

Joseph Amento and Toyota Motor Corp.  
Case No. 2017-327

**STATE OF CONNECTICUT**  
DEPARTMENT OF CONSUMER PROTECTION  
Automobile Dispute Settlement Program

Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, W. W. Kocher, Esq. having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above caption matter:

**FINDINGS OF FACT**

Joseph Amento, (the "Consumer") purchased a 2016 Toyota Tacoma ("vehicle") from Massad-Zeon Motor Sales Co. Inc. d/b/a Wallingford Toyota located at 569 N. Colony Street, Branford, Connecticut 06492 (the "Dealer"). The Consumer took delivery of the vehicle on August 22, 2016. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, the Arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Toyota Motor Sales USA, Inc. (the "Manufacturer") did contest the initial eligibility of the vehicle in this case. The hearing was held on Monday, May 8, 2017. Mr. Tim Clark served as the State's Technical Expert. Also appearing at the hearing were the Consumer Mr. Joseph Amento, and Mr. Kenneth Maques and Mr. Derek Ryba for the Manufacturer. The record was closed Monday, May 8, 2017.

The Consumer first reported to the Manufacturer through the Dealer and agent a defect pertaining to the operation of the transmission, stating it constantly shifted gears, hunted for the proper gear and was lurching and bucking at stop lights. This notice was provided September 1, 2016 with 280 miles on the vehicle's odometer. Subsequent repair attempts for this defect occurred on:

<u>Repair Dates</u>	<u>Miles</u>	<u>Defect</u>
9/16/16	798	Constant shifting, hunting for gears, stuck in gear
12/7/16	2955	Erratic shifting
12/12/16	2970	Erratic Shifting
1/24/17		Phone calls and emails to Manufacturer and it's response

The above defects continue to exist as of the date of the hearing

The vehicle has been out of service by reason of repair for a cumulative total of 4 days during the statutory eligibility period of two years from the date of purchase.

## **REASONING**

### **Nonconformity**

The Consumer continued to complain of the nonconformity of the vehicle stating the vehicle continues to constantly shift gears, is hunting for the proper gear and is lurching and bucking at stop signs and lights.

### **Eligibility and Reasonable Repair Attempts**

The Request for Arbitration contends that the vehicle's transmission is not functioning properly. The defects met the statutory presumption for eligibility, as they were subject to five repair attempts during the first two years or 24,000 miles of ownership. Given the documented repair during the statutory period, the Consumer was found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

### **Substantial Impairment and Factual Discussion**

The Arbitrator holds that a substantial impairment to use exists in the form of defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

The Consumer appeared and testified at the arbitration hearing. The Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the vehicle defects experienced by the Consumer and the multiple repair attempts made by the Consumer.

As noted above, the Consumer experienced the transmission / shifting problems within 10 days of purchase and brought the vehicle to the selling dealership on September 1, 2016 after being driven only 280 miles. At that time the Dealer reprogrammed the ECM.

Fifteen days later, on September 16, 2016 after being driven 768 miles the Consumer returned to the Dealer stating among other things that the vehicle became stuck in gear requiring him to pull off the highway to avoid an accident.

The Dealer checked the transmission fluid which was low and filled it to the proper level.

On December 7, 2016, after 2955 miles, the Consumer again brought the vehicle to the Dealer with the same complaints. The Dealer had the vehicle tested by the Regional Representative. After a 30 mile test ride, the Representative concluded the vehicle was within "normal operation". Five days later by agreement of the parties the vehicle was returned to the Dealer and reprogrammed pursuant to Toyota Technical Service Bulletin T-SB-0077-16 revised November 15, 2016. This adjustment seemed to temporarily alleviate the problems but after approximately 1000 miles the problems returned.

Thereafter, Consumer contacted the Manufacturer on January 19, 2017 by phone, resulting in the Manufacturer's letter of January 20, 2017 and additional phone calls of January 23 and January 24. This culminated in the Manufacturer's letter of February 3, 2017 in which it stated:

"Therefore, we cannot offer you any assistance at this time."

The State's Technical Expert, Mr. Tim Clark, had the opportunity to test drive the vehicle in April 2017 and again during the May 8<sup>th</sup> hearing.

In the initial April test drive, Mr. Clark noted that the vehicle "surged" on three occasions when coming to a stop. He considered this a safety issue.

