



**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:

**Kyra-Leigh Wiebe**

Claimant

INVOLVING:

**Kamloops Chrysler Dodge Jeep Ram Ltd.,  
Motor Dealer Licence #5044 / cancelled**

Motor Dealer

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

By way of written submissions.

[1] On December 15, 2021, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Kyra-Leigh Wiebe (the "Claimant") was presented to the Motor Dealer Customer Compensation Fund Board (the "Board") for hearing.

**Decision**

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

**Claim summary**

[3] This claim is for \$1, 500.00 and is based on the transaction between the Claimant and Kamloops Chrysler Dodge Jeep Ram Ltd. ("Kamloops Chrysler") in which on May 8, 2019, the Claimant purchased a 2017 Mitsubishi Lancer (the "Mitsubishi") from Kamloops Chrysler.

[4] In March 2019, the Claimant paid Kamloops Chrysler a deposit of \$500.00 for the Mitsubishi to be shipped from Vancouver to Kamloops in an understanding that the deposit would be applied towards the purchase price of the Mitsubishi.

[5] On May 8, 2019, the Claimant paid Kamloops Chrysler \$500.00 as down payment for the Mitsubishi.

[6] Contrary to the agreement, Kamloops Chrysler did not deliver the Mitsubishi to the Claimant in Kamloops and the Claimant drove to Vancouver to pick it up.

[7] Later, after pulling a credit report, the Claimant noticed that the amount of the loan for the Mitsubishi was \$1,000.00 higher than expected. The discrepancy equaled the amount of the deposit and down payment paid by the Claimant to Kamloops Chrysler.

[8] As a result of the failure by Kamloops Chrysler to apply the \$500.00 deposit and the \$500.00 down payment towards the purchase price of the Mitsubishi, \$1,000.00 was added

to the financed amount and the Claimant is being charged interest on that amount for 84 months of the loan contract.

[9] The claim is \$1,500.00 consisting of \$500.00 deposit, \$500.00 down payment, and \$500 interest.

**Legislative authority and the Board’s findings**

[10] 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 applicant is an individual [*Regulation*, Section 4)];
- (iv) the applicant 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)].

[11] 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:

- (i) The Claimant’s Demand to Motor Dealer;
- (ii) The Claimant’s Claim Application;
- (iii) The Claim Investigation Report; and
- (iv) The investigation Cost Recovery Invoice.

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

[13] The Board established that this claim consists of 2 parts – for the loss of \$1,000.00 deposit/down payment, and for \$500.00 interest with respect to payment of the deposit/down payment. The Board considered these losses separately.

**\$1,000.00 deposit/down payment**

[14] In reviewing the eligibility of the Claimant’s loss of the deposit/down payment for compensation from the Fund, the Board applied Section 5(1)(a)(i) of the *Regulation* which states that among others, the following losses are eligible for compensation from the Fund: “the refusal of the motor dealer, without lawful justification, to deliver the motor vehicle contracted for or to return the trade-in, full payment, deposit, down payment or other liquidated amount”.

[15] The Board reviewed the claim documents and established that:

- (i) the Claimant made a total of \$1,000.00 deposit/down payment to Kamloops Chrysler over two payments of \$500.00 each in March 2019 and May 2019;

- (ii) the \$1,000.00 deposit payment is documented on the Purchase Agreement for the Mitsubishi;
- (iii) the \$1,000.00 deposit payment was omitted on the Conditional Sales Contract; and
- (iv) Kamloops Chrysler did not reimburse the Claimant for \$1,000.00 deposit/down payment.

[16] In light of the above, the claimant's alleged loss of the deposit/down payment is eligible for compensation from the Fund.

[17] In determining the amount of compensation, the Board established that the compensation equals the amount paid by the Claimant to Kamloops Chrysler, i.e., \$1,000.00.

\$500.00 interest with respect to payment of the deposit/down payment

[18] In reviewing the eligibility of the portion of this claim for interest with respect to the deposit/down payment added to the financed amount, the Board applied Section 5(2) of the *Regulation* stipulating that a Claimant is not entitled to claim any interest with respect to an eligible loss.

[19] In light of the above, the Board denied the portion of this claim for interest.

**Compensation payment to Claimant**

[20] 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 February 13, 2022.

[21] The Board recognized that the awarded compensation is less than the claimed amount. There may be other legal remedies available to the Claimant. The Claimant is 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*, which has information that may be helpful for the Claimant.

[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 is 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 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.

**Investigation cost recovery by the VSA**

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

[25] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #20384-2. The Board approved the invoiced investigation costs in the amount of \$514.12 for recovery by the VSA from the Fund.

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

[26] 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.

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

**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: January 7, 2022

/Original is signed/

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Ian Moore  
Acting Chair, Motor Dealer Customer Compensation Fund Board

Attachment  
IM/jm/ag