

ORIGINAL

IN THE SUPREME COURT OF OHIO

**Robert Eugene Searfoss III**  
Attorney Reg. No. 0078906

Respondent,

-vs-

**Wood County Bar Association**  
**Certified Grievance Committee**  
P.O. Box 1133  
Bowling Green, Ohio 43402

Relator.

Case No. 2016-1489

**Relator's Answer to Respondent's**  
**Objections**

Volume 5 of 7

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RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

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*Respondent*

## HOW TO DEAL WITH WARRANTY PROBLEMS

disputes relating to design of the vehicle or part, or disputes which are already the subject of litigation.

The CAP will need the following information from you:

- 1) Legible copies of all documents and repair orders relevant to your case, 2) Vehicle identification number of your vehicle, 3) A brief description of your unresolved concern, 4) The identity of your servicing/selling dealer, 5) The date(s) of repair(s) and mileage at the time, 6) Current mileage, and 7) A description of the action you expect to resolve your concern.

Upon receipt of your request:

- The National Center for Dispute Settlement (NCDS) will acknowledge receipt of your request, by mail, within ten (10) days, and advise you whether or not your dispute is within the jurisdiction of the Process.
- When your request is within jurisdiction NCDS will request Chrysler and the dealer to present their side of the dispute. You will receive copies of their responses.
- While your dispute is pending NCDS or Chrysler may contact you to see if your case can be settled by agreement. If a settlement is offered to you, Chrysler will ask you to sign a form that contains that settlement. Your case will then be closed. There is no requirement for you to participate in this settlement process.

## HOW TO DEAL WITH WARRANTY PROBLEMS

- If you requested an oral hearing, a decision-maker will contact you to arrange a convenient time and place for a hearing. Usually, this will be at a dealership near you.
- If you request a documents-only review, an NCDS panel will review and decide your case. Neither you, the dealer nor Chrysler need be present.
- NCDS will send you a written Statement of Decision. This statement will include the decision, any action to be taken by the dealer or Chrysler and the time by which the action must be taken. The decision will be binding on the dealer and Chrysler but not on you unless you accept the decision.

- If any action is required on the part of the dealer or Chrysler you will be contacted within ten (10) days after the date by which the dealer or Chrysler must act to determine whether performance has been rendered.
- The entire dispute settlement process will normally take no longer than 40 days.
- The CAP dispute settlement procedure does not take the place of any state or Federal legal remedies available to you. Whether or not you decide to submit your dispute to the Process, you are free to pursue other legal remedies.

## HOW TO DEAL WITH WARRANTY PROBLEMS

### D. Notice Under State Lemon Laws

Some states have laws allowing you to get a replacement vehicle or a refund of the vehicle's purchase price under certain circumstances. These laws vary from state to state. If your state law allows, Chrysler requires that you first notify us in writing of any service difficulty that you may have experienced so that we can have a chance to make any needed repairs before you are eligible for remedies provided by these laws. In all other states, we ask that you give us written notice of any service difficulty. Send your written notice to the Chrysler Customer Assistance Center at the address in 7.2.

### 7.2 Helpful Addresses and Telephone Numbers

Here are the addresses and telephone numbers of the Chrysler Customer Assistance Center that can help you wherever you happen to be. Contact the one that covers your area.

- In the United States:  
Chrysler Customer Assistance Center  
P.O. Box 21-8004  
Auburn Hills, Michigan 48321-8004  
Phone: (877) 426-5337

**HOW TO DEAL WITH WARRANTY PROBLEMS**

To contact Chrysler by email,  
simply access the following website:  
[www.jeep.com](http://www.jeep.com)  
(click on the "Contact Us" button)

- **In Canada:**  
Chrysler Canada, Inc.  
Customer Service  
Chrysler Centre  
P.O. Box 1621  
Windsor, Ontario N9A-4H6  
Phone: (800) 465-2001

- **In Mexico, contact the Customer Relations  
Office for Chrysler, Jeep, Dodge or Ram vehicle at:**  
1240 Prolongacion Pasco de la Reforma AV.  
Santa Fe, C.P. 05109

Deleg. Cuajimalpa, Mexico  
Phone (in Mexico): (015) 5081-7568  
Phone (outside Mexico): (800) 505-1300

- **In Puerto Rico and U.S. Virgin Islands:**  
Customer Service  
Chrysler International Services SA LLC  
Box 191857  
San Juan, Puerto Rico 00919-1857  
Phone: (787) 782-5757  
Fax: (787) 782-3345



**OPTIONAL SERVICE CONTRACT**

## **8. Optional Service Contract**

Chrysler Group LLC's or Chrysler Service Contract Company LLC's optional service contracts offer valuable protection against repair costs when these warranties don't apply. They complement but don't replace the warranty coverages outlined in this booklet. Several plans are available, covering various time-and-mileage periods and various sets of components. (Service contracts aren't available if you live in a U.S. possession or territory.) Ask your dealer for details.

## 9. Maintenance

### 9.1 General Information

It's your responsibility to properly maintain and operate your new vehicle. Follow the instructions contained in the General and Scheduled Maintenance Service guidelines in your Owner's Manual. Regular, scheduled maintenance is essential to trouble-free operation. If there is a dispute between you and Chrysler Group LLC ("Chrysler") concerning your maintenance of your vehicle, Chrysler will require you to provide proof that your vehicle was properly maintained.

For your convenience, Chrysler has prepared a Maintenance Log which is included in your Owner's Manual. You should use this Maintenance Log to keep track of scheduled maintenance, either by routinely having the repairs entered in your Maintenance Log, or by keeping receipts or other documentation of work you've had done on your vehicle in your Maintenance Log.

## MAINTENANCE

### 9.2 Where To Go For Maintenance

Chrysler recommends that you return to the dealer from whom you bought your vehicle for all maintenance service both during and after the warranty periods. Although you can get warranty service from any dealer who sells your particular make, returning to your selling dealer will help ensure that all your service needs are met and that you're completely satisfied. The dealership technicians are specifically trained to proficiently perform maintenance and repair procedures on your Chrysler Group LLC vehicle.

Authorized Chrysler, Dodge, Jeep or Ram dealers will help ensure that all your service needs are met and that you're completely satisfied. Chrysler strongly recommends you use genuine Chrysler / MOPAR parts to maintain your vehicle.



NOTES

**RETAIL BUYERS ORDER**

20899 De Rd 424, Defiance, Ohio 43512  
Phone 419-799-7872

STOCK NO.	112250
DEAL NO.	

10/2



PURCHASER'S NAME JAMES P BODENBENDER DATE 12/13/2011  
 STREET ADDRESS 12426 Rd 179 PHONE (419) 934-2500  
 CITY ORWOOD COUNTY PAULDING STATE OH ZIP 45872 SALESPERSON THOM SMITH

ENTER MY ORDER FOR ONE  NEW  USED  CAR  TRUCK  DEMONSTRATOR  FACTORY OFFICIAL  RENTAL VEHICLE AS FOLLOWS:

YEAR	2011	MAKE	JEEP	MODEL	COMPASS SP	BODY TYPE	WAGON	COLOR	WHITE	TRIM	
VIN	1J4NF1FR7RD258959					TO BE DELIVERED ON OR ABOUT	12/13/2011		STOCK NO.	N50050	

PRICE OF VEHICLE	\$ 25,910.00
OTHER GOODS & SERVICES	
DOCUMENTARY FEE	250.00
TAXABLE PRICE	26,160.00
LESS: TRADE IN ALLOWANCE(S)	7,500.00
TAX BASE \$	18,660.00
SALES TAX 3.3%	1,305.20
TITLE FEE	33.50
REGISTRATION FEE	N/A
CREDIT LIFE AND DISABILITY	N/A
PLUS: PAYOFF ON TRADE VEHICLE(S)	N/A
TOTAL DUE	\$ 19,999.70
LESS INITIAL PAYMENT/CASH DOWN	N/A
LESS REBATE/FACTORY INCENTIVE	2,000.00
OTHER	N/A
BALANCE DUE	\$ 17,999.70

**ODOMETER MILEAGE STATEMENT**  
 THE ODOMETER OF THE PURCHASED VEHICLE NOW READS 12 MILES/KILOMETERS AND IS ACCURATE UNLESS CHECKED BELOW:  
 ODOMETER MILEAGE IS NOT ACCURATE. REFER TO THE FEDERAL MILEAGE STATEMENT FOR FULL DISCLOSURE.

