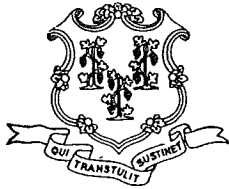


In the matter of arbitration entitled:

Moccia vs. Ford

Case Number: 2015-2635



**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 Consumer **Antonio B. Moccia** purchased a **2013 Ford Focus (VIN No. 1FADP3K24DL230129)** from **Stamford Ford Lincoln** located at **212 Magee Avenue in Stamford, Connecticut, 06902**. The Consumer took delivery of this vehicle on **February 16, 2013**. 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. Said hearing was held on **Thursday, February 25, 2016**.

- A.** The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to **transmission irregularities and hesitation, and poor fuel mileage** on **July 29, 2013** with **2,262 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>
08-05-2014	6,454	transmission irregularities and hesitation; poor fuel mileage
09-24-2014	7,185	transmission irregularities and hesitation; poor fuel mileage
06-16-2015	10,733	transmission irregularities and hesitation; poor fuel mileage
08-04-2015	11,393	transmission irregularities and hesitation; poor fuel mileage
08-20-2015	11,640	transmission irregularities and hesitation; poor fuel mileage

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 **42 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>
Transmission irregularities, unresponsiveness, and slow shifting, as described above.		

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II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject vehicle: continual severe transmission issues including unresponsiveness, vibration, shaking, and impaired acceleration; and poor fuel mileage. Said defects were said to continue to exist.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration revealed that the vehicle experienced transmission unresponsiveness, vibration, shaking, and impaired acceleration while being driven on the roadway, as well as greatly reduced fuel mileage within the statutory period, necessitating multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defects did not meet the statutory presumption for eligibility, as they were subject to three repair attempts during the first two years of ownership. However, the vehicle was subject to three repair attempts during this period, the third occurring at just 7,185 miles, as detailed in Part 1 of this decision. One factor which prevented the Consumer from bringing the car in for additional repairs during the early months of ownership was revealed at the hearing. The Consumer testified that the authorized dealership, Stamford Ford Lincoln, told him during the first repair attempt that this Ford Focus vehicle has a 7,000 mile "break-in" period, and that the transmission would improve by that time.

Said representation by the selling dealership is directly responsible for the Consumer waiting to bring the vehicle back for a second repair until August 5, 2014, when the car had been driven 6,454 miles, as listed in Part 1 of this decision. The Consumer had been experiencing the same severe transmission defects throughout this time (and through today), but had believed in the comments made by the Stamford Ford Lincoln representative. Three repairs during the statutory period is a reasonable number of repairs in this case, so the Consumer was therefore found to have met the eligibility requirements of the statute.

Due to the continual and severe transmission unresponsiveness, vibration, shaking, and impaired acceleration, a safety concern was also proven by substantial evidence to exist. Said concern was subject to one repair attempt during the first year of ownership, and although the statutory presumption is for two repairs during that first year of ownership, the above-cited representation of Stamford Ford Lincoln prevented the Consumer from bringing the car back for additional repairs during the first year. The statutory presumption for eligibility based upon a safety-related concern, as set forth in Chapter 743b, was therefore also met.

Although the vehicle was deemed eligible for the reasonable number of repair attempts for both safety and non-safety related defects as cited above, the vehicle is also eligible due to the the forty-two (42) days that the vehicle was listed as being out of service for repairs during the statutory period. The vehicle had been out for service on the day of the hearing as well.

The Manufacturer, Ford Motor Company, did not attend the hearing, failed to offer a "Manufacturer's Statement" or any written documentation to the Department or to the Consumer, and offered no reason for their absence or lack of participation in this case. As such, the Manufacturer was unable to contest the eligibility of the vehicle, or to dispute any of the facts presented by the Consumer under oath.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist in the form of defects which meet the requirements of Connecticut General

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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 Antonio B. Moccia and a witness, Antoinette Malone, appeared and testified at the arbitration hearing. No representative from the Manufacturer was present. This arbitrator delayed the start of the hearing to allow additional time for the Manufacturer's representative to arrive, but none did. On the day of the hearing, or leading up to the hearing, the Department did not receive any notification of a late arrival, nor any notice that the Manufacturer had chosen not to have a representative present. Mr. Clark stated that the Manufacturer was mailed the notice of this hearing on January 11, 2015, and that the Manufacturer signed for the certified mail on January 20, 2015.

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 authorized dealership. In addition, Mr. Clark described the mechanical operation of the novel Automatically Controlled Manual Transmission, and further mentioned how other vehicles of the Consumer's same model have been having similar problems with their transmissions, that Ford is aware of the issue, that Ford has extended the warranty on these transmissions to 100,000 miles, but also, that there is no Manufacturer resolution at this time.

As shown in Part I of this decision, the Consumer first experienced serious transmission issues and poor fuel mileage with the vehicle almost immediately after purchase. The vehicle was first brought back to the selling dealership for diagnosis and repair when the vehicle had been driven just 2,262 miles on July 29, 2013. The transmission and fuel mileage issues have remained complaints since that time, and up through the date of the hearing. The Consumer and his witness Ms. Malone testified as to their apprehension with driving the vehicle, and detailed the fear they experience when the transmission does not respond, and particularly when it causes a delay in initial acceleration from a stop or causes the vehicle to accelerate slowly. Safety was listed in the Consumer's Request for Arbitration as a major concern (see pages 8 and 9).

