



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:

Suzanne and Stephan McNeil

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 August 10, 2022, a Claim for compensation from the Motor Dealer Customer Compensation Fund (the "**Fund**") filed by Suzanne and Stephan McNeil (the "**Claimants**") was presented to the Motor Dealer Customer Compensation Fund Board (the "**Board**") for further consideration. The Board's consideration of the claim was previously adjourned on April 20, 2022.

Decision

[2] This claim has been approved for \$14,385.99, which will be paid to the Claimants from the Fund.

Claim Summary

[3] This claim is based on the transaction that occurred on May 15, 2018, between the Claimants and the Motor Dealer, E.J. Klassen Motorcade Ltd. ("**E.J. Klassen**"), for the purchase of a 2017 Chevrolet Silverado (the "**Silverado**") motor vehicle (the "**Transaction**").

[4] As part of the Transaction, the Claimants also purchased a life and disability insurance policy through E.J. Klassen for which they were never provided a receipt or copy of paperwork of any means. The amount paid by the Claimants for the life insurance was \$6,649.37 and the amount paid for the disability insurance was \$7,736.62 for a total of \$14,385.99.

[5] On November 5, 2021, the Claimants paid the outstanding amount left on the loan for the Silverado and were expecting to receive reimbursement of a portion of their life and disability insurance premiums. However, they were advised by the insurance carrier, Industrial Alliance, that they had no record of a policy in their name and that E.J. Klassen had never processed their insurance policy or forwarded the amount that they had paid for the life and disability insurance to the carrier. As a result, the Claimants had no life and disability insurance coverage and were not entitled to reimbursement of any portion of the

premiums paid.

Legislative Authority and the Board’s Findings

[6] The Board reviewed the documents on file, copies of which were provided to the Claimant and to E.J. Klassen 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.

[7] The Board found that the claim met the initial eligibility criteria established by the *Motor Dealer Customer Compensation Fund Regulation* (the “**Regulation**”) as follows:

- (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 Silverado from a registered motor dealer [Regulation, Section 4(a)]; and
- (v) the Silverado was to be used primarily for personal or family use [Regulation, Section 4(a)(i)].

[8] In reviewing the eligibility of the Claimants’ alleged loss, the Board applied section 5(1)(a)(iii) of the Regulation which provides that:

- “5(1) The following losses are eligible for compensation from the fund:
- (a) with respect to the purchase of a motor vehicle, the loss of a trade-in, full payment, deposit, down payment, or other liquidated amount resulting from
...
 - (iii) the dishonest conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer.”

[9] The Board found that the claim is eligible for compensation as it was with respect to the purchase of a motor vehicle and a liquidated amount resulting from the dishonest conduct of E.J. Klassen and misappropriation of money paid to them by the Claimants for their life and disability insurance which E.J. Klassen failed to forward to the insurance carrier.

[10] The Board found that the Claimants' loss was eligible for compensation from the Fund as it met the requirements of section 5(1)(a)(iii) of the Regulation. The claim arose out of the purchase of a motor vehicle and it was for a liquidated amount resulting from the dishonest conduct and misappropriation of money paid by the Claimants to E.J. Klassen for a life and disability insurance policy which E.J. Klassen failed to forward to the insurance carrier.

[11] The Board found that the amount of the compensation was equal to the amount paid by the Claimants to E.J. Klassen for the life and disability insurance, namely, \$14,385.99

Compensation Payment to the Claimants

[12] We will send the claimants a cheque in the amount of \$14,385.99 within 60 days from the date of the hearing - on or before October 9, 2022.

[13] If the Board decides to reconsider its decision before that time, the payment will be withheld until the completion of the reconsideration procedures.

If Additional Compensation is Received by the Claimant

[14] 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

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

[16] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice 21213-1. The Board approved the invoiced investigation costs in the amount of \$816.37 for recovery by the VSA from the Fund.

Reimbursement to the Fund by the Motor Dealer

[17] 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.

[18] The VSA Licensing Department will take the required action regarding repayment to the Fund by the Motor Dealer.

Finality of Decision

[19] Section 16(2) of the MDA provides that a decision of the Board made under that Act is final and conclusive and not open to appeal.

[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: August 10, 2022

Per: The Motor Dealer Customer Compensation Fund Board

/Original is signed/

Ian Moore, Chair