**TRADE-IN RECORD 1**

YEAR	2005	MAKE	BUICK	MODEL	LESABRE CVT	TYPE	SEDAN	
VIN #	1G4HP52F55U255P61					MILEAGE	51,200	
PAYOFF \$							Trade In Allowance	\$ 7,500.00

**TRADE-IN RECORD 2**

YEAR		MAKE		MODEL		TYPE		
VIN #						MILEAGE		
PAYOFF \$							Trade In Allowance	

**NEGATIVE EQUITY DISCLOSURE & CONSENT:**  
 I am aware that the balance owed on my trade-in vehicle(s) or the amount owed on my lease turn in vehicle(s) exceeds the trade in allowance(s) from the dealer. As a result, I have requested that the "Total Due" be increased by the difference, \$ N/A (known as negative equity).  
 INITIALS: \_\_\_\_\_

- SEE VEHICLE DELIVERY REPORT ATTACHED
- SEE USED VEHICLE LIMITED WARRANTY ATTACHED
- LIMITED RIGHT TO CANCEL APPLIES: If you have entered into a Spot Delivery Agreement-Limited Right to Cancel, the sale of the Vehicle is conditioned on final approval of financing by, or assignment of the Retail Installment Sale Contract to a lender. If final financing is not available, you may cancel this Agreement and the Retail Installment Sale Contract. SEE ATTACHED DOCUMENT FOR IMPORTANT DETAILS
- DEPOSIT RECEIPT: Dealer hereby acknowledges receipt of the sum of \$ N/A as a deposit or partial payment for the vehicle described above. If this receipt is for a deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit:
  - IS  IS NOT REFUNDABLE, subject to the conditions on the reverse side and the following:

REMARKS

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ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALERS, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES PURCHASER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THIS VEHICLE AND THE RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY OR SERVICE CONTRACT.

WE HEREBY AND DEMONSTRATE THE RIGHT UNDER FEDERAL AND STATE LAW TO A TRIAL BY JURY

	26,160.00
LESS: TRADE IN ALLOWANCE(S)	7,500.00
TAX BASE \$	18,660.00
SALES TAX 7.3%	1,366.20
TITLE FEE	
REGISTRATION FEE	33.50
CREDIT LIFE AND DISABILITY	N/A
PLUS: PAYOFF ON TRADE VEHICLE(S)	N/A
TOTAL DUE	\$ 19,999.70
LESS INITIAL PAYMENT/CASH DOWN	N/A
LESS REBATE/FACTORY INCENTIVE	2,000.00
OTHER	N/A
BALANCE DUE	\$ 17,999.70

YEAR	MAKE	MODEL	TYPE
VIN #			MILEAGE
PAYOFF \$ _____ Trade In Allowance _____			

**NEGATIVE EQUITY DISCLOSURE & CONSENT:**  
 I am aware that the balance owed on my trade-in vehicle(s) or the amount owed on my lease turn in vehicle(s) exceeds the trade in allowance(s) from the dealer. As a result, I have requested that the "Total Due" be increased by the difference, \$ N/A (known as negative equity).  
 INITIALS: \_\_\_\_\_  
 SEE VEHICLE DELIVERY REPORT ATTACHED  
 SEE USED VEHICLE LIMITED WARRANTY ATTACHED  
 LIMITED RIGHT TO CANCEL APPLIES: If you have entered into a Spot Delivery Agreement-Limited Right to Cancel, the sale of the Vehicle is conditioned on final approval of financing by, or assignment of the Retail Installment Sale Contract to a lender. If final financing is not completed, the Limited Right to Cancel, and the Retail Installment Sale Contract. **SEE ATTACHED DOCUMENT FOR IMPORTANT DETAILS**  
 DEPOSIT RECEIPT: Dealer hereby acknowledges receipt of the sum of \$ N/A as a deposit or partial payment for the vehicle described above. If this receipt is for a deposit, Dealer will refrain from selling the described vehicle for N/A days. This Deposit:  
 IS  IS NOT REFUNDABLE, subject to the conditions on the reverse side and the following:

REMARKS  
 2 of 2

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES PURCHASER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER HEREBY ASSUMES NO AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN SCOPE TO THE EXTENT OF THE WRITTEN WARRANTY OR SERVICE CONTRACT.

**JURY WAIVER:** THE PURCHASER AND DEALER WAIVE AND RENOUNCE THE RIGHT UNDER FEDERAL AND STATE LAW TO A TRIAL BY JURY FOR ANY CLAIM.

**GOVERNING LAW:** THE TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING ANY DOCUMENTS WHICH ARE A PART OF THIS TRANSACTION OR INCORPORATED HEREIN BY REFERENCE) AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF OHIO.

**CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE. GUÍA PARA COMPRADORES DE VEHÍCULOS USADOS. LA INFORMACIÓN QUE VE EN EL FORMULARIO DE LA VENTANILLA PARA ESTE VEHÍCULO FORMA PARTE DEL PRESENTE CONTRATO. LA INFORMACIÓN DEL FORMULARIO DE LA VENTANILLA DEJA SIN EFECTO TODA DISPOSICIÓN EN CONTRARIO CONTENIDA EN EL CONTRATO DE VENTA.

The front and back of this Agreement, the finance document, if one was signed by the customer, and any documents incorporated herein comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into; or will be recognized. I have read the terms and conditions printed on the back hereof and agree to them as a part of this Agreement the same as if it were printed above my signature. I certify that I am at least 18 years old, and hereby acknowledge receipt of a copy of this Agreement. THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE.

BUYER SIGNS X James P. B... DATE 12/13/2011

CO-BUYER SIGNS X \_\_\_\_\_ DATE \_\_\_\_\_

Dealer or Authorized Representative (Must Be Accepted By An Authorized Representative of the Dealer)

X \_\_\_\_\_ DATE 12/13/2011

BODENBENDER,  
James

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07 Feb '13

Car purchasers sufficiently met the heightened pleading requirements of Ohio R. Civ. P. 9(B) for their fraud claim by asserting that a car manufacturer failed to disclose to them that the purchased vehicles were lemon law buybacks, pursuant to RC § 1345.76(A)(2), and that the purchasers had relied on the lack of such assertions to their detriment; such material omissions resulted in detrimental reliance and injury just as much as a specific false or misleading statement would have. *Lee v. Chrysler Corp.*, 2005 Ohio App. LEXIS 737, 2005 Ohio 742, (2005).

#### PUNITIVE DAMAGES.

Punitive damages were properly awarded where a buyback vehicle was resold in Ohio in violation of RC § 1345.76. The manufacturer had a nondelegable duty to ensure that a buyback vehicle with defective brakes was not sold in Ohio: *Pearn v. Daimler Chrysler Corp.*, 148 Ohio App. 3d 228, 772 N.E.2d 712, 2002 Ohio App. LEXIS 3247, 2002 Ohio 3197, (2002), appeal denied by 97 Ohio St. 3d 1424, 2002 Ohio 5820, 777 N.E.2d 278, 2002 Ohio LEXIS 2749 (2002).

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Current through Legislation passed by the 129th Ohio General Assembly  
and filed with the Secretary of State through files 1-69 and 71.

