

FLORIDA RECREATIONAL VEHICLE
MEDIATION/ARBITRATION PROGRAM

Collins Center for Public Policy, Inc.
DECISION OF THE ARBITRATOR
(DISMISSAL)

In the Matter Between:

Case 200902

Charles Milligan
111 Grace Street
Deland, Florida 32724

v

Coachmen Recreational Vehicle Company, LLC
4100 Edison Lakes Pkwy., Suite 100
Mishawaka, Indiana 46545

Date claim received by the Collins Center: 01/21/2009
Mediator: Bruce Chapin
Date Mediation Held: 02/26/2009

FINDINGS OF THE ARBITRATOR

Pursuant to notice to all parties, an arbitration hearing was held in this case on May 13, 2010, in Orlando City Hall, Florida. Upon consideration of all testimony and evidence presented, including matters stipulated by the parties, the following factual findings are made:

1. Identification of subject vehicle: Year: 2007; Make: Sparks-coach
; Model: 40 Q52
Vehicle Identification Number: 4U2AB2DC76CX44258
Date of delivery of the vehicle to the Consumer: 3/6/2007
Vehicle sold in Florida? Yes; No.
Mileage on odometer at the time of deliver: 1343
2. Name/Address of Selling Dealer: Giant Recreation
World, 13926 W. Colonial Dr., Winter
Garden FL
3. Facts supporting dismissal of the claim: please see Ex "A"

CONCLUSIONS

It is concluded that the Consumer's Year: 2007 ; Make: Sports Coach
; Model: 40 Q52 ;
Vehicle Identification Number: 4UZA B2D C76 EX 442 58 is:

Please see attached Exhibit A

The request for relief filed by the Consumer(s) is hereby denied and the case is hereby DISMISSED.

SIGNED:

May 26, 2010
Date

Patricia Muscarella
Arbitrator Patricia Muscarella

A COPY OF THIS DECISION was furnished to the Consumer and each involved Manufacturer by registered mail on this date: May 27, 2010

Gloria Massery
Collins Center Case Manager

Exhibit A

Facts supporting dismissal of the claim:

1. This case arises out of a claim by Plaintiff Mr. Milligan that the Settlement Agreement entered into at mediation and dated February 26, 2009 was breached.
2. The date of the arbitration hearing was May 13, 2010, well over a year later.
3. After introductions of the participants and prior to the beginning of the case in chief, the parties wanted to discuss the scope of the arbitration. Ms. Nemeth, attorney representing CRVC, LLC ("CRVC") stated that her understanding was that if the arbitration hearing was initiated as a result of the Plaintiff's claim that the Settlement Agreement ("Agreement") was breached or that the manufacturer was not in conformance with the Agreement, then the hearing was limited to whether or not the manufacturer is in conformance with the Agreement. Anything prior to the Agreement was not to be considered and anything outside of the terms Agreement was not to be considered. Ms. Weston, attorney for the Plaintiff stated that they had agreed to arbitrate the Magnuson Moss issues and had filed a motion in Federal Court to that effect. Ms. Weston's understanding was that the Plaintiff had agreed to expand the scope of this hearing to include the Magnuson Moss claim. Plaintiff had offered to dismiss the Magnuson Moss claims as an incentive for Defendant to arbitrate this matter, whether it was state or federal law, breach of warranty or the Magnuson Moss Warranty Act. Ms. Nemeth indicated she was not prepared to address the Magnuson Moss issues at this hearing.
4. Ms. Nemeth stated that there was a motion to dismiss in the court case, that there was a Settlement Agreement and that if the Plaintiff believed that the Agreement had been breached that they would rather have this matter arbitrated rather than go to court. If there are claims that were in the complaint or issues that were not included in the Agreement then those matters would have to be disposed of in separate proceedings. Ms. Weston agreed.
5. Therefore, the parties agreed to expand the scope of the arbitration to only those items that are covered in the Agreement.
6. Next, the parties agreed to inspect the RV primarily to allow Mr. Jack's the opportunity to inspect the RV prior to his testimony.
7. The Settlement Agreement provides in pertinent part for CRVC to repair:
 - 1a. Leaks identified on attached Exhibit 1, which are 1. Leak at fantastic fan, 2. Leak showing at driver left overhead cabinet, 3. Slide leak at rear corner of door side bedroom slide, 4. Leak at rear side of door side kitchen slide, 5. Leak off door side at main slide both corners and in the basement.
 - 1b. Ceiling panel in living room
 - 1c. Sealer and glue outside joints over driver window

8. The Settlement Agreement also provides for CVRC to check and repair if necessary the following items: A. Carpet and padding in bedroom, B. Wood at walls and Floor, C. Sidewalls at floor in slide rooms, and D. Slide out motors under kitchen slide.
9. The Settlement Agreement is dated 2/26/09 and provides for a 90 day warranty on all on workmanship and materials.
10. The Warranty Claim Summary was entered into evidence as Defendant's Exhibit #1 and consists of eight pages summarizing seven repairs all completed on 4/06/09. These seven repair items roughly track the items on the Settlement Agreement.
11. A fax dated April 20, 2009 from Mr. Milligan to the Collins Center indicated that Mr. Milligan was willing to bring back the RV to the Fitzgerald facility around May 20, 2009. Mr. Milligan testified that he returned the RV to the Fitzgerald facility on May 18, 2009 and the RV was released back to him on May 21, 2009. According to Mr. Milligan the RV began leaking within days after picking up the RV.
12. There was additional extensive testimonial and documentary evidence presented by both sides at the arbitration hearing and found not relevant to the disposition of this case.

Conclusions of Law:

1. Based on F.S. 681, I do not find any authority to arbitrate Magnuson Moss issues and therefore find that I do not have jurisdiction to hear those claims.
2. F.S. 681.1097(4)(g) provides: If a manufacturer fails to perform within the time required in any settlement, the consumer must notify the program administrator of such failure in writing within 30 days of the required performance date.
3. Under F.S. 681.1097(4)(g), consumer must notify the program administrator of such failure in writing within 30 days of the required performance date.
4. Plaintiff Mr. Milligan did not notify the program manager with in the proscribed period of time as required by F.S. 681.1097(4)(g).
5. Based on the jurisdictional issue, the arbitrator finds that this case was not timely filed and must be dismissed.

NOTICE TO THE PARTIES:

Effective **July 1, 2001**, either party may request that the program arbitrator make a technical correction to the decision by filing a written request with the Collins Center within 10 days after receipt of the written decisions. Technical corrections shall be limited to computational errors, corrections of a party' s name or information regarding the recreational vehicle, and typographical or spelling errors. Technical corrections of a decision shall not toll the time for filing a notice of appeal or for manufacturer compliance.

A decision of the Arbitrator is binding unless appealed by either party by filing a petition with the circuit court within the time and in the manner prescribed in the statute. Such application must be filed within 30 days of the moving party' s receipt of this Decision or the Decision becomes final. Upon filing such application, the moving party must mail a copy to the Collins Center for Public Policy, 1415 E. Piedmont Drive, Suite 1, Tallahassee, FL 32308.