

**Licence  
Appeal  
Tribunal**

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September 20, 2006

**MEMORANDUM**

**Re: Paul Sandrin**

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

**DISTRIBUTION LIST:**

Victor Nikitine for the Applicant  
Aviva Harari for the Respondent

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PAUL SANDRIN

APPEAL FROM A DECISION OF THE BOARD OF  
TRUSTEES OF THE MOTOR VEHICLE DEALERS  
COMPENSATION FUND

TRIBUNAL: IRVIN H. SHERMAN Q.C., Vice-Chair

APPEARANCES: VICTOR NIKITINE, Student-at-law for Paul Sandrin, the Applicant  
AVIVA HARARI, Counsel, representing the Board of  
Trustees of the Motor Vehicle Dealers Compensation Fund

DATE OF  
HEARING: September 15, 2006

Toronto

**REASONS FOR DECISION AND ORDER**

**BACKGROUND:**

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a written decision of the Board of Trustees (the "Board") of the Motor Vehicle Dealers Compensation Fund (the "Fund") dated April 25, 2006, wherein the Board denied the Applicant's claim for compensation from the Fund because the Applicant has not suffered a pecuniary loss arising out of a transaction involving a trade in a motor vehicle.

The facts giving rise to this appeal are not in dispute. In October 1998, the Applicant purchased a Chevrolet Camaro automobile from 12600 Ontario Inc. c.o.b. as Highland Creek Motors (the "Dealer"). The Applicant entered into a Conditional Sales Agreement ("CSA") with the dealer that was assigned to CIBC Finance Inc. ("CIBC"). The Applicant experienced problems with the Camaro shortly after he purchased this car. He informed CIBC of these problems. The Applicant claimed that he entered into two agreements with CIBC. The first agreement was to the effect that the dealer would repair the Camaro within two weeks failing which the dealer would repurchase his loan. The second agreement stipulated that if the dealer was unable to repair the Camaro, then it would sell the Camaro

and bear any loss with respect to the sale. The Applicant cancelled the insurance that he placed on the Camaro after leaving it at the dealership for two weeks. The Camaro was stolen and vandalized. When the dealer refused to pay the balance owing, CIBC attempted to collect the balance for the Applicant who denied owing any money. The Applicant then brought suit in the Superior Court of Justice seeking a declaration that the CSA was unenforceable against him and for other relief not relevant to this appeal.

Following "a three day trial that spanned four days", Madame Justice Spies held that the CSA was unenforceable against the Applicant (*Sandrin v. 26001 Ontario Inc. c.o.b. Highland Creek Motors* [2005] O.J. No. 2228 (Quicklaw)).

### **THE MOTOR VEHICLE DEALERS CLAIMS FUND:**

The Lieutenant Governor in Council may make regulations under subsections 24 (o) and (q) of the *Motor Vehicle Dealers Act* R.S.O. 1990, c.M.42 for the establishment, maintenance and administration of the fund and the procedures or rules relating to payments out of the Fund.

The Fund is established under section 2 of the Schedule to Regulation 801, R.R.O. 1990 (the "Regulations"). Under subsection 10 (a) of the Regulations the maximum amount payable out of the fund is limited to \$15,000.00 exclusive of costs.

The remaining regulatory provisions relevant to this appeal are:

"claim" means a claim for pecuniary loss arising out of a transaction involving a trade in a motor vehicle.

"claimant" means an applicant for payment out of the Fund and "application" has a corresponding meaning.

12. (3) A customer may make a claim against the Fund where the customer gives written notice of the claim to the Registrar within two years of the participant's refusal or failure to pay, even if the motor vehicle dealer with respect to whom the claim is being made ceased to be a participant after the refusal or failure to pay, and where the claim meets one of the following requirements:

1. The customer has recovered in any court in Ontario a judgment in respect of the claim and the judgment has become final by reason of the expiration of the time for appeal or of having been confirmed by the highest court to which an appeal may be taken and the customer makes an application, supported by the judgment and statement of claim, for payment of the unsatisfied portion of the judgment and costs as assessed.

### **THE APPLICANT'S SUBMISSIONS**

The Applicant seeks that the sum of \$15,000.00 be paid to him out of the Fund. He submits that he has suffered a pecuniary loss, namely the \$16,000.00 costs awarded to

him by the Court, and which has not been paid by the dealer who has gone out of business. The Applicant refers to that portion of Madame Justice Spies' Supplemental Reasons for Judgment where Her Ladyship wrote: "... *all of the troubles encountered by [the Applicant] are all the fault of [the dealer]*" who breached his contract with the Applicant and who was responsible for the theft and loss of the Camaro." The judgment that the Applicant has against the dealer relates to costs only. It is submitted by giving the word "judgment" a large and liberal interpretation in the manner referred to in section 10 of the *Interpretation Act* R.S.O. 1990, c.l.11, then it can be said that an award for costs is subsumed in the word "judgment" as found in paragraph 12(3)(1) of the Regulations.

