

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

QUARTERLY CASE SUMMARIES

January 2003 - March 2003 (1st Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

Tuckish v. DaimlerChrysler, 2002-1186/FTL (Fla. NMVAB February 13, 2003).

The Manufacturer's representative argued that the vehicle did not meet the definition of a "motor vehicle" under Chapter 681, Florida Statutes, because it was not a "new" vehicle when the Consumer purchased it. The sales contract listed the vehicle as "used," but the Consumer testified that the sales personnel told him that the vehicle was actually new and was only designated as "used" because of the odometer mileage. (The mileage at the time of delivery was 102 miles.) However, prior to the Consumer's purchase, the subject vehicle had already been sold and titled to a different consumer. Apparently, the first consumer sold the vehicle to an automobile dealer, who then sold the vehicle to the Consumer involved in this case. The Board concluded that the vehicle was not "new" when the Consumer purchased it on the ground that the vehicle had been previously sold to an ultimate purchaser. Accordingly, the Board dismissed the Consumer's case.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Reasonable Number of Attempts §681.104, F.S.; §681.1095(8), F.S.

Herber v. BMW of North America, LLC, 2002-1158/ORL (Fla. NMVAB February 7, 2003).

The Consumers complained of a water leak and damage to the vehicle's interior, which was caused by the water leak. The vehicle was allegedly out of service for repair of nonconformities for 30 or more days. However, some of the days that the Consumer claimed were out-of-service days were attributable to the Consumers' refusal to pick up the vehicle after the final repair attempt was completed. They refused to pick up their vehicle because they insisted that the service agent replace the dash, carpet, seats, and door panels which were damaged by the water leak. The Board ruled that the time attributable to the Consumers' refusal to pick up the vehicle, after being notified that the repair was completed, did not constitute out-of-service days. Therefore, the vehicle was out of service for a total of 21 days, rather than the alleged 30 or more. Accordingly, the Board dismissed the Consumers' case.

Final Repair Attempt §681.104(1)(a), F.S.; §§681.104(1)(a), 681.104(3)(a)1., F.S.

Ali v. Nissan Motor Corporation USA, 2003-0046/WPB (Fla. NMVAB March 20, 2003).

The Manufacturer contended that the Consumer picked up the vehicle before the Manufacturer's service agent had completed the Manufacturer's final repair attempt. The repair had not been completed because the service agent was waiting for a necessary part to be delivered. However, by the time that the Consumer picked up the vehicle, it had been at the service center for twenty days. The Board ruled that the requirement that the Manufacturer be given a final repair attempt to cure the nonconformity did not apply because the Manufacturer did not complete the final repair within ten days, as required by the Statute. Accordingly, the Consumer was awarded a refund.

Beckman v. DaimlerChrysler Motors Corporation, 2002-1071/TPA (Fla. NMVAB February 10, 2003).

The Manufacturer had not completed its final repair attempt when the Consumer requested Arbitration. The Manufacturer's representative argued that a reading of Chapter 681 in its entirety shows that the legislature intended for a logical progression to be followed whereby the consumer would complete all repair attempts and determine whether a problem still existed before requesting arbitration. The Board disagreed, ruling that the statute does not impose such a requirement and that the Consumer had complied with the filing requirements for lemon law relief. However, the Consumer's claim was ultimately dismissed on other grounds.

DEFINITION OF NONCONFORMITY §681.102(16), F.S.

Rule 2-30.001(2)(a), F.A.C., Definition of "Condition"

Hidalgo-Gato v. Jaguar Cars, 2003-0115/MIA (Fla. NMVAB March 24, 2003).

The Consumer complained of brake vibration and noise. The Board conducted a test drive and found only a slight vibration. Nevertheless, the Board ruled that the brake vibration and noise substantially impaired the use, value, and safety of the vehicle, citing to the vehicle's repair history, especially the fact that the brake rotors became warped and required replacement on three occasions. The Board also cited to the lack of evidence that the Manufacturer or its service agent ever diagnosed or cured the underlying problem. Accordingly, the Consumer was awarded a refund.

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

Defect does not substantially impair use, value or safety of vehicle §681.104(4)(a), F.S.

Ortiz v. Ford Motor Company, 2002-1167/TLH (Fla. NMVAB February 28, 2003).

