

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

LUIS ALVAREZ,

Consumer,

vs.

CASE NO.: 2006-0738/FTL

ASTON MARTIN LAGONDA OF  
NORTH AMERICA, INC.,

Manufacturer.

---

**DECISION OF THE BOARD**

THIS CASE came before the Florida New Motor Vehicle Arbitration Board upon approval of the Consumer's request for arbitration. Appearing before the Board were the following:

For the Consumer:

Rebecca J. Covey, Esq.  
1318 Southeast 1st Avenue  
Fort Lauderdale, Florida 33316

For the Manufacturer:

Tania Sayegh, Esquire  
P.O. Box 70036  
Fort Lauderdale, Florida 33307

Upon Notice to the parties, the Board held a hearing in this case on December 13, 2006, in Fort Lauderdale, Florida. Board members present were Chairperson Carolyn Moore, Technical Member Luis M. Perez, and Member Joseph M. Librie. Legal Advisor to the Board was Tamela Stults-Wagner, Assistant Attorney General, Department of Legal Affairs. Secretary to the Board was Gloria Ramirez, Department of Legal Affairs. The Consumer testified on his own behalf. The Manufacturer presented no testimony. Consumer exhibits C-1 through C-7

were received in evidence. The motor vehicle which is the subject of this case was not inspected by the Board.

At the hearing, the Board was unable to complete the calculation of the refund and directed the Consumer to provide documentation of his vehicle rentals during the repair period, documentation of the \$5,000.00 order deposit and the \$5,100.00 refundable security deposit to establish that these were two different payments, and documentation of the flat bed tow charge receipt(s) to and from the hearing. On December 18, 2006, the Consumer provided all the information. On December 18, 2006, Manufacturer's attorney did not object.

#### PRELIMINARY MATTERS

This claim was subject to an untimely filed Answer and Affirmative Defenses. Pursuant to Paragraph (8), *Hearings Before the Florida New Vehicle Arbitration Board*, "the **Manufacturer's Answer** form must be filed with the Board Administrator no later than **20 days** after receipt of the Notice of Arbitration." The Manufacturer contends that Manufacturer's attorney did not receive the said Notice of Arbitration timely from the Manufacturer's clerical staff, because they were confused by the venue and inadvertently misplaced it and could not thereafter find the file. Manufacturer asserts this is excusable neglect. In addition, the Manufacturer's Prehearing Information Sheet was not received five days before the hearing as required by paragraph (22) of the Board's rules. Counsel for the Manufacturer cited the same reasons for the late filing of the Prehearing Sheet. Upon consideration, the clerical error of the Manufacturer's staff was not excusable neglect and the Answer and Prehearing Sheet were both untimely filed. Accordingly, the Manufacturer was not permitted to assert the late-raised

affirmative defenses at the hearing and was limited to cross examining the Consumer.

Manufacturer witnesses listed on the late-filed Prehearing Sheet were not permitted to testify.

The Consumer filed a Prehearing Information Sheet and submitted the following documents less than five days before the hearing: the back of the Bill of Sale which was already filed timely, a copy of the Consumer's Insurance Policy, and a clearer copy of the Motor Vehicle Lease Agreement, which was filed previously. The Consumer contends that the Consumer's Insurance Policy information is necessary for a test drive, and the clearer copy of the Motor Vehicle Lease Agreement is duplicative and the back of the Bill of Sale is merely completing a document already filed. The Prehearing Information Sheet having been untimely filed by the Consumer, witnesses listed thereon were not permitted to testify. The Consumer's Insurance Policy information was allowed into evidence for the limited purpose of proof of insurance, and the clearer copy of the Motor Vehicle Lease Agreement was allowed, because it was merely duplicative, and the back of the Bill of Sale was allowed into evidence, because it was completing a document already filed and would be received into evidence as Exhibit C-8.

#### FINDINGS OF FACT

Based upon the stipulations by the parties, the testimony of the parties and witnesses and the evidence presented, the Board makes the following findings of fact:

1. The Consumer is a legal resident of the state of Louisiana and has a secondary home and business in the state of Florida. On December 28, 2004, the Consumer deposited \$5,000.00 on an order for a new 2005 Aston Martin DB Coupe automobile, Vehicle Identification Number SCFAD01A85GA01187, with Star Motors, Houston, Texas. Star Motors, Inc. paid Florida sales

tax and city tax on the vehicle, but no lemon law fee or battery tire fees. Thereafter, on January 3, 2005, the vehicle was leased to Consumer from Giles Automotive, Inc., Lafayette, Louisiana. The lease was a lease-purchase agreement. Subsequently on January 3, 2005, Chase Manhattan Bank USA Finance Corp, Phoenix, Arizona, purchased the vehicle from Giles Automotive, Inc. and assumed the lease. The vehicle was delivered to the Consumer in Florida and he made the \$5,000.00 order deposit by telephone via credit card in Florida. The Consumer was provided with Aston Martin Lagonda of North America, Inc.'s written express, limited warranty. Mileage at the time of delivery was 74 miles.

2. The Consumer complains of the following problem that substantially impairs the use, value or safety of the vehicle: electrical system failure including the brakes.

