



BBB AUTO LINE

December 30, 2014

MS
204

CA 93561

Re: FRD1431185 Subject: Ford Motor Corporation

Dear Ms

Enclosed is the arbitrator's *Decision and Reasons for Decision* in your case. You may either accept or reject the decision.

To accept the decision, you must sign the attached *Acceptance or Rejection of Decision* form and return it to the BBB at the following address so that it is received within 30 calendar days from the date at the top of this page:

BBB AUTO LINE
3033 Wilson Blvd., Suite 600
Arlington, VA 22201

You may want to return this form via certified mail. You may also fax the form to us at 703.247.9700.

Failure to accept the decision within this time period will be considered a rejection and the manufacturer will not be bound to its terms. Please note:

- * If you accept the decision, the manufacturer will be bound to its terms and must comply within 30 days unless the period for performance is extended for delays caused by reasons beyond the control of the manufacturer or its representative. Within 10 days after expiration of the compliance period, the BBB will contact you to verify that the manufacturer has performed all actions required by the decision.
- * If you reject the decision, or if you accept the decision and the manufacturer does not promptly perform the terms of the decision, you may pursue other legal rights and remedies available to you under state or federal law. This may include the use of small claims court.
- * The decision and findings may be admissible in evidence in any court action.

You may regain possession, without charge, of any documents that you submitted to BBB AUTO LINE. In addition, you may obtain copies of BBB AUTO LINE's records relating to your dispute, although a reasonable copying charge may be assessed. If you would like, you may request a free copy of our *Operating Procedures*.

Council of Better Business Bureaus, Inc.

3033 Wilson Boulevard, Suite 600 · Arlington, VA · 22201 · Phone 800.955.5100 · Fax: 703.247.9700

We hope your experience with BBB AUTO LINE has been positive. If you have a complaint that we have not been able to resolve, you may register your complaint with the Arbitration Certification Program of the California Department of Consumer Affairs at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834. Their phone number is 916.574.7350. Please note that the Arbitration Certification Program does not hear appeals from arbitration decisions.

If you have any questions about the decision or if I may be of service to you, please feel free to call me at 800.955.5100. Additionally, please call me if you need any assistance returning the form within the time allotted.

Sincerely,

William Clopton at Extension 502



REPAIR DECISION

Submitted Date: 12/26/14

Customer: Ms
Arbitrator: J

- Hearing Date: 12/22/14

Question 1

Vehicle (Year, Make, Model)
2013 Ford Fiesta

The manufacturer shall, within 30 days from the manufacturer's receipt of the customer's acceptance of this Decision, repair the following components/symptoms in the "vehicle", leased owned or leased by the customer.

(List all components/symptoms to be repaired)

- 1 Repair the harsh shifting, slipping, and rattling noises emitted during the shifting of Vehicle.
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

Question 3

The manufacturer will contact the customer to make all arrangements for the completion of these repairs, which shall take place at a dealership chosen by the Consumer

CASF
Arbitrator: J

Customer: Ms T
Date: 12/26/14



REASONS FOR DECISION

Submitted Date: 12/26/14

VIN: 3
Customer: Ms T

- Hearing Date: 12/22/14

Arbitrator: J**Question 1**

Vehicle (Year, Make, Model)

2013 Ford Fiesta

Question 2

Please list each vehicle problem alleged by the customer. Include both past and present problems.

Harsh shifting, slipping, and rattling transmission.

Question 3

For the following reasons, I have determined that a {please list one of the following awards below: repair, denial, repurchase, reimbursement, repurchase/replacement, restitution}

Repair

• decision is a fair resolution of this dispute:

The arbitrator took the following into consideration in making her decision:

T. _____ by ("Consumer") complained of a single problem with her 2013 Ford Fiesta VIN _____ ("Vehicle"): the Vehicle's transmission shifts harshly, grinds, and slips.

Consumer states that the problem has been the subject of repairs on at least 6 occasions totalling 19 days out of service. Consumer states that Consumer feels unsafe in Vehicle when driving because something could happen to the transmission and Vehicle could stop on the road causing an accident. Consumer states that Vehicle has shifted unexpectedly causing such concerns. Consumer seeks repurchase of Vehicle.

