



Claim No.: C-21-11-066
Neutral Citation: 2022-BCMDCCFB-023

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:

Kalok Hui

Claimant

INVOLVING:

**Motormax Used Cars Ltd.
Dealer Licence 23957 / Canceled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On December 9, 2022, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "**Fund**") filed by Kalok Hui (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 \$12,000.00 and is based on a consignment agreement entered into between the Claimant and Motormax Used Cars Ltd. ("**Motormax**") on October 6, 2018, for a 2003 Mazda RX8 (the "**Mazda**"). The Motormax representatives assured the Claimant that the Mazda would be sold by 2019.

[4] As alleged by the Claimant, in August 2019, despite that the Mazda was still not sold, Mr. Hui was advised by Motormax that the Mazda needed repairs which were too expensive for Mr. Hui at the time. Motormax representatives then presented a lower quote for the repairs but stated it would be poor workmanship and it would not be ready to sell until the end of the summer.

[5] In the summer of 2020, Mr. Hui attempted to reach Motormax to reclaim the Mazda as it had still not been sold. A Motormax representative eventually called him back only to advise that he had been out of the country dealing with family issues. Mr. Hui then gave Motormax until the end of summer 2021 to sell the Mazda claiming that if it did not sell by then, he would take it back.

[6] Due to the Mazda still not being sold in June 2021, Mr. Hui reached out to Motormax to have his Mazda returned. The dealer representative advised that he was presently engaged in a lawsuit and would not be able to access the dealership to return the Mazda until the lawsuit was resolved. The Claimant is now seeking compensation in the amount of \$12,000.00 for the Mazda.

Legislative Authority and the Board's Findings

[7] In reviewing the eligibility of the Claimant's alleged loss, the Board applied Section 4(b) of the *Motor Dealer Customer Compensation Fund Regulation* (the "**Regulation**") which lists who may apply for compensation.

[8] The Board reviewed the documents on file, copies of which were provided to the Claimant and to Walker Auto Sales at the pre-hearing stage and to which both parties had an opportunity to respond. The documents under review included:

- a. Claimant's Allegations Summary,
- b. Demand to Motor Dealer,
- c. Claim Application,
- d. Investigation Report; and
- e. Investigation Cost Recovery Invoice.

[9] The Board rejected the facts as alleged by the Claimant. The Board found that the claim is not eligible for compensation due to the fact that the Claimant did not own the vehicle at the time of the alleged consignment. The Mazda had already been sold and was owned by another party, prior to the Claimant's alleged consignment to Motormax. The Claimant, thus, does not qualify as an individual who may apply for compensation under the *Regulation*.

[10] The Board has jurisdiction to assess claims that 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 or speak with a lawyer about other possible remedies. Enclosed is the Vehicle Sales Authority of BC (the "**VSA**") Fact Sheet *Where to go for help*.

Investigation Cost Recovery by the VSA

[11] 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.

[12] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #21066-1. The Board approved the invoiced investigation costs in the amount of \$812.19 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the Motor Dealer

[13] 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.

[14] Since this claim is denied, the investigation costs will not be charged to Motormax.

Reconsideration

[15] 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: January 4, 2023

Motor Dealer Customer Compensation Fund Board

Per:

/Original is signed/

Ian Moore, Board Chair
Enc.