



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:

Rob Hunter

Claimant

INVOLVING:

**Comox Valley Nissan Ltd.
Dealer Licence 10636 / 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 Rob Hunter (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 \$4,020.45 and is based on the transaction between the Claimant and Comox Valley Nissan Ltd. ("**Comox Valley**") on December 21, 2016, in which the Claimant purchased a 2014 Dodge 2500 4x4 Crew Cab (the "**Dodge**") from Comox Valley, together with a warranty in the amount claimed.

[4] The Claimant was advised by a Comox Valley salesperson at the time of purchasing the Warranty that there would be a "*Claims Free Reward*" meaning that if the Warranty was not used by the expiration date, then the amount paid for the warranty would be fully refunded.

[5] As the expiration date was approaching, the Claimant called the warranty company, to let them know that he did not use the warranty before its expiry date. He was then informed that the warranty in fact did not have the Claims Free Reward option, contrary to what he was advised by Comox Valley.

Legislative Authority and the Board's Findings

[6] In reviewing the eligibility of the Claimant's alleged loss, the Board applied Section 5(1)(b) of the *Motor Dealer Customer Compensation Fund Regulation* (the "**Regulation**") which lists the losses eligible from the Fund "*with respect to the purchase of an extended warranty plan, the loss of an unexpired portion of the warranty or plan resulting from bankruptcy, insolvency, receivership or other failure of the motor dealer*".

[7] 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,
- e. Investigation Cost Recovery Invoice; and
- f. The Claimant's Response to the Investigation Report.

[8] The Board found that the claim is not eligible for compensation due to the fact that a clear contract was in place and the option for which compensation is being sought was simply not part of the contract. Therefore, compensation for the Claims Free Reward Option is contrary to the terms of the contract.

[9] 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 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

[10] 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.

[11] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #202058. The Board approved the invoiced investigation costs in the amount of \$668.28 for recovery by the VSA from the Compensation Fund.

Reimbursement to the Fund by the Motor Dealer

[12] 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.

[13] Since this claim is denied, the investigation costs will not be charged to Comox Valley.

Reconsideration

[14] 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.