\*\*\* Annotations current through January 9, 2012 \*\*\*

TITLE 13. COMMERCIAL TRANSACTIONS -- OTHER COMMERCIAL TRANSACTIONS  
CHAPTER 1345. CONSUMER SALES PRACTICES  
NONCONFORMING NEW MOTOR VEHICLE LAW

**Go to the Ohio Code Archive Directory**

ORC Ann. 1345.77 (2012)

#### § 1345.77. Rules for informal dispute resolution mechanism

(A) The attorney general shall adopt rules for the establishment and qualification of an informal dispute resolution mechanism to provide for the resolution of warranty disputes between the consumer and the manufacturer, its agent, or its authorized dealer. The mechanism shall be under the supervision of the division of consumer protection of the office of the attorney general and shall meet or exceed the minimum requirements for an informal dispute resolution mechanism as provided by the "Magnuson-Moss Warranty Federal Trade Commission Improvement Act," 88 Stat. 2183, 15 U.S.C. 2301, and regulations adopted thereunder.

(B) If a qualified informal dispute resolution mechanism exists and the consumer receives timely notification, in writing, of the availability of the mechanism with a description of its operation and effect, the cause of action under section 1345.75 of the Revised Code may not be asserted by the consumer until after the consumer has initially resorted to the informal dispute resolution mechanism. If such a mechanism does not exist, if the consumer is dissatisfied with the decision produced by the mechanism, or if the manufacturer, its agent, or its authorized dealer fails to promptly fulfill the terms determined by the mechanism, the consumer may assert a cause of action under section 1345.75 of the Revised Code.

(C) Any violation of a rule adopted pursuant to division (A) of this section is an unfair and deceptive act or practice as defined by section 1345.02 of the Revised Code.

Definitions, RC § 1345.71.

Obligation of consumer under loan or retail installment sales contract; exception, RC § 1345.72.

Remedies; civil action; time limitation; affirmative defense, RC § 1345.75.

#### OH Administrative Code

Office of the attorney general, consumer protection section--

Informal dispute resolution programs for settlement of new motor vehicle warranty disputes--

Repair orders for new motor vehicles services or repairs. OAC 109:4-4-05.

ALR

Products liability: admissibility of evidence of subsequent repairs or other remedial measures by third party other than defendant. 64 ALR5th 119.

Products liability: consumer expectations test. 73 ALR5th 75.

Products liability: manufacturer's postsale obligation to modify, repair, or recall product. 47 ALR5th 395.

Validity, construction and effect of state motor vehicle warranty legislation (Lemon Laws). 88 ALR5th 301.

#### LexisNexis 50 State Surveys, Legislation & Regulations

Automobile Lemon Laws & Warranties

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#### TITLE 13. COMMERCIAL TRANSACTIONS -- OTHER COMMERCIAL TRANSACTIONS CHAPTER 1345. CONSUMER SALES PRACTICES NONCONFORMING NEW MOTOR VEHICLE LAW

Go to the Ohio Code Archive Directory

ORC Ann. 1345.75 (2012)

§ 1345.75. Civil action for loss due to noncompliance

(A) Any consumer may bring a civil action in a court of common pleas or other court of competent jurisdiction against any manufacturer if the manufacturer fails to comply with section 1345.72 of the Revised Code and, in addition to the relief to which the consumer is entitled under that section, shall be entitled to recover reasonable attorney's fees and all court costs.

(B) The remedies in sections 1345.71 to 1345.78 of the Revised Code are in addition to remedies otherwise available to consumers under law.

(C) Any action brought under division (A) of this section shall be commenced within five years of the date of original delivery of the motor vehicle. Any period of limitation of actions under any federal or Ohio laws with respect to any consumer shall be tolled for the period that begins on the date that a complaint is filed with an informal dispute resolution mechanism established pursuant to section 1345.77 of the Revised Code and ends on the date of the decision by the informal dispute resolution mechanism.

(D) It is an affirmative defense to any claim under this section that a nonconformity is the result of abuse, neglect, or the unauthorized modification or alteration of a motor vehicle by anyone other than the manufacturer, its agent, or its authorized dealer.

#### **HISTORY:**

142 v H 232 (Eff 10-22-87); 148 v H 21. Eff 9-15-99.

#### **NOTES:**

##### Related Statutes & Rules

##### Cross-References to Related Statutes

Conditions for resale of defective motor vehicle by manufacturer, RC § 1345.76.

Definitions, RC § 1345.71.

Establishment of informal dispute resolution mechanism, RC § 1345.77.

Obligation of consumer under loan or retail installment sales contract; exception, RC § 1345.72.

##### OH Administrative Code

Office of the attorney general, consumer protection section--

Informal dispute resolution programs for settlement of new motor vehicle warranty disputes--

Duties of warrantor. OAC 109:4-4-03.

##### Practice Manuals & Treatises

Anderson's Ohio Consumer Law Manual § 18.05 Definition of "Consumer" Under the Lemon Law

Anderson's Ohio Consumer Law Manual § 18.11 Attorney Fees

##### Jury Instructions

OJI-CV 529.01 Nonconforming motor vehicle (Lemon Law) R.C. 1345.71 et seq.

##### ALR

Award of attorney's fees under state motor vehicle warranty legislation (lemon laws). 82 ALR5th 501.

Products liability: admissibility of evidence of subsequent repairs or other remedial measures by third party other than defendant. 64 ALR5th 119.

Products liability: manufacturer's postsale obligation to modify, repair, or recall product. 47 ALR5th 395.

Validity, construction and effect of state motor vehicle warranty legislation (Lemon Laws). 88 ALR5th 301.

##### LexisNexis 50 State Surveys, Legislation & Regulations

Automobile Lemon Laws & Warranties

#### Case Notes & OAGs

ANALYSIS Generally Administrative remedies Attorney's fees Breach of implied warranties Manufacturer Mileage deduction Other remedies Punitive damages

#### GENERALLY.

Consumer's acceptance of an arbitration decision bars a civil action under RC § 1345.75. The Lemon Law does not preclude a refund of less than the full purchase price in either settlement or the informal dispute-resolution process: *Maitland v. Ford Motor Co.*, 103 Ohio St. 3d 463, Ohio LEXIS 2628, 2004 Ohio 5717, (2004).

#### ADMINISTRATIVE REMEDIES.

Informal dispute resolution requirement set forth in RC § 1345.77(B) is properly viewed as an administrative remedy which constitutes a prerequisite to filing a civil action under RC § 1345.75. *Harris v. Ford Motor Co.*, 166 Ohio App. 3d 599, 852 N.E.2d 750, 2006 Ohio App. LEXIS 220, 2006 Ohio 259, (2006).

#### ATTORNEY'S FEES.

Vehicle purchaser presented sufficient evidence that the vehicle was nonconforming and that repair attempts deprived him of use of the vehicle for a substantial number of days. The trial court did not abuse its discretion by awarding the purchaser attorney fees as the prevailing party: *State v. Boerio*, 2010 Ohio App. LEXIS 5213, 2010 Ohio 6215, (Dec. 17, 2010).

Trial court did not abuse its discretion when it denied a vehicle lessee's motions for attorney fees under RC § 1345.75 after a vehicle manufacturer confessed judgment under the lessee's Lemon Law claims pursuant to RC § 1345.71 et seq., as the lessee failed to first seek alternative dispute resolution through arbitration, as directed by RC § 1345.77(B) prior to the filing his complaint. *Pilz v. Ford Motor Co.*, 2007 Ohio App. LEXIS 2440, 2007 Ohio 2611, (May 29, 2007).

Where the purchaser was successful in the purchaser's Ohio Lemon Law, R.C. § 1345.71 et seq., claim, the trial court did not abuse its discretion in awarding the purchaser \$ 19,938 in attorney's fees, as the trial court found that out of the 400 hours of time allegedly spent on the case by the purchaser's attorneys, 250 hours was reasonable; the trial court, however, failed to correctly calculate the amount of fees to award based on the rates agreed to by the purchaser and manufacturer. *Willis v. Ford Motor Co.*, 2003 Ohio App. LEXIS 3073, 2003 Ohio 3362, (2003).

#### BREACH OF IMPLIED WARRANTIES.

Notwithstanding an express limitation of a warranty to repair or replacement of defective parts, if the product is so defective that the warranty fails of its essential purpose the buyer may recover for breach of implied warranties: *Nearhouse v. Volkswagen of America, Inc.*, 42 Ohio App. 3d 42, 536 N.E.2d 46 (1987).

