

OLD REPUBLIC SURETY COMPANY '
c/o Kay L. Cason, Esq.
Gorham & Waldrep '
2101 6th Avenue North, Suite 700
Birmingham, AL 35203, '
Petitioner, '
v. '
STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION
DOCKET NO. MISC. 98-487

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

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v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department made a demand against Old Republic Surety Company (APetitioner@), as surety, on a \$10,000 surety bond the Petitioner issued to Steven R. Quinn, d/b/a J & S Auto Sales, as principal, pursuant to Code of Ala. 1975, ' 40-12-398. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a). A hearing was conducted on February 18, 1999. Kay Cason represented the Petitioner. John Green represented Colin and Odette Bacchus. Assistant Counsel John Breckenridge represented the Department. Stephen R. Quinn was notified of the hearing, but failed to appear.

The issue in this case is whether the Petitioner is liable to the Department on the \$10,000 surety bond in question.

Steven R. Quinn was a licensed motor vehicle dealer in Alabama during the subject period. As a motor vehicle dealer, Quinn was required by ' 40-12-398 to obtain a \$10,000 surety bond. Quinn accordingly obtained a \$10,000 bond from the Petitioner in 1995. The bond was renewed annually, and was in effect during

the period in issue.

Colin and Odette Bacchus purchased a 1986 Chevrolet from Quinn in October 1996. The Bacchuses sued Quinn in Madison County Circuit Court in 1997 concerning the vehicle. The complaint alleged that Quinn was guilty of breach of contract, deceit, and fraud, and that Quinn violated the Deceptive Trade Practices Act and the Federal Truth In Lending Act. The complaint claimed compensatory and punitive damages.

The Bacchuses moved for summary judgment after Quinn failed to respond to the complaint. In support of the motion, the Bacchuses submitted a sworn affidavit claiming they were entitled to \$7,650.84 due to violation of the Federal Truth In Lending Act, \$10,000 in compensatory damages due to fraud, and \$10,000 in punitive damages. Based on that evidence, the Madison County Circuit Court entered a default judgment against Quinn for \$27,650.84.

The Bacchuses attempted but were unable to collect the judgment from Quinn. They consequently contacted the Department, and the Department made a demand against the Petitioner on the bond. The Petitioner appealed.

The Petitioner argues it should not be liable on the bond because:

- (1) A default judgment against Quinn, as principal, is not binding on the Petitioner, as surety;
- (2) The Petitioner may assert any defense that Quinn could have asserted in the circuit court action;

(3) The Petitioner is not liable for any part of the judgment constituting punitive damages; and,

(4) The Petitioner's liability is limited to only actual damages.

The Petitioner's arguments, although well-articulated, are rejected. This case turns on the plain language of ' 40-12-398. That statute provides in pertinent part:

A...Such bond shall be in a form to be approved by the commissioner, and shall be conditioned that the motor vehicle dealer,...shall comply with the conditions of any contract made by such dealer in connection with the sale or exchange of any motor vehicle and shall not violate any of the provisions of law relating to the conduct of the business for which he is licensed. Such bond shall be payable to the Commissioner and to his successors in office, and shall be in favor of any person who shall recover any judgment for any loss as a result of any violation of the conditions hereinabove contained.@

The language of the statute is sufficiently broad to make a surety liable for Aany judgment@against a dealer/principal Afor any loss@incurred in conjunction with the principal's operation as a motor vehicle dealer. The language of the actual bond is narrower than the language of ' 40-12-398, but it is also sufficiently broad to make the Petitioner liable in this case.

Concerning Petitioner's argument (1), ' 40-12-398 does not distinguish between a default judgment and other judgments. It states only that the bond shall be payable for Aany judgment@. I recognize the Petitioner's public policy argument that a default judgment should not be binding on a surety. But it is for the Legislature to decide public policy. As indicated, the Legislature included the broad language Aany judgment@in ' 40-12-398. In any case, there is no evidence or even allegations of a conspiracy to defraud the Petitioner in this case.

The Petitioner's argument (2) claims the Petitioner should be allowed to assert

any defenses that Quinn could have asserted. However, the Petitioner has not offered any valid defense that was available to Quinn. The Petitioner argues it should be allowed to challenge the method by which damages were determined, and to assert that the damages for which it is liable are less than the amount claimed. However, the Petitioner's liability on the bond is fixed by statute to the amount of the judgment, up to \$10,000. The Department is not authorized or empowered to look behind the circuit court judgment to determine if the court's computation of damages was correct.

The Petitioner's argument (3) that the Petitioner is not liable for punitive damages included in the judgment must also fail. First, the Petitioner has not identified what part of the judgment, if any, constituted punitive damages for which it is not liable. Second, the Bacchuses submitted a sworn affidavit in circuit court specifying \$10,000 in punitive damages, and \$17,650.84 in compensatory and other damages. The circuit court incorporated that sworn evidence in its Order, and accordingly entered judgment against Quinn for \$27,650.84. Although the Order itself did not distinguish between punitive damages and compensatory damages, the Court relied on the Bacchuses' affidavit in entering its Order. Thus, even if the Petitioner is not responsible for punitive damages, the compensatory damages were more than the \$10,000 bond limit. In any case, as indicated, ' 40-12-398 states that the surety is liable for any judgment, regardless of how it was computed.

Likewise, Petitioner's argument (4) must also fail, again based on the clear wording of ' 40-12-398. The nature of the damages included in the judgment is irrelevant.

In summary, the Petitioner issued Quinn a \$10,000 surety bond conditioned to pay any judgment against Quinn relating to his conduct as a motor vehicle dealer. The Bacchuses received a judgment against Quinn relating to their purchase of a motor vehicle from Quinn. The Petitioner is thus liable on the bond. The Department's demand against the Petitioner for payment on the bond is affirmed.

This Final Order may be appealed to circuit court within 30 days. Code of Ala. 1975, ' 40-2A-9(g).

Entered July 21, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: John Breckenridge, Esq.
Kay L. Cason, Esq.
John W. Green, III, Esq.
Floyd Atkins