

**AMERICAN ARBITRATION ASSOCIATION  
COMMERCIAL ARBITRATION TRIBUNAL**

CAMERON P. COOPER, )

Complainant, )

v. )

Case No. 57-434-E-00144-10 )

ODESSA FORD, L.L.C., CHRISTOPHER S. )  
PAYNE and BRIAN LAWSON, )

Respondents. )

**AWARD OF ARBITRATOR**

I, the undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties do hereby make this statement and Award, as follows:

Claimant, Cameron P. Cooper along with his wife Wendy Cooper initially filed suit in the Circuit Court of Johnson County, Missouri, Case No. 09J0-CVO-1934. That Court ordered arbitration. On motion of Respondents, Wendy Cooper was dismissed as a Plaintiff/Claimant by order of this Arbitrator. In the initial petition referred to above, Claimants alleged common law fraud, violation of the Missouri Merchandising Practices Act and negligent misrepresentation. The claim for negligent misrepresentation has been withdrawn by counsel for Claimant. The parties throughout the arbitration case have conducted thorough discovery and several disputes with relation thereto arose during the process which received the Arbitrator's attention and were disposed of after review of briefing by both parties. The hearing in the above matter was scheduled for an approximate two days beginning April 19, 2011, but concluded in one day.

Claimant Cooper was present in person and through counsel Joseph M. Backer of the Backer Law Firm LLC. Respondent Odessa Ford L.L.C. ("Odessa Ford") was present through representative Chris Payne and by and through counsel Joseph Welch of the firm of Case & Roberts. Respondents Chris Payne and Brian Lawson were present in person and through counsel Kevin Case of the firm of Case & Roberts. There were no other appearances.

Appearing as witnesses at the hearing were Claimant Cameron P. Cooper, Richard Diklich (Claimant's expert witness), Brian Lawson and Christopher Payne all of whom were called to the witness stand during Claimant's presentation of evidence. The parties, prior to the taking of testimony, presented two binder books of exhibits and it was stipulated that Exhibit Nos. 1 through 46 should be admitted into evidence and was so ordered. Exhibit No. 47 was objected to by Respondents. Exhibit Nos. 48 through 75 were admitted into evidence by agreement of both parties. Exhibit Nos. 76, 77, 78, 79, 80, 81, 82, 83, 84 were objected to by counsel for Respondents. Exhibit Nos. 85, 86 and 87 were agreed to by both parties and were admitted into evidence. Exhibit Nos. 88, 89 were objected to by counsel for Respondents. Exhibit Nos. 90 and 91 were agreed to by both parties and were admitted into evidence. Exhibit Nos. 92, 93, 94 were objected to by Respondents. Exhibit Nos. 95 through 100 were agreed to by both parties and admitted into evidence. Exhibit Nos. 200 through 210 were agreed to by both parties and admitted into evidence. Exhibit No. 211 was objected to by counsel for Claimant.

Claimant Cameron P. Cooper (hereinafter "Cooper") resides near Holden, Missouri. In December of 2008 he went to the Odessa Ford L.L.C. location for the main purpose of shopping for an automobile for his wife Wendy. A purchase of an automobile

for her occurred and the events surrounding that purchase are not a part of this proceeding. During the testimony of Cooper, reference to the following Exhibits occurred: Nos. 36, 37, 48, 50, 59, 65, 71, 87, 90, 97, 101, 210, page 12 thereof. Those exhibits were all admitted into evidence. Reference also during his testimony was made to Exhibit Nos. 47, 88 and 89, and though identified, said exhibits were not admitted into evidence. Cooper testified that this is the first experience he had purchasing an automobile from a franchise dealership. He initially was interested in a diesel truck that he liked. The salesman at Odessa Ford, one of whom was Respondent Brian Lawson, advised him that Cooper did not qualify for financing on the diesel truck and directed his attention to a red 1997 Silverado lifted truck. Cooper stated that Lawson and his supervisor represented to him that the truck was a good and reliable truck and would satisfactorily transport Cooper from his home near Holden, Missouri to his place of employment in Arkansas. Cooper stated Lawson and his supervisor repeatedly stated the truck was a good and reliable one, in good shape and would not have any mechanical or other problems. Cooper test drove the Silverado and during that period found nothing objectionable. Cooper indicated he decided to purchase the truck based in large part on these stated representations. Cooper testified he later was directed to meet with an employee of Respondent Odessa Ford L.L.C. named Emmett Payne, the finance and insurance manager. Cooper stated that Lawson and Emmett Payne both told Cooper that the truck was a trade-in. He stated that documents in evidence would show that the truck had been purchased from the Payne Truck Center rather than accepted as a trade-in. Cooper stated that Emmett Payne kept him waiting a long time before the meeting started and that during the meeting with him, Emmett Payne used rush and hurry up tactics. A