Ford Motor Company ("Manufacturer") states that Vehicle has been the subject of warrantable repairs and these repairs fixed the problems. Manufacturer states that what Consumer is hearing and feeling is normal conditions for the transmission in this Vehicle. Manufacturer states that no safety concerns exist and that apparent failures of Consumer to tend to normal, manufacturer suggested maintenance, such as brakes, are more of a safety concern.

Therefore, Manufacturer states that there are no further repairable problems and thus requests that Consumer's request for Vehicle repurchase be denied.

I. IS VEHICLE COVERED UNDER THE SONG-BEVERLY CONSUMER WARRANTY ACT?

All parties agree that the Vehicle is within the Manufacturer's warranty period for power train issues. Presuming that Consumer's complaints are a result of a power train issue, Vehicle is covered under the Song-Beverly Consumer Warranty Act. Vehicle was purchased on August 1, 2013. Vehicle has an automatic transmission. Vehicle had 37720 miles on the date of the hearing and inspection. Therefore, Arbitrator finds that any issues that are not power train related are now outside of Manufacturer's warranty.

II. IS VEHICLE SHIFTING HARSHLY, GRINDING, AND SLIPPING A NONCONFORMITY?

A. SONG-BEVERLY CONSUMER WARRANTY ACT

If a manufacturer is unable to repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either promptly replace or repurchase the motor vehicle. Each occasion that the manufacturer has had an opportunity to repair is counted as an attempt, even if no repairs were actually made.

"Nonconformity" is defined as a defect, malfunction, or failure to conform to the written warranty that substantially impairs the use, market value, or safety of the motor vehicle to the buyer.

The Tanner Consumer Protection Act provides a presumption that a reasonable number of attempts have been made under certain conditions when such has occurred within 18 months or 18,000 miles from the date of delivery.

As to the Tanner presumption, Arbitrator finds that Vehicle was not presented within 18 months or 18,000 miles from delivery for any issues and therefore the presumption of a reasonable number of attempts has not been met.

Arbitrator therefore continues the review of facts to determine if a nonconformity exists and Manufacturer has been given a reasonable number of attempts to conform such vehicle without utilizing a presumption.

B. CONSUMER PRESENTED ISSUES.

Consumer has had Vehicle in for repairs with various complaints. With regard to complaints, the following show dates upon which the transmission complaint was stated:

On June 25, 2014, Consumer presented Vehicle to Manufacturer with a complaint that the transmission slips and harshly engages. At that time, Manufacturer verified the problem, cleaned the (automatic) clutch and replaced seals. Vehicle was out of service for 3 days for these repairs.

On July 15, 2014, Consumer presented Vehicle to Manufacturer regarding the transmission shifting hard which Consumer stated was usually felt during takeoff. Manufacturer verified problem at 250 rpm, and at 430 rpm felt shudder. Manufacturer replaced the (automatic) clutch and seals.

Consumer also stated that the check engine light had come on when pulling a small hill but that light had gone off. Manufacturer found no codes stored and therefore could not verify. Vehicle was out of service for 3 days for these repairs.

On July 31, 2014, Consumer presented Vehicle to Manufacturer stating that the check engine light was on but that Vehicle appeared to run fine. Manufacturer verified a problem with fuel pressure sequence which indicated a problem with the catalytic converter. Manufacturer replaced catalytic converter, the exhaust manifold and gaskets. Vehicle was out of service a total of 5 days for these repairs.

On September 24, 2014, in addition to a maintenance request, Consumer presented Vehicle to Manufacturer complaining of noise while braking. Manufacturer verified noised and found brakes metal-to-metal. Manufacturer replaced the rotors and brake pads.

Consumer also presented an issue regarding excessive bouncing of Vehicle. Manufacturer verified problem with both rear shocks leaking. Manufacturer replaced both rear shock absorbers. Vehicle was out of service a total of 7 days for these repairs.