#### MANUFACTURER.

Fact that a dealer installed a new motor before selling a used motorcycle did not make it a "manufacturer" for purposes of the Lemon Law: *Keel v. Toledo Harley-Davidson/Buell*, 184 Ohio App. 3d 348, 920 N.E.2d 1041, 2009 Ohio App. LEXIS 4409, 2009 Ohio 5190, (2009).

#### MILEAGE DEDUCTION.

Ohio's lemon law does not allow a manufacturer to impose a mileage deduction for reasonable use of a vehicle: *Maitland v. Ford Motor Co.*, 153 Ohio App. 3d 161, 792 N.E.2d 207, 2003 Ohio App. LEXIS 2690, 2003 Ohio 3009, (2003), reversed by 103 Ohio St. 3d 463, 2004 Ohio 5717, 816 N.E.2d 1061, 2004 Ohio LEXIS 2628 (2004).

#### OTHER REMEDIES.

Trial court erred in granting summary judgment to a vehicle manufacturer in claims asserted by a vehicle lessee under RC § 1345.03 of the Ohio Consumer Sales Practices Act, RC § 1345.02 et seq., as the lessee alleged that the



manufacturer engaged in stalling tactics and evaded its obligations under the Lemon Law, RC § 1345.71 et seq., which constituted unfair, deceptive, and unconscionable practices under the Act. Although the lessee had already received rescission under his Lemon Law claim pursuant to RC § 1345.75, he was entitled to seek alternative damages under the private claim pursuant to RC §§ 1345.09(A) and 1345.13. *Pilz v. Ford Motor Co.*, 2007 Ohio App. LEXIS 2440, 2007 Ohio 2611, (May 29, 2007).

**PUNITIVE DAMAGES.**

In the purchaser's Ohio Lemon Law, R.C. § 1345.71 et seq., claim, the trial court properly granted summary judgment pursuant to Ohio R. Civ. P. 56 on the purchaser's punitive damages claim, as neither R.C. § 1345.72 nor R.C. § 1345.75 provided for punitive damages. *Willis v. Ford Motor Co.*, 2003 Ohio App. LEXIS 3073, 2003 Ohio 3362, (2003).

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**Go to the Ohio Code Archive Directory**

**ORC Ann. 1345.76 (2012)**

§ 1345.76. Conditions for resale or lease of buyback

(A) A buyback may not be resold or leased in this state unless each of the following applies:

(1) The manufacturer provides the same express warranty that was provided to the original consumer, except that the term of the warranty shall be the greater of either of the following:

(a) Twelve thousand miles or twelve months after the date of resale, whichever is earlier;

(b) The remaining term of any manufacturer's original warranty.

(2) The manufacturer provides to the consumer, either directly or through its agent or its authorized dealer, and prior to obtaining the signature of the consumer on any document, a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form:

**WARNING: THIS VEHICLE PREVIOUSLY WAS SOLD AS NEW. IT WAS RETURNED TO THE MANUFACTURER OR ITS AGENT IN EXCHANGE FOR A REPLACEMENT VEHICLE OR REFUND AS A RESULT OF THE FOLLOWING DEFECT(S) OR CONDITION(S):**

1.....

## **HISTORY:**

142 v H 232. Eff 10-22-87.

## **NOTES:**

### Related Statutes & Rules

#### Cross-References to Related Statutes

Conditions for resale of defective motor vehicle by manufacturer, RC § 1345.76.

Definitions, RC § 1345.71.

Obligation of consumer under loan or retail installment sales contract; exception, RC § 1345.72.

Remedies; civil action; time limitation; affirmative defense, RC § 1345.75.

Written statements of consumer's rights and of work performed, RC § 1345.74.

### OH Administrative Code

Office of the attorney general, consumer protection section--

Informal dispute resolution programs for settlement of new motor vehicle warranty disputes; minimum requirements of settlement boards. OAC ch. 109:4-4.

Qualification of informal dispute settlement boards; provisional qualification; revocation. OAC ch. 109:4-5.

### Practice Checklists

Procedures for Consumers/Ohio Motor Vehicle Lemon Law, Ohio Transaction Guide: Business & Commercial Law & Forms § 51.30

#### ALR

Products liability: admissibility of evidence of subsequent repairs or other remedial measures by third party other than defendant. 64 ALR5th 119.

Products liability: manufacturer's postsale obligation to modify, repair, or recall product. 47 ALR5th 395.

Validity, construction and effect of state motor vehicle warranty legislation (Lemon Laws). 88 ALR5th 301.

### LexisNexis 50 State Surveys, Legislation & Regulations

Automobile Lemon Laws & Warranties

### Case Notes & OAGs

ANALYSIS Generally Prerequisite to civil action

### GENERALLY.

Informal dispute resolution requirement of RC § 1345.77(B) is an administrative remedy that is a prerequisite to filing a civil action under RC § 1345.75. Failure to exhaust administrative remedies is an affirmative defense that was waived where it was not properly raised by the manufacturer: *Harris v. Ford Motor Co.*, 166 Ohio App. 3d 599, 852 N.E.2d 750, 2006 Ohio App. LEXIS 220, 2006 Ohio 259, (2006).

Consumer's acceptance of an arbitration decision bars a civil action under RC § 1345.75. The Lemon Law does not preclude a refund of less than the full purchase price in either settlement or the informal dispute-resolution process: *Maitland v. Ford Motor Co.*, 103 Ohio St. 3d 463, Ohio LEXIS 2628, 2004 Ohio 5717, (2004).

RC § 1345.77 does not actually mandate that an informal dispute resolution mechanism exist: Hamrick v. DaimlerChrysler Motors, 2004 Ohio App. LEXIS 3055, 2004 Ohio 3415, (2004).

#### PREREQUISITE TO CIVIL ACTION.

Trial court did not abuse its discretion when it denied a vehicle lessee's motions for attorney fees under RC § 1345.75 after a vehicle manufacturer confessed judgment under the lessee's Lemon Law claims pursuant to RC § 1345.71 et seq., as the lessee failed to first seek alternative dispute resolution through arbitration, as directed by RC § 1345.77(B) prior to the filing his complaint. Pilz v. Ford Motor Co., 2007 Ohio App. LEXIS 2440, 2007 Ohio 2611, (May 29, 2007).

Informal dispute resolution requirement set forth in RC § 1345.77(B) is properly viewed as an administrative remedy which constitutes a prerequisite to filing a civil action under RC § 1345.75. Harris v. Ford Motor Co., 166 Ohio App. 3d 599, 852 N.E.2d 750, 2006 Ohio App. LEXIS 220, 2006 Ohio 259, (2006).

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\*\*\* Annotations current through January 9, 2012 \*\*\*

TITLE 13. COMMERCIAL TRANSACTIONS -- OTHER COMMERCIAL TRANSACTIONS  
CHAPTER 1345. CONSUMER SALES PRACTICES  
NONCONFORMING NEW MOTOR VEHICLE LAW

Go to the Ohio Code Archive Directory

ORC Ann. 1345.78 (2012)

§ 1345.78. Violations concerning buybacks

(A) Failure to comply with section 1345.76 of the Revised Code, in connection with a consumer transaction as defined in division (A) of section 1345.01 of the Revised Code, is an unfair and deceptive act or practice in violation of division (A) of section 1345.02 of the Revised Code.

(B) The attorney general shall investigate any alleged violation of division (D) of section 1345.76 of the Revised Code and, in an appropriate case, may bring an appropriate action in a court of competent jurisdiction, charging a manufacturer with a violation of that division.

#### HISTORY:

148 v H 21. Eff 9-15-99.