In the second test drive he did not note the "surges" but concluded in his expert opinion the vehicle was "not functioning as it should".

The Manufacturer's representative during the course of the hearing indicated, despite the letter of February 3, 2017, they wanted an opportunity to resolve the issue with the Consumer. They wanted the Consumer to be satisfied. They wanted happy consumers.

The Consumer stated he was very dissatisfied with and lacked confidence in the vehicle and is taking to using his wife's car in lieu of the vehicle when possible.

Based on the continued problems with the vehicle, which impacts the Consumer's normal everyday use of the vehicle, I find a substantial loss of use.

In addition, the surges and gear malfunction on the highway creates a safety issue both as to the Consumer as well as other motorists on the highway.

Since the Consumer brought the problem to the Manufacturer within the first three weeks of his ownership, I do not award a mileage deduction in favor of the Manufacturer.

The Consumer provided invoices for seat covers (\$438.00) and floor liners (\$197.90) for which Consumer is to be reimbursed.

## **CONCLUSION**

Given that the Consumer presented substantial evidence that the vehicle is not able to function normally, and the vehicle creates a safety problem, I hold for the Consumer in this case. A refund and exchange is appropriate given the facts presented.

The Manufacturer's representative at the hearing stated they wanted an opportunity to resolve the problem with the Consumer.

During the 30 day period, in which to comply with the Award, the Manufacturer will have ample opportunity to find alternatives to the repurchase such as the replacement with a new vehicle or other steps that maybe agreeable to the Parties.

Absent an agreement between the Parties to the contrary, Manufacturer shall complete the repurchase within the 30 day period, which repurchase shall reimburse the Consumer for all costs and expenses relating to the purchase of the Vehicle

The decision of this Arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Manguson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat 183 (1975), 15 USC 2301et seq., as in effect on October 1, 1982.

Either party to the dispute may apply to the Superior Court within 30 days of receiving this Award to have the Award vacated, modified, or corrected or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, and 52-420 of the Connecticut General Statutes.

## **AWARD**

The Arbitrator finds that the Consumer is entitled to a refund of the contract price, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. The total vehicle price, as delivered, was \$43,770.49 made up of its vehicle cost of \$39,394.76 and finance charge of \$4,375.73.

### **Allowance for use:**

The vehicle contract price shall not be reduced by taking into account the mileage on the vehicle.

### **Finance Charges to be Reimbursed by Manufacturer:**

The Consumer shall be reimbursed for all finance charges incurred.

**Additional Expenses to be Reimbursed by Manufacturer:**

Seat Covers     \$438.00   Floor Liners     \$197.90     Lemon Law Filing Fee   \$50.00

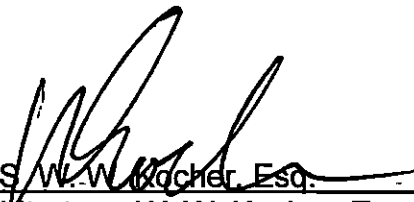
Any other costs such as dealer fees, title and registration fees, etc. appear to be included in the total vehicle cost but to the extent they are not, they are to be reimbursed to the Consumer.

**Total Refund Award and Conditions:**

The total refund amount to be paid to the Consumer for the vehicle is \$39,394.76 less the outstanding balance due on the vehicle. In addition to the total refund amount and the finance charges indicated above to be paid by the Manufacturer, the costs of the seat covers, floor liners, Lemon Law Filing Fee and any other dealer charges not included in the total vehicle cost are to be reimbursed to the Consumer by the Manufacturer.

Since the vehicle is financed and the loan has an outstanding balance, the Manufacturer shall prepare one check payable to the lien holder, as its interest may appear, and one check payable to the Consumer in the amount of the balance of the refund. The Consumer shall sign an authorization that will assign the Consumer's right, title, and interest in the vehicle to the Manufacturer upon receipt of the refund. The Consumer shall surrender the vehicle at the time of the refund.

The Manufacturer shall provide the total refund to the Consumer within 30 days of the Manufacturer's receipt of this Award. The Consumer shall surrender the vehicle to the manufacturer upon receipt of the refund. The exchange shall occur at Wallingford Toyota or at such other location as the parties may agree.

  
S/S W. W. Kocher, Esq.                      5/18/17  
Arbitrator – W. W. Kocher, Esq.              Date