

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

QUARTERLY CASE SUMMARIES

July 1999 - September 1999 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4)

John R. Esposito, Jr. v. Mitsubishi Motor Sales, of America, Inc., 1999-0704/JAX (Fla. NMVAB August 25, 1999)

The Consumer complained of brake pulsation and transmission/hard shifting. The Manufacturer stipulated that the vehicle had been presented for three repair attempts. After the third repair attempt, but prior to a final repair attempt, the Consumer damaged the vehicle by riding into the center median. The Consumer presented the vehicle to the repair facility and told them he would not return to pick up the vehicle until the pulsation and (new) pulling problem were fixed. The Consumer never returned to pick up the vehicle and ceased making lease payments. The Lessor repossessed the vehicle from the repair facility, the vehicle was sold at auction and the Consumer owed a deficiency. The Consumer requested the Board reimburse him for the deficiency and refund the balance the Manufacturer. The Consumer argued that the Board had the authority to fashion a remedy for him (even though he no longer possessed the vehicle) pursuant to an order entered by an Administrative Law Judge, after an initial rejection of Consumer's Request for Arbitration by the Department of Agriculture and Consumer Services. The Board rejected Consumer's argument and granted the Manufacturer's motion to dismiss on the basis that the Consumer could not furnish clear title to the and possession of the vehicle to Manufacturer.

NONCONFORMITY §§681.102(15), F.S. (1995); 681.102(16), F.S. (1997):

Breslin v. American Honda Motor Company, 1999-0448/JAX (Fla. NMVAB July 14, 1999)

The Consumer alleged that a film was left on her windshield when the wipers were used during heavy rain storms. The film impaired the Consumer's vision when driving at night or in inclement weather. The Manufacturer contended that the film was "normal" and was only the water left on the windshield after the wiper swept across it, and that the film evaporated in a millisecond. The Board performed an inspection of the vehicle during the hearing. The Board noted that, although it was a hot day, when the wipers and windshield fluid were used, a film remained on the windshield. It remained present and visible for a prolonged length of time. The Board found that the film substantially impaired the safety of the vehicle. The Consumer was awarded all sums paid in by her, but her down payment was reduced

as a result of negative equity on the trade-in vehicle.

Pinkney v Ford Motor Company, 1999-0446/JAX (Fla. NMVAB August 24, 1999)

The Consumer filed the Request for Arbitration alleging that her odometer was inaccurate. She noticed that the odometer was registering more mileage than she actually had driven. The Manufacturer was unable to duplicate the problem during the first and third repair attempts and told the Consumer there was no problem. During the second repair attempt, the vehicle was sublet to a speedometer and glass repair shop that indicated the odometer was off by 4 to 6 percent. The Consumer testified that the document from the repair shop originally indicated that the odometer was off by 16 percent, and she saw a technician alter the document to make it appear as "4-6" instead of "16." The Board found in favor of the Consumer.

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

What Constitutes a Reasonable Number of Attempts

Bryant/Thornton v. DaimlerChrysler Motors Corporation, 1999-0557/TLH (Fla. NMVAB July 14, 1999)

The Consumer testified that on the day after she accepted delivery of a new 1998 Chrysler Breeze automobile she discovered oil leaking on her driveway and the brakes made a loud noise when she applied pressure. The Consumer took the vehicle to the dealer and was told by a salesperson that these things were normal for a new vehicle, that nothing could be done. Shortly thereafter the Consumer took the vehicle to a Super Lube and was told that the oil leak was as a result of a loose bolt, which was tightened. The Consumer took the vehicle in May 1998, to the dealer for the same problems. She was told again by sales personnel that nothing could be done, and was not permitted to talk to service personnel. As a result, the Consumer returned to Super Lube and was told that the vehicle had a leaking head gasket, and in September, Super Lube advised the Consumer that there was a potential problem with the oil sending unit rear seal. Returning to Super Lube in February 1999, the Consumer was told that the cylinder head gasket was blown and that Chrysler should be contacted. The Manufacturer's headquarters were contacted with the diagnosis and the vehicle was returned to the dealer. At that time (March 1999) the Manufacturer's service agent advised the Consumer that the head gasket had blown, but that the warranty had expired. No repair work was ever performed by the Manufacturer's authorized service agent. At the hearing, the Manufacturer asserted that there were not a reasonable number of repair attempts, because there were never any repairs performed under the warranty, and that the defect did not substantially impair the use, value or safety of the vehicle, because the vehicle had more than 48,000 miles on the odometer at the time of the pre-hearing inspection, and was no longer under warranty.

The Board concluded that the oil leak was a substantial impairment as to the use, value and safety, and that the Consumer reported the problem within the lemon law rights period. The Board also held that, while the Consumer was unable to establish a presumption of reasonable number of attempts

under the statute, she did establish through the evidence and the totality of the circumstances that the Manufacturer had the opportunity to repair a reasonable number of times.

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

Delancey v. Ford Motor Company, 1999-0560/ORL, (Fla. NMVAB July 20, 1999)

The board found that the problem with the driver's window not closing properly and making a loud noise when raised was a nonconformity, but dismissed the Consumer's case after a majority of the Board concluded that the Consumer failed to make the vehicle available for the final repair attempt.

