

AMERICAN ARBITRATION ASSOCIATION
Consumer Arbitration Tribunal

In the Matter of the Arbitration between

Re: 32 188 E 00539 06

Stacey Rame (Claimant)

and

Car Max Auto Superstores, Inc.

and

Car Max Business Services, LLC d/b/a Car Max Auto
Finance, a fictitious name. (Respondents)

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated June 22, 2005, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, AWARD, as follows:

On June 22, 2005, Stacey Rame (hereinafter "Rame") purchased a 2002 Pontiac Firebird formula Trans Am from Respondent CarMax Auto Superstores, Inc. for a sales price of approximately \$22,000, with a down payment of \$4000 and the remainder financed through CarMax Business Services, LLC d/b/a CarMax Auto Finance. (Both CarMax's are hereinafter collectively referred to as "CarMax")¹

Rame's car was covered by a CarMax 30 day warranty and she purchased an additional 48,000 mile warranty at a cost of \$1499.00.

The salesman represented the car as a "one owner vehicle" which was not true. Instead, the car had two previous owners and a repossession in its' history, as well as several sales through the auto auction. CarMax knew of these transactions because it had an "AutoCheck Vehicle History Report" in its' possession which detailed these transactions.

Prior to purchase Rame's husband heard a knocking sound in the engine, which went away once the engine warmed up. Both Mr. Rame and CarMax believed this was a normal noise for this type of engine.

After purchase, the noise became worse and Rame returned the car to CarMax for repairs under the 30 day warranty. Ms. Rame complied with the warranty notification requirements by advising CarMax of her claim within 30 days of the purchase, even though the car was not brought to CarMax for repairs until July 25, 2005, 3 days after the warranty expired. The warranty required "*Customer must notify CarMax of the failure of a Covered Part within the warranty period.*"

Ms Rame testified she called CarMax on the last day of the warranty and "VJ" advised her to bring the car in on Monday since the service department was very busy. Dan Eckler, service manager, testified it was not uncommon for CarMax service to ask a customer to delay bringing in their car when the service department was busy, even if it meant the warranty expired in the interim. Under those circumstances, CarMax would repair the car under the 30 day warranty.

CarMax was unable to diagnose the problem and sent the car to Maroone Chevrolet, who had expertise in General Motors engines. Maroone's mechanic determined the piston walls and rod bearings were scored and the engine needed to be rebuilt or replaced at a cost of approximately \$14,000.00. The mechanic noted a gritty substance in the bottom of the oil pan.

CarMax, proceeding on the incorrect assumption the car was now covered by the extended warranty, reported the damage to the extended warranty carrier AON. AON sent an inspector, Dan Schloss, to inspect the car.

¹CarMax Finance is subject to all claims and defenses which Rame could assert against CarMax Superstore relating to the purchased vehicle pursuant to the FTC Holder Rule, 16 C.F.R. 433, *et seq.*

Schloss agreed the bearings were scored and noted metal in the bottom of the oil pan. No samples were taken. AON requested additional tear down of the engine for further inspection.

After the additional tear down, AON sent a second inspector, Jason Tornatore, to inspect the car. Tornatore found a "caramel gritty substance" coating the rings and piston tops and a "thick sticky substance" in the oil pan which had a sweet smell "consistent with sugar". Tornatore took samples of the oil, the "thick sticky substance" and the caramel colored substance adhering to the ports around the injection nozzle for testing.

Tornatore then inspected the fuel filler neck, where gasoline is put into the vehicle, and found a single crystal, 1/16 to 1/8 inches in diameter, which he promptly tasted and determined to be "sugar". At this point, Tornatore asked that the gas tank be removed from the vehicle and predicted sugar would be located in the bottom of the gas tank.

Tornatore returned several days later to inspect the gas tank which had been removed from the car. He reached inside the gas tank and removed a substance which he referred to as "sugar". A sample of this material and the fuel were taken for testing.

Based on Tornatore's findings warranty coverage was denied since the mechanical problems were caused by vandalism, not mechanical breakdown. The facts do not support this denial of coverage.

Despite all the samples of oil, fuel and other substances removed for testing, the only substance actually tested by a lab was the oil. The report on this test found only water contamination; no evidence of sugar contamination of the oil was presented.

The supposed finding of sugar at the filler neck is tentative at best. It is inconceivable that the mere tasting of a tiny speck of crystalline material could support denial of warranty coverage.

Even if Tornatore was correct in his findings of sugar in the fuel tank and at the filler neck, it would be virtually impossible for sugar in those locations to cause the scoring on the piston wall and bearings which caused the engine failure. The sugar would have to be in the *oil*, not the *fuel*, to cause this type of damage. No evidence was presented showing cross-contamination between the fuel and oil and testimony indicated it would be extremely difficult for sugar-laced fuel to contaminate the oil. As noted above, the only contaminant in the oil was water.

The engine failure was not caused by vandalism, but by mechanical breakdown and was covered by the CarMax 30 day warranty.

CONCLUSIONS OF LAW

Based on the foregoing facts, I hereby reach the following conclusions of law:

1. CarMax engaged in common law fraud when it represented the car as a one owner vehicle when it knew this was untrue.
2. CarMax violated the Florida Unfair or Deceptive Trade Practices Act, Sec. 501.976(3) when it represented the car as a one owner vehicle when it knew this was untrue.
3. CarMax breached its' 30 day limited warranty provided to Rame when it refused to repair the vehicle.
4. CarMax violated the Florida Unfair or Deceptive Trade Practices Act, Sec. 501.976(7) when it refused to honor its' 30 day limited warranty provided to Rame and repair the vehicle.

Damages

Accordingly, I, AWARD, as follows:

1. The sales contract is hereby rescinded. CarMax shall reimburse claimant for all principal and finance charges paid on the contract totaling Six THOUSAND TWO HUNDRED FORTY-SEVEN DOLLARS AND FIVE CENTS (\$6247.05) plus interest² in the amount of ONE THOUSAND TWENTY-FOUR DOLLARS AND SEVENTY CENTS (\$1024.70) for a total of SEVEN THOUSAND TWO HUNDRED SEVENTY-ONE DOLLARS AND SEVENTY FIVE CENTS, (\$7271.75).
2. CarMax shall not enforce or seek collection of the remaining loan balance on the installment contract.
3. CarMax shall forward to the three major credit reporting agencies a letter designed to correct any adverse effect this matter has had on Rame's credit. Counsel are specifically directed to concur to develop agreeable language to satisfy this requirement.
4. Rame is the prevailing party and entitled to attorneys' fees and costs pursuant to statute. The circuit court shall determine the amount of fees.

The administrative filing fees and case service fees of the American Arbitration Association totaling \$1250.00 shall be borne entirely by Respondent. The fees and expenses of the arbitrator totaling \$3, 255.85 shall be borne entirely by Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$375.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

The above amounts are to be paid within 30 days of this Award.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

June 28, 2007
Date

Denise Morris Hammond
Denise Morris Hammond

I, Denise Morris Hammond, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

June 28, 2007
Date

Denise Morris Hammond
Denise Morris Hammond

²Interest is calculated at the statutory rate of 7% for 2005; 9% for 2006 and 11% for 2007. Interest is calculated through the date of the award.