

**OFFICE OF THE ATTORNEY GENERAL  
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD**

**QUARTERLY CASE SUMMARIES**

April 2000 - June 2000 (2nd Quarter)

**JURISDICTION:**

**Motor Vehicle §681.102(15), F.S. (1997)**

*Angee v. BMW of North America, Inc.*, 2000-0234/MIA (Fla. NMVAB May 1, 2000).

The parties stipulated that the Consumer leased a 1997 BMW 318i automobile on February 29, 1998. Mileage at the time of delivery was 14,700 miles. The Manufacturer contended that the vehicle was a commercial "loaner" and therefore was leased to the Consumer as a "used" vehicle, and not new, as required by the statute. The Board found in favor of the Manufacturer and concluded that the vehicle was not a "motor vehicle" as defined by the statute. The case was dismissed.

*Eisenberg v. Ford Motor Company*, 2000-0277/TPA (Fla. NMVAB May 9, 2000).

The financing document produced by the Consumer identified the vehicle as "used." Mileage at the time of delivery was 1,170 miles. Prior to the Consumer's purchase of the vehicle, it had been leased to the Chief of Police. The Consumer argued that the purchase price he paid was reflective of a new vehicle. After the problems began with the vehicle he was advised by the dealer's representative that the vehicle had been "loaned" to the Chief of Police. The Manufacturer argued that the claim should be dismissed because the vehicle was not "new" as defined by the statute. The Board held in favor of the Manufacturer and dismissed.

**Whether Problem First Reported During Lemon Law Rights Period §§681.102(9) & 681.103, F.S.**

*Montgomery v. DaimlerChrysler Motors Corp.*, 2000-0245/ORL (Fla. NMVAB May 10, 2000).

The Consumer complained that the vehicle caught fire on December 27, 1999. Twenty-four months after delivery of the vehicle was December 25, 1999. The Board held that the Consumer's Lemon Law rights period expired on December 25, 1999. The fire was reported after that date; consequently, the Consumer was not qualified for relief under the Lemon Law. The case was dismissed.

## **REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.:**

### **Days Out of Service §681.104(1)(b), 681.104(3)(b), F.S.**

*McGrath v. Mitsubishi Motor Sales of America, Inc.*, 2000-0260/WPB (Fla. NMVAB May 5, 2000).

The Consumer filed a Request for Arbitration alleging that the vehicle was out of service for 30 days for repair of defects that substantially impaired the use, value or safety of the vehicle. The Consumer was directed by the Manufacturer's service agent to have the vehicle towed to the service agent when the vehicle's engine failed to operate properly. The towing company did not deliver the vehicle to the service agent until the following day. At the hearing, the Manufacturer contended that the Consumer was not qualified for relief because the vehicle was out of service at the repair facility for only 29 days. The Board found the defects complained of by the Consumer were nonconformities. The Board held that, because the Manufacturer's authorized service agent specifically directed that the vehicle be towed to the repair facility, the towing company's delay in delivering the vehicle would not be held against the Consumer. The Board held in favor of the Consumer and awarded a refund.

### **Written Notification to the Manufacturer §681.104(1)(a), F.S.**

*Martin v. Mitsubishi Motor Sales of America, Inc.*, 2000-0400/PEN (Fla. NMVAB June 9, 2000).

The Consumer sent written notification to the Manufacturer to provide a final repair attempt. The Consumer did not receive a response from the Manufacturer within 10 days after the Manufacturer's receipt of the notification. He did receive telephone calls from the dealership, but did not bring the vehicle in, because he was not directed to a repair facility by the Manufacturer. At the hearing, the Manufacturer argued that the dealership was its authorized agent in responding to Consumer's defect notification and because the Consumer refused to allow the Manufacturer a final attempt to cure the nonconformity, the claim should be dismissed. The Board held in favor of the Consumer, concluding that the statute requires the Manufacturer to respond directly to the Consumer after notice.

## **MANUFACTURER AFFIRMATIVE DEFENSES §681.104 F.S.**

### **Defect does not substantially impair use, value or safety §681.104(a), F.S.**

*Alweiss v. Ford Motor Company*, 2000-0194/MIA (Fla. NMVAB May 1, 2000).

The Manufacturer contended that the complaint of engine hesitation and stalling did not substantially impair the use, value or safety of the Consumer's vehicle. One of the Manufacturer's witnesses stated that the vehicle was test driven on several occasions, although these test drives were not shown on the Consumer's copy of the service orders because of "office procedure." The witness testified that no problem existed with the vehicle as demonstrated during the test drives. The Board

held that because the Manufacturer failed to document the test drives on the service orders, or to perform adequate test drives in the face of Consumer's complaints, the Manufacturer had failed to adequately carry out its statutory and warranty obligations of diagnosis and repair. Consequently, the Manufacturer's assertion of no substantial impairment was rejected by the Board and the Consumer was awarded a refund.

*Bell v. DaimlerChrysler Motors Corp.*, 2000-0093/PEN (Fla. NMVAB April 4, 2000).

The Consumer complained of uncomfortable seats and rumbling noises. The Board held in favor of the Manufacturer, stating that the problems complained of by the Consumer did not substantially impair the use, value or safety of the vehicle. The case was dismissed.

### **REFUND §681.104(2)(a)(b), F.S.:**

*Stanchina v. Mazda Motors of America, Inc.*, 2000-0223/JAX (Fla. NMVAB May 23, 2000).

In determining the total refund to the Consumer, the Board held that a \$2,000.00 dealer trade incentive received by the Consumer and applied to the purchase of the vehicle, was refundable to the Consumer as if it were a down payment of cash.

### **Reasonable Offset for Use 681.102(20), F.S. (1997):**

*Forbes v. Ford Motor Company*, 2000-0211/FTM (Fla. NMVAB April 28, 2000).

The Board used the mileage attributable to the Consumers as of the date of the arbitration hearing before the Ford Dispute Settlement Board, over the objection by Ford's counsel, who argued that the proceeding conducted by the Dispute Settlement Board was not an arbitration hearing as contemplated by the statute, and the program was not state-certified. The Consumers testified that they were directed to Dispute Settlement Board by the Manufacturer's authorized service agent and by the information contained in the Manufacturer's written warranty.

### **MISCELLANEOUS PROCEDURAL ISSUES:**

*Dillion v. Toyota Motor Sales U.S.A.*, 2000-0312/FTL (Fla. NMVAB).

The Manufacturer filed its Manufacturer's Answer on May 3, 2000, but it was not on the form as prescribed by Florida Administrative Code Rule 2-30. The Manufacturer received its Notice of Arbitration by certified mail on April 4, 2000. The Manufacturer's Answer was required to be filed within 15 days of receipt of the Notice of Arbitration, or no later than April 20, 2000. The Board determined that the failure to use the required form and failure to produce evidence of a postmark date that rebutted the May 3, 2000 receipt, resulted in the untimely filing of the Manufacturer's Answer. The Manufacturer was not permitted to present any affirmative defenses at the arbitration hearing.