large pile of documents was put in front of Cooper and he was told he should sign at the identified spots to complete the transaction. Cooper stated the procedure had the effect of confusing and misleading him as to the content of the documents he was to sign. Cooper stated he was never given a valid Missouri vehicle inspection document by Odessa Ford. He further testified that he was not (a) told the truck had previously been a rental or executive truck, (b) that the truck had, previous to his purchase, been repaired in several respects, (c) that the rear brakes would lock up or (d) that personnel at Odessa Ford knew that fact, and knew that the brakes needed to be repaired but had not been. Emmett Payne presented and had Cooper sign a document commonly known as a Junk Affidavit pursuant to Section 307.390 RSMo which indicates that Cooper should not drive the vehicle on public streets or highways but was to use it for junk or salvage only, even though it was clear that Cooper intended to purchase the truck for use as previously described. In the completion of the retail sale transaction, Cooper also signed other documents not appropriate for the specific transaction. Cooper further testified he was given a temporary tag for the vehicle by personnel at Odessa Ford so that he could drive the vehicle away from the premises and use it until he got it titled and licensed appropriately. Further, Cooper testified he was sold GAP insurance, but he learned that this applies only when the buyer is going to operate the vehicle on public roadways, and he also purchased a service contract although the vehicle was not eligible for such. Cooper took the vehicle in for service to Odessa Ford twice and on both occasions was allowed to drive the vehicle away, despite the violation of the Junk Affidavit statute. His attempt to return the vehicle and obtain a replacement proved futile.

Richard Diklich qualified as an expert with respect to automobile and truck repair and reconditioning, and made reference in his testimony to Exhibit Nos. 1 through 46, 55 through 59, 61, 65, 67, 68, 72, 73, 97, 102, and 109. He found numerous parts and operating mechanisms in the subject vehicle to be deficient, testified that it could not pass the Missouri vehicle inspection, then gave his opinion that the deficiencies observed had existed for a long period prior to his examination of the truck. He was directed to Exhibit Nos. 47, 89 and 88 to which counsel for Respondents objected and those objections were sustained. He commented with respect to discrepancy on the odometer readings in different documents. He set the actual value of the truck at \$5,500.00.

Mr. Brian Lawson, called by Claimant, testified that he sold the subject truck to Cooper but that his supervisor, Bill Norton, handled most of the transaction. He indicated he had never sold a truck or a lifted truck before and knew little about them. He stated he was mainly involved in the sale of a Ford Focus to Wendy Cooper, Claimant Cooper's wife. He did not advise Cooper of any of the defects in the Chevy Silverado. He prepared none of the documents for the transaction. He was involved in the discussions with Cooper relating to the subject truck, although he did not actually know the condition of the vehicle. He did not tell Cooper that the vehicle was a "junker" and did not prepare the "Junk Affidavit." With respect to Exhibit No. 67, he acknowledged that he did sign the document indicating that the truck was a "trade-in" and has learned since that this was not correct. He was not the one who advised Cooper that he could get a "service contract." In reference to Exhibit No. 95 which indicates a sales price of \$10,995, he could not explain why the sale price was quoted to Cooper for \$12,590. As a salesperson, primarily involved in new car sales, he doesn't have any duties with respect

to furnishing the vehicular inspection required at time of sale. Lawson indicated Cooper "fell in love" with the Chevy lifted truck and was anxious to use it on back roads through muddy conditions.

