



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



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrators, Jeremy Aron-Dine, Emily Schofield, and Andrew Whinery, having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decide the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Michael Trezza and Andrea Trezza (collectively, the “Consumers”) purchased a 2014 Ford Focus (the “vehicle”) from **Ford of Branford** located at **301 East Main Street in Branford, Connecticut, 06405** (the “Dealer”). The Consumers took delivery of the vehicle on **August 1, 2014**. The registration is “passenger” as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, we confirmed that this case was eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Ford Motor Company (the “Manufacturer”) did not contest the initial eligibility for arbitration of the vehicle in this case.

The hearing was held on **Monday, November 7, 2016**. Mr. Tim Clark served as the State’s Technical Expert. Also appearing at the hearing were the Consumers Mr. Michael Trezza and Ms. Andrea Trezza. Mr. Samuel Hoff, of Campbell Campbell Edwards & Conroy, appeared on behalf of the Manufacturer.

Eligibility under § 42-179(d)

The Consumer first reported to the Manufacturer, its authorized Dealer, or its agent a defect pertaining to transmission shudders and hesitation upon acceleration by telephone sometime around January 2015. The car underwent the following repair attempts:

Repair Date	Miles	Defect
06-08-2015	12,412	Transmission shuddering and hesitation when accelerating
07-06-2015	13,791	Transmission shuddering and hesitation when accelerating
04-14-2016	24,219	Transmission shuddering and hesitation when accelerating
04-19-2016	24,308	Oil leak
08-29-2016	29,884	Transmission shuddering and hesitation when accelerating

The above defect or defects continue to exist, as demonstrated by Consumers’ testimony and as discovered in the test drive performed by the State’s Technical Expert as ordered by the arbitrators.

Eligibility under § 42-179(f)

The first two repair attempts listed above occurred during the first 12 months and the defect continued to exist. The defect was life threatening or likely to cause serious bodily injury if the vehicle is driven.

II. REASONING

Nonconformity

The Consumers complained of the following nonconformities with the subject vehicle: The vehicle shudders while shifting from first to second and second to third gears, and is slow to accelerate at low speed, particularly from a stop and when driving uphill. The problem first appeared after roughly six thousand miles. It has been temporarily ameliorated by two clutch replacements, but each time has reappeared. The Consumers have testified that the nonconformity is intermittent at present, but that before each clutch replacement, it has started as an intermittent problem and gradually become a constant one.

Eligibility and Reasonable Number of Repair Attempts

The Request for Arbitration revealed that the nonconformities described above necessitated multiple visits to an authorized dealership for diagnosis, testing, and repair. The Consumers also communicated with the Dealer and Manufacturer regularly by telephone and email.

The defects meet the statutory presumption set forth in § 42-179(f) for eligibility for relief. As discussed below, the nonconformities unreasonably increased the risk of death or serious bodily injury and continued to exist despite two repair attempts in the first year. The vehicle was subject to additional repairs for these defects after the statutory period, as described in Part I above, indicating that they persisted after the two repair attempts.

Alternatively, we find that the vehicle meets the “reasonable number of attempts” standard of § 42-179(d). The vehicle admittedly does not meet § 42-179(e)’s four-attempt standard for a presumption: there were only three repair attempts for the transmission defect during the first two years of ownership and only two within the first 24,000 miles. Nevertheless, we conclude that the vehicle was subject to a reasonable number of repair attempts. Consumers testified that they were in regular contact with the Manufacturer and the Dealer beginning around January 2015, and deferred bringing in the vehicle for repair because they were informed that the required parts were on backorder. Testimony from the Consumers and the State’s Technical Expert leads us to believe that this problem will likely recur roughly every 10,000 miles, which suggests that the Consumers brought the vehicle in for repair as many times as is reasonable, given the nature of the problem. Their testimony also suggested that the underlying problem with the transmission simply could not be permanently fixed, regardless of the number of times the vehicle was brought in for repairs. We therefore find that the Manufacturer and Dealer were unable to cure the vehicle’s nonconformities after a reasonable number of attempts, within the meaning of § 42-179(d) of Connecticut General Statutes Chapter 743b.

Substantial Impairment and Factual Discussion

In the present matter, we find that a substantial impairment to use, safety, and value 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 Consumers appeared and testified at the arbitration hearing. The Request for Arbitration, the written repair records, the test drive, and the oral testimony provided at the hearing detailed the vehicle defects experienced by the Consumers and the multiple repair attempts by the authorized dealership.

