

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas Claims Commission

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

NOV 30 2016

- Mr.
- Mrs.
- Ms.
- Miss

SPRINGDALE AUTO FINANCE Claimant

vs.

State of Arkansas, Respondent

AR Dept. of Finance & Administration

COMPLAINT

SPRINGDALE AUTO FINANCE, INC. the above named Claimant, of 1035 SUNRISE SPRINGDALE
(Name) (Street or R.F.D. & No.) (City)

AR 72764 479-751-6300 County of WASHINGTON represented by Roman Roach
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of 2933 ACADIANA FAYETTEVILLE AR 72703 479-236-1202 says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: DEA + MOTOR VEHICLE Amount sought: \$ 8,046.44

Month, day, year and place of incident or service: MARCH 7th 2016.

Explanation: SPRINGDALE AUTO FINANCE, INC. FINANCED A 2004 CHEVY TAHOE (1GNEK13Z04R225771) FOR ANGEL AYALA ON 12/26/2015. WHEN HE REGISTERED THE VEHICLE DESCRIBED HEREIN, WE PROVIDED THE PROPER PAPERWORK AND DOCUMENTS REFLECTING OUR LIEN ON THE TITLE. THE DEPARTMENT OF FINANCE AND ADMINISTRATION HAS ADMITTED TO ME, THAT AT THE TIME ANGEL AYALA REGISTERED THE VEHICLE, THE EMPLOYEE AT THE D.F.A AND MOTOR VEHICLE OMITTED AND FAILED TO PLACE OUR LIEN ON THE TITLE AND FORWARDED A FREE + CLEAR TITLE TO ANGEL AYALA. ANGEL AYALA HAS SINCE THEN SOLD THE SAID VEHICLE.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or office thereof?

No when? (Month) (Day) (Year) to whom? (Department)
(Yes or No)

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? _____, if so, state name and address

and that the nature thereof is as follows: _____ and was acquired on _____ in the following manner: _____

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Roman Roach (Print Claimant/Representative Name) [Signature] (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Springdale Arkansas
(City) (State)

(SEAL) on this 14 day of November 2016
(Date) (Month) (Year)

[Signature]
(Notary Public)

SF1-R799

My Commission Expires: March 19 2025
(Month) (Day) (Year)

RECEIVED
Do Not Write in These Spaces

Claim No. 17-0300-07

Date Filed 11-20-2016
(Month) (Day) (Year)

Amount of Claim \$ 8046.44

Fund DEA/MV

failure to follow procedures

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 8,046.44 Claim No. 17-0390-CC

Springdale Auto Finance Claimant Attorneys Springdale Auto Finance, pro se Claimant
vs. Department of Finance and Administration
Motor Vehicle Respondent Jeffery Weber Respondent
State of Arkansas

Date Filed November 30, 2016 Type of Claim Failure to Follow Procedure

FINDING OF FACTS

The Arkansas State Claims Commission (the "Claims Commission") hereby unanimously grants the Motion to Dismiss (the "Motion") filed by the Department of Finance and Administration-Motor Vehicle (the "Respondent") for the reasons contained in the Motion. As such, the claim of Springdale Auto Finance ("Springdale Auto Finance") is hereby denied and dismissed.

IT IS SO ORDERED.

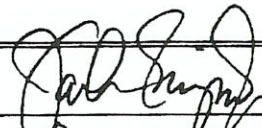

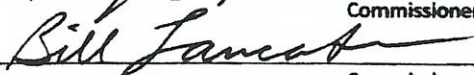
(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously GRANTS the Respondent's Motion and DENIES and DISMISSES Springdale Auto Finance's claim against the Respondent.