3. The Consumer took the vehicle in for repair to the Manufacturer's authorized service agent on October 11, 2005, where the vehicle has remained out of service by reason of repair through and including December 13, 2006, for a total of 428 days cumulative out-of-service days.

4. On September 2006, the Consumer sent written notification to the Manufacturer to advise the Manufacturer that the vehicle had been out of service by reason of repair for 15 or more cumulative days. The Manufacturer received the notification on September 15, 2006. After receipt of the notification, the Manufacturer or its authorized service agent had at least one opportunity to inspect or repair the vehicle.

5. On November 8, 2006, the Consumer filed a Request for Arbitration with this Board seeking a refund.

6. In order to lease the vehicle, the Consumer contributed a down payment of

\$15,184.35, which included the deposit (\$5,000.00), initial monthly lease payment (\$5,084.35) and refundable security deposit (\$5,000.00). The vehicle was leased from the lessor, Chase Manhattan Bank USA Financial Corporation. The Consumer is required to pay the Lessor the sum of \$5,084.34 per month, and as of the date of this hearing, 23 lease payments have been made in addition to the first month's payment for a total of \$116,940.05. The Consumer seeks reimbursement of the following as incidental charges: \$277.00 for towing, \$9.28 for postage and \$3,816.83 for car rental while the vehicle has been out of service for repair.

Total purchase price for the vehicle, for the purpose of calculating the statutory reasonable offset for use was \$168,650.00. Mileage attributable to the Consumer up to the date of this hearing was 2,070 (2,144 reduced by 74 miles at delivery). Application of the statutory formula results in a reasonable offset for use of \$2,909.21.

### CONCLUSIONS

Based upon the foregoing findings of fact, the Board makes the following conclusions:

1. Pursuant to Chapter 681, Florida Statutes (2006), and the evidence presented, the Florida New Motor Vehicle Arbitration Board has jurisdiction of the parties to and the subject matter of this case.
2. Section 681.104(2)(a), Florida Statutes (2006), requires that "if the manufacturer or its authorized service agent, cannot conform the motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts," the manufacturer must repurchase the defective vehicle and either replace it with a replacement motor vehicle that is acceptable to the consumer, or pay a refund to the consumer as set forth in paragraph (2)(b). The

refund or replacement must include all reasonably incurred "collateral " and "incidental " charges, as those terms are defined in the statute. The manufacturer receives a "reasonable offset" for the consumer's use of the defective vehicle, pursuant to a formula set forth in the statute. The Board shall grant this relief "if a reasonable number of attempts have been undertaken to correct a nonconformity or nonconformities." §681.1095(8), Fla. Stat. (2006).

3. Section 681.102 (15), Florida Statutes (2006), defines a "motor vehicle," in pertinent part, as:

[A] new vehicle, propelled by power other than muscular power, which is sold in this state to transport persons or property, and includes a recreational vehicle or a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale, or the lessee is responsible for repairs, but does not include vehicles run only upon tracks, off-road vehicles, trucks over 10,000 pounds gross vehicle weight, motorcycles, mopeds or the living facilities of recreational vehicles.

4. The evidence established that the vehicle which is the subject of this claim meets the above-quoted statutory definition and the claim is properly before this Board.

5. A nonconformity is defined as a "defect or condition that substantially impairs the use, value or safety of a motor vehicle, but does not include a defect or condition that results from an accident, abuse, neglect, modification or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent." §681.102(16), Fla. Stat. (2006).

6. Upon consideration of the evidence presented by the parties, it is concluded that the electrical system failure was a defect that substantially impaired the use, value and safety of the vehicle, and as such, it constitutes a nonconformity that required the vehicle to be out of service by reason of repair for more than 30 cumulative days.

7. Section 681.104(3), Florida Statutes (2006), provides in pertinent part:

It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the Lemon Law rights period,

.....

(b) The motor vehicle has been out of service by reason of repair of one or more nonconformities by the manufacturer, or its authorized service agent, for a cumulative total of 30 or more days...exclusive of down time for routine maintenance prescribed by the owner's manual. The manufacturer or its authorized service agent must have had at least one opportunity to inspect or repair the vehicle following receipt of the notification as provided in paragraph (1)(b). The 30-day period...may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

Paragraph (1)(b) of Section 681.104, Florida Statutes (2006), requires that:

If the motor vehicle is out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 15 or more days, exclusive of downtime for routine maintenance prescribed by the owner's manual, the consumer shall so notify the manufacturer in writing by registered or express mail to give the manufacturer or its authorized service agent an opportunity to inspect or repair the vehicle.

8. The evidence establishes that the Consumer's vehicle was out of service for repair for a total of 428 cumulative calendar days. After 15 or more days out of service, the Consumer mailed the required written notification to the Manufacturer. Following receipt of the notification, the Manufacturer or its service agent had the opportunity to inspect or repair the vehicle. Accordingly, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the warranty. The vehicle having been out of service for repair of the nonconformity for 428 days, the Consumer is entitled to the requested relief under the Lemon

Law.

