OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2004 - September 2004 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Heitmann v. Ford Motor Company, 2004-0466/FTM (Fla. NMVAB July 28, 2004).
The Manufacturer contended that the party appearing at the hearing was not a "consumer" under the terms of the statute, because she was not the titled owner of the vehicle and did not sign the Request for Arbitration. Mrs. Heitmann appeared at the hearing, but her husband, Mr. Heitmann, did not appear. Mr. Heitmann was the only owner on the title to the vehicle and his signature was the only signature on the Request for Arbitration. Mr. Heitmann purchased the vehicle to be used by his wife, for her personal use and for transporting their three children. Mrs. Heitmann's name was on the bank account from which the periodic payments to the lienholder were drawn, and during the course of repairs, Mrs. Heitmann was able to enforce the Manufacturer's warranty. Mrs. Heitmann was the primary driver of the vehicle. The Board ruled that the Consumer's wife is a "consumer" under the terms of the statute. Ultimately, the Consumers were awarded a refund.

NONCONFORMITY §681.102(16), F.S.

Conover v. Mercedes-Benz USA, Inc., 2004-0435/JAX (Fla. NMVAB July 30, 2004).
The Consumers complained that the vehicle's acceleration felt "notchy" or "sticky." On each of the three repair attempts, prior to the Manufacturer's receipt of the Consumers' defect notification form, the Manufacturer's authorized service agent replaced the vehicle's accelerator cable. After each replacement of the accelerator cable, the vehicle's acceleration improved, but the problem always returned within a few months. The Manufacturer contended that the "notchy" acceleration was a design characteristic of the vehicle, akin to the notchy feel of some radio control dials, and as such, it was not a defect. The Board ruled that the "notchy" acceleration was a defect or condition that substantially impaired the use of the vehicle. Ultimately, the Consumers were awarded a refund.

Stubbs v. General Motors Corporation, Chevrolet Motor Division, 2004-0479/ORL (Fla. NMVAB September 22, 2004).
The Consumer complained of a pronounced clunking sound coming from the transmission when it was shifting between second and third gear. The Manufacturer's Representative argued at the hearing that the transmission clunk was a normal operating condition for the vehicle, that the

Manufacturer was aware of the clunking condition, and that the condition was worse in four-wheel drive vehicles such as the Consumer's vehicle. The Board noted that a prospective purchaser would likely either decline to purchase the Consumer's vehicle in favor of one which does not exhibit the clunking condition or would pay substantially less for the Consumer's "clunker." Upon these facts, the Board found that the transmission clunking condition substantially impaired the value of the vehicle. The Board further ruled that the Manufacturer's defense of "normal operation" was irrelevant to the issue of whether the defect or condition substantially impaired the vehicle.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes Written Notification Under §681.104(1)(a), F.S.; §681.104(1)(b), F.S.

Roach v. Kia Motors America, 2004-0590/ORL (Fla. NMVAB September 23, 2004).
The Manufacturer contended that the Consumers failed to provide the Manufacturer with written notification pursuant to the terms of the statute, because the Consumers' defect notification form did not correctly describe the problem they were having with the vehicle. The Consumers complained of an intermittent stalling problem with the vehicle. On the defect notification form, however, they listed as a continuing defect, "blown fuse[,] wiring and fuse box harness, and ECM harness." The Consumers based their description of the problem upon wording in the repair orders. The Board noted that the statute does not require that a consumer be a diagnostician of their vehicle, nor does it require that each and every defect be identified on the written defect notification form. The Board also made note that the printed instructions on the defect notification form direct the Manufacturer to ascertain all appropriate information. Accordingly, the Board ruled that the Manufacturer received written notification pursuant to the requirements of the statute. Ultimately, the Board awarded the Consumers a refund.

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

Hankins v. Ford Motor Company, 2004-0501/ORL (Fla. NMVAB August 25, 2004).
The Manufacturer contended that it was not afforded a reasonable number of repair attempts, because there were only two repair attempts on the transmission problem prior to the Manufacturer's receipt of the Consumer's written defect notification. The Consumer complained of a transmission slipping problem and presented the vehicle to the Manufacturer's authorized service agent on two occasions. On each repair attempt, the Manufacturer's service agent test drove the vehicle and performed electronic diagnostic testing. The service agent found no indication of a transmission slipping problem, and consequently, performed no repairs. After two unsuccessful attempts to have the problem corrected, the Consumer sent written notification to the Manufacturer and thereafter provided the Manufacturer with a final repair attempt. As with the two previous repair attempts, however, the Manufacturer's authorized service agent test

drove the vehicle and performed electronic diagnostic testing. Finding no indication of a transmission slipping problem, the service agent again performed no repairs. Upon these facts, the Board found that the Manufacturer was provided a reasonable number of attempts to correct the transmission slipping problem. Ultimately, 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.

