

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

QUARTERLY CASE SUMMARIES

January 2000 - March 2000 (1st Quarter)

REASONABLE NUMBER OF ATTEMPTS: §681.104, Fla. Stat. (1997)

Repair Attempts:

Swain v. Ford Motor Company, 1999-1266/PEN (Fla. NMVAB February 17, 2000).

The Consumer presented the vehicle for repair of a squeaking noise in the rear end of the vehicle on two occasions. The Manufacturer had a final repair attempt and contended at the hearing that the Manufacturer was not provided a "reasonable number of repair attempts" because the Consumer had not presented the vehicle for repairs a total of three times. The Board held that the Consumer is not required to establish the statutory presumption to qualify for relief. The Manufacturer's assertions that the noise was "normal" supported the Consumer's contention that there were a reasonable number of repair attempts.

Final Repair Attempt §681.104(1)(a), F.S.

Alcala v. Toyota Motor Sales, U.S.A., 1999-1156/MIA (Fla. NMVAB January 7, 2000).

The Consumer complained of an intermittent engine noise "like two pieces of metal hitting." The vehicle was presented for repairs three times and for the final repair attempt on September 15, 1999. The repair (replacement of a cracked piston ring) was not completed until September 30, 1999. Under Section 681.104(1)(a), the Manufacturer must conform the motor vehicle to the warranty within 10 days of delivery of the vehicle to the designated repair facility. Failing that, the requirement for a final repair attempt does not apply. The Board held for the Consumer determining that the nonconformity continued to exist after the third repair attempt.

Written Notification to the Manufacturer

Peralta v. Ford Motor Company 1999-1310/MIA, (Fla. NMVAB March 24, 2000)

The Consumer complained of brake problems. The brakes made a grinding noise, pulsated and locked up when applied. On October 22, 1999, the Consumer sent written notification to the Manufacturer to provide a final repair attempt. The notification did not describe the brake problem. The Manufacturer received the notification and on November 5, 1999, the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt. At that attempt, the brake problem

was not addressed. At the arbitration hearing, the Manufacturer moved to dismiss the Consumer's Request for Arbitration because the Manufacturer was not afforded an opportunity for a final repair on the brakes. In support, the Manufacturer asserted that the Consumer failed to provide written notification of the brake problem. The Board held in favor of the Manufacturer on the basis of the failure to provide the Manufacturer with the requisite written notification as to the brake problem.

MANUFACTURER DEFENSES:

Defect Not Covered by Warranty

O'Connor v. Ford Motor Company, 2000-0085/TPA (Fla. NMVAB March 6, 2000)

Consumer complained of a vibration which shook the entire vehicle when driven at speeds of 60 miles per hour and above. In the course of repairs, the tires were balanced and the wheels replaced. The vibration continued. In addition to repairs performed by the authorized service agent, the Consumer took the vehicle to a tire service agent. After replacing the tires, the tire service agent advised the Consumer that the vehicle's tires were not the cause of the vibration. The Manufacturer contended that the Consumer's problems were tire problems, and as such, were not covered by the Manufacturer's warranty. In support of this, the Manufacturer's witness testified that at the prehearing inspection he determined that three of the tires had insufficient air pressure, one tire had a metal bolt lodged in the thread and a heavy truck balancing weight was attached to one wheel. The Board rejected the Manufacturer's contention as being based entirely upon one inspection of the vehicle conducted six months after the Manufacturer's final repair attempt.. During the course of repairs, which was the relevant time period , the evidence reflected that replacement of tires did not correct the nonconformity.

REFUND §681.104(2)(a)(b), F.S.:

Sabel v. Ford Motor Company, 2000-0030/TPA (Fla. NMVAB March 1, 2000).

The Consumer received the vehicle which was the subject of this case in settlement of a dispute with the Manufacturer concerning certain alleged defects in a prior 1999 vehicle. In connection with the purchase of the prior vehicle, the Consumer contributed a cash down payment of \$3,000.00 and received a net trade-in allowance and financed the balance. The retail installment contract executed by the Consumer at the time of the exchange of the prior vehicle for the vehicle in this case was prepared so that the transaction constituted an "even swap" of the two vehicles. In this case, the Consumer contended that the Board should look to the purchase of the prior vehicle and refund to her the amount of her down payment and trade-in allowance from that purchase, because that vehicle was defective. Counsel for the Manufacturer argued that the Board should not look behind the transaction in which the Consumer acquired the vehicle which is the subject of this case. The Board rejected the Consumer's argument and only awarded the Consumer sums paid in conjunction with the purchase of the vehicle

which was the subject of this case.