Date of Hearing February 16, 2017

Date of Disposition February 16, 2017


Chairman

Commissioner

Commissioner

**HARRELSON
LAW FIRM**
A PROFESSIONAL ASSOCIATION

STEVE HARRELSON

LICENSED TO PRACTICE IN
ARKANSAS, LOUISIANA & TEXAS

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LEGAL ASSISTANT: ROBIN PARKER
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Please Respond to Little Rock Office

February 22, 2017

Notice of Appeal

Arkansas
State Claims Commission

FEB 23 2017

RECEIVED

Re: *Springdale Auto Finance v. Department of Finance & Administration*
Arkansas State Claims Commission No.: 17-0390-CC

Arkansas State Claims Commission
101 East Capitol Avenue, Ste. 410
Little Rock, Arkansas 72201

Via Hand Delivery

To whom it may concern:

I have been retained by Springdale Auto Finance, the appellant in the above-referenced matter. My client received an adverse opinion from the Arkansas State Claims Commission denying his claim on February 16, 2017.

Springdale Auto Finance desires to appeal this finding to the Claims Review Subcommittee of the Arkansas General Assembly. Please acknowledge receipt of this appeal and please notify me upon placement of this item on the agenda for that subcommittee. Thank you for your attention to this matter and please do not hesitate to contact me should you have any questions.

Cordially,



Steve Harrelson

SH/rep

cc: Jeffrey Weber, Esq. (Via E-Mail: Jeffrey.weber@dfa.arkansas.gov)
Roman Roark (Via E-Mail)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

SPRINGDALE AUTO FINANCE

CLAIMANT

V.

CLAIM NO. 17-0390-CC

**ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION—
OFFICE OF MOTOR VEHICLES**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim of Springdale Auto Finance (the “Claimant”) against the Arkansas Department of Finance and Administration—Office of Motor Vehicles (the “Respondent”). At the hearing held on September 14, 2017, the president of Springdale Auto Finance, Roman Roark (“Roark”), appeared on behalf of Claimant, as well as Claimant’s attorney, Steve Harrelson. Jeffrey Weber appeared on behalf of Respondent.

Based upon a review of the pleadings, testimony, evidence, and the law of Arkansas, the Claims Commission hereby finds as follows:

FINDINGS OF FACT

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. The parties are in agreement as to the relevant facts.
3. On December 26, 2015, Angel Ayala (“Ayala”) purchased a 2004 Chevrolet Tahoe (the “Vehicle”) from Northwest Auto of Arkansas, Inc. for \$12,838.42. Claimant provided \$9,625.00 in financing. Ayala executed a Retail Installment Contract and Security Agreement (the “Installment Contract”).

4. To protect its interest in the Vehicle, Claimant noted its lien (as first lienholder) on the Vehicle's title.
5. On March 7, 2016, Ayala registered the Vehicle with Respondent using a fraudulent bill of sale and the Vehicle's title (which showed Claimant as first lienholder).
6. Ayala was issued a title on March 25, 2016, that did not list Claimant's lien. This was an error by Respondent. Respondent's witness stated that the error happened both at the local and state offices of Respondent.
7. With a "clear" title in hand, Ayala then traded the Vehicle to Jhonathan Chavez ("Chavez") for Chavez's vehicle on September 10, 2016. Chavez then obtained a title from Respondent.
8. The parties are in agreement that Chavez was a bona fide purchaser.
9. On October 27, 2016, when Ayala stopped making payments to Claimant pursuant to the Installment Contract, Claimant repossessed the Vehicle.
10. Claimant is currently in possession of the Vehicle.
11. Claimant filed a criminal complaint against Ayala, as well as a civil lawsuit in small claims court. Claimant has been unable to locate Ayala to serve him with the complaint.
12. Claimant seeks \$8,046.44 in damages from Respondent. Roark testified that the value of the Vehicle is approximately \$6,200.00.
13. Roark also testified that he will deliver the Vehicle to Chavez if Respondent will compensate Claimant's damages.

CONCLUSIONS OF LAW

14. The Claims Commission finds that Claimant satisfied its obligations under Arkansas law regarding its lien.

15. The Claims Commission finds that possession of the Vehicle does not satisfy Claimant's lien because Chavez also has title to the Vehicle.

