



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:

Patrick Traverse

Claimant

INVOLVING:

**E.J. Klassen Motorcade Ltd.
Dealer Licence #7983/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On August 10, 2022, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "**Fund**") filed by Patrick Traverse (the "**Claimant**") was presented to the Motor Dealer Customer Compensation Fund Board (the "**Board**") for hearing.

Decision

[2] This claim has been approved for \$2,166.15, which will be paid to the Claimant from the Fund.

Claim Summary

[3] This claim arises out of a transaction between the Claimant and E.J. Klassen Motorcade Ltd. ("**E.J. Klassen**") which occurred on January 31, 2020, when the Claimant purchased a 2014 Hyundai Elantra Sport Limited (the "**Elantra**").

[4] As part of the Claimant's purchase of the Vehicle, the Claimant also purchased an Automobile Mechanical Breakdown Insurance Policy (the "**Policy**"). The Policy was offered by iA Pacific General ("**iA**") at a cost of \$2,166.15.

[5] On February 6, 2020, the Motor Dealer's assets were sold to Applewood Chevrolet Buick GMC ("**Applewood**").

[6] In September 2020, the Claimant experienced mechanical difficulties with the Vehicle and he brought it to Applewood for repairs to be performed under the Policy. The Claimant was advised by Applewood that iA had not received the Claimant's payment for the policy from E.J. Klassen and that as a result, the Claimant had no insurance coverage to cover the repairs.

[7] On September 17, 2020, the Claimant purchased a second insurance policy from iA at a discounted price of \$1,390.20 which was forwarded by Applewood to iA.

Legislative Authority and the Board's Findings

[8] The Board reviewed the documents on file, copies of which were provided to the

Claimant and to E.J. Klassen 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.

[9] In assessing the eligibility of the claim, 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 motor vehicle from a registered motor dealer [Regulation, Section 4(a)]; and
- (v) the Elantra was to be used primarily for personal or family use [Regulation, Section 4(a)(i)].

[10] In reviewing the eligibility of the Claimant's alleged loss for compensation from the Fund, the Board applied section 5(1)(a)(iii) 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
 - ...
 - (iii) the dishonest conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer.

[11] The Board found that the Claimant purchased a motor vehicle from E.J. Klassen. Included in the total purchase price was the Policy at a price of \$2,166.15 (inclusive of GST). The Board further found that E.J. Klassen failed to forward the amount paid by the Claimant for the Policy to iA and as such, no policy was issued by iA to the Claimant.

[12] The Board found that failure by E.J. Klassen to forward the amount paid to it by the Claimant for the Policy constitutes dishonest conduct. Further, the amount paid by the Claimant for the Policy is clearly indicated on the Purchase Agreement and as such, it is a liquidated amount.

[13] The Board found that the Claimant's loss was eligible for compensation from the Fund as it met the requirements of section 5(1)(a)(iii) of the Regulation.

[14] In determining the amount of compensation, the Board found that the compensation equals the amount paid for the Policy, i.e., \$2,166.15.

Compensation Payment to the Claimant

[15] We will send the claimant a cheque in the amount of \$2,166.15 within 60 days from the date of the hearing - on or before October 9, 2022.

[16] 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

[17] 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

[18] 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.

[19] The Board reviewed the VSA Investigation Cost Recovery Invoice for this claim - Invoice #20126-2. The Board approved the invoiced investigation costs in the amount of \$715.24 for recovery by the VSA from the Fund.

Reimbursement to the Fund by the Motor Dealer

[20] 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.

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

Finality of Decision

[22] 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.

[23] 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.

[24] 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