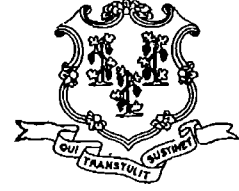




**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrators, Ian Ayres, Chelsea Lane-Miller and Valerie D. Comenencia Ortiz, 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

Nicholas J. Damato (the “Consumer”) leased a **2015 Acura TLX** (the “vehicle”) from **Schaller Acura** located at **345 Center St., Manchester, CT 06040** (the “Dealer”). The Consumer took delivery of this vehicle on **July 24, 2015**. 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, the arbitrators deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. American Honda Motor Co., Inc. (the “Manufacturer”) did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Tuesday, November 22, 2016**. Mr. Tim Clark served as the State’s Technical Expert. Also appearing at the hearing were the Consumer and Mr. Andrew Harrison, of American Honda. The record closed on **Tuesday November 22, 2016** with the submission of additional documents concerning an additional repair attempt on November 16, 2016.

Eligibility under § 42-179(d)

The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to vibration on the steering wheel and pedal on July 31, 2015. The car underwent the following repair attempts:

<u>Repair Date</u>	<u>Miles</u>	<u>Complaint</u>
<u>07-31-2015</u>	<u>430</u>	<u>vibration on the steering wheel and pedal at 70-80mph, vehicle pulls left.</u>
<u>10-27-2015</u>	<u>5,289</u>	<u>tire pressure drops excessively; rear camera and navigation sometimes don’t work.</u>
<u>06-09-2016</u>	<u>14,507</u>	<u>sunroof seal sticking to the roof; rotate tires.</u>
<u>06-23-2016</u>	<u>14,992</u>	<u>vibration when applying brakes on the highway.</u>
<u>07-19-2016</u>	<u>15,578</u>	<u>vibration through seats, floor and gas pedal.</u>
<u>08-11-2016</u>	<u>16,359</u>	<u>vibration throughout vehicle, steering wheel, seat, floor when driving 80MPH and up.</u>
<u>08-17-2016</u>	<u>16,486</u>	<u>vibration when vehicle comes to a stop.</u>
<u>11-15-2016</u>	<u>18,907</u>	<u>vibration at highway speeds.</u>

The vibration described above continues to exist, though was reduced by 50% following the 11/15/2016 service, according to the Consumer’s testimony (at 8:18 in the recording).

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject vehicle: The vehicle produces vibrations felt on the seats, steering wheel, pedal and floor at highway speeds and when applying brakes. The problem first appeared within the first week after delivery. It temporarily ameliorated after some repair attempts, but said defects were said to continue to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the nonconformities described above necessitated multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defects met the statutory presumption for eligibility, as they were subject to four repair attempts during the first two years or 24,000 miles of ownership, and the vehicle was subject to additional repairs for this defect after the statutory period, as detailed in Part I of this decision. Given the documented repairs during the statutory period, the Consumers were found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

Vehicle Repurchase and Factual Discussion

In the present matter, the Manufacturer conceded liability and stipulated a willingness to repurchase the vehicle. The controversy is limited to the amount of the refund. The Manufacturer requested a reasonable allowance of use to account for the number of miles the vehicle has traveled. The Consumer, however, requested a full refund of all payments related to the vehicle due to the record of repeated visits to the dealership and his dissatisfaction with the vehicle.

We find that a limited mileage deduction is appropriate in this case. The Consumer first reported a defect on July 31, 2015 at 430 miles, when he brought the car to the Dealership due to vibration in the steering wheel and pedal when driving 70-80 miles per hour, as well as the vehicle pulling to the left. In the Consumer's Request for Arbitration, he reported that the Dealer told him that this could have been due to the fact that the vehicle came from a large facility and could have flat spots on the tires from sitting for some time. The Dealer rebalanced all four wheels, adjusted the steering wheel, and reported that there was no pulling or vibration following the servicing. According to the official service records, the Consumer brought the car in for a second time on October 27, 2015 at 5,289 miles due to issues with the vehicle's tire pressure system, the rear camera and the navigation system. Although in the Request for Arbitration, the Consumer states that he "informed the manager that [he] was still detecting a small vibration at certain times," the service record does not include this claim, nor do the services performed on that date seem to address this issue.

The Consumer brought the vehicle in for a third time on December 12, 2015, at 7,310 miles, for an oil, lube and filter service. The service records do not include any other complaints, and the Consumer did not include this service in the Request for Arbitration. The Consumer brought the vehicle in for a fourth time on June 9, 2016, at 14,507 miles, for an oil and filter service, to rotate and rebalance the tires, and to address an issue with the sunroof seal. The Consumer reported in the Request for Arbitration that he brought the vehicle in for service due to continuing vibration and that the manager suggested that the vibration was back because the tires had not been rotated and balanced during the previous visit. However, the official service records did not include any complaints about vibration on that date, and the Consumer paid for the rotation and balance service, suggesting that this was a routine service, rather than a service related to a defect and covered by the warranty.