16. The Claims Commission finds that Respondent was negligent in failing to place Claimant's lien on the certificate of title issued to Ayala. As stated on the Respondent's website:

The Office of Motor Vehicle primary responsibilities are to administer the State of Arkansas vehicle registration, title, and lien perfection laws. The Office establishes and maintains the vehicle registration, title and lien perfecting operating procedures used in the State Revenue Offices.

The Office also examines all title applications submitted in State Revenue Offices for accuracy and compliance with state law, authorizes title production for all approved title applications, maintains the state repository for vehicle registration, title and lien records . . .

(emphasis added). The responsibilities undertaken by Respondent establish a duty on the part of the Respondent to accurately list liens on titles issued by Respondent. It is undisputed that Respondent breached that duty by failing to list Claimant's lien on the title issued to Ayala. It is also undisputed that Respondent's breach caused damages to Claimant.

17. It is significant to the Claims Commission that both the local and state offices of Respondent failed to take note of Claimant's lien.

18. The Claims Commission finds that Claimant adequately pursued its remedies at law.

19. The Claims Commission finds that, upon sufficient proof of the Vehicle's return to Chavez, is entitled to an award of \$8,046.44. Such proof shall be submitted in writing to the director of the Claims Commission on or before Friday, September 29, 2017. Claimant's award is

intended to compensate Claimant for the value of the Vehicle, as well as Claimant's costs and attorney's fees.

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Co-Chair

Bill Lancaster

ARKANSAS STATE CLAIMS COMMISSION
Bill Lancaster

Sylvester Smith

ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: September 21, 2017

OCT 27 2017

**BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

RECEIVED

SPRINGDALE AUTO FINANCE

CLAIMANT

v.

Claim No. 17-0390-CC

**DEPARTMENT OF FINANCE & ADMINISTRATION
OFFICE OF MOTOR VEHICLES**

RESPONDENT

NOTICE OF APPEAL

COMES NOW the Respondent, the Arkansas Department of Finance and Administration, Revenue Division, Office of Motor Vehicle, by and through its attorney, Jeffrey Weber, Office of Revenue Legal Counsel, and for its Notice of Appeal states:

I. Introduction

1. The Arkansas Department of Finance and Administration (hereinafter "DFA") appeals from the Claims Commission's Order of September 21, 2017.

2. The appeal is limited to the Claims Commission's award of \$1,846.44, in attorney's fees and costs. DFA does not appeal the underlying award of \$6,200.00, which represents the value of the vehicle in question.

3. Because there is no statutory authority for the Claims Commission's award of costs and attorney's fees in the present case, the \$1,846.44 award should be reversed.

II. Law

4. The Claims Commission rules do not provide authority for attorney's fees and the only costs contemplated by the rules are witness fees. Claims Commission Rule 3.2(d). Only the parties testified at the hearing. No witnesses were subpoenaed.

5. Even if the statutes, cases, and rules that govern civil litigation were allowed to be used by the Claims Commission, there is still no authority for attorney's fees and costs in the present case.

6. It is well settled in Arkansas that the award of attorney's fees in civil litigation is limited to those instances where it is authorized by statute. *City of Siloam Springs v. La-De, LLC*, 2015 Ark. 433, 4, 475 S.W.3d 869, 872. *See also, Nissan North America v. Harlan*, 2017 Ark. App. 203, 12, 518 S.W.3d 89, 97.

7. In civil litigation, costs are allowed to the prevailing party if the court directs. Ark. R. Civ. P. 54(d)(1). Costs are limited to filings fees and other fees charged by the clerk, and fees for service of process, subpoenas, warning orders, and interpreters. Costs also include witness fees and mileage allowances, and fees for experts or masters. Attorney's fees are specifically excluded. *Id.* at (d)(2).

III. Facts and Procedural History

8. On December 26, 2015, Angel Ayala bought a 2004 Chevrolet Tahoe (the "vehicle") from Northwest Auto of Arkansas, Inc. The sales price was \$12,838.42. On March 7, 2016, Mr. Ayala registered the vehicle. He did not provide a copy of the installment contract. Rather, he provided a fraudulent bill of sale showing he only paid \$1,000.00 for the vehicle. Mr. Ayala did not pay tax on a \$1,000.00 purchase because it was a vehicle purchase of less than \$4000.00.

