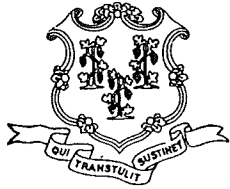


In the matter of arbitration entitled:

Grunberg vs. Ford Motor Company

Case Number: 2016-1405



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



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, 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 captioned matter:

I. FINDINGS OF FACT

Allan Grunberg (the "Consumer") leased a **2014 Ford Focus EV** (the "vehicle") from **Colonial Ford** located at **126 Federal Road in Danbury, Connecticut, 06811** ("the Dealership"). The Consumer took delivery of this vehicle on **August 14, 2014**. The vehicle registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The manufacturer of the subject vehicle, Ford Motor Company (the "Manufacturer") contested the initial eligibility of the vehicle in this case, but a review of the Consumer's allegations revealed that the vehicle was indeed eligible. Said arbitration hearing was held on **Tuesday August 30, 2016**, at which Mr. Tim Clark served as the State's Technical Expert. Samuel R. Hoff, Esq. appeared for the Manufacturer. Walter J. Onacewicz, Esq. appeared for the leasing company, CAB East, LLC.

- A.** The Consumer reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to a warning appearing on dashboard followed by the loss of motor power and a delay in re-starting the vehicle at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
<u>10-30-2015</u>	<u>12,225</u>	<u>Warning on dashboard followed by loss of motor power; re-start delay</u>
<u>04-23-2016</u>	<u>18,169</u>	<u>Warning on dashboard followed by loss of motor power; re-start delay</u>
<u>05-24-2016</u>	<u>19,383</u>	<u>Warning on dashboard followed by loss of motor power; re-start delay</u>
<u>06-03-2016</u>	<u>19,563</u>	<u>Warning on dashboard followed by loss of motor power; re-start delay</u>

The above defect or defects were claimed by the Consumer to continue to exist as of the date of the hearing.

- B.** The vehicle has been out of service by reason of repair for a cumulative total of _____ during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).
- C.** Two repair attempts were made during the first 12 months of Consumer ownership for a defect or defects, still existing, that is/are life threatening or likely to cause serious bodily injury if the vehicle is driven. Said defect or defects were reported to the manufacturer, its authorized dealer, or its agent at following times:

<u>Date</u>	<u>Miles</u>	<u>Defect</u>
_____	_____	_____
_____	_____	_____

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II. REASONING

Nonconformity

The Consumer complained of the following defects with the subject vehicle: The intermittent appearance of the dashboard warning "Stop Safely Now" followed by the vehicle's electric motor losing power. The vehicle was also unable to easily re-start after the motor failed. Said defects were claimed by the Consumer to continue to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration revealed that while the vehicle was being driven on the roadway, the vehicle experienced an intermittent, sudden failure of the motor. Immediately preceding the failure of the motor, a warning appeared on the dashboard which alerted the driver: "Stop Safely Now." This command was unable to be easily or safely implemented due to traffic conditions, as the vehicle was in motion when the warning appeared and there was just a short delay before the motor shut off. In addition, the Consumer was unable to immediately re-start the vehicle after the motor stopped working, leaving him stranded on the roadway in traffic on several occasions. The Consumer testified how the vehicle had to be pushed out of the lane of traffic. These related "motor shut off" defects necessitated multiple visits to the Dealership for diagnosis, testing, and repair. There were four repair attempts for the claimed defects within the statutory period, as set forth in Part I of this decision, thereby rendering the vehicle eligible for arbitration pursuant to Chapter 743b.

The Consumer had also claimed that a safety concern existed in his Request for Arbitration. Although the sudden loss of power and the failure to quickly re-start the vehicle while on the roadway are safety issues that could cause serious injury or death, said defects did not meet the statutory presumption for eligibility for an impairment to safety, as just one repair attempt was undertaken during the first year of ownership (performed on October 30, 2015), falling short of the two repairs required by Chapter 743b.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that both 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 Consumer's 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 by the Dealership. As shown in Part I of this decision, the Consumer first experienced a loss of power episode the week before the first repair attempt, which was at 12,225 miles. Due to no loaner car being available at the Dealership, the Consumer had initially elected to wait to bring the car in for diagnosis. However, a second motor shut-off episode occurred the week following the first episode, which prompted the Consumer to bring the vehicle in immediately.

The Consumer testified as to his apprehension with driving the vehicle, and detailed the fear that he and his wife experienced when the warning message commanded to the driver that the vehicle should be suddenly pulled off of the roadway, followed by experiencing the motor losing power, and then not being able to immediately re-start the vehicle to get it out of harm's way. Safety was listed within pages 8 and 9 of the Consumer's Request for Arbitration as a major concern, and his concern is justified.

