

IN THE MATTER OF

THE AUCTIONEERS ACT, SS 1978 c A-34

AND

Troy Douglas (o/a 5K Auction Services)

DECISION AND DEMAND FOR FORFEITURE OF BOND

Introduction

1. The within Demand for Forfeiture of Bond ("Demand") is made with respect to the bond filed by Troy Douglas O/A 5K Auction Services ("5K Auction Services") pursuant to section 17 of *The Auctioneers Act, SS 1978, c A-34* ("Act").

2. Section 17 of the Act provides the Registrar may demand that the bond be forfeited in certain situations, including if the person with respect to whose conduct the bond is conditioned has a final judgement against them in respect of a claim arising from an auction (section 17(3)(b)).

3. Section 13 of *The Financial and Consumer Affairs Authority Act* and section 2-26 of *The Legislation Act* provides the authority to the Registrar to delegate any responsibility or power imposed on or assigned to the Registrar to the Executive Director, Consumer Protection Division.

4. The Executive Director, Consumer Protection Division may exercise the responsibilities or powers of the Registrar for the purposes of the Act.

5. In this decision, in my delegated capacity as Registrar, I am not deciding how money realized from the bond will be paid. The Lieutenant governor in council will by order direct bond moneys be paid according to 17(5) of the Act. Instead, my decision concerns whether to demand forfeiture of the bond.

6. For the reasons below, which are based on the information in the Disclosure Materials, the Notice of Proposed Demand for Bond ("Notice of Proposed Demand"), and written responses to the

Notice of Proposed Demand, I am satisfied that 5K Auction Services has had a final judgement against them in respect of a claim arising from an auction and I may demand forfeiture of the bond.

Background

7. Pursuant to section 17 of the *Act*, the Registrar required, and 5K Auction Services filed, penal bond (Penal Bond) number 110,024 effective June 18, 2019, in the amount of \$25,000.00. The bond was filed as a condition of 5K Auction Services' licence application under the *Act*.

8. According to the terms of the Penal Bond, the obligation to pay the proceeds of the bond to Her Majesty the Queen in right of Saskatchewan is subject to forfeiture under the provisions of *The Auctioneers Act*.

"NOW THE CONDITION of the above obligation is such that if the said obligation does not by reason of any act, matter or thing at any time hereafter become or be forfeit under The Auctioneers Act, then the said obligation shall be void, but otherwise shall be and remain in full force and effect and shall be subject to forfeiture as provided by the said Act."

9. Any obligation under the bond shall cease and determine twenty-seven calendar months after the Registrar received notice in writing of the surety's intention to terminate the obligation. The terms specifically state the following:

"PROVIDED that if the Principal or Surety at any time gives notice in writing to the Registrar of The Auctioneers Act of intention to terminate the obligation hereby undertaken then this obligation shall cease and determine in respect only of any act, matter or thing taking place, arising or done subsequent to twenty-seven calendar months after receipt by the Registrar of such notice."

10. The terms of the bond are clear that a claim under the bond with respect to any act, matter or thing taking place needs to be made before the expiration of the 27 calendar months after the receipt of notice of intention to terminate.

"PROVIDED FURTHER that if such notice has been given, any claim hereunder shall be made on the Surety before the expiration of the aforesaid twenty-seven months."

11. In addition, the terms state that no proceeds of the bond are to be paid with respect to contracts entered into 3 calendar months or more after the receipt of the notice.

"AND PROVIDED FURTHER that no proceeds of this bond shall be paid to any person in respect of a contract entered three calendar months or more after receipt by the Registrar of any such notice."

12. The Consumer Protection Division received notice of cancellation on June 23, 2020, according to the date stamp on the notice of cancellation of bond in the disclosure materials. Under the terms of the bond, the obligation would cease and determine 27 calendar months later, on or about September 23, 2022. This Demand is being made within the 27-month timeline. The obligations under the bond continued and continue to this day.

13. 5K Auction Services held a licence as an auction sales company until October 27, 2020.

14. An investigation was conducted in respect to 5K Auction Services following receipt of a complaint and claim for payment of financial loss made by [REDACTED].

15. I provided Western Surety Company ("Western Surety") and Troy Douglas operating as 5K Auction Services with the Notice of Proposed Demand, disclosure materials and a statement of Registrar's expenses. I provided Western and Mr. Douglas with an opportunity to make written submissions whether I should demand forfeiture of the bond. I received a written response from James Toothill, Chief Claims Manager and Privacy Officer and Jordan Richards, General Counsel and Chief Compliance Officer on behalf of Western Surety. Troy Douglas did not submit a response.

16. Western Surety stated in its response that "I can confirm acceptance of the notice of claim via this email. We will review everything asap and provide you with our findings and position once completed. Western Surety further responded on March 15, 2022: "I have reviewed the documents provided, and do not have any substantive comments. It appears that Western Surety is obligated under the bond and *The Auctioneer Act* to pay the \$4,078.70 judgment owing to [REDACTED], along with the \$528.46 of registrar's costs." They further asked "is it possible for Western Surety to just pay those amounts now, as opposed to paying the bond limit (\$25,000)? It doesn't look like 5K Auction Services

has conducted any auctions since the one with [REDACTED] over two years ago. It seems doubtful that any further claims will arise between now and September 2022 when our obligations under the bond cease (27 months after notice was given in June 2020). From an administrative perspective, it would be easier for us to just pay the \$4,607.16 rather than paying the full amount and then having the remainder returned to us in September. "

Issues.