We find that the nonconformity resulted in a substantial impairment to the use, safety, and value of the vehicle for the following reasons:

Use

The Consumers described several ways in which the nonconformity has impaired their use of the vehicle.

First, the Consumers testified that they would not allow their children to drive the vehicle and made efforts to minimize their children's time as passengers in the vehicle. For example, the Consumers would move the vehicle out of their driveway to allow their children to use other vehicles.

Second, the Consumers testified that the Dealer and Manufacturer told them that the vehicle should only have one driver. We find that such instructions create an unreasonable impairment to use because multiple drivers should be able to use the same vehicle and the Consumers were not informed of any such restriction when they purchased the vehicle.

Finally, the Consumer testified that use of the vehicle during normal driving conditions was impaired. For example, the Consumers testified that they wait at intersections for a longer-than-normal amount of time to make sure they can complete turns in the event the vehicle shudders or has trouble accelerating. We find that, in addition to being an impairment to safety, the need to adapt driving technique in this way indicates an impairment to use.

While any one of these issues alone would likely be sufficient grounds to find a substantial impairment to use of the vehicle, we find that, collectively, they indicate a clear substantial impairment to use resulting from the nonconformity.

Safety

We also find that the nonconformity has substantially impaired the safety of the vehicle. The Consumers testified that the vehicle hesitates and shudders when accelerating from a standstill and while shifting into second and third gears. They further testified that the problem is especially pronounced when traveling uphill and that the lack of acceleration is often severe enough to make it difficult to quickly cross an intersection or merge with traffic. When making a left turn, they wait for longer gaps in traffic than would be necessary in a car that could be relied on to accelerate properly. We find that such a failure to accelerate properly would substantially impair the safety of the vehicle for any driver. We further find that the impairment is particularly severe with respect to these particular Consumers, who live in hilly terrain and must make a left turn and drive uphill every time they leave their house.

Moreover, we find that the failure of acceleration that Consumers described creates a likelihood of death or serious bodily harm that would not otherwise exist. Reliable acceleration is critical to the safe operation of the vehicle and the avoidance of accidents. The defect continued to exist after the

IV. REFUND AWARD

We find that the Consumers are entitled to a **refund of the contract price**, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. (The contract price is less the \$0.00 credit/rebate given to the purchaser.) The total vehicle price, as delivered, was \$23,913.00.

Allowance for use

The contract price **shall be** reduced by an allowance for the Consumer's use of the vehicle. It shall be calculated using the total mileage driven **at the time the Consumers testified they first experienced the defect with the vehicle** (at 6,000 miles), minus the mileage at the time of delivery (51 miles) yielding a mileage credit as follows:

$$\frac{\$23,913.00 \times (6,000 \text{ miles} - 51 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: \$1,185.49.

Finance Charges to be Reimbursed by Manufacturer

The Consumer **shall not be** reimbursed for finance charges because the vehicle was purchased with 0% financing.

Additional Expenses to be Reimbursed by Manufacturer

Conn. State Sales Tax: \$1,523.24
Registration Fee: \$95.00
Title Fee: 25.00
Lien Fee: \$10.00
Other Charges: \$55.00
Dealer Conveyance Fee: \$75.00
Lemon Law Filing Fee: \$50.00

Total Refund Award and Conditions

The total refund amount is **\$24,560.75** (twenty-four thousand five hundred sixty dollars and seventy-five cents). A rental vehicle shall be provided by the Manufacturer, at the Manufacturer's sole cost, if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange due to the named defects.

Because 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 Consumers** in the amount of the balance of the refund. The Consumers shall sign an authorization that will assign the Consumers' right, title, and interest of the vehicle to the Manufacturer upon receipt of the refund. The Consumers shall surrender the vehicle at the time of the refund.

The Manufacturer shall provide the total refund to the Consumers within 30 days of the Manufacturer's receipt of this arbitration decision. The Consumers shall surrender the vehicle to the manufacturer upon receipt of the refund, but if the vehicle is in the possession of the Manufacturer or their agent, the vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at: **Ford of Branford, 301 East Main Street, Branford, CT 06405, OR at the local manufacturer-authorized dealership of the Consumers' choice.**