The Consumer complained that the head rests in his Mustang did not lock or stay in place and would move up or down with only minimal pressure. The Consumer was concerned that the defective head rests would aggravate his pre-existing neck injuries, in the event of an accident. The Board inspected the vehicle and found that the head rest did not fall down when minimal pressure was applied. The Board ruled that the head-rest problem was not a nonconformity. Accordingly, the Consumer's claim was dismissed.

Lenoci v. General Motors Corporation, Pontiac/GMC Division, 2002-1094/ORL (Fla. NMVAB January 28, 2003).

The Consumer complained that the vehicle would intermittently hesitate upon acceleration and then slam into gear. Although the Manufacturer's service agents made every effort to duplicate the problem during the final repair attempt, the problem was not duplicated, so no repairs were made. The Consumer testified that the problem continued after the final repair attempt. The Board found that the defect was a nonconformity and that it continued to exist after the final repair attempt. Accordingly, the Board awarded the Consumer a refund.

Miller v. Ford Motor Company, 2002-1263/JAX (Fla. NMVAB March 6, 2003).

The Consumers complained that their vehicle would run out of gas when the fuel gauge indicated one-quarter tank of fuel. They also complained that the fuel gauge would fail to indicate a full tank after the tank was filled up. The defect was the subject of four repair attempts. On the fourth attempt, the Consumers were told that the problem was a "normal characteristic" of Cougars and that no repairs were available. At the hearing, the Manufacturer's witness testified that the Consumers' fuel gauge was working within specifications. The Board ruled that the faulty fuel gauge was a nonconformity that substantially impaired the use and safety of the vehicle. Accordingly, the Consumers were awarded a refund.

Guzman v. General Motors Corporation, Chevrolet Motor Division, 2002-1201/JAX (Fla. NMVAB January 24, 2003).

The Consumer complained that the vehicle consumed excessive amounts of oil. In the beginning, the vehicle burned a quart of oil for every 400-500 miles that the vehicle was driven. However, oil consumption declined to three quarts per 8,000 miles that the vehicle was driven after the Manufacturer replaced the pistons. The Manufacturer contended that the level of oil consumption was normal for a high-performance sports car, such as the vehicle involved in this case. The Board ruled that the evidence presented did not establish that the rate of oil consumption was excessive for a high-performance sports car so as to constitute a nonconformity under the statute. Accordingly, the Board dismissed the Consumer's case.

Young v. Mazda Motor of America, Inc., 2002-1136/JAX (Fla. NMVAB January 23, 2003). The Consumer complained that the vehicle's engine unpredictably and intermittently shut off when the vehicle was traveling at speeds of 60 miles per hour or more. The Manufacturer could not duplicate the problem and contended that the problem was not a nonconformity. The Board ruled, "[T]he unpredictable, intermittent engine shut-off when the vehicle was being driven at speeds of 60 miles per hour or more is a defect that, without a doubt, substantially impairs the safety of the vehicle." The Board noted that the Manufacturer had made every effort to attempt to correct the problem, but ultimately the Board concluded that the Consumer should not have to continue to risk her safety to give any further opportunities for repair. Accordingly, the Board awarded the consumer a refund.

Vitolo v. Mercedes-Benz USA, Inc., 2003-0096/FTL (Fla. March 17, 2003). The Consumer complained of musty mildew odor, which only occurred after the initial blowing of air from the air conditioning unit after the vehicle sat idle at least overnight or for a few days. The Consumer asserted that she developed conjunctivitis in her eyes as well as other health problems as a result of the odor. The Board inspected the vehicle and found only a slight odor from the air conditioning unit. The Board noted that the defect must be viewed from the standpoint of a reasonable person in the Consumer's circumstances. The Board found that the Consumer's physical reaction was abnormal. Accordingly, the Consumer's claim was dismissed.

Untimely Filing of the Request for Arbitration §681.109(4), F.S.