#### NOTES:

Practice Manuals & Treatises

Anderson's Ohio Consumer Law Manual § 3.17 Ohio Statutes--Express Incorporation

Anderson's Ohio Consumer Law Manual § 18.14 Buyback Restrictions

ALR

Validity, construction and effect of state motor vehicle warranty legislation (Lemon Laws). 88 ALR5th 301.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Automobile Lemon Laws & Warranties

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CHAPTER 1345. CONSUMER SALES PRACTICES  
NONCONFORMING NEW MOTOR VEHICLE LAW**

**Go to the Ohio Code Archive Directory**

ORC Ann. 1345.81 (2012)

§ 1345.81. Use of nonoriginal equipment manufacturer aftermarket crash parts

(A) As used in this section:

(1) "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels.

(2) "Nonoriginal equipment manufacturer aftermarket crash part" or "non-OEM aftermarket crash part" means any aftermarket crash part that is not made by or for the manufacturer of the motor vehicle.

(3) "Repair facility" means any motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle.

(4) "Installer" means any individual who actually performs the work of replacing or repairing parts of a motor vehicle.

(5) "Insurer" means any individual serving as an agent or authorized representative of an insurance company, involved with the coverage for repair of the motor vehicle in question.

(B) Any insurer who provides an estimate for the repair of a motor vehicle based in whole or in part upon the use of any non-OEM aftermarket crash part in the repair of the motor vehicle and any repair facility or installer who intends to use a non-OEM aftermarket crash part in the repair of a motor vehicle shall comply with the following provisions, as applicable:

(1) If the person requesting the repair chooses to receive a written estimate, the insurer, repair facility, or installer providing the estimate shall identify, clearly in the written estimate, each non-OEM aftermarket crash part and shall contain a written notice with the following language in ten-point or larger type: "This estimate has been

prepared based upon the use of one or more aftermarket crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable to these aftermarket crash parts are provided by the parts manufacturer or distributor rather than by your own motor vehicle manufacturer." Receipt and approval of the written estimate shall be acknowledged by the signature of the person requesting the repair at the bottom of the written estimate.

(2) If the person requesting the repair chooses to receive an oral estimate or no estimate at all, the insurer, repair facility, or installer providing the estimate or seeking the person's approval for repair work to commence shall furnish or read to the person a written notice as described in division (B)(1) of this section at the time that the oral estimate is given or when the person requesting the repair gives his approval for the repair work to commence. If the person has chosen to receive an oral estimate or no estimate, the written notice described in division (B)(1) of this section shall be provided with the final invoice for the repair.

(C) Any non-OEM aftermarket crash part manufactured after the effective date of this act shall have permanently affixed thereto, or inscribed thereon, prior to the installation of the part, the business name or logo of the manufacturer.

Whenever practical, the location of the affixed or inscribed information upon the part shall ensure that the information shall be accessible after installation.

(D) An insurer, repair facility, or installer may use a salvage motor vehicle part in the repair of a motor vehicle, if the salvage motor vehicle part is of a like kind and quality to the part in need of repair and is removed from a salvage motor vehicle by a salvage motor vehicle dealer licensed under Chapter 4738. of the Revised Code.

(E) Any violation of this section in connection with a consumer transaction as defined in section 1345.01 of the Revised Code is an unfair and deceptive act or practice as defined by section 1345.02 of the Revised Code.

**HISTORY:**

143 v H 302. Eff 10-16-90.

**NOTES:**

**LexisNexis 50 State Surveys, Legislation & Regulations**

**Automobile Lemon Laws & Warranties**

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CHAPTER 1345. CONSUMER SALES PRACTICES  
NONCONFORMING NEW MOTOR VEHICLE LAW

Go to the Ohio Code Archive Directory

ORC Ann. 1345.71 (2012)

§ 1345.71. Definitions

As used in sections 1345.71 to 1345.78 of the Revised Code:

- (A) "Consumer" means any of the following:
- (1) The purchaser, other than for purposes of resale, of a motor vehicle;
  - (2) Any lessee of a motor vehicle in a contractual arrangement under which a charge is made for the use of the vehicle at a periodic rate for a term of thirty days or more, and title to the vehicle is in the name of a person other than the user;
  - (3) Any person to whom the motor vehicle is transferred during the duration of the express warranty that is applicable to the motor vehicle;
  - (4) Any other person who is entitled by the terms of the warranty to enforce the warranty.
- (B) "Manufacturer" and "distributor" have the same meanings as in section 4517.01 of the Revised Code, and "manufacturer" includes a remanufacturer as defined in that section.
- (C) "Express warranty" and "warranty" mean the written warranty of the manufacturer or distributor of a new motor vehicle concerning the condition and fitness for use of the vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.
- (D) "Motor vehicle" means any passenger car or noncommercial motor vehicle or those parts of any motor home that are not part of the permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping but does not mean any mobile home or recreational vehicle, or any manufactured home as defined in section 3781.06 of the Revised Code.
- (E) "Nonconformity" means any defect or condition that substantially impairs the use, value, or safety of a motor vehicle to the consumer and does not conform to the express warranty of the manufacturer or distributor.
- (F) "Full purchase price" means both of the following:
- (1) In the case of a sale, the contract price for the motor vehicle, including charges for transportation, undercoating, dealer-installed options and accessories, dealer services, dealer preparation, and delivery charges; all finance, credit insurance, warranty, and service contract charges incurred by the consumer; and all sales tax, license and registration fees, and other government charges.

(2) In the case of a lease, the capitalized cost reduction, security deposit, taxes, title fees, all monthly lease payments, the residual value of the vehicle, and all finance, credit insurance, warranty, and service contract charges incurred by the consumer.

(G) "Buyback" means a motor vehicle that has been replaced or repurchased by a manufacturer as the result of a court judgment, a determination of an informal dispute settlement mechanism, or a settlement agreed to by a consumer regardless of whether it is in the context of a court, an informal dispute settlement mechanism, or otherwise, in this or any other state, in which the consumer has asserted that the motor vehicle does not conform to the warranty, has presented documentation to establish that a nonconformity exists pursuant to section 1345.72 or 1345.73 of the Revised Code, and has requested replacement or repurchase of the vehicle.

(H) "Mobile home," "motor home," "noncommercial motor vehicle," "passenger car," and "recreational vehicle" have the same meanings as in section 4501.01 of the Revised Code.

#### **HISTORY:**

142 v H 232 (Eff 10-22-87); 147 v S 142 (Eff 3-30-99); 148 v H 21. Eff 9-15-99.

#### **NOTES:**

##### Related Statutes & Rules

##### Cross-References to Related Statutes

Conditions for resale of defective motor vehicle by manufacturer, RC § 1345.76.

Obligation of consumer under loan or retail installment sales contract; exception, RC § 1345.72.

Remedies; civil action; time limitation; affirmative defense, RC § 1345.75.

##### OH Administrative Code

Office of the attorney general, consumer protection section--

Definitions relative to informal dispute resolution programs for settlement of new motor vehicle warranty disputes--

Certification as qualified settlement board. OAC 109:4-5-01.

Establishment and minimum requirements of boards. OAC 109:4-4-01.

##### Practice Manuals & Treatises

Anderson's Ohio Consumer Law Manual § 18.03 Motor Vehicle

Anderson's Ohio Consumer Law Manual § 18.05 Definition of "Consumer" Under the Lemon Law

Anderson's Ohio Consumer Law Manual § 18.14 Buyback Restrictions

##### Practice Checklists

Automotive Industry Trade Practices, Ohio Transaction Guide: Business & Commercial Law & Forms § 51.33

Motor Vehicles, Ohio Transaction Guide: Business & Commercial Law & Forms § 51.64

Procedures for Consumers/Ohio Motor Vehicle Lemon Law, Ohio Transaction Guide: Business & Commercial Law & Forms § 51.130

Procedures for Manufacturers/Ohio Motor Vehicle Lemon Law, Ohio Transaction Guide: Business & Commercial Law & Forms § 51.131

## Jury Instructions

OJI-CV 529.01 Nonconforming motor vehicle (Lemon Law) R.C. 1345.71 et seq.

### ALR

Award of attorney's fees under state motor vehicle warranty legislation (lemon laws). 82 ALR5th 501.

