

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

QUARTERLY CASE SUMMARIES

October 2002 - December 2002 (4th Quarter)

JURISDICTION

Motor Vehicle §681.102(15), F.S.

Reeves v. Ford Motor Company, 2002-0912/ORL (Fla. NMVAB December 3, 2002).

The Manufacturer contended that the subject vehicle was not a “motor vehicle” as defined by the lemon law statute because the original purchase occurred in Ohio. The Manufacturer originally delivered the vehicle to a Ford franchised dealer located in Ohio. The Ohio dealer then sold the vehicle to a Florida independent (non-franchised) dealer, which subsequently sold the vehicle to the Consumer in Florida. The Consumer’s purchase contract identified the vehicle as “new”; however, the certificate of title identified the vehicle as “used.” (Florida’s titling statute requires that vehicles be titled as used when they are sold at retail by non-franchised motor vehicle dealers.) The Manufacturer contended that the original sale occurred in Ohio, when the franchised dealer sold the vehicle to the non-franchised Florida dealer. The Manufacturer argued that the subject vehicle was not a “motor vehicle” because it was not originally sold in Florida and when it was subsequently sold to the Consumer, it was sold as “used.” The Board found that the Florida non-franchised dealer was not an “ultimate purchaser” because it purchased the vehicle for purposes of resale. Therefore, the vehicle was a new vehicle when the Florida dealer sold it to the Consumer. The Consumer was ultimately awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Reasonable Number of Attempts §681.104(2)(a), F.S.

Chancey v. Mitsubishi Motor Sales of America, Inc., 2002-0997/JAX (Fla. NMVAB December 27, 2002).

The Consumers complained of the following problems: “SRS” warning light illuminating, “TCL” and “ABS” warning lights illuminating, and water leaking from the air conditioner onto the interior floor of the vehicle. The “SRS” illumination problem was corrected after four repair attempts, and the problems with the other two warning lights were corrected after two repair attempts. The air conditioner leak was corrected after three repair attempts. The Board found that the warning lights could all have been indicative of failure in major safety-related components of the vehicle and that it was not unreasonable for the Consumers to be concerned about the potential for such failure. Consequently, the Board ruled

that the recurring illumination of the warning lights was a defect or condition that substantially impaired the vehicle's safety. Similarly, the Board ruled that the air conditioner leak substantially impaired the vehicle's value. However, the Board ultimately ruled against the Consumers, on the ground that the Manufacturer corrected the nonconformities within a reasonable number of attempts. Accordingly, the Consumer's case was dismissed.

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

Furr v. General Motors Corporation, Pontiac-GMC Division, 2002-0909/JAX (Fla. NMVAB November 6, 2002).

The Manufacturer argued that the Consumer failed to send a sufficient written notification of a final repair opportunity. When the Consumer leased the vehicle, she did not receive a written statement explaining her rights under the Florida Lemon Law; consequently, she followed the instructions in her warranty book to notify the Manufacturer of her continuing problem. The Manufacturer received the letter, and a representative telephoned the Consumer. The Manufacturer's representative also mailed a letter to the Consumer confirming the telephone call and designating the repair facility to address the problem. The vehicle was already at the designated repair facility undergoing repair on the day the Manufacturer telephoned the Consumer. The Board held that the Consumer's letter was sufficient written notification under the statute, because it contained the necessary information to prompt the Manufacturer to schedule and arrange a final repair attempt. The Board ultimately awarded the Consumer a refund.

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

Bauer v. Kia Motors America, 2002-0905/ORL (Fla. NMVAB October 30, 2002).

Although the Manufacturer's representative stipulated that the Manufacturer was provided a final repair attempt, he nonetheless requested that the Board issue an "interim repair decision" to permit an additional repair. According to the Manufacturer, the authorized service agent failed to follow the Manufacturer's instructions for repair of the defect. In addition to requesting an additional repair attempt, the Manufacturer's representative contended that the alleged defect did not substantially impair the use, value or safety of the vehicle, because the expense of repairing the defect would only be \$90 and the Consumer simply needed to apply tape to secure the panel when she needed to use the rear cargo area. The Board ruled that the rear door interior access panel defect was a nonconformity that substantially impaired the use, value and safety of the vehicle. The Board further found that the consumer had adhered to the statutory requirements for written notice and final opportunity to repair. The Manufacturer's request for an "interim repair decision" was rejected as outside the scope of the Board's statutory authority. The Board ultimately awarded the Consumer a refund.

