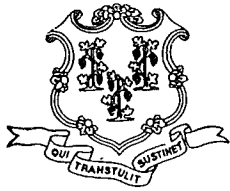


In the matter of arbitration entitled:

Latham vs. Ford

Case Number: 2016-53



**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

The Consumers **Kaitlin A. Latham and Karen Latham**, purchased or leased a **2014 Ford Focus SE** from **McMahon Ford** located at **1 Main Street in Norwalk, Connecticut, 06852**. The Consumer took delivery of this vehicle on **January 15, 2014**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The Manufacturer did not contest the initial eligibility of the vehicle in this case, and then moved to stipulate that the vehicle met the requirements of a refund pursuant to Chapter 743b. Said hearing was held on **Tuesday, March 8, 2016**.

- A.** The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to **malfunctioning of the transmission, including erratic acceleration and vibration** on **November 10, 2014** with **7,629 miles** on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
<u>03-09-2015</u>	<u>10,083</u>	<u>malfunctioning transmission, with erratic acceleration & vibration</u>
<u>08-05-2015</u>	<u>14,253</u>	<u>malfunctioning transmission, with erratic acceleration & vibration</u>
<u>08-18-2015</u>	<u>14,422</u>	<u>malfunctioning transmission, with erratic acceleration & vibration</u>
<u>08-21-2015</u>	<u>14,441</u>	<u>malfunctioning transmission, with erratic acceleration & vibration</u>
<u>12-07-2015</u>	<u>16,777</u>	<u>malfunctioning transmission, with erratic acceleration & vibration</u>

The above defect or defects continue to exist.

- B.** The vehicle has been out of service by reason of repair for a cumulative total of _____ calendar days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

- C.** Two repair attempts during the first 12 months and the defect still exists that is life threatening or likely to cause serious bodily injury, if the vehicle is driven. The defects occurred as follows:

<u>Date</u>	<u>Miles</u>	<u>Defect</u>
<u>Malfunctioning transmission causing failure of the vehicle to accelerate normally (as listed above).</u>		

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject vehicle: a malfunctioning transmission which causes erratic acceleration, shuddering, shaking, and vibration during normal driving conditions. The Consumer presented substantial evidence that the defect existed, was not successfully repaired, and continued to exist.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration revealed that the vehicle experienced continual malfunctioning of the transmission, a sophisticated Automatically Shifted Manual Transmission or "ASMT" type, necessitating multiple visits to the selling dealership for diagnosis, testing, and repair. Said defect met the statutory presumption for eligibility, as it was subject to six (6) repair attempts during the statutory period, and four (4) repairs within just the first 14,500 miles of ownership, as detailed in Part 1 of this decision. The vehicle therefore easily met the statutory presumption of 4 repairs before the first 24,000 miles. The Consumer was therefore found to have met the eligibility requirements of the statute. The transmission defect impacted the ability of the vehicle to accelerate normally, which is considered to be a serious safety issue, so the vehicle defect also qualified as a safety-related concern pursuant to the statutory requirements.

The vehicle was therefore deemed eligible for the number of repair attempts, and initial eligibility was not contested by the Manufacturer through its representative Attorney Brendan Vaughn. The Manufacturer, Ford Motor Company, also stipulated that the vehicle was substantially impaired pursuant to the statutory requirements, so the car was deemed to be a "lemon" at the start of the hearing. As such, this case then proceeded as a hearing in damages.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that a substantial impairment to use exists in the form of a defect (malfunctioning of the transmission) which meets 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, and the Manufacturer was represented by Attorney Brendan Vaughn of Campbell, Campbell, Edwards, and Conroy in Boston. The Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the vehicle's transmission defect experienced by the Consumer, and the multiple repair attempts by an authorized Ford dealership.