17. With Western Surety's submissions in mind, I will address the following issues in this decision:

- a. Can I demand forfeiture of the full amount of the bond filed by 5k Auction Services even though the estimated amount of the claims plus the registrar's expenses are less than \$25,000?
- b. Did 5K Auction Services have a final judgement against them in respect of a claim arising out of an auction such that a demand for forfeiture of the bond can be made?

Analysis

Can and Should I Demand Forfeiture of the Bond in the Full Penal Amount?

18. In my view, the director's demand for forfeiture of the bond is not limited to the estimated amount of the current claim and the director's expenses.

19. The bond presented by 5K Auction Services is to be construed as a penal bond payable to the Crown notwithstanding the Crown has suffered no loss or damage. Section 17(2) of the Act provides as follows:

- (2) Notwithstanding that the Crown in right of Saskatchewan has not suffered any loss or damage:
 - (a) every bond filed with the registrar pursuant to subsection (1) must be construed as being a penal bond; and

(b) if any bond is forfeited pursuant to subsection (3), the amount due and owing as a debt to the Crown in right of Saskatchewan by the person bound by the bond must be determined as if the Crown had suffered a loss or damage that would entitle the Crown to be indemnified to the maximum amount of liability set out in the bond.

20. The surety's obligation to pay the penal amount is not limited to the estimated payment of loss or damage occasioned by a breach of the obligation. The amount due and owing to the Crown in right of Saskatchewan is the maximum amount of liability set out in the bond.

21. Mr. Justice Noble explained a bond surety's liabilities in *SMDA Insurance Corp v Manning Mercury Sales Ltd*, [1995] SJ No 766. In that case, the deputy registrar demanded forfeiture of a bond due to the principal's bankruptcy. The court noted the surety's liability to pay the bond arises because of the statutory provision for forfeiture under *The Motor Dealers Act* R.S.S. 1978, c. M-22. The surety is required to pay upon demand, notwithstanding the merits of underlying claims and not hold back payment until claims are adjudicated.

"The Acting Deputy Registrar of the Act, in his letter demanding payment by the plaintiff, did state that a claim arising from the sale of the vehicle had been made against the bond. However, he demanded payment by virtue of the statutory forfeiture of the bond set out above. The liability of the plaintiff is determined not by the validity of a claim made against the bond posted by the defendant but instead by the statutory provision. The plaintiff, as surety under the bond, has no right to question the validity of the claim made against the bond and no right to withhold payment until the adjudication of that claim. The plaintiff is required to pay upon demand, irrespective of the merits of the claim." (Para 14).

22. In this case I am demanding forfeiture of the bond because there is a final judgement against 5k Auction Services. The surety's liability to pay the penal amount arises because of the provisions for forfeiture in section 17(3) (b) of the Act.

Registrar may require a bond

17(1) Every applicant for a licence may be required to file with the registrar, as part of the application, a bond in the amount and form prescribed by the registrar, issued by an insurer licensed under *The Saskatchewan Insurance Act* to transact guarantee insurance.

(3) Every bond filed under subsection (1) shall be forfeited upon the demand of the registrar where:

(b) final judgment in respect of a claim arising from an auction has been given against the person in respect of whose conduct the bond is conditioned or against any authorized representative of that person;

23. The bond terms specify that the bond is subject to forfeiture as provided for in *The Auctioneers Act*

"NOW THE CONDITION of the above obligation is such that if the said obligation does not by reason of any act, matter or thing at any time hereafter become or be forfeit under the Auctioneers Act, then the said obligation shall be void, but otherwise shall be and remain in full force and effect and shall be subject to forfeiture as provided by the said Act."

24. I find that I have the authority to demand the full penal amount of the bond under the Act, and terms of the bond provided 5K Auction Services has a final judgement against it arising from an auction. The Surety's obligation is to pay the full amount.

25. Western Surety requested that it pay bond proceeds in the amount of [REDACTED] claim plus the director's expenses. However, I cannot determine the total amount of claims at this stage. There may be further claims.

26. Following receipt of the bond proceeds, the public will be advised that 5K Auction Services' bond was demanded and forfeited. The public will be provided with information on how claims may be submitted for determination. In this case, I may determine the claims and prepare a notice of proposed decision with respect to such claims. The claimant, 5K Auction Services and Western Surety will have the opportunity to make written representations with respect to the proposed determination. I will consider the written representations and decide whether the claims are entitled to a portion of the bond money. The written representations will be 5K Auction Services' and Western Surety's opportunity to be heard with respect to the claims.