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 Transmission Control Module software updates were performed, as well as replacing the clutches, all to no avail. The Consumer felt that he did not have the full use of the vehicle, and given the continual severe transmission issues experienced during daily driving he is justified in his 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 substantial loss of safety due to the transmission's lack of performance has also been proven by convincing evidence. A refund and exchange is appropriate in this case.

Beginning early on in the Consumer's ownership, the subject car suffered from severe transmission defects while being driven upon the road under normal conditions. Given the grave safety concerns presented, which impacted the Consumer's ability to use the vehicle confidently, a mileage deduction in favor of the Manufacturer is not appropriate given the facts presented. Finance charges will be awarded to the Consumer in full. The Consumer testified that the vehicle was equipped with dealer-installed heated seats upon his purchase, which cost \$500.00. Although the selling dealership failed to include this optional equipment on the purchase agreement, said cost will be refunded to the Consumer in full.

I am also including a \$6.74 reimbursement as the estimated postage cost that the Consumer had to bear in order to notify the Manufacturer of his decision to avail himself of Chapter 743b, said mailing being a requirement of the statute. His letter was dated November 25, 2015. I have taken judicial notice of the postal rates at USPS.com (viewed on 02-26-2016) for a certified letter to be mailed from zip code 06902 (Stamford, Connecticut) to 48126 (Dearborn). See attached www.USPS.com website print-out.

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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 **\$0.00** credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **\$21,015.58**.

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 _____ (at 0000 miles), minus the mileage at the time of delivery (00 miles) yielding a mileage credit as follows:

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

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: \$503.07	Title & Regis. Fees: \$112.35	Dealer Conveyance Fee: \$369.00
Lemon Law Filing Fee: \$50.00	Certified Mail Fees: \$6.74	Fuel Reimbursement: \$268.12
Dealer-installed Heated Seats: \$500.00		

Total Refund Award and Conditions:

The total refund amount is **\$22,824.86** (twenty two thousand eight hundred twenty four dollars and eighty six 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 **25** 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 (Consumer's choice): **Stamford Ford Lincoln located at 212 Magee Avenue in Stamford, Connecticut, 06902**, OR at the **Consumer's home**.

- Mobile Price Calculator
- Business Price Calculator
- Postal Explorer
- USPS.com



Postage Price Calculator

Summary

Print Friendly

First-Class Mail®, Letter, weight 0 lb 1 oz (0.028 kg), mailed on February 26 after 10:00 AM from STAMFORD CT 06902 to DEARBORN MI 48126

Mailing Summary		Retail	Click-N-Ship®
First-Class Mail® Stamped Letter		\$0.49	Not available
Certified Mail®		\$3.45	Not available
Return Receipt		\$2.80	Not available
Total		\$6.74	Not available

Expected Delivery Day from STAMFORD CT 06902 to DEARBORN MI 48126 (Zone 4) is Mon, Feb 29.

- Start Over
- Back

Customs Form No Form Needed

The surface area of the address side of the item to be mailed must be large enough to contain completely the applicable customs form, postage, and any applicable markings, endorsements, and extra service labels.

Related Links

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- [International Price Charts \(HTML\) \(PDF\)](#)
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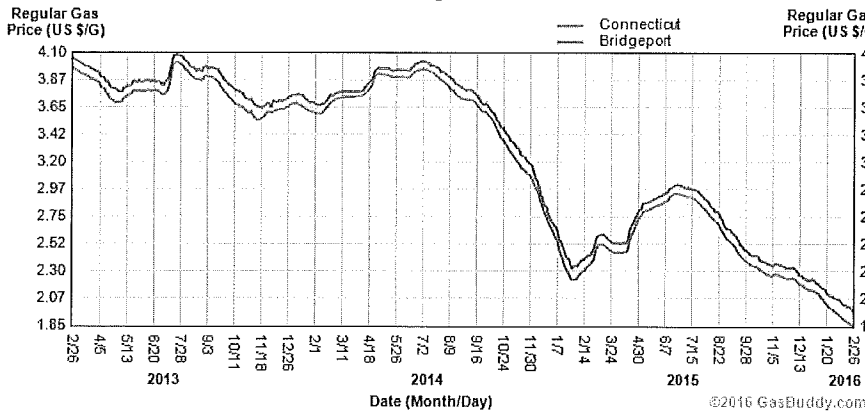
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\$129
PER MONTH LEASE
39 Months/39,000 Miles/Year/2015
\$500
PLUS \$1,000 Cash
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Quick charts: 1 Month | 3 Month | 6 Month | 9 Month | 1 Year | 18 month | 2 Years | 3 Years | 4 Years | 5 Years
Years

36 Month Average Retail Price Chart



Regular Gas Price (US \$/G) — Connecticut — Regular Gas Price (US \$/G)

Regular Ga Price (US \$/)

Customize price charts

Area 1: Time Period: US \$/G

Area 2: Show Crude Oil Price Canadian c/L

Area 3:

Phoenix Historical Gas Price Charts Provided by GasBuddy.com

0%
APR FINAN
FOR UP TO 36 M
\$250
PLUS \$1,000 Cash
THE 2016 NISSAN ROGUE®
More Loan Information

THE 2015 NISSAN ALTIMA **\$3,775** Up To **Total Savings***
*More Cash Back Inform

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