Validity, construction and effect of state motor vehicle warranty legislation (Lemon Laws). 88 ALR5th 301.

## LexisNexis 50 State Surveys, Legislation & Regulations

Automobile Lemon Laws & Warranties

## Case Notes & OAGs

ANALYSIS Generally All-terrain vehicles Attorney fees Bad faith Consumers Date vehicle returned to dealer Express warranty coverage Motor homes Substantial impairment Vehicle out of service for repairs

### GENERALLY.

Term "new motor vehicle," as used in RC § 1345.72, refers to a vehicle within the period of one year following the date of its original delivery or during the first 18,000 miles of its operation, whichever occurs earlier: *Curl v. Volkswagen of Am., Inc.*, 114 Ohio St. 3d 266, 871 N.E.2d 1141, 2007 Ohio LEXIS 1639, 2007 Ohio 3609, (2007).

A lessee may qualify as a purchaser under RC § 1345.71. Problems confined to "fit and finish" may not constitute substantial defects. The consumer must cooperate in a reasonable number of repair attempts: *GMAC v. Hollanshead*, 105 Ohio App. 3d 17, 663 N.E.2d 663, 1995 Ohio App. LEXIS 2665 (1995).

### ALL-TERRAIN VEHICLES.

An all-terrain vehicle is subject to Ohio's lemon law: *Yommer v. Outdoor Enters.*, 126 Ohio App. 3d 738, 711 N.E.2d 296, 1998 Ohio App. LEXIS 1314 (1998).

### ATTORNEY FEES.

Under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, the awarding of attorney fees are to be encouraged but are also to be left to the sound discretion of the trial court: *Winrod v. Ford Motor Co.*, 53 Ohio App. 3d 94, 557 N.E.2d 1250 (1988).

### BAD FAITH.

The trial court properly granted summary judgment pursuant to Ohio R. Civ. P. 56, against the purchaser in his Ohio Lemon Law, R.C. § 1345.71 et seq., bad faith claim, as there was no provision in the Ohio Lemon Law regarding a bad faith cause of action against a car manufacturer. *Willis v. Ford Motor Co.*, 2003 Ohio App. LEXIS 3073, 2003 Ohio 3362, (2003).

### CONSUMERS.

When a consumer bought a car from a dealer which had been used as a rental and which malfunctioned after the consumer bought it, he qualified as a "consumer," under RC § 1345.71(A)(1), (3) and (4), because (1) he bought the car, other than for purposes of resale, (2) the car was transferred to him during the period of the manufacturer's express warranty, and (3) he was entitled to enforce the terms of the warranty. *Curl v. Volkswagen of Am., Inc.*, 2005 Ohio App. LEXIS 5770, 2005 Ohio 6420, (Dec. 2, 2005), reversed by 114 Ohio St. 3d 266, 2007 Ohio 3609, 871 N.E.2d 1141, 2007 Ohio LEXIS 1639, 2007-2 Trade Cas. (CCH) P75785 (2007).

A person who leases a new motor vehicle with an enforceable express written warranty is included in the definition of "consumer" under RC § 1345.71(A) and is entitled to the protections afforded under Ohio's Lemon



Law, RC § 1345.71 et seq; *Pertuset v. Ford Motor Co.*, 96 Ohio App. 3d 777, 645 N.E.2d 1329, 1994 Ohio App. LEXIS 4758 (1994).

A lessee of a new vehicle is a "consumer" for purposes of the lemon law: *Potente v. Peugeot Motors of America, Inc.*, 62 Ohio Misc. 2d 335, 598 N.E.2d 907, 1991 Ohio Misc. LEXIS 78 (1991).

#### DATE VEHICLE RETURNED TO DEALER.

When a consumer bought a car from a dealer which had been used as a rental and which malfunctioned after the consumer bought it, the car was protected under Ohio's Lemon Law, RC § 1345.71 et seq., because it was returned to the dealer within one year of the date of its delivery to the consumer, which was the relevant date for determining whether the statute applied, rather than the date of the vehicle's delivery to the dealer. *Curl v. Volkswagen of Am., Inc.*, 2005 Ohio App. LEXIS 5770, 2005 Ohio 6420, (Dec. 2, 2005), reversed by 114 Ohio St. 3d 266, 2007 Ohio 3609, 871 N.E.2d 1141, 2007 Ohio LEXIS 1639, 2007-2 Trade Cas. (CCH) P75785 (2007).

#### EXPRESS WARRANTY COVERAGE.

Consumer's summary judgment motion in the consumer's suit against a vehicle manufacturer for "lemon law" violations, under RC § 1345.71 et seq., was properly granted because the consumer's motion presented evidence, in the form of invoices for repairs made or attempted on the consumer's vehicle, establishing defects in workmanship or materials covered by an express warranty, under RC § 1345.71(E), and the manufacturer presented no evidence to establish a genuine issue of material fact on this issue. *Evans v. Mazda Motors of Am., Inc.*, 2007 Ohio App. LEXIS 4164, 2007 Ohio 4622, (2007).

#### MOTOR HOMES.

In an action by motor home purchasers against, inter alia, a motor home manufacturer and an engine manufacturer, the purchaser's Ohio Lemon Law, RC § 1345.71, claim against the engine manufacturer was dismissed where RC § 1345.71 did not apply to the engine manufacturer as a matter of law because it was not a motor home manufacturer. *Temple v. Fleetwood Enter.*, 2003 U.S. Dist. LEXIS 26507 (S.D. Ohio Sept. 23, 2003), dismissed by 2003 U.S. Dist. LEXIS 26847 (S.D. Ohio Dec. 5, 2003).

Motor homes are covered by the Ohio lemon law. The manufacturer of the frame is not liable as to cold storage, cooking, eating and sleeping facilities added to the frame: *Dillow v. Mallard Coach Co.*, 83 Ohio App. 3d 801, 615 N.E.2d 1076, 1992 Ohio App. LEXIS 6002 (1992).

#### SUBSTANTIAL IMPAIRMENT.

(Unpublished) Even assuming that the district court made the errors alleged by a vehicle owner in his trial under RC § 1345.71 et seq., the errors were harmless because no reasonable juror could have found that the vehicle was a lemon; the owner failed to demonstrate substantial impairment to the vehicle within the first year or 18,000 miles that the dealer was unwilling or unable to fix for purposes of RC §§ 1345.71(E) and 1345.72(A). *Benit v. Mercedes-Benz USA, LLC*, 2009 U.S. App. LEXIS 6369 (6th Cir. Mar. 23, 2009).

Lemon law's substantial impairment standard is objective, measured in terms of a reasonable person. A defective lift gate which made the vehicle noisier when driven, although bothersome, did not substantially impair the vehicle's use, value, or safety to a reasonable person: *Iams v. DaimlerChrysler, Corp.*, 174 Ohio App. 3d 537, 883 N.E.2d 466, 2007 Ohio App. LEXIS 5878, 2007 Ohio 6709, (2007).

#### VEHICLE OUT OF SERVICE FOR REPAIRS.

Where the recreational vehicle contained a nonconformity under RC § 1345.71(E) in the form of a leaky window that the manufacturer had failed to repair on four occasions during the first year of ownership, the purchasers were entitled to a remedy under RC § 1345.72(B), as the vehicle was out of service by reason of repair for 30 or more days pursuant to RC § 1345.73(B) during the first year as a result of the nonconformity. *Lesjak v. Forest River, Inc.*, 2004 Ohio App. LEXIS 226, 2004 Ohio 245, (2004), criticized by *Iams v. DaimlerChrysler, Corp.*, 174 Ohio App. 3d 537, 2007 Ohio 6709, 883 N.E.2d 466, 2007 Ohio App. LEXIS 5878 (Ohio Ct. App., Hardin County 2007).

§ 1345.75 provided for punitive damages. *Willis v. Ford Motor Co.*, 2003 Ohio App. LEXIS 3073, 2003 Ohio 3362, (2003).