Thomas v. American Suzuki Motor Corporation, 1999-0791/STP (Fla. NMVAB September 14, 1999)

The Board found the Manufacturer was denied a final repair opportunity, because the Consumer failed to leave the vehicle with the designated repair facility for 10 days from the date the vehicle was delivered to the facility.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), F.S.:

Defect does not substantially impair vehicle's use, value or safety §681.104(4)(a):

Champney v. BMW of North America, Inc. 1999-0170/TLH, (Fla. NMVAB July 1, 1999)

The Consumer alleged that the "check engine" and "SRS" warning lights came on constantly, and the vehicle pulled and veered to the left and right. The Manufacturer testified that each time the vehicle was brought in for repairs, the diagnostic tests showed a problem which the Manufacturer corrected. These lights were operating as they were intended to alert the Consumer to a technical problem requiring service from the Manufacturer's authorized service agents. The Manufacturer testified that at the pre-arbitration inspection the vehicle's tires were found with evidence of curb damage on the outer edge of one tire, and that the two front tires were inflated dangerously high, and that both these things would account for the swerving of the vehicle. The Manufacturer testified that low or excessive air pressure in the tires can cause a vehicle to pull to one side or another. The Board found for the Manufacturer stating that while it sympathized with the Consumer's frustration in taking the vehicle in repeatedly for service, the evidence showed that the warning lights were operating as designed and therefore neither they nor the pulling or swerving were a nonconformity.

Hutter v. DaimlerChrysler Motors Corporation, 1999-0687/FTL (Fla. NMVAB September 2, 1999)

The Consumer complained that his 1999 Chrysler Sebring convertible leaked by the driver's side window area whenever the vehicle went through a high pressure car wash. The owner's manual stated that the vehicle should not be subjected to high pressure washes as leaks may occur. The Manufacturer asserted that the water leak was excluded from the Manufacturer's warranty, because of the statements contained in the owner's manual. The Manufacturer also contended that the defect did

not substantially impair the use, value or safety of the vehicle, because the leak only occurred during the high pressure car wash, not during rain or during other types of car washes. The Board found that the defect complained of did not substantially impair the use, value or safety of the vehicle.

Accident, Abuse, Neglect, Unauthorized Modification §681.104(4)(b), F.S.:

Fisher v. General Motors Corporation, Saturn Corporation, 1999-0535/FTM, (Fla. NMVAB July 2, 1999)

The Consumer complained that the brake pedal intermittently traveled to the floor. An aftermarket supplemental braking system was installed on the vehicle by the Consumer. The Board concluded that the brake problem was the result of modification or alteration by persons other than the Manufacturer or its authorized service agent and the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §§681.102(7), F.S. (1995) & 681.102(8), F.S. (1997):

Catron v. General Motors Corporation, Chevrolet Motor Division, 1999-0649/FTL (Fla. NMVAB July 22, 1999)

The Consumer filed a Request for Arbitration alleging the vehicle's brakes made a squeaking noise and it was hard to stop. The Consumer prevailed on the merits and requested reimbursement for \$100.00 for consultation fees paid to an attorney. The Board denied the request because attorney fees were not reimbursable as incidental charges under the statute, and the statute did not otherwise give the board the authority to award attorney fees.

Kautz v. Ford Motor Company, 1999-0796/WPB (Fla. NMVAB Sept. 10, 1999)

The Consumer complained the transmission in his 1998 Ford Ranger pickup truck would grind and shift improperly. The Consumer prevailed on the merits of his claim and argued the mileage for the purpose of calculating the statutory offset for use should be reduced by an unspecified amount, because the Manufacturer should have resolved this claim prior to the Request for Arbitration being filed. The Consumer also sought reimbursement of an unspecified amount of money for lost time for transporting his teenage son who was not eligible to drive the rental car, \$19.90 for additional postage costs, and the registration fees for his truck. The Board found that the registration fees, \$19.90 for additional postage and lost time for transporting his son were not reasonable charges and did not award these to the Consumer as incidental or collateral charges. The Board ruled that the additional mileage deduction sought by the Consumer was outside the scope of Section 681.102 (20), Florida Statutes, the definition of the reasonable offset for use, and did not make any additional deductions to the mileage.

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

Allen v. Ford Motor Company, 1999-0758/PEN, (Fla. NMVAB September 22, 1999)

The Manufacturer filed an Amended Answer prior to the hearing asserting no affirmative defenses and offering to provide the Consumers a refund. The Manufacturer appeared at the hearing in order to dispute the trade-in allowance stated on the buyer's order. The Consumers traded a 1978 Chevrolet truck and the were given \$5,000.00 net trade-in allowance. The Manufacturer produced a copy of the NADA Official Used Car Guide (Southeastern Edition) that included information on vehicles dating back to the year 1991. The Manufacturer argued that this book should be utilized to determine the trade-in allowance, because it was the book utilized by the selling dealer at the time of the trade-in. The Manufacturer's representative argued that the trade-in vehicle had more than 180,000 miles on the odometer, and adjusting the 1991 book value for age and mileage, Consumer's trade-in was worth \$2,500.00. The Board held that, because the Manufacturer failed to provide the applicable NADA book as required by the statute, the trade-in allowance stated in the buyer's order would be awarded.