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

Pearson v. Nissan Motor Corporation, U.S.A., 2002-1029/STP (Fla. NMVAB December 17, 2002).

In a days-out-of-service case, the Manufacturer's representative requested that the Consumer's claim be dismissed because the nonconformities had been repaired. The Manufacturer's representative contended that the Lemon Law requires a current problem to exist with the vehicle. The Board rejected the Manufacturer's contention, noting that there is no requirement in the statute that the nonconformities continue to exist on the date of the hearing or that any nonconformities continue to exist after 30 or more days out of service. Ultimately, the Consumer was awarded a refund.

Madore v. Mercedes-Benz USA, Inc., 2002-0784/JAX (Fla. NMVAB November 27, 2002).

The Manufacturer argued that the in-and-out dates reflected on its service agent's written repair order were incorrect. The repair order gave the "date in" as November 8, 2001 and the "date ready" as November 27, 2001. A service technician testified that the consumer actually picked up the vehicle on November 10, 2001, and the repair order was "left open" until the end of November. It was the normal procedure for that dealership to leave repair orders "open" if ordered parts were delayed and "close" the repair orders at the end of the month. The Consumer testified that his personal calendar and memory of the events surrounding that repair were that he brought the vehicle into the service agent on November 8, 2001 and left the vehicle. Thereafter, he telephoned several times to check on the status of the repair and was told that parts had been ordered, but there was a delay in delivery. The Consumer, a member of the armed forces, was required to report for duty in Georgia by November 29, 2001, so he contacted the service agent and arranged to pick up his vehicle on November 27, 2001, in order to drive to Georgia. He later returned the vehicle to the dealership, and the delayed part (a replacement transmission) was installed. The Board resolved the conflicting testimony in favor of the Consumer and found the vehicle was out of service for repair from November 8-27, 2001. The Board noted that the Manufacturer, through its authorized service agent, has a statutory duty to provide a written repair order that reflects the date the vehicle is brought into the repair facility and the date the work is completed. The Board ultimately awarded the Consumer a refund.

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

Middleton v. Ford Motor Company, 2002-0856/JAX (Fla. NMVAB November 27, 2002).

The Consumer complained that rear-seat passengers had been unable to exit the vehicle just by pressing the button next to the door handle and lifting the door handle. The problem occurred when the power locks were engaged and the child safety lock feature was off. However, the doors could be unlocked with the remote control. Each time the Consumer took the vehicle to the Manufacturer's authorized service agent for repair she informed the service personnel that her rear door locks did not work. She did not explain the situation in any greater detail, and the service agent did not further inquire. Throughout the course of repairs, the service personnel checked the operation of the locks

from outside the vehicle by using the remote and found the locks to be functioning normally. The Manufacturer's witness testified that he was not aware that the Consumer was complaining of an inability to exit from the back seat of the vehicle when the locks were on. The Board inspected the vehicle and found that the rear door locks operated properly when utilized in accordance with the instructions in the Owner's Manual. The Board found that the problem complained of was not a defect, noting that the Consumer's problem was more indicative of a lack of communication. Accordingly, the Board dismissed the Consumer's claim.

Hood v. Ford Motor Company, 2002-0848/ORL (Fla. NMVAB November 20, 2002).

The Manufacturer's representative argued that the alleged gear selector problem was cured and that the remaining problems complained of by the Consumer were not the subject of a reasonable number of repair attempts. The Consumer complained of assorted electrical problems. The electrical problems intermittently caused the following malfunctions: (1) the gear would not shift into gear from park, (2) the power windows and power locks failed, and (3) the brake lights illuminated and would not go off, draining the battery. The Board found the assorted electrical problems to be an overall electrical condition that substantially impaired the use, value and safety of the vehicle. The Board also found that the electrical condition continued to exist after the final repair attempt. Accordingly, the Board awarded the Consumer a refund.

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

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

Metzler v. Toyota Motor Sales, U.S.A., 2002-0907/TPA (Fla. NMVAB December 13, 2002).