Mr. Chris Payne, called by Claimant as a witness, indicated that he was an investor, owned some real estate investments and was formerly an auto dealer and had franchises for such. The Odessa Ford L.L.C. no longer operates a franchise dealership. Odessa Ford L.L.C. is owned by a revocable trust of which he was the Trustor and is Trustee. During his testimony, reference was made to Exhibit Nos. 65, 101, 102 and 103. Exhibit No. 103 was objected to and not admitted into evidence. He testified that during the latter part of 2008 and 2009 he suffered from health related matters, was at the Ford Dealership some but not on a regular basis, that he had no personal knowledge of the transaction with Cooper and had no knowledge of the specific vehicle sold to Cooper. He was referred to several exhibits and did not dispute them, but asserted he had no personal knowledge of the content thereof. His first knowledge of the problems relating to the sale of the specific truck to Cooper was only after being advised of the filing of the suit. He identified the revocable trust document in which Odessa Ford L.L.C. was made a part of a revocable trust which was Exhibit No. 211 which was offered, but not received into evidence.

The above statements of testimony of the various witnesses is only a summary of the detailed notes kept by the Arbitrator during the hearing. No transcript was requested by either party and none was made. Depositions of some of the witnesses were attached as exhibits and admitted into evidence, and those contained more thorough recitations of some of the pertinent facts, as do certain answers to interrogatories which were included

as exhibits. Respondents in post-trial documents submitted to the Arbitrator have acknowledged the liability of Odessa Ford L.L.C. for certain actions of its agents. Many of the findings of fact stated hereafter coincide therewith.

In considering the damages to be awarded the Claimant, the Arbitrator has taken into account the purchase price of the vehicle which was \$12,590.00, the processing fee of \$189.00, the GAP insurance premium for \$420.00, and the service contract for \$1,730.00, totaling \$14,929.00. He has also considered the fact that the value of the vehicle according to Claimant's expert is \$5,500.00, which mathematically indicates a damage figure of \$9,429.00. A part of the transaction which Odessa Ford, L.L.C. arranged included a financing agreement which may require a payment of \$20,731.00 to satisfy, however, the Arbitrator has no evidence establishing any discount for early pay-off if such exists. The mathematical difference between the amount to pay off the existing indebtedness less the value of the vehicle is \$15,231.00 which includes interest on the amount financed, so the Arbitrator holds it proper to base any award on the \$9,429.00 figure. Claimant in post-trial documents requests an award for loss of use of the vehicle for over two years in the amount of \$11,500.00 which was supported by the evidence as a whole. Claimant could not legally use the truck on a public road. The entitlement to consequential and incidental damages such as inconvenience, embarrassment, and emotional distress were not established in the hearing to any satisfactory certainty to this Arbitrator.

Consideration of the award of punitive damages is certainly appropriate in the instant case. In testimony, Claimant asked for the award of punitive damages as in the judgment of the Arbitrator may be appropriate. In documents submitted in the

proceedings, Claimant, through Counsel, has suggested punitive damages be awarded as great as \$500,000.00. The Arbitrator is certainly aware of several circumstances where punitive damages have been awarded. In some types of cases, three times the award for actual compensatory damages has been deemed appropriate. In others, an even greater amount has been ordered. In the instant case, the Arbitrator has taken into consideration the egregious actions of employees Emmett Payne and Bill Norton and, to a lesser degree, Brian Lawson. One of the purposes of the award of punitive damages is to deter future similar actions by a defendant or defendants in a case. Here, Emmett Payne and Bill Norton, two of the significant malfeasants are not defendants in the case and the award of punitive damage will likely have little or no impact upon them. Defendant Odessa Ford, L.L.C. is no longer in operation as a sales agency of automobiles, so any impact on that defendant so as to deter future actions is speculative.

Additionally, the Arbitrator has also considered the actions and involvement of the Claimant himself with respect to the misfortunes which he suffered. Claimant Cooper is a high school graduate with extensive service in the Marine Corps, including overseas duty and is employed. He is married and had owned several other automobiles and trucks on which he had personally participated in making repairs. He testified he usually read documents before signing them. At the hearing, he impressed the Arbitrator as a calm, responsive and serious individual. Though characterized as a "rural person" by his counsel, Cooper was certainly no "babe in the woods." It is the Arbitrator's conclusion that, even though he was pressured, his eagerness to acquire the bright red Chevy Silverado lifted truck, his inattention to even the significant or detailed content of the



forms he signed, and his impatience to close the transaction were factors leading to his disappointment in what he purchased.