9. When registering the vehicle, Mr. Ayala presented the Department with the Certificate of Title he received from Northwest Auto that shows a lien in favor of Springdale Auto Finance. A title was issued to Mr. Ayala 18 days later, on March 25, 2016, but the Claimant's lien was not listed.

10. On September 10, 2016, Mr. Ayala apparently traded the vehicle to Mr. Jhonathon Chavez for Mr. Chavez's unspecified vehicle. Mr. Chavez then received his own title absent the Claimant's lien. When Mr. Ayala failed to continue making the payments on the vehicle, the Claimant repossessed it from Mr. Chavez on October 27, 2016.

11. Both the Claimant and Mr. Chavez filed claims with the Claims Commission. The Department filed motions to dismiss in each and both were granted. The Claimant appealed, but Mr. Chavez did not. At the appeal hearing, the Claims Review Subcommittee of the Arkansas Legislative Council remanded the case to the Claims Commission so it could hold a full hearing.

12. The hearing was had on September 14, 2017. Roman Roark, president of the Claimant, testified that the vehicle was worth approximately \$6,200, and that once he received payment, he would return the car to Mr. Chavez. At no time did he testify as to his litigation costs. DFA conceded that it missed the lien when it issued Mr. Ayala his title.

13. In its Order, the Commission awarded the Claimant, subject to the return of the vehicle to Mr. Chavez, \$8,046.44, which is the amount the Claimant made in his complaint. The Commission issued its Order on September 21, 2017. It reads, "Claimant's award is intended to compensate Claimant for the value of the Vehicle, as well as Claimant's costs and attorney's fees." Order, paragraph 19.

14. The vehicle was returned to Mr. Chavez on September 22, 2017.

IV. Discussion

15. There is no statutory authority, or authority from the Commission's own rules, that allow it to award attorney's fees. Moreover, the few cases and statutes that refer to the awarding of attorney's fees by the Claims Commission are not applicable in the present case.

16. Arkansas appellate courts have discussed attorney's fees being awarded by the Claims Commission in four cases: *Walters v. Arkansas Department of Human Services*, 83 Ark. App. 85, 118 S.W.3d 134 (2003); *Wilson v. State of Arkansas*, 2000 WL1635705 (November 1, 2000); *Baker v. Arkansas Department of Human Services*, 340 Ark. 408, 12 S.W.3d 200 (2000); *Iburg v. Arkansas Department of Human Services*, 2001 WL755892 (July 5, 2001). In each of these case, however, the appellate court ruled that attorney's fees may be awarded by the Claims Commission for specific litigation in parental termination of rights cases in the circuit courts. Attorney's fees in these cases were not allowed for litigation in the Claims Commission itself.

17. In *Walters*, after a mother's parental rights were terminated and the case was affirmed on appeal, the mother's counsel sought attorney's fees and costs. The Court of Appeals ruled that the attorney was statutorily entitled to fees and costs. However, because the legislature had not provided a source for those fees, the attorney could make a claim to the Claims Commission who could then make the award. *Walters*, 83 Ark. App. at 86, 118 S.W.3d at 136. The *Wilson* and *Iburg* cases were also parental rights termination case that were sent to the Claims Commission because there was no funding source for the attorney's statutorily provided fees and costs. *Wilson*, 2000 WL 1635705 at 1; *Iburg*, 2001 WL 755892 at 1.

18. The *Baker* case is the Supreme Court case to address this issue. The Supreme Court held that the attorney's fees and costs should be paid from the Juvenile Court Representation Fund, and if there was not sufficient funds available, the attorney could make a claim in the Claims Commission. *Baker*, 340 Ark. at 409, 12 S.W.3d at 201.

19. There are no cases in which an appellate court approved of an award of attorney's fees and costs for litigation that was in the commission itself. Of course, because appeals go to the legislative committee and not the appellate courts, it would be unlikely for an appellate court

to have the opportunity to review the issue. Nevertheless, the only cases discussing the issue are inapposite.