The Consumer complained of engine problems that caused the vehicle to be out of service for repair for 30 or more days. The Manufacturer's representative argued that the engine problems were the result of an accident or abuse by persons other than the Manufacturer or its authorized service agent. Prior to the engine problems, the vehicle was in the Manufacturer's authorized service agent's repair facility for exterior body damage repairs to the side of the vehicle. Approximately one week after the Consumer picked-up the vehicle, it had to be towed back to the Manufacturer's authorized service agent, because the vehicle's engine overheated and was making a knocking sound. Subsequently, the vehicle had to again be towed to the Manufacturer's authorized service agent's facility. The service agent told the Consumer that the vehicle's block drain was found to be in the "open" position which caused the coolant to leak from the vehicle, but they declined responsibility for causing the block drain to be "open." Consequently, the service agent required the Consumer to pay \$1,000 toward the cost of the repairs. A witness for the Manufacturer speculated that the vehicle's engine could have been starved of oil as a result of the accident that caused the side body damage. Concerning the open block drain, the witness expressed the opinion that the Consumer could not have driven the vehicle 177 miles if the block drain had been open when he picked-up the vehicle. The Board rejected the Manufacturer's defense, holding that the engine problems evinced a defect or condition that substantially impaired the

use and value of the vehicle. Accordingly, the Board awarded the Consumer a refund.

Cyr v. Ford Motor Company, 2002-0893/ORL (Fla. NMVAB December 2, 2002).

The Manufacturer's representative argued that the alleged defect was the result of improper maintenance of the vehicle by the Consumer. The Consumer complained of an alignment problem which caused the vehicle to pull when driven. The Manufacturer's witness testified that, at the pre-hearing inspection, he saw no evidence to indicate that the vehicle's tires had been rotated. He also testified that the tires appeared to be "chopped" which could cause the vehicle to pull and to vibrate. The maintenance guide for the vehicle recommended that tires be rotated every 5,000 to 6,000 miles. The Consumer testified that the vehicle's tires were rotated when the vehicle attained 21,121 miles of operation and again when the vehicle attained 28,080. The Consumer additionally testified that the front tires were moved to the rear of the vehicle after the pre-hearing inspection was conducted. An inspection of the vehicle was performed by the Board, and tire tread was observed to be evenly worn, indicating that the tires had been rotated. The Board found that the evidence presented by the Consumer and the inspection performed during the hearing overcame the Manufacturer's defense that the defect was the result of improper maintenance. The Board ultimately awarded the Consumer a refund.

REFUND §681.104(2)(a)(b), F.S.

Collateral Charges §681.102(3), F.S.

Wassberg v. Toyota Motor Sales, U.S.A., 2002-0970/FTM (Fla. NMVAB December 23, 2002).

The Consumers requested reimbursement for a cargo net, a sound system, a radio mounting kit, spectre mica touch-up paint, oil filters, an aero kit that had not been installed on the vehicle, paint purchased to paint the aero kit, tires, and tire service fees. The Consumers purchased the sound system through their business and submitted an invoice for reimbursement which reflected the retail price for the sound system. The Board ordered a refund which included reimbursement for the cargo net, the sound system, and the radio mounting kit. The Board denied the consumers' request for reimbursement for spectre mica paint, oil filters, the aero kit that had not been installed, paint purchased to paint the aero kit, tires, and tire service fees.

Rodriguez v. Ford Motor Company, 2002-1005/TPA (Fla. NMVAB December 10, 2002).

The Manufacturer argued that the interest paid by the Consumers should not be reimbursed, because it was interest paid on the Consumers' home loan. Prior to making any payments on the loan for the subject vehicle, the Consumers satisfied the lien against the vehicle with funds secured by a home loan. The Consumers requested reimbursement for interest on the home loan that was attributable to the vehicle loan payoff amount. The Manufacturer's representative argued that section 681.104(2)(b), Florida Statutes (2001), directed that "refunds shall be made to the consumer and lien holder of record, if any, as their interests may appear." Because there was no existing lien against the vehicle, the

Manufacturer's representative contended that the Consumers should not be reimbursed for the interest paid. The Board rejected the Manufacturer's argument. Accordingly, the refund included reimbursement to the Consumers for interest paid on the home loan that was attributable to the vehicle loan payoff.

Incidental Charges §681.102(8), F.S.

Robertson v. General Motors Corporation, Chevrolet Motor Division, 2002-0829/TPA (Fla. NMVAB October 3, 2002).

The Consumers requested reimbursement for incidental charges as follows: \$65.40 for postage expenses, \$17.37 for copy expenses, payment of insurance premiums covering the subject vehicle, \$10.00 for a copy of the BBB/Autoline hearing tape, and \$5.00 for each time they were provided a rental vehicle when the subject vehicle was in the repair facility. The Consumers were required to pay the \$5.00 fee because they did not have a credit card to secure the rental contract. The Manufacturer objected to these incidental costs. The Board granted reimbursement for the postage and copy expenses, but denied reimbursement for the insurance premiums and the costs to obtain the BBB tape and rental vehicles.