9. It is concluded that the Consumer's 2005 Aston Martin DB9 Coupe automobile, Vehicle Identification Number SCFAD01A85GA01187, is a "Lemon" within the meaning of Chapter 681, Florida Statutes (2006). Accordingly, the Consumer is entitled to a refund of the amounts paid by him, including \$15,184.35 for the down payment; and \$116,940.05 for the monthly lease payments made as of the date of the hearing, plus any subsequent monthly lease payments the Consumer is required to make prior to the date of repurchase. Incidental charges of \$277.00 for towing, \$9.28 for postage and \$3,816.83 for car rental shall be added to the refund. §681.102(8), Fla. Stat. (2006). The Manufacturer is entitled to a reasonable offset for the Consumer's use of the vehicle, calculated according to the formula set forth in Section 681.102(20), Florida Statutes (2006), in the amount of \$2,909.21. The lessor, Chase Manhattan Bank USA Finance Corporation, is entitled to a refund of the lease price less the aggregate deposit and lease payments previously paid to the lessor for the leased vehicle. "Lease price" is defined in Section 681.102(9), Florida Statutes (2006), as:

[t]he aggregate of the capitalized cost, as defined in s.521.003(2), and each of the following items to the extent not included in the capitalized cost:

- (a) Lessor's earned rent charges through the date of repurchase.
- (b) Collateral charges, if applicable.
- (c) Any fee paid to another to obtain the lease.
- (d) Any insurance or other costs expended by the lessor for the benefit of the lessee.
- (e) Any amount equal to state and local sales taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.

DECISION

Based upon the foregoing findings of fact and conclusions, it is

ORDERED that the Manufacturer shall pay to the Consumer a refund in the amount of \$132,124.44, which represents the lessee costs and all collateral charges, less the sum of \$2,909.21 as the statutory offset for use, plus \$4,103.11 as collateral charges, for a total refund of \$133,318.30. The amount of the refund shall be increased by the amount of any additional lease payments the Consumer may make prior to the date of repurchase of the vehicle. The Manufacturer shall refund to the Lessor, Chase Manhattan Bank USA Finance Corporation, the sum which represents the lease price, as defined by Section 681.102(9), Florida Statutes (2006), less the aggregate deposit and rental payments previously paid to the Lessor for the leased vehicle. The Lessor shall not assess a penalty for early lease termination against the Consumer/Lessee. It is further

ORDERED that the Manufacturer shall comply with this Decision within 40 days of the date the Manufacturer receives this Decision. Upon compliance with this Decision by the Manufacturer, the Consumer shall deliver possession of the subject motor vehicle to the Manufacturer and the titleholder shall deliver clear title to the vehicle to the Manufacturer. In the event the Manufacturer fails to comply within the time specified, and fails to file an appeal as set forth below, the Consumer is directed to notify the Department of Legal Affairs, Lemon Law Arbitration Program, Enforcement Unit, The Capitol, Tallahassee, Florida 32399-1050, of such noncompliance. It is further

ORDERED that the Board retains jurisdiction of this case for the purpose of correcting

any technical errors or mistakes in this Decision arising from inadvertence, oversight or omission.

RIGHTS OF APPEAL

This Decision shall become final and binding upon the parties unless within **30 days of receipt of this Decision**, either party files an appeal by petition to the Circuit court, pursuant to Section 681.1095(10), Florida Statutes (2006), which states, "The petition shall be filed in the county where the consumer resides, or where the motor vehicle was acquired, or where the arbitration hearing was conducted." Within **seven (7) days** after the petition has been filed, the appealing party must send a copy of the petition to the Department of Legal Affairs, Lemon Law Arbitration Program, The Capitol, Tallahassee, Florida 32399-1050.

Pursuant to Section 681.1095(12), Florida Statutes (2006):

An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal.

Within **30 days of final disposition** of the appeal, the appealing party shall furnish the Department of Legal Affairs with a copy of the order or judgment of the court.

DONE and ORDERED this 10th day of January, 2007.

FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

Luis Pérez, Member  
Joseph M. Librie, Member  
Carolyn Moore, Chairperson, Dissenting

CERTIFICATE OF MAILING

I HEREBY CERTIFY that copies of the foregoing Decision were furnished by U.S. Certified Mail to: Luis Alvarez, M.D., 5959 Collins Avenue, #180, Miami Beach, Florida 33140; and to Frankie T. Woods, Ford Customer Service Division, Post Office Box 945500, Maitland, FL 32794-5500, on this 7<sup>th</sup> day of January, 2007.

  
\_\_\_\_\_  
Board Secretary

Additional copies by regular mail to:

Chase Manhattan Bank USA Finance Corporation  
P.O. Box 29214  
Phoenix, Arizona 85038-9214

Rebecca Covey, Esq.  
1318 Southeast 1st Avenue  
Fort Lauderdale, Florida 33316

Tania Sayegh, Esq.  
William L. Bromagen P. A.  
Post Office Box 70036  
Fort Lauderdale, FL 33307

Carolyn Moore  
Luis Perez  
Joseph M. Librie

CDI: 1.001;1.004; 4.001, 5.002; 7.003