

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

CAROLYN L. KELLY,

Consumer,

vs.

CASE NO.: 2007-0445/FTL

CHRYSLER LLC,

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 Covey, Esq.  
1318 SE 1st Avenue  
Fort Lauderdale, FL 33316

For the Manufacturer:

Merle Bumford  
10300 Boggy Creek Road, Suite 120  
Orlando, FL 32824

Upon Notice to the parties, the Board held a hearing in this case on August 22, 2007, in Fort Lauderdale, Florida. Board members present were Chairperson Rhoda Glasco-Foderingham, Technical Member Frank J. Licolli, and Member Richard Welch. Legal Advisor to the Board was Barbara Zappi, Assistant Attorney General, Department of Legal Affairs. The Consumer testified on her own behalf. The Manufacturer presented the testimony of Brian O'Neal, Service Manager at Stuart Jeep, and Merle Bumford, State Arbitration Specialist with Chrysler LLC. Consumer exhibits C-1 through C-6, and Manufacturer exhibits

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M-1 and M-2 were received in evidence. The motor vehicle which is the subject of this case was not inspected by the Board.

#### PRELIMINARY MATTER

The Consumer sought to introduce their Prehearing Information Sheet as a pleading along with introducing four exhibits that were attached to it into evidence. The prehearing sheet and attachments were received by the Board one day before the hearing and received by the Manufacturer two days before the hearing. Paragraph (6) of the Board's rules at *Hearings Before the Florida New Motor Vehicle Arbitration Board*, states, with regard to the Consumer's Prehearing Information Sheet and attachments, "these forms must be completed, if applicable, with the originals to be received by the Board Administrator and a copy to be received by each involved manufacturer or manufacturer's attorney (if known) no later than 5 days before the scheduled hearing." Failure, without good cause, to submit the documents on time, may result in documents not being considered. The Consumer's Prehearing Information Sheet along with the four exhibits were not considered, because good cause was not shown for the failure to timely submit them.

The Manufacturer sought to introduce two exhibits into evidence that were received by the Board in a timely manner. The Consumer, through counsel, objected. Counsel for the Consumer claimed that she never received those documents from the Manufacturer. The Manufacturer argued that the exhibits were attached to their Amended Answer and Amended Prehearing Sheet for which they produced a receipt showing they were received by the

Consumer's Attorney via overnight mail on August 16, 2007. The document was accepted for consideration.

### 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 parties stipulated that the Consumer purchased a new 2007 Jeep Liberty utility vehicle, Vehicle Identification Number 1J4GK58K17W525730, in Stuart, Florida, on April 18, 2007. The Consumer was provided with Chrysler LLC's written express, limited warranty. Mileage at the time of delivery was 43 miles.

2. The Consumer complains of the following problem that substantially impairs the use, value or safety of the vehicle: vehicle shudders. Carolyn Kelly, testified that the vehicle shudders at speeds around 65-75 miles per hour. The shudder can be felt in the steering wheel and in the floor. According to Ms. Kelly, the shudder feels like the vehicle is going over a bump in the road.

3. The vehicle was presented to the Manufacturer's authorized service agent for repair of the shudder on the following occasions: May 3, 2007 (replaced torque converter and reprogrammed powertrain control module per a technical service bulletin, test driven 12 miles), May 8, 2007 (replaced torque converter for the second time, test driven 159 miles), and May 25, 2007 (no repairs performed, test driven 3 miles).

4. On May 30, 2007, the Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer

received the notification on June 4, 2007. On June 2, 2007, the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt. At that time, the vehicle was test driven 10 miles and no repairs were performed. The shuddering continued to exist after the final repair attempt.

5. On June 18, 2007, the Consumer filed a Request for Arbitration with this Board seeking a refund.

6. The Manufacturer contends that any alleged defect or condition was repaired within a reasonable number of attempts. Brian O'Neal, Service Manager at Stuart Jeep, confirmed that there was a shudder in the Consumer's vehicle prior to May 8, 2007. Mr. O'Neal testified that, the shudder was repaired when the second torque converter was replaced at the second repair attempt on May 8, 2007. According to Mr. O'Neal, he has driven the Consumer's vehicle after that repair attempt and believes the shudder was not present in the vehicle. Merle Bumford, State Arbitration Specialist with Chrysler LLC, testified that any shudder that is present in the vehicle is a result of "torque converter lock-up" and is not a defect or condition that substantially impairs the use, value or safety of the vehicle. Mr. Bumford test drove the vehicle for 20 miles at the Manufacturer's prehearing inspection on July 24, 2007. According to Mr. Bumford, he did not feel any shudder in the vehicle; however, he did feel "torque converter lock-up."