#### PURCHASE PRICE.

For purposes of RC § 1345.72, a dealer may not challenge the purchase price of a defective vehicle by showing that it was increased by an inflated trade-in allowance: *Dunaway v. Ford Motor Co.*, 97 Ohio Misc. 2d 3, 709 N.E.2d 947, 1998 Ohio Misc. LEXIS 60 (CP 1998).

#### REPLACEMENT OF DEFECTIVE VEHICLE.

Where an automobile dealership employed egregious and misleading tactics in replacing a defective vehicle, the buyers were entitled to compensatory and punitive damages, as well as attorney fees: *Smith v. GMC*, 168 Ohio App. 3d 336, 859 N.E.2d 1035, 2006 Ohio App. LEXIS 4197, 2006 Ohio 4283, (2006).

#### SUBSTANTIAL IMPAIRMENT.

(Unpublished) Even assuming that the district court made the errors alleged by a vehicle owner in his trial under RC § 1345.71 et seq., the errors were harmless because no reasonable juror could have found that the vehicle was a lemon; the owner failed to demonstrate substantial impairment to the vehicle within the first year or 18,000 miles that the dealer was unwilling or unable to fix for purposes of RC §§ 1345.71(E) and 1345.72(A). *Benit v. Mercedes-Benz USA, LLC*, 2009 U.S. App. LEXIS 6369 (6th Cir. Mar. 23, 2009).

Lemon law's substantial impairment standard is objective, measured in terms of a reasonable person. A defective lift gate which made the vehicle noisier when driven, although bothersome, did not substantially impair the vehicle's use, value, or safety to a reasonable person: *Iams v. DaimlerChrysler, Corp.*, 174 Ohio App. 3d 537, 883 N.E.2d 466, 2007 Ohio App. LEXIS 5878, 2007 Ohio 6709, (2007).

#### VEHICLE OUT OF SERVICE FOR REPAIRS.

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TITLE 13. COMMERCIAL TRANSACTIONS -- OTHER COMMERCIAL TRANSACTIONS  
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ORC Ann. 1345.73 (2012)

§ 1345.73. Presumption of reasonable number of attempts to repair

(A) Except as provided in division (B) of this section, it shall be presumed that a reasonable number of attempts have been undertaken by the manufacturer, its dealer, or its authorized agent to conform a motor vehicle to any applicable express warranty if, during the period of one year following the date of original delivery or during the first eighteen thousand miles of operation, whichever is earlier, any of the following apply:

(1) Substantially the same nonconformity has been subject to repair three or more times and either continues to exist or recurs;

(2) The vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days;

(3) There have been eight or more attempts to repair any nonconformity;

(4) There has been at least one attempt to repair a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven, and the nonconformity either continues to exist or recurs.

(B) (1) Any period of time described in division (A) of this section shall be extended by any period of time during which the vehicle could not be reasonably repaired due to war, invasion, civil unrest, strike, fire, flood, or natural disaster.

(2) If an extension of time is necessitated under division (B)(1) of this section due to the conditions described in that division, the manufacturer shall arrange for the use of a vehicle for the consumer whose vehicle is out of service at no cost to the consumer. If the manufacturer utilizes or contracts with a motor vehicle dealer or other third party to provide the vehicle, the manufacturer shall reimburse the motor vehicle dealer or other third party at a reasonable rate for the use of the vehicle.

**HISTORY:**

142 v H 232 (Eff 10-22-87); 148 v H 21. Eff 9-15-99; 2011 HB 153, § 101.01, eff. Sept. 29, 2011.

**NOTES:**

Section Notes

**EFFECT OF AMENDMENTS**

The 2011 amendment added the exception to the beginning of the introductory language of (A); redesignated former (A) through (D) as (A)(1) through (A)(4); and added (B).

Related Statutes & Rules

Cross-References to Related Statutes

Conditions for resale of defective motor vehicle by manufacturer, RC § 1345.76.

Definitions, RC § 1345.71.

Obligation of consumer under loan or retail installment sales contract; exception, RC § 1345.72.

Remedies; civil action; time limitation; affirmative defense, RC § 1345.75.

Practice Manuals & Treatises

Anderson's Ohio Consumer Law Manual § 18.09 Reasonable Number of Repair Attempts

Jury Instructions

Jim

- wants money refunded

- what does warranty

Bought 12-13-11

Took it in 3 times for noise in engine

1<sup>st</sup> - took transmission apart

2<sup>nd</sup> - unknown

3<sup>rd</sup> - put motor mounts in 2-16-12

talked to John at Chrysler  
to start lemon law process

- Cheryl gave case #

- Linda in Utah handling it

Lemon law # 21894994

Linda 419.574. ~~4880~~ 1500

800-763-8422 ext 66282

2012  
James P. Bidenbender  
12426 Road 179  
Oakwood, OH 45873-9124

Rob SEARFOS  
321 N. Main ST.  
Bowling GREEN, Ohio  
43402

TOLEDO OH 436  
21 APR 2012 PM 11



4340232424



BODENBENDER,  
James

---

07 Feb '13

**STEPHEN K. SNAVELY CO., L.P.A.**

ATTORNEY & COUNSELOR AT LAW  
505 FOURTH STREET  
P.O. BOX 759  
DEFIANCE, OHIO 43512

Stephen K. Snavely

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Fax: (419) 784-5285

January 3, 2013

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

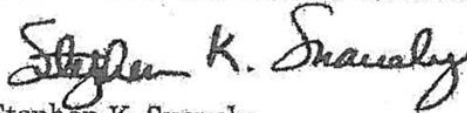
RE: James Bodenbender

Dear Mr. Searfoss:

I mailed a request to you on December 13, 2012. Enclosed is a copy of that letter. I have not received a response. I renew my request for Mr. Bodenbender that you provide me with an accounting and the refund of the unused portion of the retainer.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.



Stephen K. Snavely

SKS:mas

pc: James Bodenbender

LAW OFFICES OF ROBERT E SEARFOSS III  
321 N. MAIN STREET  
BOWLING GREEN, OH 43402  
PHONE: (419) 353-1856 • FAX: (419) 353-1858

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---

January 3, 2013

Stephen Snavelly, Esq.  
505 Fourth Street  
PO Box 759  
Defiance, Ohio 43512

Re: James Bodenbender

Mr. Snavelly,

Mr. Bodenbender and I had an oral agreement. I would bill \$250 per hour, accept a \$5,000 retainer, not ask for an additional retainer in expectation of recovering attorney fees from the opposition, and would take all action I deemed necessary.

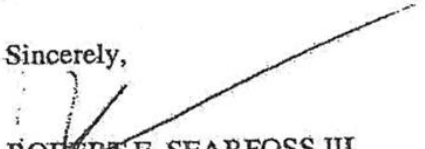
At the initial meeting, I informed Mr. Bodenbender that I would intend to do substantial research and preparation *before* filing the complaint and that we would also need to exhaust administrative remedies first. He concurred.

I was retained in April, conducted extensive research through July and handled the consumer complaint with the Ohio Attorney General. Before filing suit, Mr. Bodenbender instructed me to do nothing until further notice. Months later I received your letter.

I have spent 25.6 hours towards the original objective of Mr. Bodenbender. I understand he now chooses to abandon his claims, but he is still liable for services rendered. I am without my original timesheet for this matter, but do have a note in the file regarding the total time as of July 2, 2012, being 25.6 hours.

I do not intend to invest any further time on this matter, and am closing the file. Please have your client pay the outstanding balance.

Sincerely,

  
ROBERT E. SEARFOSS III

RES: kgm



**STEPHEN K. SNAVELY CO., L.P.A.**

**ATTORNEY & COUNSELOR AT LAW  
505 FOURTH STREET  
P.O. BOX 759  
DEFIANCE, OHIO 43512**

Stephen K. Snavely

Telephone: (419) 782-8846  
Toll-Free 1-888-782-8846  
Fax: (419) 784-5285

December 13, 2012

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

RE: James Bodenbender

Dear Mr. Searfoss:

James Bodenbender and I are confused by your letter dated December 3, 2012. In your letter, you refer to "our agreement". Please provide me with the copy of your agreement with Mr. Bodenbender for your legal services. I am renewing my request for the accounting for your legal services.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.