### THE RESPONDENT'S SUBMISSIONS:

The Respondent submits that its decision denying the Applicant's compensation from the Fund is correct because the Applicant has not suffered any pecuniary loss that arose out of a transaction involving a trade in a motor vehicle. The Respondent refers to paragraphs 5 and 10 of the Supplemental Reasons for Judgment where Spies J. wrote:

Mr. Morton [the Applicant's counsel] submits, however, that I should award [the Applicant] costs notwithstanding that I did not give judgment in favour to [the Applicant] against [the dealer]" and "I would have awarded judgment against [the dealer] in favour of [the Applicant] if he had suffered a financial loss.

With respect to the application of paragraph 12(3)(1) of the Regulations, the Registrar's counsel referred to that portion of the decision of the Ontario Court (General Division) Divisional Court in the unreported case of *The Motor Vehicle Dealers Compensation Fund v. Maria Didaskalou* (Court File No. 135/94), where the Court stated at page two of its decision:

In our view, when a claim under this provision is made, the Board of Trustees cannot look behind the judgment to decide whether the judge erred in awarding damages or in fixing the amount of those damages. Instead, pursuant to the definition of "claim" in s.1 of the Schedule, the Trustees are simply to decide (a) whether the awarded amount to a claim for a pecuniary loss and, if so, (b) whether they arose out of a transaction involving a trade in a motor vehicle.

### ANALYSIS:

The Tribunal, like the Board of Trustees, cannot look behind the court judgment in the Applicant's case against the dealer and CIBC (*Didaskalou*, supra). Madam Justice Spies has found that the Applicant did not suffer any damages. The Applicant suffered no pecuniary loss. There is no judgment in the Applicant's favour against the dealer. When the Applicant's counsel appeared before Her Ladyship on the application for costs, he submitted that the dealer pay the Applicant's costs notwithstanding the fact that the Court did not award judgment in the Applicant's favour (Supplemental Reasons for Judgment, paragraphs 5 and 8). Her Ladyship stated that she would have awarded the Applicant if he had suffered a financial loss (Supplementary Reasons for Judgment, paragraphs 5, 8 and 10).

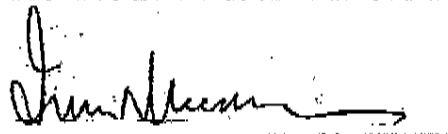
When the Applicant purchased the Camaro from the dealer, there was a trade in a motor vehicle. Title to the Camaro subsequently reverted to the dealer such that the Applicant no longer had any interest in the Camaro. He was not responsible for the damage to the stolen Camaro because he did not own the Camaro at that time. He incurred no liability to CIBC on the CSA. He has suffered no pecuniary loss. He cannot make a claim against the fund. He does not meet the definition of "claim".

Costs are a discretionary remedy granted by the court under section 131 of the *Courts of Justice Act* and the rules of the court. They are awarded by the court as an indemnity to the person entitled to them. The Court of Appeal has held that costs are incidental to the determination of the rights of the parties. They are a procedural matter as distinct from a matter of substance, *Somers v. Fournier et al.* (2002), 60 O.R. (2<sup>nd</sup>) 225. The Tribunal finds that the word 'judgment' as found in paragraph 12 (3)(1) of the Regulations refers to matters of substance arising as consequence of the wrongful actions of motor vehicle salespersons or dealers to the detriment of the purchaser. The award of costs by the Superior Court to the Applicant cannot be said to fall within the definition of "judgment".

#### ORDER:

The Tribunal finds that the Applicant has not proven that the amount of compensation should be increased and, therefore, pursuant to the provisions of section 15(3) of the Schedule to Ontario Regulation 801, R.R.O, 1990, as amended, made pursuant to the Act, the Tribunal hereby confirms the decision of the Board with respect to the application of the Applicant.

LICENCE APPEAL TRIBUNAL



Irvin H. Sherman, Q.C.  
Vice-Chair

*Released: September 20, 2006*

Filename 3550.mvdcf.sandrin.doc

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, will also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> in approximately two weeks time. The decision will also be available on Quicklaw at a later date.