The Consumer felt that he did not have the full use of the vehicle, and given the several dangerous loss of power and delayed re-starting episodes experienced intermittently during daily driving, as well as the

In the matter of arbitration entitled:

Grunberg vs. Ford Motor Company

Case Number: 2016-1405

substantiated fear of allowing family members to drive or ride in the vehicle after the first episode occurred, he is justified in his concerns. The Manufacturer's argument that the vehicle was repaired after the fourth repair at the Dealership does not negate the fact that the vehicle met the statutory eligibility requirements, and suffered a substantial loss of use, as well as a loss of safety. The repair records also indicated that the Dealership had given the vehicle back to the Consumer after repair on May 26, 2016, only to have another motor shut-off episode occur shortly thereafter, forcing the Consumer to bring to vehicle right back for diagnosis and repair on June 3, 2016. The Dealership also replaced the same part, Part No. CM5Z*14A318*D, three times, only to have the dangerous shut-off scenario occur again. The Consumer has clearly lost confidence in this vehicle. Based on the ongoing defects, which impact the Consumer's normal, everyday use of the vehicle, I find a substantial loss of use in this case. A substantial loss of safety due to the emissions-related issues and warning indicators has also been proven by convincing evidence. A refund and exchange is appropriate in this case.

Upon questioning by the Manufacturer's representative, the Consumer verified in his testimony that the subject vehicle was driven normally, without incident, for almost twelve thousand two hundred and twenty-five (12,225) miles (refer to the Request for Arbitration at Page 2). Therefore, a mileage deduction in favor of the Manufacturer is appropriate given the facts presented. The mileage deduction shall be based upon this mileage, the initial ownership period without incident, using the twenty cent (\$0.20) per mile excess mileage charge in the subject lease, as listed in Part IV of this decision.

All lease costs will be awarded to the Consumer in full. The cost of the high-rate EV charger purchased by the Consumer shall be reimbursed by the Manufacturer in the amount of \$615.77, and said charger shall thereby remain with the vehicle after the exchange.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumer in this case. A refund and exchange, as noted in Part IV of this decision, is appropriate given the facts presented.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to the Superior Court within 30 days receiving this decision to have the decision 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.



Arbitrator - Jerry P. Padula, Esq.

09-21-2016

Date

(See Section IV of this decision, entitled "Refund Award," on the following page.)

In the matter of arbitration entitled:

Grunberg vs. Ford Motor Company

Case Number: 2016-1405

IV. REFUND AWARD FOR LEASED VEHICLE

This arbitrator finds in favor of the Consumer, and holds that the Consumer and lease holder are entitled to a refund based upon the terms of the vehicle lease agreement and this decision, as set forth below:

For The Consumer:

The manufacturer shall refund to the Consumer the total of all amounts detailed below:

- 1) All lease payments made by the Consumer since August 12, 2014 (the date of the lease agreement) with a credit due in favor of the Manufacturer in the amount of \$2,443.00 for accumulated mileage computed by using the mileage at purchase (10 miles) subtracted from the mileage at the time of the October 30, 2015 repair (12,225 miles), a distance of 12,215 miles, multiplied by the overage charge per mile listed in the lease agreement (\$0.20 per mile);
- 2) All lease costs paid;
- 3) State Sales Tax due at signing in the amount of \$783.40;
- 4) Vehicle title, registration, and Clean Air Act fees in the amount of \$185.00;
- 5) Dealer conveyance fee in the amount of \$399.00;
- 6) State Lemon Law fee for new vehicle purchase in the amount of \$3.00;
- 7) The price of the EV charger purchased by the Consumer in the amount of \$615.77, and
- 8) The Department of Consumer Protection Lemon Law filing fee of \$50.00.

For the Leasing Company:

The Manufacturer shall pay the leasing company "**CAB East, LLC**" the balance necessary to terminate the lease and release the Consumer from any further obligation of the lease. The Manufacturer shall also pay the leasing company the "purchase option," and therefore ownership shall revert to the Manufacturer. The Manufacturer shall be responsible for any early termination fees, if applicable.

Other Reimbursements by the Manufacturer:

The Manufacturer shall reimburse to the leasing company all of the following fees or expenses:

NONE

Vehicle Exchange:

The Manufacturer shall provide the total refund to the Consumer and the leasing company, as their interests may appear. The exchange shall occur at **Colonial Ford** located at **126 Federal Road in Danbury, Connecticut, 06811** within **twenty-five (25) days** of the Manufacturer's receipt of this arbitration decision. Payment of the refund shall be conditional upon the assignment of any right, title, and interest in the vehicle by the leasing company and the Consumer, to the Manufacturer. The Consumer and the leasing company shall surrender the vehicle at the time of receipt of the refund.