7. In order to purchase the vehicle, the Consumer traded in a 2006 Jeep Wrangler with no existing lien. The purchase contract reflected a net trade-in allowance of \$20,000.00 which was not acceptable to the Consumer. In accordance with Section 681.102(19), Florida Statutes (2006), the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the

trade-in (hereinafter NADA Guide) was used to calculate the net trade-in allowance. Taking into account the trade-in vehicle's equipment and mileage, the retail price reflected in the NADA Guide was \$23,075.00 (\$20,925.00 plus \$750.00 for an automatic transmission, \$725.00 for a hard top, and \$675.00 for low mileage). In addition, the Consumer contributed a \$4,448.58 cash down payment and requested reimbursement of \$386.90 for a sun shade cover, \$23.46 for a locking gas cap, \$335.14 for a trailer hitch, and \$53.00 for window tinting as collateral charges.

8. For purposes of calculating the statutory reasonable offset for use, the purchase price for the vehicle is \$23,335.00 (\$27,835.00 minus a \$4,500.00 Manufacturer's rebate). Mileage attributable to the Consumer on the date of this arbitration hearing was 1,602 miles (2,299 odometer miles reduced by 43 miles at delivery, and 654 miles attributable to repair). Application of the statutory formula results in a reasonable offset for use of \$311.52.

9. The Consumer seeks reimbursement of the following as incidental charges: \$17.04 for postage, \$1.85 for photo copies, and \$10.00 for parking at this hearing.

#### CONCLUSIONS OF LAW

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 shall

repurchase or replace the vehicle.

3. 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).

4. Upon consideration of the evidence presented by the parties, it is concluded that the shuddering is a defect or condition that substantially impairs the use and value of the vehicle, and as such, it constitutes a nonconformity within the meaning of the statute. The Manufacturer’s assertions to the contrary are rejected.

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

(3) 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...

(a) The same nonconformity has been subject to repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in paragraph (1)(a), and such nonconformity continues to exist.

Paragraph (1)(a) of Section 681.104, Florida Statutes (2006), requires that, after three attempts have been made to repair the same nonconformity, the consumer must give written notice to the Manufacturer of the need for repair to allow the Manufacturer a final opportunity to cure the nonconformity.

6. The Consumer took the vehicle to the Manufacturer’s authorized service agent for repair of the same nonconformity on at least three occasions prior to sending the written notice; thereafter, a final repair was attempted. The nonconformity continued to exist after the final

repair attempt. Accordingly, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the warranty. The Manufacturer having failed to conform the vehicle to the warranty within a reasonable number of attempts, the Consumer is entitled to the requested relief under the Lemon Law.

7. It is concluded that the Consumer's 2007 Jeep Liberty utility vehicle, Vehicle Identification Number 1J4GK58K17W525730, is a "Lemon" within the meaning of Chapter 681, Florida Statutes (2006). Accordingly, the Consumer is entitled to a refund of \$23,075.00 for the net trade-in allowance, her cash down payment of \$4,448.58, along with \$386.90 for a sun shade cover, \$23.46 for a locking gas cap, \$335.14 for a trailer hitch, and \$53.00 for window tinting, as collateral charges pursuant to Section 681.102(3), Florida Statutes (2006). Incidental charges in the amount of \$17.04 for postage and \$10.00 for parking are added to the amount of the refund. §681.102(8), Fla. Stat. (2006). The Consumer's request of \$1.85 for photo copies is denied. The Manufacturer is entitled to a reasonable offset for the Consumer's use of the vehicle as set forth in Section 681.102(20), Florida Statutes (2006), in the amount of \$311.52.

#### 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 \$28,322.08, which includes all collateral charges, less the sum of \$311.52, which constitutes the statutory offset for use, plus \$27.04 as incidental charges, for a total refund of \$28,037.60. 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.

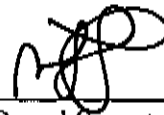
DONE and ORDERED this 7th day of September, 2007.

**FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD**

Rhoda Glasco-Foderingham, Chairperson  
Frank J. Licolli, Member  
Richard Welch, Member

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that copies of the foregoing Decision were furnished by U.S. Certified Mail to: Carolyn Kelly, 6278 N. Federal Highway, #285, Fort Lauderdale, FL 33308; and to Vincent A. Johnson, Chrysler LLC, 10300 Boggy Creek Road, Suite 120, Orlando, FL 32824, on this 12th day of September, 2007.



Board Secretary

Additional copies by regular mail to:

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

Rhoda Glasco-Foderingham  
Frank J. Licolli  
Richard Welch

CDI: 4.001, 5.002, 5.017, 5.009, 7.003