This case is one appropriate for the consideration of the award of claimant costs and attorneys' fees. Claimant, through counsel, submitted several pages of the itemization of time and service, along with supporting documents and receipts. Counsel for all Respondents have made specific objections to 25 time entries or descriptive recitations related thereto—some of which have merit. After thorough consideration of all the issues and the positions of the parties, the Arbitrator rules Claimant and his counsel are entitled to significant fees and related costs as delineated hereinafter.

#### **FINDINGS OF FACT**

1. Claimant purchased a 1997 Lifted Chevy truck from Odessa Ford L.L.C.
2. The total purchase price plus other related charges for the 1997 Lifted Chevy truck totaled \$14,929.
3. Odessa Ford's representatives indicated to Claimant that the 1997 Lifted Chevy truck would pass a Missouri motor vehicle inspection.
4. Odessa Ford's representatives stated that the 1997 Chevy truck would pass for motor vehicle inspection and qualify for a service contract and these were material facts to Claimant.
5. Odessa Ford's representatives' statements that the truck would pass inspection and qualify for a service contract were false.
6. Claimant reasonably relied on Odessa Ford's representations that the 1997 truck would pass inspection and would qualify for a service contract, all to his detriment.
7. Claimant was damaged as a result of his reliance on Odessa Ford's representations.

8. The value of the 1997 Lifted Chevy truck, according to the testimony of Claimant's own witness, was actually \$5,500.00.

9. Respondent Christopher Payne did not make any representations to Claimant.

10. There is no evidence that Christopher Payne was involved in the sale of the 1997 Lifted Chevy truck to Claimant.

11. The Christopher S. Payne Revocable Trust is and was at the time of sale of the vehicle to Claimant, the owner of Odessa Ford L.L.C.

12. The Christopher S. Payne Revocable Trust is not a party to this arbitration.

13. Brian Lawson made representations to Claimant Cooper which, although he was relying on information furnished by his manager, Bill Norton, were not personally known by him to be true and, in fact, were false and Claimant Cooper relied to his detriment thereon.

#### **CONCLUSIONS OF LAW**

1. Odessa Ford L.L.C., through its agents, Bill Norton, Emmett Payne and Brian Lawson cumulatively, fraudulently misrepresented the condition of the vehicle to Claimant, and consummated a transaction inappropriate under all existing factors.

2. As a result of the representations and actions of Odessa Ford L.L.C., Claimant was damaged.

3. Odessa Ford L.L.C. violated the Missouri Merchandising Practices Act (§ 407.020) in the sale of the 1997 Lifted Chevy truck to Claimant.

4. As a result of Odessa Ford L.L.C.'s violation of the Missouri Merchandising Practices Act and fraudulent actions, Claimant is entitled to an award against Odessa Ford L.L.C. and Brian Lawson for actual damages and lawful interest,

loss of use value and for costs and attorneys' fees as determined as reasonable by the Arbitrator, and further is likewise liable for punitive damages for the fraudulent misrepresentation and violation of the Missouri Merchandising Practices Act.

**AWARD**

It is hereby ordered, adjudged and decreed that Claimant Cameron Cooper and his counsel are awarded judgment against Odessa Ford L.L.C. and Brian Lawson as follows:

Damages, costs and fees totaling \$70,041 comprised of:

1. Actual damages in the amount of \$9,429;
2. Special damage for loss of use in the amount of \$11,500;
3. Punitive damages in an approximate amount of two times the actual damages amount figure - \$18,500; and
4. Attorneys' fees in the amount of \$25,000 plus various itemized costs in the amount of \$2,114 and expert witness expenses of \$3,498, totaling \$30,612.

All to bear interest at the rate of 5.25%, compounded daily after July 15, 2011.

Administrative Fees:

The administrative fees and expenses of the American Arbitration Association totaling \$1,275 and the compensation and expenses of the Arbitrator totaling \$750 shall be borne as incurred by Respondents.

DATED: *June 20, 2011*

*W.H. Bates*

W.H. Bates, Arbitrator