20. A review of the four statutes that refer to the Claims Commission's authority to award attorney's fees demonstrates that the award was improper in the present case. Like civil litigation awards of attorney's fees, the commission is limited to awarding fees in specific types of cases and for cases litigated in the circuit courts. There is no indication that the General Assembly has given the Claims Commission greater authority to award attorney's fees than it has historically given to the circuit courts.

21. Ark. Code Ann. § 20-8-708. This statute contains one sentence that reads, "A governmental contractor is responsible for costs and attorney's fees for malpractice litigation arising out of healthcare services delivered under a contract brought to the Arkansas Claims Commission." An award under this statute is limited to certain types of medical malpractice cases.

22. Ark. Code Ann. § 25-19-107(c)(2)(A). This statute allows for a substantially prevailing plaintiff in a Freedom of Information Act circuit court case to seek attorney's fees in the Claims Commission. Like the cases cited above, this allows for attorney's fees in cases litigated in circuit court.

23. Ark. Code Ann. § 27-14-412(b)(4)(A)(ii). This statute requires a person requesting records from the Office of Motor Vehicles to agree to:

hold harmless and indemnify the department for any money damages, punitive damages, criminal fines, civil penalties, court costs, and attorney's fees awarded to any person or entity by any state or federal court or by the Arkansas State Claims Commission resulting from any disclosure by the party of motor vehicle information that is contrary to state or federal law.

This is not a general grant of authority to the Claims Commission to award attorney's fees in its cases. Rather, by its plain language, it simply is intended to protect the State from having to pay any monies that might arise from the misuse of the records via an award from state or federal courts or the Claims Commission.

24. Ark. Code Ann. § 27-50-905(d)(2)(A). This statute reads:

A driver who has brought suit to require a change in his or her record and who has obtained an order of the court requiring the change may file a claim for his or her attorney's fees and any other damages he or she may have suffered with the Arkansas State Claims Commission.

Again, this is authority to award attorney's fees in circuit court litigation.

V. Conclusion

25. There is no authority that allows the Claims Commission to award attorney's fees in its own cases without a specific statute allowing it. And, there is no statute that allows the commission to award attorney's fees in a case based on a car-purchase contract. Allowing the award in this case would result in the Claims Commission having greater authority in the awarding of attorney's fees and costs than General Assembly has allowed the circuit courts, and this would be without the General Assembly having passed any statute allowing for it.

26. The Department of Finance and Administration is only appealing the award of attorney's fees and costs and ordered in paragraph 19 of the Claims Commission Order of September 21, 2017. The Department is prepared to deliver the \$6,200.00 ordered by the Claims Commission for the value of the vehicle immediately to the Claimant, the Claims Commission for delivery to the Claimant, or to any other entity the subcommittee directs as a registry.

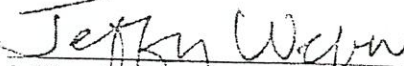
WHEREFORE, the Department of Finance and Administration respectfully requests that the Claims Commission's award of attorney's fees and costs to the Claimant be reversed and

the Claimant's award be limited to \$6,200.00, which represents the proof presented at the hearing as to the value of the vehicle.

Respectfully submitted.

Arkansas Department of Finance and
Administration, Revenue Division, Office of Motor
Vehicle

By:

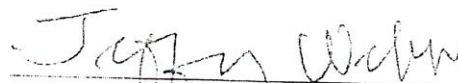


Jeffrey Weber, Attorney Specialist (ABN 93082)
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Arkansas Department of Finance and Administration
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E-mail: jeffrey.weber@dfa.arkansas.gov

CERTIFICATE OF SERVICE

I, Jeffrey Weber, on this 27th day of October, 2017, do hereby certify that I have served a true and correct copy of the above and foregoing document upon Claimant by depositing same in the U. S. Mail, postage prepaid, addressed as follows:

Steve Harrelson
200 River Market Avenue, Suite 600
Little Rock, Arkansas 72291


Jeffrey Weber