Chester v. Ford Motor Company, 2002-0748/JAX (Fla. NMVAB November 27, 2002).

The Consumer sought reimbursement for a document scanner and a used car that was allegedly purchased as alternative transportation to the "lemon" vehicle. The Manufacturer objected to the charges as being unreasonable. The Consumer was ultimately awarded a refund, but the Board agreed that the document scanner and used car were not reasonable incidental charges.

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

Lambert v. Ford Motor Company, 2002-1006/TPA (Fla. NMVAB December 9, 2002).

In connection with the purchase of the "lemon" vehicle, the Consumer contributed a trade-in vehicle for which she received \$9,550 as a net trade-in allowance. The net trade-in allowance was not acceptable to the Manufacturer, so the Manufacturer provided a copy of the NADA Official Used Car Guide (Southeastern Edition) in effect on the date of the purchase. The NADA Guide indicated a retail price for the consumer's trade-in vehicle of \$8,775 (\$7,775 plus \$500 for a moon roof, \$100 for aluminum alloy wheels, \$50 for a compact disc player, \$250 for leather seats, and \$100 for a "mach" stereo system). The Manufacturer objected to enhancing the base retail price of the trade-in vehicle without requiring the Consumer to produce documentary proof of the enhancements. The Board accepted the consumer's sworn testimony regarding the equipment on the trade-in, and awarded her the NADA retail price as the net trade-in allowance.

Brookshire v. Ford Motor Company, 2002-0805/ORL (Fla. NMVAB December 6, 2002).

The consumer provided two vehicles as trade-in vehicles at the time he acquired the subject vehicle. The net trade-in allowance reflected on the installment contract was not acceptable to the consumer, so

the Board used the NADA Official Used Car Guide to calculate the retail value of the vehicles. One of the trade-in vehicles was not included in the NADA Official Used Car Guide; however, it was included in the NADA Official Older Used Car Guide. The Manufacturer objected to the use of the Official Older Used Car Guide on the ground that the lemon law statute required that the NADA Official Used Car Guide be used, not the Official Older Used Car Guide. The Manufacturer also objected to the use of the NADA Guides on the ground that the Board should not separately calculate the value of the two trade-in vehicles where the purchase order and installment contract reflected the “gross trade-in allowance” and did not separately allocate an amount for each vehicle. The Board found that the facts presented were not contemplated by the legislature. The Board noted that the statute is a remedial statute and should be liberally construed to effectuate its remedial purpose. Consequently, the Board held that under the circumstances it was appropriate to use the NADA Older Used Car Guide.

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

Howard v. General Motors Corporation, Chevrolet Motor Division, 2002-1069/STP (Fla. NMVAB December 20, 2002).

The Consumer argued that the Board should utilize the mileage attributable to the Consumer at the time he requested a BBB/AUTOLINE hearing to calculate the offset. The Consumer filed a claim with BBB/AUTOLINE, but the program rendered a decision declining jurisdiction without holding an arbitration hearing. Thereafter, the Consumer filed a request for arbitration before the Board. The Board rejected the Consumer’s argument. Relying on section 681.102(20), Florida Statutes (2001), which provides that the “number of miles attributable to the consumer” is the mileage “up to the date of a settlement or arbitration hearing.” The Board ruled that the mileage as of the date of the hearing before the New Motor Vehicle Arbitration Board was the mileage to be used in the offset calculation, because the Consumer did not have a BBB/AUTOLINE arbitration hearing.

MISCELLANEOUS ISSUES

Bowers v. Ford Motor Company, 2002-0413/ORL (Fla. NMVAB October 4, 2002).

The Manufacturer’s representative argued that the Board lacked jurisdiction to consider the Consumers’ claim because the parties had entered into a settlement agreement. Pursuant to the settlement agreement, the Manufacturer paid off the outstanding lien against the vehicle, and the Consumers turned in the vehicle to the dealer. Although the Consumers had agreed to sign a release, they refused to do so when they turned in the vehicle. Counsel for the Manufacturer stated that he was in possession of the Consumers’ refund check and would tender it if the Consumers would sign the required documents, including the release. The Board held that it was not empowered to enforce settlement agreements between the parties.