Trade-in Allowance 681.102(19), F.S. (1997):

Ammirata v. Toyota Motor Sales, U.S.A., 1999-0784/MIA (Fla. NMVAB February 11, 2000)

The Consumer objected to the zero net trade-in allowance evidenced on the lease documents and submitted a copy of the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the purchase, which reflected a base retail price for the Consumer's trade-in vehicle of \$24,750.00. In addition the NADA guide provided an additional \$500.00 should be added to Consumer's trade-in vehicle based upon optional equipment. The Consumer prevailed on the merits and the Board awarded her the NADA retail value for her trade-in vehicle.

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

Daniels v. American Honda Motor Company, 2000-0019/TPA (Fla. NMVAB February 23, 2000)

The Consumers filed a claim with BBB/AUTOLINE, the state-certified informal dispute settlement program sponsored by American Honda. The Consumers were not satisfied with that decision and filed a Request for Arbitration with this Board subsequently. Mileage was estimated at the time to the BBB/AUTOLINE hearing to be 36,757 miles. The Manufacturer raised as a defense that the Board cannot utilize the mileage on Consumers' vehicle as of the BBB/AUTOLINE hearing because it is described in Chapter 681 as a "procedure" and not an arbitration hearing and because a consumer is not required to be eligible for a Lemon Law arbitration hearing in order to be eligible for a BBB/AUTOLINE hearing. The Board rejected this contention by the Manufacturer and used the mileage on the vehicle as of the BBB/AUTOLINE hearing on the basis that the Consumers were required to resort to that hearing in order to be eligible for arbitration before this Board.

Elliott v. Ford Motor Company, 2000-0168/TPA (Fla. NMVAB March 31, 2000).

The amount the lessor paid to purchase the vehicle was not produced at the hearing. The Manufacturer produced a copy of the dealer invoice, and a copy of the window sticker which indicated a Manufacturer's suggested retail price of \$31,990.00. The lease signed by the Consumer indicated an "agreed upon value" of \$30,490.00. The Board determined that the purchase price for the purpose of calculating the statutory offset for use was \$30,490.00.

Incidental Charges 681.102(8), F.S. (1997):

Goodman v. BMW of North America, Inc., 2000-0185/STP (Fla. NMVAB April 7, 2000).

The Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The vehicle was presented to the designated repair facility for the final repair attempt and 15 days later the Consumer called the authorized service agent to advise that the Consumer would no longer allow work to be performed on the vehicle because the final repair attempt was not completed within 10 days. The authorized service agent required the Consumer to

return a loaner vehicle he was driving. At the time, the Consumer's vehicle could not be driven and the Consumer rented a vehicle. The Consumer sought reimbursement for incidental charges of \$718.87 for car rental from February 15, 2000 through March 7, 2000. The Manufacturer objected to these charges, contending that the Manufacturer should not be required to pay for a rental vehicle for a period of time the Consumer refused to allow repairs to vehicle. The Board awarded the charges to Consumer.

MISCELLANEOUS:

Gacusana v. General Motors Corporation, Chevrolet Division, & Mark III Industries, 1999-1252/MIA (Fla. NMVAB February 3, 2000)

The Consumer filed a Request for Arbitration claiming his 1999 Chevrolet Astro Conversion Van was out of service by reason of repairs for a total of 34 cumulative days. Manufacturer Mark III contended that, because the Consumer gave permission for service for more than 30 days, he had waived his Lemon Law remedy. The Board held that pursuant to Section 681.115, Florida Statutes, any agreement entered into by a consumer that waives, limits or disclaims the rights set forth in the Lemon Law statutes is void as contrary to public policy. The Consumer therefore, did not waive his rights.

Renshaw v. General Motors Corporation, Pontiac-GMC Division, 2000-0121/ORL (Fla. NMVAB April 14, 2000)

The case was initially noticed for hearing for March 21, 2000. On March 15, 2000, the Manufacturer requested a continuance because of difficulty in scheduling the prehearing inspection of the vehicle. On March 17, 2000, the Manufacturer's request for a continuance was granted. On March 27, 2000 a telephone conference was held in order to set a time and location for the pre-arbitration inspection of the Consumer's vehicle. The Consumer participated in that conference. At that conference, the April 11, 2000, hearing date for the arbitration was set. On April 10, 2000, the Consumer requested a continuance of the April 11, 2000 hearing. The Consumer was referred to paragraph (26), *Hearings Before the Florida New Motor Vehicle Arbitration Board* which provides that a request to reschedule a hearing "made later than 3 business days before the hearing must be made at the hearing." The Manufacturer objected to the untimely request for a continuance and the Chairperson declined to consider the request. The Board Administrator notified the Consumer of the Chairperson's ruling and advised her to appear at the April 11, 2000, hearing and be prepared to argue the merits of the case. The Consumer was advised that her failure to appear at the hearing would result in the hearing being canceled and the case dismissed. On April 11, 2000, the Consumer did not appear at the hearing. After waiting 30 minutes from the scheduled time of the hearing, the Consumer was declared in default and the case was dismissed. The Consumer did not contact the Board Administrator within one business day of the hearing to request that the decision be set aside.