 and were provided with a VISA receipt as proof of payment. The Claimants were not provided with a copy of the extended warranty policy and were told that they will receive it by mail once the policy is registered.

[5] In February 2020, the Claimants needed to make a warranty claim for repairs performed at the service department of Nelson Chrysler Dodge Jeep. At that time, the Claimants discovered that they had no manufacturer warranty and no extended warranty coverage.

[6] The Claimants contacted the management of Kamloops Chrysler Dodge Jeep Inc., which turned out to be a different motor dealer holding dealer licence #41858. This new

dealership purchased the assets of the motor dealer that sold the Dodge and the extended warranty to the Claimants, Kamloops Chrysler, dealer licence #5044.

[7] The new dealership rectified the issue with the manufacturer's warranty for the claimants. The issue of the extended warranty remained unresolved.

Legislative authority and the Board's findings

[8] The Board established that the claim met the initial eligibility criteria established by the *Motor Dealer Customer Compensation Fund Regulation* (the "*Regulation*"):

- (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)]; and
- (v) the motor vehicle is used primarily for personal and not business purposes [*Regulation*, Section 4(a)(i)].

[9] 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. The documents under review included the Demand to Motor Dealer, the Claim Application, the Investigations Report and the Addendum to the Investigation Report.

[10] 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 states that among others, the following losses are eligible for compensation from the Fund: "the dishonest conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer".

[11] The Board found that:

- (i) the Claimants paid Kamloops Chrysler \$1,000.00 for the extended warranty, were provided the VISA receipt confirming payment and were not provided the expended warranty provider information;
- (ii) while two businesses were granting warranties through Kamloops Chrysler, there is no evidence as to which insurer was the provider of the warranty purchased by the Claimants;
- (iii) since the insurer is unknown, there is no ability to apply Section 18 of the *Insurance Act* to pursue compensation for the Claimants' loss from the insurance provider.

[12] In determining the amount of compensation, the Board found that the compensation equals \$1,000.00 being the amount paid by the Claimants for the extended warranty to Kamloops Chrysler.

Compensation payment to Claimants

[13] We will send the claimant a cheque in the amount of \$1,000.00 within 60 days from the date of the hearing - on or before December 12, 2021.

[14] 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

[15] 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 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 unpaid.

Investigation cost recovery by the VSA

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

[17] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #20235-1. The Board approved the invoiced investigation costs in the amount of \$243.76 for recovery by the VSA from the Fund.

Reimbursement to the Fund by the motor dealer

[18] 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 investigated by the VSA Investigations Officer, 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.

[19] The VSA Licensing Department will take the required action regarding repayment to the Fund by Kamloops Chrysler.

Finality of decision

[20] 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".

[21] 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.

[22] 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 16, 2021

/Original is signed/

Ian Moore
Acting Chair, Motor Dealer Customer Compensation Fund Board

IM/jm/ag