

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:

Monica Adame Kotrbackova

Claimant

INVOLVING:

**Wells Auto Sport A Division of 688271 B.C. Ltd.
Dealer Licence 30457/cancelled**

Motor Dealer

DECISION OF THE MOTOR DEALER CUSTOMER COMPENSATION FUND BOARD

By way of written submissions.

[1] On February 14, 2024, the claim for compensation from the Motor Dealer Customer Compensation Fund (the "**Fund**") filed by Monica Adame Kotrbackova (the "**Claimant**") was presented to the Fund Board (the "**Board**") for hearing. The claim is about the purchase of an extended warranty from a dealer which is no longer in business.

Decision

[2] This claim has been denied.

Claim Summary

[3] The following are the allegations of the Claimant:

[4] This claim is about a transaction on December 31, 2022 between the Claimant and Wells Auto Sport A Division of 688271 B.C. Ltd. ("**Wells Auto Sport**"). The Claimant bought a 2015 Kia Optima LX (the "**Kia Optima**") from Wells Auto Sport. She also bought a Global Warranty Bronze extended warranty (the "**Warranty**") for the Kia Optima. The Claimant says Wells Auto Sport told her the Warranty was for a two-year term. The Purchase Agreement for the Kia Optima listed the price of the Warranty as \$1,587.00, but it didn't state the term of the Warranty. The Claimant did not receive the Warranty documentation at the time of the transaction.

[5] The Claimant later discovered from Global Warranty that the Warranty was for a one-year term and its face value was \$399.00 plus GST. The Warranty documents showed that Wells Auto Sport had underreported the Kia Optima's mileage by about 20,000 kilometers.

[6] The claim is for \$1,247.50, representing the difference between the amount the Claimant was charged for the Warranty by Wells Auto Sport (\$1,587.00 plus GST) and the face value of the Warranty as stated by Global Warranty (\$399.00 plus GST).

Legislative Authority and the Board's Findings

[7] When considering the eligibility of the Claimant's alleged loss, the Board applied Section 5(1) of the *Motor Dealer Customer Compensation Fund Regulation* (the

"**Regulation**") which says which losses are eligible for compensation from the Fund. Section 5(1)(b) of the *Regulation* states:

"5 (1) *The following losses are eligible for compensation from the fund:*

(b) 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".

[8] The Board reviewed the documents on file, copies of which were provided to the Claimant and Wells Auto Sport at the pre-hearing stage. Both parties had an opportunity to respond to those documents. The documents included:

- a. Demand to Motor Dealer;
- b. Claim Application;
- c. Investigation Report; and
- d. Investigation Cost Recovery Invoice.

[9] The Board found that there was not enough evidence that the claim fit the eligibility criteria in Section 5(1)(b) of the *Regulation* and denied the claim.

[10] Before it can allow a claim, the Board must have sufficient evidence of the essential facts. The evidence does not need to be overwhelming, but it must be enough to persuade the Board on a balance of probabilities. In other words, the Board must be satisfied that the facts supporting the claim are more likely than not to exist. A Claimant's statement is not usually enough by itself, without some other supporting evidence.

[11] The Claimant says that she was told the Warranty was for two years, and that her loss is of the unexpired portion of the Warranty. Unfortunately, she has not been able to provide to the Board any supporting evidence for her statement. None of the documents reviewed by the Board indicated the term of the Warranty, other than the documents provided by Global Warranty. Those documents said it was for a one-year term, not two.

[12] The Board has two conflicting pieces of evidence about the term of the Warranty: the Claimant's statement and the Global Warranty documents. Neither is conclusive. It is possible that Wells Auto Sport told the Claimant the Warranty was for two years; it is also possible that she misunderstood or misremembered what was said. Without more, the Board does not have enough evidence to conclude on a balance of probabilities that the Warranty was for two years.

[13] The Board can only deal with claims that fall within the specific terms of the *Regulation*. The Claimant may have other legal remedies and is encouraged to do her own investigations into other possible remedies. Attached is the Vehicle Sales Authority of BC (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 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 #22153. The Board approved the invoiced investigation costs in the amount of \$440.69 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] Since this claim is denied, the investigation costs will not be charged to Wells Auto Sport.

Reconsideration

[18] 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: March 27, 2024.

Motor Dealer Customer Compensation Fund Board

Per:

/Original is signed/

Mary Childs, Board Chair

Attachment
MC/ag/jm