



**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:

**Nicole Romanowski**

Claimant

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 February 9, 2022, a Claim for compensation from the Motor Dealer Customer Compensation Fund (the "**Fund**") filed by Nicole Romanowski (the "**Claimant**") 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 December 15, 2021 due to the Board's request for further evidence from the Vehicle Sales Authority ("**VSA**").

**Decision**

[2] The Board has determined that the claim should be denied.

**Claim Summary**

[3] This claim is for \$2,500.00 and is a result of a transaction which occurred on September 23, 2019, between the Claimant and Kamloops Chrysler Dodge Jeep Ram Ltd. ("**Kamloops Chrysler**") in which the Claimant purchased a 2017 Volkswagen Jetta (the "**Jetta**"). The purchase was financed by TD Auto Finance.

[4] As part of the subject transaction, the Claimant purchased an extended warranty from Kamloops Chrysler which was provided by First Canadian Protection Plan ("**FCPP**"). The Claimant paid Kamloops Chrysler an additional \$2,500.00 for the extended warranty, which was described by its sales manager as a 50% discounted price. The Claimant did not receive a copy of the FCPP extended warranty policy or the policy number from Kamloops Chrysler.

[5] On September 24, 2020, the Claimant called FCPP to inquire about the process of transferring the warranty to a new owner if the Jetta were to be sold. The Claimant's records were located, and an FCPP representative advised that:

(a) the extended warranty for the Jetta was opened on September 23, 2019, cancelled four days later, and was void; and

(b) the regular price for the extended warranty that was purchased by the Claimant was in fact \$4,900.00 and not \$2,500.00 as charged by Kamloops Chrysler.

[6] A friend of the Claimant contacted Kamloops Chrysler to make enquires concerning the Claimant's purchase of the extended warranty. The salesperson who assisted the Claimant with the original transaction stated that effective September 8, 2020, Kamloops Chrysler had gone bankrupt, that a Trustee had been appointed, and that new owners were operating the dealership. The Claimant's friend next spoke with the Trustee who advised that the previous owners of Kamloops Chrysler did not have sufficient funds to refund the Claimant the cost of the extended warranty.

[7] On May 31, 2021, FCPP advised the VSA that it would honor the Claimant's extended warranty despite the fact that it had received no payment for it and that a certificate reflecting this would be mailed to the Claimant.

[8] On June 1, 2021, the Claimant advised the VSA that the Claimant sold the Jetta on May 14, 2021 and wished to be refunded the \$2,500.00 that the Claimant had paid Kamloops Chrysler for the extended warranty. FCPP subsequently advised the VSA that as they had determined that they would honor the extended warranty, any eligible repairs incurred by the Claimant would have been covered under the policy but as they had not received payment for the warranty, they could not refund the Claimant's purchase. On this basis, the Claimant brought this claim to the Board.

#### **Legislative Authority and the Board's Findings**

[9] In considering this claim, the Board reviewed the following documents, copies of which were provided to the Claimant and to Kamloops Chrysler at the pre-hearing stage and to which each had an opportunity to respond:

- (i) the Claimant's Demand to Motor Dealer;
- (ii) the Claimant's Claim Application;
- (iii) the Claim Investigation Report dated March 3, 2021;
- (iv) the Claim investigation Report Addendum dated July 14, 2021; and
- (v) the Investigation Cost Recovery Invoice.

[10] Section 5(1)(b) of the *Motor Dealer Customer Compensation Fund Regulation* (the "**Regulation**") provides that the following loss is eligible for compensation from the Fund:

*"With respect to the purchase of an extended warranty or service plan, the loss of the unexpired portion of the warranty or plan resulting from the bankruptcy, insolvency, receivership or other failure of the motor dealer."*

[11] In applying section 5(1)(b) of the *Regulation* against the facts in this claim, the Board found that despite Kamloops Chrysler's apparent failure to forward to FCPP the \$2,500.00 paid by the Claimant for the extended warranty, FCPP ultimately honored the purchase and provided the warranty coverage to the Claimant and as such, the Claimant did not suffer a loss of its unexpired portion. The Board further found that the warranty was non-refundable and included a 30-day term in the policy to transfer the warranty to the next buyer.

[12] Given these findings, the Board found that the Claimant did not suffer a loss that was eligible for compensation from the Fund.

[13] The Board has jurisdiction to assess claims which fall within the specific terms of the *Regulation* only. The claimants 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 VSA Fact Sheet *Where to go for help*.

#### **Investigation Cost Recovery by the VSA**

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

[15] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #20281-3. The Board approved the invoiced investigation costs in the amount of \$1,552.86 for reimbursement to the VSA from the Fund.

#### **Reimbursement to the Fund by the Motor Dealer**

[16] Section 24 of the MDA provides that where a claim is paid out of the Fund, the motor dealer who caused the claim must reimburse the Fund for that amount and for any investigations costs reimbursed. The Registrar of Motor Dealers may cancel the dealer license of the motor dealer who caused the claim if the Fund is not repaid.

[17] Since this claim has been denied, Kamloops Chrysler will not be required to reimburse the Fund for the above-referenced investigation costs.

#### **Finality of Decision**

[18] Decisions of the Board cannot be appealed. Section 16(2) of the MDA provides that "*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: Sections 16(2), 18.1 and 18.2 of the MDA provide that the Board may, at its discretion, reconsider its own 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 which 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: March 4, 2022

/Original is signed/

\_\_\_\_\_  
Ian Moore  
Chair, Motor Dealer Customer Compensation Fund Board

*Enclosure: Fact Sheet*

Suite 280 – 8029 199th Street  
Langley, British Columbia  
V2Y 0E2

Telephone 604.575.7255  
Toll Free 1.877.294.9889  
Facsimile 604.575-7080

Email [compensationfund@mvsabc.com](mailto:compensationfund@mvsabc.com)  
Web [www.vehiclesalesauthority.com](http://www.vehiclesalesauthority.com)