27. My office will then prepare a recommendation for an order of the Lieutenant Governor in Council as to the payment of the bond proceeds for valid claims. The recommendation will depend in part, on the nature and the extent of any additional claims received and determined. Any surplus money not paid under the order must be returned to Western Surety after payment of the Registrar's expenses. Section 17 provides;

(5) The Lieutenant Governor in Council may by order direct that any moneys recovered under a forfeited bond or realized from the sale of any collateral security be:

(a) paid over:

(i) to the local registrar of the Court of Queen's Bench in trust for such persons as may become judgment creditors of the person named in that bond in respect of auctions conducted by him or his authorized representative;

(ii) to any trustee, custodian, interim receiver, receiver or liquidator of the person named in the bond or his authorized representative;

in accordance with and upon the conditions set forth in the order; or

(b) paid over to such persons as may be deemed by the registrar to be entitled to them.

(6) Any moneys not expended under an order of the Lieutenant Governor in Council made under subsection (5) shall, after the payment of any expenditures incurred by the registrar in connection with the forfeiture of the bond and the determination and settlement of valid claims, be refunded to the surety or obligor under the bond.

28. It is appropriate to demand the full penal amount even though the penal amount exceeds [REDACTED] judgement plus the registrar's estimated expenses for two reasons. The surety's obligation to pay the penal amount is not limited to the judgment and expenses. The surety's obligation is to pay the full amount. Secondly, I don't know the extent of any further valid claims at this stage.

Did 5K Auction Services have a Final Judgement against it?

29. [REDACTED] filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority describing her concerns regarding her interactions with 5K Auction Services.

30. On or about August 29, 2019, [REDACTED] contacted 5K Auction Services by way of Facebook messenger and explained that she had power of attorney for her elderly mother and asked for details of an agreement between the 5K Auction Services and [REDACTED]' mother. [REDACTED] asked that all agreements between 5K Auction Services and her mother be considered void.

31. Between September 2, 2019, and November 6, 2019, [REDACTED] [REDACTED] and 5K Auction Services had frequent exchanges over Facebook Messenger where a representative of 5K Auction Services indicated

that he has spoken to [REDACTED]' mother as well as the RCMP and have clarified the mother's rights and wishes to manage her own affairs and that the auction will continue as planned.

32. On or about [REDACTED], the auction took place at [REDACTED] mother's property, which led to disagreements between [REDACTED] and 5K Auction Services over what items were to be sold and what items were not. [REDACTED] and 5K Auction Services disagreed over what amount of money was owed to which involved party, which subsequently led to a complaint being made with the Consumer Protection Division on November 13, 2019.

33. [REDACTED] filed a statement of claim in the Provincial Court of Saskatchewan and was awarded a default judgement in her favor in the amount of \$4,078.70 on December 4, 2020.

34. 5K Auction Services was aware of this judgement but has declined to pay the amount as ordered by the judgement.

35. For the reasons above, which are based on the information provided in the Disclosure Materials, the Notice of Proposed Demand and the written responses, I am satisfied that 5K Auction Services has had a final judgement against them in respect of a claim arising out of an auction.

Decision

36. Final judgement is in respect of a claim arising from an auction has been given against Troy Douglas O/A 5K Auction Services. I demand forfeiture of the bond in the full penal amount of \$25,000 pursuant to section 17(3)(b) of the Act.

Payment and Calculation of Claims

37. The payment of bond money will depend on the nature and the extent of valid claims. The Lieutenant Governor in Council will by order direct payment of the moneys according to 17(5) of the Act.

38. If the total amount of valid claims exceeds the available bond money, pro-rating the claims is one way to share the bond proceeds amongst claimants.

39. Claimants understand their claim may be prorated. The claim for payment of financial loss form provides as follows:

"I understand that if there are multiple claims, the amount of compensation ordered by the Director may need to be prorated"

40. A claimant's pro-rated portion would be calculated taking into consideration the following:

- the amount of money received from the bond;
- the loss incurred by the claimant;
- the losses incurred by all valid claimants

41. The formula used to calculate a portion of the bond money is

$$(A/ B) \times C = D$$

Where

A= the amount determined as a valid claim for a claimant,

B= the losses incurred by all claimants who filed valid claims,

C= the amount of bond money received (in this case \$25,000),

D= prorated portion.

Appeal Information

42. If you are directly affected by my decision you may appeal to the court. s.15(1) of the Act provides as follows:

Appeal to Queen's Bench

15(1) A person who is dissatisfied with a decision of the registrar under section 14 or under subsection (3) of section 17 may, within thirty days from the date of the decision, appeal to a judge of the Court of Queen's Bench who may, upon hearing the appeal, by order do any one or more or the following things:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;

- (d) vary the decision appealed against;
- (e) refer the matter back to the registrar for further consideration and decision;
- (f) award costs of the appeal;
- (g) make such other order as to him seems just.

(2) The appeal shall be by notice of motion and a copy thereof shall be served upon the registrar not less than ten days before the day on which the motion is returnable.

(3) There shall be no further appeal.

43. Please see the Act for further details If you wish to appeal.

Applicable Legislation:

1. *The Auctioneers Act, SS 1978, c A-34, ss 2,3, 15, 17.*

DATED at Regina, Saskatchewan, this 26th day of April 2022.



Denny Huyghebaert
Registrar as delegated
The Auctioneers Act