Bustamante v. BMW of North America, LLC, 2004-0450/MIA (Fla. NMVAB August 9, 2004). The vehicle was equipped with a Spanish version of a Global Positioning System (GPS). The Spanish translation was poor, and at times, it caused the GPS software to fail. The GPS erroneously interpreted "yes" answers to questions to be "no" answers, which would prompt the software to shut itself down. In order for the Consumer to avoid the shut-down problem, the Consumer had to answer "no" whenever she meant "yes." The Board acknowledged that the GPS problem was an annoyance, but nevertheless, found that it did not substantially impair use, value, or safety of the vehicle. Accordingly, the Consumer's case was dismissed.

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

Newby v. Mercedes-Benz USA, Inc., 2004-0447/STP (Fla. NMVAB August 30, 2004). The Manufacturer contended that the Consumers' case should be dismissed, because their Request for Arbitration was filed more than 60 days after the expiration of the Consumers' Lemon Law rights period. The Request for Arbitration was filed on May 3, 2004. The purchase documents were dated March 1, 2004. However, the Consumers' indicated on their Request for Arbitration that they took delivery of the vehicle on March 4, 2004. At the hearing, the Consumers testified that the vehicle was not ready for delivery on March 1, 2004, and that it was subsequently delivered to one of the Consumers at her place of business on March 4, 2004. No documentary evidence was presented to substantiate the Consumers' claim that they took delivery on March 4, 2004. Upon these facts, the Board ruled that the Consumers' Request for Arbitration was untimely filed.

MULTIPLE MANUFACTURERS

Xenos v. Ford Motor Company and *Roush Performance Products*, 2004-0306/TPA (Fla. NMVAB August 18, 2004).
Roush Performance contended that it was not a "manufacturer" under the terms of the Lemon Law statute. Prior to the Consumer's purchase, the vehicle was extensively modified by Roush. The modifications performed by Roush included the addition of a Roush supercharger and related engine cooling system to the vehicle's engine, recalibration of the transmission and power train, installation of a new braking system, and the replacement of the Ford suspension and exhaust systems with Roush systems. The Ford suggested retail price of approximately $25,000 was increased by approximately $24,000 as a result of the manufacturing performed by Roush. The Consumer was provided with a written express limited warranty from Ford and a written limited warranty from Roush Performance Products. Ford Motor Company contended that Roush Performance was a manufacturer under the terms of the Lemon Law statute because of the extensive modifications Roush made to the vehicle. Upon these facts, the Board ruled that Roush Performance was a manufacturer of the vehicle in question. Ultimately, however, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

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

Thomas v. General Motors Corporation, Chevrolet Motor Division, 2004-0437/STP (Fla. NMVAB July 1, 2004).
The Consumer requested the Board utilize the NADA retail price for his two trade-in vehicles. One of the vehicles was included in the NADA Used Car Guide (Southeastern Edition) in effect at the time of the transaction, but the other vehicle, a conversion van, was not included in that edition of the NADA Used Car Guide. That NADA Used Car Guide contained a reference to and incorporation of the NADA Van Conversion Guide for conversion vans. Therefore, the Board utilized the NADA Van Conversion Guide that was in effect at the time of the transaction to derive a net trade-in allowance for the conversion van.

MISCELLANEOUS ISSUES

Boutwell v. Kia Motors America, 2004-0509/ORL (Fla. NMVAB September 1, 2004).
The Consumer sought to prohibit the Manufacturer from raising any affirmative defenses at the hearing, arguing that the Manufacturer's Answer was untimely filed. The Manufacturer received the Notice of Arbitration on June 25, 2004. The date 15 days after the Manufacturer's receipt was July 10, 2004, which was a Saturday. Counsel for the Consumer argued that the Manufacturer's Answer was untimely because it was filed on Monday, July 12, 2004. The Board ruled that the Manufacturer's Answer was timely filed. Accordingly, the Manufacturer was allowed to raise the affirmative defenses specified on its Answer.

Bates v. Ford Motor Company, 2004-0482/WPB (Fla. NMVAB August 11, 2004).
At the hearing, the Manufacturer's counsel requested leave to raise an affirmative defense that was not timely raised in the Manufacturer's Answer or in a timely filed amendment. Counsel for the Manufacturer asserted that the affirmative defense indicated on the Manufacturer's Answer was the result of a scrivener's error. As there was sufficient time prior to the hearing in which the Manufacturer could have corrected the alleged error in its Answer, the Board denied the Manufacturer's request. The Board also denied the Manufacturer's in-hearing request for a continuance.

Dougherty v. Ford Motor Company, 2004-0453/ORL (Fla. NMVAB July 28, 2004).
The Consumers did not receive the Manufacturer's Third Prehearing Information Sheet, which added a Manufacturer witness. Therefore, the witness was not properly noticed, and the Board did not allow the witness to testify.