Duplissey v. BMW of North America, LLC, 2003-0071/STP (Fla. NMVAB March 26, 2003). The Manufacturer's counsel moved that the Consumer's case be dismissed because it was untimely filed. In support of the motion, counsel argued that the Consumer's Request for Arbitration was initially deemed ineligible on December 3, 2002, because her application was deficient. The Consumer was required to cure the deficiency in her Request no later than 30 days from the date she received notification of ineligibility. The Consumer returned her amended Request on January 16, 2003, which exceeded the 30-day period she was permitted to cure the deficiency in her Request. The Consumer testified that she did not receive the December 3, 2002, notification of ineligibility. The Consumer further testified that when she failed to receive information concerning her Request, she made telephone contact with the Division of Consumer Services to inquire of the status of her case. The Consumer was verbally given an extension within which to return her Request, and she returned the Request and supporting documents to the Division within the extended time. The Board ruled that the greater weight of the evidence supported a conclusion that the Consumer was given an extension within which to return her completed Request form. Accordingly, the Manufacturer's motion to dismiss was denied.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Hillier v. DaimlerChrysler Motors Corporation, 2002-0953/TPA (Fla. NMVAB January 16, 2003).

By the day of the arbitration hearing, the Consumer had missed paying the lienholder several monthly payments. The Manufacturer requested to be relieved of payment to the lienholder for the past-due payments and any late fees or additional interest attributable to the Consumer's nonpayment. The Board denied the Manufacturer's request to be relieved of the past-due payments; however, the Board did relieve the Manufacturer from any responsibility for accrued late fees that resulted from the Consumer's failure to make timely monthly payments.

Incidental Charges §681.102(8), F.S.

Ulsh v. Toyota Motor Sales, U.S.A., 2002-1234/JAX (Fla. NMVAB February 3, 2002).

The Consumer requested \$200 as reimbursement for a lost day of work. The Consumer contended that the Manufacturer's representative directed him to take the vehicle to a repair facility that was such a distance away from the Consumer's home that he was forced to miss a day of work. The Board's award included \$200 for reimbursement of lost wages.

Rivernider v. General Motors Corporation, Cadillac Motor Division, 2002-0839/ORL (Fla. NMVAB January 27, 2003).

The Consumer requested reimbursement for expert witness fees in the amount of \$2,200. The Consumer's expert witness inspected the vehicle, prepared for the hearing, consulted with the Consumer's attorney, and testified at the hearing. The Board awarded the Consumer reimbursement for his expert witness fee, but only in the amount of \$500, rather than \$2,200 as the Consumer requested.

Net Trade-in Allowance §681.102(19), F.S.

Senker v. Mercedes-Benz USA, Inc., 2002-0850/TPA (Fla. NMVAB January 3, 2003).

The Consumers traded in a 2001 Mercedes automobile for which they received a zero net trade-in allowance. The trade-in allowance was not acceptable to the Consumers. However, the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the transaction did not list the Consumers' trade-in vehicle because it was a current model. Consequently, the Board ruled that the zero net trade-in allowance as reflected in the purchase document would govern.

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

Sutter v. BMW of North America, LLC, 2002-1278/FTM (Fla. NMVAB February 28, 2003).

The Consumer requested that the mileage offset exclude 200 miles which the Consumer attributed to driving to and from the repair facility. The Manufacturer objected, but the Board agreed with the Consumer, ruling that 200 miles should not be counted as consumer miles.

MISCELLANEOUS ISSUES

Neves v. Ford Motor Company, 2002-1138/FTM (Fla. NMVAB January 16, 2003).

The Consumer complained of a hesitation and surge of the engine when the vehicle was driven between 30 and 45 miles per hour. The Manufacturer defended by contending that the hesitation was normal and that the vehicle was operating as designed. The Board noted that the Lemon Law does not exclude from the definition of “nonconformity” defects which are the result of design or which the Manufacturer deems are “normal” for the subject vehicle. The Board ultimately found the problems amounted to a nonconformity. Accordingly, the Consumer was awarded a refund.

Weingartner v. American Isuzu Motors, Inc., 2002-0972/ORL (Fla. NMVAB February 4, 2003).

The Consumer complained of a front-end vibration that occurred at all driving speeds and a pulsation when the brakes were applied. The problems were the subject of five repair attempts plus a final repair attempt. The Manufacturer argued that the problems were cured before or at the final repair attempt, citing as evidence the fact that the Consumer waited more than a year after the final repair attempt to file a request for arbitration. The Board agreed with the Manufacturer. Accordingly, the Consumer’s case was dismissed.