As shown in Part I of this decision, the Consumer first brought the vehicle to authorized dealership McMahan Ford in order to diagnose the transmission concern when the vehicle had been driven just 7,629 miles on November 10, 2014. However, the Consumer testified at the hearing that the vehicle defect had revealed itself to her "months before" this first repair attempt. Mr. Clark also provided testimony about the nature of the transmission defect based upon his experience with like vehicles. He provided information that he obtained from his research in other cases, including the fact that this ASMT-equipped vehicle has specific mechanical defects for which Ford has not yet created a permanent fix. Mr. Clark stated that he regularly checks for published manufacturer updates regarding this problem.

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The malfunctioning of the ASMT-style transmission caused a very dangerous condition, namely, that the vehicle is not able to accelerate normally due to the shuddering and lack of responsiveness caused by the slipping of the internal clutches. Mr. Clark described the problem on the record. This same transmission issue has remained a complaint since the time of the first repair, and up through the date of the hearing.

The written repair records and the oral testimony of both parties verified that an authorized dealership had performed diagnostic tests and had attempted to duplicate the Consumer's concerns. Various software updates were performed and replacement hardware was installed, to no avail. Croce's Transmission and Auto Repair, a third-party transmission shop, was also employed by McMahan Ford to diagnose the vehicle during the August 18, 2015 repair attempt, but the same transmission problem still reared itself.

The Consumer felt that she did not have the full use of the vehicle, and given the many episodes she experienced during daily driving when the transmission failed to properly shift, causing shuddering, shaking, vibration, and a lack of acceleration, she is justified in her concerns.

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 loss of safety due to the transmission malfunction and impaired acceleration has also been proven to exist. The defect has been proven by substantial evidence to be a safety concern that could cause serious injury or death, pursuant to the statutory definition. The defect had not been resolved as of the date of the hearing, and there is apparently no method yet available from Ford to fix this vehicle or those of like model containing the ASMT.

Due to the substantial safety defect in the transmission which began after purchase, a mileage deduction in favor of the Manufacturer is not appropriate in this case. Finance charges will be awarded in full to the Consumer. The cost of filing the Lemon law arbitration case with the Department of Consumer Protection (\$50.00) will also be awarded to the Consumer, despite the argument of Ford. The details of the award are set forth in Part IV of this decision. The vehicle accident and repair records, as noted in the written record, do not impact the value of the vehicle.

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.

03-21-2016

Date

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

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IV. REFUND 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 contract price is less the **\$2,500.00** credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **\$17,350.00**.

Allowance for use:

- The contract price **shall not** be reduced by taking into account the mileage on the vehicle.
- 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 of the first deal repair attempt (at 3,836 miles), minus the mileage at the time of delivery (68 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$00,000.00 \times 0,000 \text{ miles } (0,000 \text{ miles} - 00 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$0.00**.

Finance Charges to be Reimbursed by Manufacturer:

- The Consumer shall be reimbursed for finance charges incurred on the following dates:

- The Consumer shall be reimbursed for finance charges incurred from:
_____ to _____
- The Consumer shall be reimbursed for **all finance charges incurred**.
- The Consumer shall **not** be reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Conn. State Sales Tax: \$1,235.95 Title & Regis. Fees: \$161.00 Dealer Conveyance Fee: \$290.00
Lemon Law Filing Fee: \$50.00

Total Refund Award and Conditions:

The total refund amount is **\$19,086.95** (nineteen thousand eighty six dollars and ninety five cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.** A rental vehicle shall be provided by the Manufacturer if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange.

If 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(s) in the amount of the balance of the refund. The Consumer(s) shall sign an authorization that will assign the Consumer's right, title, and interest of the vehicle to the Manufacturer upon receipt of the refund. The Consumer(s) shall surrender the vehicle at the time of the refund.

If the vehicle is not financed, the Consumer(s) shall surrender the vehicle's title to the Manufacturer at the time of receipt of the refund set forth in this decision.

The Manufacturer shall provide the total refund to the Consumer(s) within **30** days of the manufacturer's receipt of this arbitration decision. The Consumer(s) 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: **McMahon Ford** located at **1 Main Street in Norwalk, Connecticut, 06852**.