After the Consumer's initial complaint about the vehicle's vibration on July 31, 2015 at 430 miles, the next similar complaint documented in the service records took place on June 23, 2016, at 14,992 miles. The record shows that the Consumer complained about a vibration in the front end since the tires were rotated during the last visit (June 9, 2016 at 14,507 miles), as well as a vibration when applying the brakes on the highway. Following this service, the Consumer regularly brought the car to the Dealership on five additional dates, consistently reporting a vibration.

Although the Consumer might have been inconvenienced by the vehicle's vibrations from July 31, 2015 to June 23, 2016, the Consumer utilized the vehicle for almost eleven months, and drove 14,562 miles from the first time he

reported vibrations on the car until the second time he made a similar complaint. Given the continual driveability concerns presented due to the vibrations of the vehicle, balanced with this significant distance in time and miles, as well as the relatively high mileage at the time of the hearing (around 19,000 miles as testified by the consumer), a mileage deduction limited to the total mileage driven at the June 23, 2016 repair attempt (14,992 miles) is appropriate.

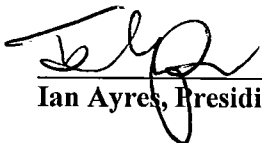
III. CONCLUSION

Given that the Manufacturer has agreed to grant a refund to the Consumer, and considering the evidence and testimony submitted by the parties, we find that a partial mileage deduction in favor of the Manufacturer is appropriate.

The decision of these arbitrators 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.

Date: November 30, 2016



Ian Ayres, Presiding Arbitrator



Chelsea Lane-Miller, Arbitrator



Valerie Comenencia Ortiz, Arbitrator

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

IV. REFUND AWARD

The Manufacturer has conceded liability and has agreed to repurchase the vehicle from the Consumer. Thus, in this case, the arbitrators are only addressing whether and to what extent the repurchase price should include a reasonable allowance for use as explained below.

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 June 23, 2016 repair attempt** (at 14,992 miles), minus the mileage at the time of delivery (105 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$39,849.00 \quad \times \quad 14,887 \text{ miles } (14,992 \text{ miles} - 105 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$4943.60**.

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.

Expenses to be Reimbursed by Manufacturer:

Down Payment: \$2,000 on 7/24/15 (including the July 2015 monthly payment)

Monthly Payments: \$8,360.64 (16 monthly payments at \$522.54 each from August 2015-November 2016). At the arbitration, consumer stated that he had paid \$9626.64 in monthly payments for the car. However, given that Consumer paid his first monthly payment on 7/24/15 as part of his \$2,000.00 down payment, and has made 16 monthly payments since that time, we are unable to identify how or why Consumer paid more than \$8360.64 in monthly payments..

Repairs: \$58.44 for tire rotation/balancing service on 6/9/16

Total = \$10,419.08

Total Refund Award and Conditions:

The total refund amount is \$10,419.08 (total expenses) - \$4943.60 (reasonable use allowance) = **\$5475.48** (five thousand four hundred seventy five dollars and forty eight cents).

If Manufacturer has not already done so, Manufacturer shall waive the \$350 fee for not purchasing the vehicle at the end of the lease.

Furthermore, at the time of arbitration, Consumer stated that the mileage was approximately 19,000 miles. He brought the car in for a service on 11/15/16, and the mileage at that time was **18,907 and left with 18,935 miles**. So that the vehicle is delivered to the manufacturer promptly and at roughly the same mileage as the car had at the arbitration, the manufacturer may reduce the damages owed consumer by 20 cents per mile for every mile over 19,200 miles. This is the price listed in the lease contract and agreed to by the Consumer for excessive mileage over 15,000 miles per year.

Consumer also claimed as damages for the following amounts that he paid in connection with this arbitration:

\$50 Lemon Law Arbitration Fee

\$13.99 postage (\$7.54 and \$6.45 postage for certified letters)

These types of expenses are not always awarded to Consumer, and we do not believe the facts in this case support compensation of these fees. Therefore they are not included in the damages award.

The Consumer may surrender the vehicle to Manufacturer at any time to avoid any excess mileage charges, though the vehicle title shall not be surrendered until the refund is provided. The Manufacturer shall provide the total refund to the Consumer(s) within **15** days of receiving the vehicle from Consumer, or within **30** days of the Manufacturer's receipt of this arbitration decision. If Consumer has not already done so, the Consumer shall surrender the vehicle to the manufacturer upon receipt of the refund, or 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: **Schaller Acura, 345 Center St. Manchester, CT 06040, OR at a local manufacturer-authorized dealership or other location agreed upon by both Manufacturer and Consumer.**