On October 14, 2014, Consumer presented Vehicle to Manufacturer with a complaint of intermittent harsh shifting at low speeds. Manufacturer was unable to duplicate, indicating the opinion that this was a normal operating characteristic of Vehicle.

Consumer also presented Vehicle with a rattle noise from left side of Vehicle which coincided with Vehicle shifting but was not present at higher speeds. Manufacturer stated this was normal characteristic of Vehicle. Vehicle

out of service for one day for these attempted repairs.

On October 22, 2014, Consumer presented Vehicle to Manufacturer complaining of intermittent noise at stop and takeoff. Consumer states Vehicle abnormally shifting from 2nd gear into first. Manufacturer could not duplicate the problem.

Consumer also stated that there was a rattling noise from rear area near catalytic converter. Manufacturer stated items in glove box caused problem and could not duplicate the concern. Vehicle was out of service for 3 days for these repairs.

III. TEST DRIVE.

Arbitrator took Vehicle on a test drive with Consumer and a Better Business Bureau representative. Manufacturer was not present. Vehicle was driven at city speeds of 35 - 40 miles per hour. Arbitrator could feel some vibration when shifting, noted some hard shifting, and heard some rattling.

IV. MAINTENANCE ISSUES.

Arbitrator notes that Vehicle does not appear to be maintained in a manner consistent with Manufacturers' suggested maintenance. While Consumer stated that Vehicle's tires were purchased through a third party - which Arbitrator agrees is not a basis for a maintenance concern - Consumer did not indicate that any other maintenance was performed by third parties. Therefore, Arbitrator presumes that all preventative maintenance recorded by Manufacturer is the only maintenance performed on Vehicle.

Consumer first took Vehicle in for preventative maintenance, including an oil change, on May 22, 2014. At that time, Vehicle had 23,714 miles. At that time, Manufacturer inspection noted that brakes and tires needed immediate replacement. On September 24, 2014, brakes were found to be metal-to-metal, requiring front rotors to be replaced as well as the brake pads. This was the second preventative maintenance oil change requested. Tires were again noted to be in need of replacement.

Consumer apparently has had the tires replaced since the September 24, 2014 visit. There is no further preventative maintenance shown, thus indicating that such maintenance has only been performed twice in 37,720 miles.

Arbitrator does not find, however, that such apparent lack of preventative maintenance constitutes an unauthorized or unreasonable use of Vehicle.

V. MANUFACTURER CLAIMS OF NORMAL OPERATING CONDITIONS.

Consumer states that Manufacturer has been given numerous opportunities to repair the problems. Manufacturer, through its agent, Ford, however, has been under the belief that the Consumer complaints are a result of normal operating conditions.

Arbitrator notes that the first complaint by Consumer was not until after Consumer had the Vehicle for over 10 months and driven it for over 26,000 miles. Arbitrator finds that Consumer's complaints did not arise immediately upon purchase, indicating that the problems were not always present and Consumer was not simply uninformed regarding Vehicle's "standard" operations.

VI. CONCLUSION.

Arbitrator finds that the complaint regarding the harsh shifting, slipping, and rattling noises coming from the transmission are nonconformities that substantially impair the use and value of Vehicle to the consumer. Arbitrator finds that because Manufacturer, through its agent, Ford, was

under a belief, although mistaken, that these issues are normal operating conditions, Manufacturer has not had a reasonable number of attempts to conform Vehicle to the express warranties.

Therefore, Arbitrator orders Manufacturer, within 30 days from the Manufacturer's receipt of the customer's acceptance of this Decision, to repair the harsh shifting, slipping, and rattling noise emitted during the shifting of Vehicle.

End of Reasons for Decision.

Question 4

If awarding a repurchase, replacement or restitution:

If you have determined that the manufacturer is entitled to a deduction for reasonable use, please indicate the number of vehicle miles prior to the first repair attempt of the problem that gave rise to the nonconformity.

- b Please describe all collateral and incidental damages paid, incurred or to be incurred by the customer. Please explain why if any of these collateral/incidental damages are not awarded.

CAS:
Arbitrator:

Customer: _____
Date: 12/26/14