

**STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL  
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD**

G.V. TECH, INC.,

Consumer,

vs.

CASE NO.: 2007-0088/FTL

DAILMERCHRYSLER  
MOTORS COMPANY, LLC,

Manufacturer.

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**DECISION OF THE BOARD**

THIS CASE came before the Florida New Motor Vehicle Arbitration Board upon approval of the Consumers' request for arbitration. Appearing before the Board were the following:

For the Consumers:

Rebecca J. Covey, Esquire  
1318 SE 1st Avenue  
Fort Lauderdale, FL 33316

For the Manufacturer:

Merle Bumford  
10300 Boggy Creek Road, Suite 120  
Orlando, FL 32824

Upon Notice to the parties, the Board held a hearing in this case on May 2, 2007, in Fort Lauderdale, Florida. Board members present were Chairperson Robin S. Thompson, Technical Member Luis M. Perez, and Member Carolyn Moore. Legal Advisor to the Board was Tamela Stults-Wagner, Assistant Attorney General, Department of Legal Affairs. Secretary to the Board

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was Rosita Barber, Department of Legal Affairs. Nicholas Smith, owner of G.V. Tech, Inc., testified on behalf of the Consumer. Merle Bumford, State Board Arbitration Specialist, DaimlerChrysler Motors Company, LLC, testified for the Manufacturer. Consumer exhibits C-1 through C-5, and Manufacturer exhibit M-1 were received in evidence. The motor vehicle which is the subject of this case was not inspected by the Board.

Prior to the hearing, the Manufacturer filed an amended Manufacturer's Answer withdrawing its defense to the claim and offering to provide a refund to the Consumer. The parties were unable to reach agreement on the amount of the refund, and this hearing was convened for the purpose of calculating the refund.

#### FINDINGS OF FACT

Based upon the stipulations by the parties, the testimony of the parties and the evidence presented, the Board makes the following findings of fact:

1. The parties stipulated that the Consumer purchased a new 2005 Dodge Ram Truck, Vehicle Identification Number 1D7HA16D45J547926, in Coconut Creek, Florida, on January 15, 2005. The Consumer was provided with DaimlerChrysler Motors Company's written express, limited warranty. Mileage at the time of delivery was 20 miles.
2. The vehicle has the following defect or condition that substantially impairs its use, value or safety: hard shifting and clunking and banking noise from the transmission and lack of power.
3. The defects were not corrected by the Manufacturer or its authorized service agent within a reasonable number of attempts, which included a final repair attempt after the

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Manufacturer's receipt of written notification from the Consumer.

4. On January 23, 2007, the Consumer filed a Request for Arbitration with this Board seeking a refund.

5. At the time of purchase, the Consumer traded in a 2002 Dodge Ram 1500 pick-up truck which was encumbered by a lien in the amount of \$9,000.00. The purchase contract reflects a gross trade-in allowance of \$11,000.00 for the trade, resulting in a net trade-in allowance of \$2,000.00. The net trade-in allowance reflected in the purchase agreement was not acceptable to the Consumer. Pursuant to Section 681.102(19), Florida Statutes (2006), the Manufacturer produced the NADA Used Car Appraisal Guide (Southeast Edition) in effect at the time of the trade-in, which reflected a retail price for the trade-in vehicle of \$12,025.00 (\$13,975.00 plus \$150.00 for disc player, minus \$725.00 for V-6, \$575.00 for standard transmission, \$450.00 for excess mileage, \$200.00 for no cruise control, \$150.00 for tilt steering). Reduction by the lien of \$9,000.00 results in a net trade-in allowance of \$3,025.00.

The Consumer also contributed a down payment of \$1,500.00. The purchase was financed with a loan from the lienholder, Chrysler Financial. The Consumer is required to pay the lienholder the sum of \$578.82 per month and as of the date of this hearing, 27 payments have been made for a total of \$15,628.14. In addition, the Consumer seeks reimbursement of \$211.95 for tinted windows and \$1,102.19 for tool box and cover.

6. Total purchase price of the vehicle, for the purpose of calculating the reasonable offset for use, was \$16,480.00 (\$28,980.00 minus \$3,500.00 rebate and minus debt from trade-in \$9,000.00). Mileage attributable to the Consumer up to the date of the hearing was 53,993

(54,160 odometer miles minus 20 at delivery and 147 attributable to repair). Application of the statutory formula results in a reasonable offset for use of \$7,415.04.

7. The Consumer incurred the following incidental charges as a result of the vehicle nonconformity: \$4.64 for postage and \$15.00 for parking at the hearing.

#### CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Board makes the following conclusions:

1. Pursuant to Chapter 681, Florida Statutes (2006), and the evidence presented, the Florida New Motor Vehicle Arbitration Board has jurisdiction of the parties to and the subject matter of this case.
2. Section 681.104(2)(a), Florida Statutes (2006), requires that "if the manufacturer or its authorized service agent, cannot conform the motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts," the manufacturer shall repurchase or replace the vehicle.
3. A nonconformity is defined as a "defect or condition that substantially impairs the use, value or safety of a motor vehicle, but does not include a defect or condition that results from an accident, abuse, neglect, modification or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent." §681.102(16), Fla. Stat. (2006).
4. The Manufacturer stipulated that the hard shifting and clunking and banking noise from the transmission and lack of power is a defect or condition that substantially impairs the use, value and safety of the vehicle, and as such, it constitutes a nonconformity within the meaning of the statute.

