

**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:

Lindsay Sharp

Claimant

INVOLVING:

**Bow-Mel Chrysler Ltd.
Dealer Licence 8583/Cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On April 20, 2023, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund") filed by Lindsay Sharp (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 \$2,270.00.

The following are allegations of the Claimant:

[4] In January 2014, the claimant purchased a 2014 Dodge Grand Caravan (the "2014 Dodge") with an extended warranty from Bow-Mel Chrysler Ltd. ("Bow-Mel Chrysler"). The claimant was told that the extended warranty:

- (i) could be transferred to another vehicle if the claimant did an upgrade, and
- (ii) could be refunded if not used.

[5] On July 9, 2016, the claimant traded in the 2014 Dodge to Bow-Mel Chrysler for a new 2016 Dodge Grand Caravan (the "2016 Dodge"). The claimant attempted to transfer the extended warranty from the 2014 Dodge to the 2016 Dodge but was told that this could not be done, and a refund could not be issued. The claimant purchased a new extended warranty for the 2016 Dodge.

[6] At the time of the purchase of the 2016 Dodge, the claimant was told that the 2016 Dodge would have the same features as the 2014 Dodge.

- [7] After the purchase, the claimant discovered that the 2016 Dodge:
- i. did not have a spare tire as the 2014 Dodge, but only a jack,
 - ii. did not have a tow hitch cover which resulted in the tow hitch rusting,
 - iii. had cosmetic and mechanical issues such as paint bubbling around the lights, rust at tailgate and doors, rear slinging door making noise when shutting, and the radio and Bluetooth not working properly,
 - iv. had an oil-stained handprint left on it while in repair/service.

[8] After the purchase of the extended warranty, the claimant had multiple issues related to it:

- (i) the warranty did not cover \$25 paid by the claimant for a part,
- (ii) the warranty did not cover the cost of the removal of a nail from a tire.

[9] With the purchase of the 2016 Dodge, the claimant was offered a choice of prizes, and chose a trip to Las Vegas, but was not able to take the trip due to the bankruptcy of the third party provider of the trip.

[10] After the purchase, the transmission of the 2016 Dodge broke while the claimant was in the United States. A dealership in Oregon stated that a rental vehicle would not be provided free of charge, but reimbursement could be provided later. The claimant was told by Fiat Chrysler Automobiles ("FCA") that a portion of the cost of flights back to Canada would be covered. The claimant had not received reimbursement for a rental vehicle or airfare.

[11] After the transmission issue described in paragraph 10 above, the 2016 Dodge was not sent to Canada for repairs as per the terms of the warranty. The claimant received \$300 from Road Assist but was not reimbursed for numerous expenses incurred during the two months that the 2016 Dodge was being repaired.

[12] Duncan Chrysler Dodge Jeep Ram Ltd. suggested the claimant purchase a new vehicle and said they would pick up the claimant's 2016 Dodge from the United States. Duncan Chrysler Dodge Jeep Ram Ltd. ran 2 unauthorized credit checks of the claimant's credit history.

Legislative authority and the Board's findings

[13] In reviewing the eligibility of the claimant's alleged losses for compensation from the Fund, the Board applied Section 5 of the *Motor Dealer Customer Compensation Fund Regulation* (the "*Regulation*") that expressly outlines the losses that are compensable from the Fund.

[14] The Board reviewed the documents on file, copies of which were provided to the claimant and to Bow-Mel Chrysler at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included:

- Demand to Motor Dealer dated May 22, 2020,
- Claim Application dated January 22, 2021,
- Motor Dealer's Response to the Claim dated October 30, 2020,
- Claimant's Rebuttal to the Dealer Response dated September 14, 2020,
- Eligibility Determination by the Claims Manager dated March 15, 2022,
- Claimant's Request for Formal Consideration by the Board dated March 17, 2022,
- Investigation Report dated January 16, 2023,
- Investigation Cost Recovery Invoice dated February 10, 2023, and
- Claimant's Response to the Investigation Report dated February 27, 2023.

[15] The Board identified that the claim has two distinct components that needed to be considered separately:

- (i) the losses incurred due to the purchase of the 2016 Dodge, and
- (ii) the losses incurred due to the purchase of the extended warranty.

Purchase of the Vehicle

[16] In reviewing the eligibility of the claimant's alleged losses with respect to the purchase of a vehicle, the Board applied Section 5(1)(a) of the *Regulation* which stipulates that only liquidated amounts are compensable from the Compensation Fund.

[17] 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.

[18] The Board established that the claimant's alleged losses related to the purchase of the 2016 Dodge are not for liquidated amounts and, therefore, are not eligible for compensation from the Fund.

Purchase of the Extended Warranty

[19] In reviewing the eligibility of the claimant's alleged losses due to the purchase of the extended warranty, the Board applied Section 5(1)(b) of the *Regulation* which outlines that to eligible for compensation:

- (i) it must be a loss of an unexpired portion of the warranty or service plan, and
- (ii) such loss must be the result of the bankruptcy, insolvency, receivership or other failure of the motor dealer.

[20] The Board found no evidence that this claim relates to the unexpired portion of the warranty and, therefore, it is not eligible for compensation from the Compensation Fund.

[21] 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 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*.

Investigation cost recovery by the VSA

[22] 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.

[23] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #21091. The Board approved the invoiced investigation costs in the amount of \$732.31 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the motor dealer

[24] 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 Compensation 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.

[25] Since this claim is denied, the investigation costs will not be charged to Bow-Mel Chrysler Ltd.

Reconsideration

[26] 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.

Date: May 11th, 2023

/Original is signed/

Mary Childs
Vice-Chair, Motor Dealer Customer Compensation Fund Board

ds/ag/MC

Attachment