



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:

Keith Tindle

Claimant

INVOLVING:

**Prime Auto Sales Langley Ltd.
Dealer Licence # 40326/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 Keith Tindle (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 April 20, 2022.

Decision

[2] This claim has been approved for \$18,800.00, which will be paid to the Claimant from the Fund.

Claim Summary

[3] This claim is based on the transaction that occurred on October 21, 2018, between the Claimant and the Motor Dealer, Prime Auto Sales Langley Ltd. ("**Prime Auto**"), for the purchase of a 2015 Nissan Pathfinder (the "**Pathfinder**") vehicle for which the Claimant paid \$18,800.00.

[4] On July 19, 2021, the Pathfinder was seized from the Claimant's underground parking lot by a bailiff acting on behalf of TD Auto Finance (Canada) Inc. ("**TD Auto**"). It was only after the Pathfinder was seized that the Claimant learned that TD Auto had registered a lien against it on August 24, 2018. At the time of the transaction, Prime Auto had not disclosed to the Claimant that the Pathfinder had a lien on it.

Legislative Authority and the Board's Findings

[5] The Board reviewed the documents on file, copies of which were provided to the Claimant and to Prime Auto 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.

[6] 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 applicant is an individual [Regulation, Section 4)];
- (iv) the applicant purchased the Pathfinder from a registered motor dealer [Regulation, Section 4(a)]; and
- (v) the Pathfinder was to be used primarily for personal or family use [Regulation, Section 4(a)(i)].

[7] In reviewing the eligibility of the Claimant's alleged loss, the Board applied section 5(1)(a)(iv) 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
...
 - (iv) the failure of the motor dealer to provide clear title to the motor vehicle or to ensure that the motor vehicle was free from a charge or encumbrance, in favor of a third party, that was not declared or known to the buyer at the time the purchase was made."

[8] The Board found that at the time the Claimant purchased the Pathfinder, Prime Auto failed to provide clear title to the Pathfinder and failed to ensure that the Pathfinder was free from a charge or encumbrance. Prime Auto further failed to declare to the Claimant that the lien existed at the time of the purchase. As a result, the Pathfinder was ultimately seized by a bailiff on behalf of TD Auto and it was not returned to the Claimant.

[9] The Board found that the Claimant's loss was a liquidated amount and equal to the original purchase price on the basis that the Pathfinder was seized by the bailiff and not returned. The amount of the loss therefore was \$18,800.00.

[10] The Board therefore found that the Claimant's loss was eligible for compensation from the Fund as it met the requirements of section 5(1)(a)(iv) of the Regulations

Compensation Payment to the Claimant

[11] We will send the claimant a cheque in the amount of \$18,800.00 within 60 days from the date of the hearing - on or before October 9, 2022.

[12] 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

[13] According to Section 20 of the *Motor Dealer Act* (the "MDA"), the Claimant has an obligation to advise the Vehicle Sales Authority of BC (the "VSA") if the Claimant receives additional compensation from another source for the loss paid from the Fund. For instance, if an insurance company also awards the Claimant compensation for the same loss paid from the Fund, the Claimant must advise the VSA immediately about that compensation. Failure to repay the Fund may be a cause of legal action against the Claimant for the amount unrepaid.

Investigation Cost Recovery by the VSA

[14] 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.

[15] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice 21203-2. The Board approved the invoiced investigation costs in the amount of \$1,684.14 for recovery by the VSA from the Fund.

Reimbursement to the Fund by the Motor Dealer

[16] 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.

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

Finality of Decision

[18] 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.

[19] 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.

[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: August 10, 2022

Per: The Motor Dealer Customer Compensation Fund Board

/Original is signed/

Ian Moore, Chair