5. The Manufacturer having further stipulated that the nonconformity was not corrected after a reasonable number of attempts, the Consumer is entitled to the requested relief under the Lemon Law.

6. It is concluded that the Consumer's 2005 Dodge Ram Truck, Vehicle Identification Number 1D7HA16D45J547926, is a "Lemon" within the meaning of Chapter 681, Florida Statutes (2006). Accordingly, the Consumer is entitled to a refund of \$3,025.00 for the net trade-in allowance, \$1,500.00 for the down payment and \$15,628.14 for the monthly payments made as of the date of the hearing, plus any subsequent monthly payments the Consumer is required to make prior to the date of repurchase. Collateral charges in the amount of \$211.95 for tinted windows and \$1,102.19 for tool box and cover are also awarded. §681.102(3), Fla. Stat. (2006). Incidental charges in the amount of \$19.64 for postage and hearing parking are added to the amount of the refund. §681.102(8), Fla. Stat. (2006). The Manufacturer is entitled to a reasonable offset for the Consumer's use of the vehicle, calculated according to the formula set forth in Section 681.102(20), Florida Statutes (2006), in the amount of \$7,415.04. The lienholder of record, Chrysler Financial, is entitled to a refund of the balance owed or pay off on the loan as of the date of repurchase of the vehicle.

DECISION

Based upon the foregoing findings of fact and conclusions, it is

ORDERED that the Manufacturer shall pay to the Consumer a refund in the amount of \$21,467.28 which includes all collateral charges, less the sum of \$7,415.04, which constitutes the statutory offset for use, plus incidental charges in the amount of \$19.64, for a total refund of

\$14,071.88. The amount of the refund shall be increased by the amount of any additional monthly payments the Consumer may make to the lienholder up to the date of repurchase of the vehicle. The Manufacturer shall pay to the lienholder of record, Chrysler Financial, the balance owed or payoff on the loan as of the date of repurchase of the vehicle. It is further

ORDERED that the Manufacturer shall comply with this Decision within 40 days of the date the Manufacturer receives this Decision. Upon compliance with this Decision by the Manufacturer, the Consumer shall deliver possession of the subject motor vehicle to the Manufacturer and the titleholder shall deliver clear title to the vehicle to the Manufacturer. In the event the Manufacturer fails to comply within the time specified, and fails to file an appeal as set forth below, the Consumer is directed to notify the Department of Legal Affairs, Lemon Law Arbitration Program, Enforcement Unit, The Capitol, Tallahassee, Florida 32399-1050, of such noncompliance. It is further

ORDERED that the Board retains jurisdiction of this case for the purpose of correcting any technical errors or mistakes in this Decision arising from inadvertence, oversight or omission.

**RIGHTS OF APPEAL**

This Decision shall become final and binding upon the parties unless within 30 days of receipt of this Decision, either party files an appeal by petition to the Circuit court, pursuant to Section 681.1095(10), Florida Statutes (2006), which states, "The petition shall be filed in the county where the consumer resides, or where the motor vehicle was acquired, or where the arbitration hearing was conducted." Within seven (7) days after the petition has been filed, the

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appealing party must send a copy of the petition to the Department of Legal Affairs, Lemon Law Arbitration Program, The Capitol, Tallahassee, Florida 32399-1050.

Pursuant to Section 681.1095(12), Florida Statutes (2006):

An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal.

Within 30 days of final disposition of the appeal, the appealing party shall furnish the Department of Legal Affairs with a copy of the order or judgment of the court.

DONE and ORDERED this 23rd day of May, 2007.

FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

Robin S. Thompson, Chairperson  
Luis M. Perez, Member  
Carolyn Moore, Member

CERTIFICATE OF MAILING

I HEREBY CERTIFY that copies of the foregoing Decision were furnished by U.S. Certified Mail to: G.V. Tech, Inc., c/o Nicholas C. Smith, 8467 NW 47th Street, Coral Springs, Florida 33067; and to Vincent A. Johnson, DaimlerChrysler Motors Company, LLC, 10300 Boggy Creek Road, Suite 120, Orlando, Florida 32824, on this 30th day of May, 2007.

  
Board Secretary

Additional copies by regular mail to:

Chrysler Financial  
PO Box 1728  
Newark, NJ 07101-1728

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Rebecca J. Covey, Esquire  
1318 SE 1st Avenue  
Fort Lauderdale, FL 33316

Robin S. Thompson  
Luis M. Perez, Member  
Carolyn Moore, Member

CDI: 5.200; 5.001; 5.002; 5.003; 5.009



**Office of the Attorney General**  
Lemon Law Arbitration Program  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3500, Ext. 3498  
Fax: (850) 488-7295

## **FAX COVER SHEET**

**FAX NUMBER TRANSMITTED TO: 954 763-4666**

**To: Rebecca Covey**  
**Of: Rebecca J. Covey, LLC**  
**From: Barbara Nuss**  
**Case/Matter: 2007-0088/FTL**  
**Date: June 04, 2007**  
**Pages: 9**

**COMMENTS:**