

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:

Harwinder Kumar

Claimant

INVOLVING:

**Lenux Auto Sales and Services Ltd.
Dealer Licence #40584/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 Harwinder Kumar (the "Claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

Decision

[2] This claim has been denied.

Claim summary

[3] This claim is for \$8,000.00 and is based on the transaction between the Claimant and Lenux Auto Sales and Services Ltd. ("Lenux") on or about April 8, 2019, in which the Claimant purchased a 2010 Mercedes ML350 (the "Mercedes").

[4] According to the Claimant's submission, the Claimant attended Lenux following the advertisement of the Mercedes.

[5] The Claimant noticed that the Mercedes was dirty and in need of service. The Claimant paid a \$300.00 deposit for the Mercedes and Lenux agreed to service and clean the Mercedes.

[6] The Claimant returned to Lenux a week later and found that the Mercedes had not been cleaned or serviced.

[7] On or about April 8, 2019, the Claimant purchased the Mercedes with those known deficiencies.

[8] After purchase, the Claimant took the Mercedes to be serviced and was advised that the Mercedes had several mechanical deficiencies including engine oil leaks and burns, malfunctioning window wipers, parking sensors, and reverse and brake lights. It was estimated repairs would cost \$7,000.00 - \$8,000.00.

[9] The Claimant attempted to use an extended warranty, however, none of the malfunctions were covered despite representations made by Lenux at the time of the sale of the Mercedes that they were.

[10] At a hearing on this matter, the Registrar has decided that Lenux misrepresented the Mercedes by not disclosing damages over \$2,000.00 and the odometer reading. However, the Registrar also stated the Claimant did not prove that he had relied on these misrepresentations and that there wasn't detrimental reliance on the misrepresentations.

Legislative authority and the Board's findings

[11] In reviewing the eligibility of the Claimant's alleged loss, the Board applied Section 5.1 of the *Motor Dealer Customer Compensation Fund Regulation* (the "*Regulation*") which outlines losses eligible for the Fund. In addition, the Board applied Section 5(1)(a) of the Regulation stipulating that only liquidated amounts are compensable in relation to the purchase of a vehicle. In addition, Section 7(a) of the *Regulation* stipulates that a claim based on cost, quality or value of a motor vehicle received is not eligible for compensation from the Fund.

[12] The Board reviewed the documents on file, copies of which were provided to the Claimant and to Lenux at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included: the Registrar's Decision dated March 26, 2021, the investigation Report dated October 16, 2020, the Registrar's Decision dated July 27, 2021, the Demand to Motor Dealer dated May 13, 2021, and the Compensation Fund Claim Application dated April 25, 2021.

[13] The Board found that, as established by the Registrar in the decision dated March 26, 2021, while Lenux misrepresented the Mercedes by not disclosing damages over \$2,000.00 and the odometer reading, there is no evidence that the Claimant relied on these misrepresentations.

[14] The Board established that the claim is not for a liquidated amount. A liquidated amount is a fixed amount or an amount that can be made certain by mere mathematical calculation. Where the amount of loss must be investigated beyond mere arithmetic and determined by opinion or an assessment of what is reasonable in the circumstances, it is not a liquidated amount. The Board has no jurisdiction to assess damages.

[15] The Board has jurisdiction to assess claims which fall within the specific terms of the *Regulation* only. The Claimant may have other legal remedies available to them and are encouraged to do their own investigations into, or speak with a lawyer about, other possible remedies. Attached is the Vehicle Sales Authority of BC (the "VSA") Fact Sheet *Where to go for help*.

Investigation cost recovery by the VSA

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

[17] The costs for investigating the matter that is the subject of this claim have been dealt with in the course of the hearing by the Registrar as per the Registrar's decision dated July 27, 2021. No further investigation costs have been incurred for this claim.

Finality of decision

[18] Decisions of the Board cannot be appealed. According to Section 16(2) of the *Motor Dealer Act* (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".

[19] 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.

[20] 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
Attachment