

AMERICAN ARBITRATION ASSOCIATION
CONSUMER ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Sean Lavery, hereinafter referred to as "CLAIMANT"

-and

TT of Coconut Creek, Inc. d/b/a Fairbanks Dodge, hereinafter referred to as "RESPONDENT"

CASE NUMBER: 32 188 E 00580 08

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties, and dated March 17, 2006, and pursuant to the Agreed Order on Defendant's Motion to Stay Case and Compel Arbitration entered in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, dated July 28, 2008, and having been duly sworn and having duly heard the proofs and allegations of the parties hereby, Find, as follows:

1. That the CLAIMANT purchased a used 2005 Dodge Magnum "Vehicle" from RESPONDENT on March 17, 2006. The CLAIMANT contends the RESPONDENT by and through its employees made false representations to CLAIMANT that the vehicle was purchased from the prior owners in good working order and without prior mechanical problems and defects; that the vehicle had no prior accidents, crashes or damage; and that CLAIMANT was being treated fairly and honestly in his dealings with the RESPONDENT. The CLAIMANT alleges that these representations by the RESPONDENT were false and seeks damages based on three counts: Count 1- Fraud in the Inducement, Count 2-Negligent Misrepresentation and Count 3- Deceptive and Unfair Trade Practice. The CLAIMANT alleges that the most fair compensation is the full sales price including finance charges totaling \$19,460.16 as well as punitive damages, costs and attorneys fees.
2. That the RESPONDENT denies the allegations of the claim and alleges affirmative defenses that the RESPONDENT'S sale representative had no knowledge of the history or prior status of the vehicle; that the CLAIMANT signed certain documents which put the burden on the CLAIMANT to have the vehicle mechanically inspected and in addition that the CLAIMANT agreed to accept the vehicle in an "as is" condition; that the CLAIMANT did not suffer any damages in that the CLAIMANT purchased the vehicle at less than fair market value, drove the vehicle without any significant mechanical problems and based on the purchase price did not suffer a diminished value to the vehicle.

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3. That the CLAIMANT, Sean Lavery, testified that the Honda sales representative, Stanley Kidd, told him that the vehicle had not been in a prior accident and that it was in perfect condition. That Stanley Kidd testified on deposition initially that he did not remember Sean Lavery but he testified live that subsequently when he saw Mr. Lavery, he did remember him and had a memory of the transaction. Mr. Kidd denied Mr. Lavery's allegations and further stated that he is trained to tell customers that he has no personal knowledge of a used vehicle's history, prior ownership, or prior accidents but to advise the customer that the customer has the right to have the vehicle inspected. Mr. Kidd did testify that the RESPONDENT does a mechanical inspection prior to placing a vehicle for sale.
4. That the Arbitrator finds the CLAIMANT has not proven by a greater weight of the evidence the elements necessary to sustain a claim of Fraud in the Inducement.
5. That the Arbitrator finds that the CLAIMANT has not sustained the burden of proving the requisite intent to have a claim under the Deceptive and Unfair Trade Practices Act.
6. That the Arbitrator finds that the CLAIMANT has carried the burden of proof for his claim of Negligent Misrepresentation and under the exercise of reasonable care, Stanley Kidd, the representative of the RESPONDENT should have known the history of the vehicle and the fact that it had been in a prior accident and should have so advised the CLAIMANT prior to the purchase of the vehicle.
7. That the Arbitrator finds that the fact that the CLAIMANT purchased the vehicle "As Is" and the contents of the documents signed by the CLAIMANT do not excuse the RESPONDENT from accurately representing to its customers, and the CLAIMANT specifically, the status of a used vehicle when it is sold. That the RESPONDENT is in a better position than a customer, such as the CLAIMANT, in knowing and representing that the vehicle had been in a prior accident and had sustained damages.
8. That with regard to Punitive Damages, the CLAIMANT has not proven by clear and convincing evidence that the RESPONDENT is guilty of intentional misconduct or gross negligence as defined in Florida Statute 768.72.
9. That the testimony of CLAIMANT'S expert, James Mchugh, is that the inherent diminished value loss of the vehicle amounted to \$2,434.82.
10. That the RESPONDENT'S expert, Bob Stancil, testified that the diminished value of the vehicle due to a prior accident was approximately \$2,500.00.

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Accordingly, I award as follows:

1. That RESPONDENT shall pay to CLAIMANT the sum of \$2,500.00 (Twenty Five Hundred Dollars) in compensatory damages for his claim.
2. That the claims of CLAIMANT for attorneys fees and pre-judgment interest are hereby denied.
3. That RESPONDENT shall pay to CLAIMANT post-judgment interest on the above sum at the statutory legal rate from the date the lawsuit was filed in this case.
4. The administrative filing and case service fees of the AAA, totaling \$1,250.00, shall be borne as incurred.
5. The fees and expenses of the arbitrator shall be borne as incurred.

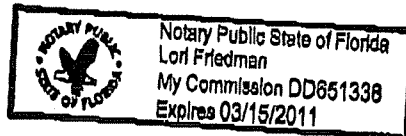
This AWARD is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

Jack L. Herskowitz, Arbitrator
 JACK L. HERSKOWITZ

Date Jan. 7, 2009

NOTARY PUBLIC in and For State of Florida

Lori Friedman



I, Jack L. Herskowitz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

1/7/09
 Date

Jack L. Herskowitz