  
Stephen K. Snavely

SKS:mas

pc: James Bodenbender

LAW OFFICES OF ROBERT E SEARFOSS III  
321 N. MAIN STREET  
BOWLING GREEN, OH 43402  
PHONE: (419) 353-1856 • FAX: (419) 353-1858

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December 3, 2012

James Bodenbender  
12426 Road 179  
Oakwood, OH 45973

Re: Termination of my services

Mr. Bodenbender,

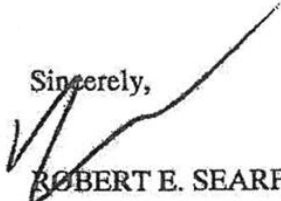
I am in receipt of your new attorney's correspondence dated November 28, 2012, terminating my services. I assume it is what it purports to be. If you have not, in fact, terminated by services through Mr. Snavelly, Esq., please notify be immediately.

The correspondence requests a refund for the unearned portion of the retainer you paid in April. There is no unearned portion. Instead, you have a balance of \$1,400. Pursuant to our agreement, all billings in excess of the \$5000 retainer would be kept on account, pending resolution. However, since you have terminated my services that amount is now due. Please pay within 30 days.

I would advise you to reconsider your decision to end our relationship, as you have already invested in my representation of you. If you do so reconsider, we can reinstate our former agreement.

If you do not, I wish you the best James.

Sincerely,

  
ROBERT E. SEARFOSS III

RES: kgm

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Fax: (419) 784-5285

November 28, 2012

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

RE: James Bodenbender

Dear Mr. Searfoss:

James Bodenbender advised me that he retained you to represent him to pursue an automobile warranty issue and that on April 19, 2012 he mailed to you a retainer of \$5,000.00. Mr. Bodenbender now wants to terminate your services and his pursuit of his claim. Please terminate all legal services immediately, make an accounting for the legal services and cost to date and return the unused portion of the retainer to James Bodenbender, 12426 Road 179, Oakwood OH 45973.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.

  
Stephen K. Snavely

SKS:mas

pc: James Bodenbender



GAYLAN v. DAVE TOWELL CADILLAC, INC.

No. 83 CVF 10437

STATE OF OHIO, AKRON MUNICIPAL COURT, SUMMIT COUNTY

15 Ohio Misc. 2d 1; 473 N.E.2d 64; 1984 Ohio Misc. LEXIS 186; 15 Ohio B. Rep. 243

March 8, 1984, Decided

**SUBSEQUENT HISTORY:** [\*\*\*1] Reporter's Note: No appeal has been taken from the decision of the court.

**DISPOSITION:** *Judgment accordingly.*

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff consumer sought to recover from defendant car dealer triple damages and attorney fees, pursuant to the Ohio Consumer Sales Practices Act contained in Ohio Rev. Code Ann. § 1345.02.

**OVERVIEW:** The consumer proved by a preponderance of the evidence that the car dealer did commit deceptive and unfair acts and practices in violation of Ohio Rev. Code Ann. § 1345.02(A) and Ohio Adm. Code 109:4-3-16(B)(5) and (22). However, the consumer did not establish that he was damaged or that he incurred attorney fees. The court awarded the minimum damages provided by the statute and did not award attorney fees.

**OUTCOME:** The court held that the car dealer employed deceptive trade practices and awarded the minimum amount of damages.

**CORE TERMS:** attorney fees, advertised, motor vehicle, sale price, consumer, dealer, deceptive, unfair, preponderance, allowance, trade-in, Ohio Consumer Sales Practices Act, advertisement, advertise, integrate, knowingly, supplier, commit, failed to prove, entitled to recover, sales tax, calculation, bargained, license.

LexisNexis(R) Headnotes

*Antitrust & Trade Law > Trade Practices & Unfair Competition > General Overview*  
*Torts > Business Torts > Unfair Business Practices > General Overview*

[HN1] The private remedies for violation of Ohio Rev. Code Ann. § 1345.02(A) are contained in Ohio Rev. Code Ann. § 1345.09(B) which provides that the consumer may recover three times the amount of his actual damages or \$ 200, whichever is greater.

*Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > General Overview*  
*Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > Statutory Awards*  
*Torts > Business Torts > Unfair Business Practices > General Overview*

[HN2] Ohio Rev. Code Ann. § 1345.09 (F)(2) provides that the court may award reasonable attorney fees to the consumer if the supplier has knowingly committed an act or practice that violates Ohio Rev. Code Ann. § 1345.02(A). Some proof as to reasonable attorney fees is required before the trier of fact can consider the subject.

**HEADNOTES**

*Sales -- Ohio Consumer Sales Practices Act -- Deceptive and unfair practices -- R.C. 1345.02 and Ohio Adm. Code 109:4-3-16(B) violated when automobile dealer fails to sell at advertised price -- Damages recoverable by consumer -- Attorney fees awarded, when -- R.C. 1345.09 (B) applied.*

**SYLLABUS**

1. A car dealer commits deceptive and unfair practices in violation of the Ohio Consumer Sales Practices

Act when it fails to sell an automobile at the advertised price and when it fails to integrate into the sales agreement all prior material statements, representations, and promises. R.C. 1345.02, Ohio Adm. Code 10:4-3-16(B)(5) and (22).

2. Under the Ohio Consumer Sales Practices Act the consumer may recover the greater of three times the amount of his actual damages or \$ 200 for each violation.

3. Under the Ohio Consumer Sales Practices Act, the court may award attorney fees to the consumer only when the dealer knowingly violates the Act and to the extent reasonable attorney fees are proved. R.C. 1345.09(B)(1).

COUNSEL: *Mr. Robert H. McDowell*, for plaintiff.

*Mr. Timothy [\*\*\*2] P. Assaf*, for defendant.

JUDGES: SCHNEIDERMAN, J.

## OPINION BY: SCHNEIDERMAN

### OPINION

[\*1] [\*\*65] Plaintiff, Anthony Gaylan, seeks to recover \$ 7,248.75 in damages, plus attorney fees, from the defendant, Dave Towell Cadillac, Inc. Defendant denies plaintiff's claim.

### FINDINGS OF FACT

Defendant is a corporation and doing business as a motor vehicle dealer selling new and used motor vehicles. Defendant is a franchise dealer for Cadillac automobiles.

On August 25, 1983, plaintiff and defendant entered into a retail contract whereby plaintiff agreed to purchase, for cash, a 1983 Cadillac Eldorado automobile (Eldorado), less a trade-in allowance for his 1979 Cadillac. The agreement provided as follows:

Sales price	\$ 22,316.00
Rust inhibitor	200.00
Document fee	15.00
Cash sale price	\$ 22,531.00
State and local taxes	\$ 726.83
License, license transfer, title, registration fee	6.00
Total price	\$ 23,263.83
Trade-in allowance	9,316.00
Balance in cash	\$ 13,947.83

[\*2] On August 27, 1983, and before plaintiff took possession of the Eldorado, he asked about purchasing the 1983 Cadillac four-door Fleetwood Brougham (Fleetwood) which [\*\*\*3] was in the showroom. The parties negotiated, and it was agreed that plaintiff would purchase the Fleetwood instead of the Eldorado for an additional \$ 950. Plaintiff paid that difference in cash and subsequently took delivery.

An agreement was prepared for the purchase of the Fleetwood; however, the calculation was done after the plaintiff signed the agreement. The sales price and the sales tax were determined by working backwards, using the total amount plaintiff paid, the trade-in allowance, the cost for rustproofing, document fee and transfer of

title fees, and defendant "plugged in" the sales price and sales tax. The sales price for the Fleetwood was \$ 23,216.48. Plaintiff knew defendant was doing the calculation in this manner and both parties were relying on the August 25 agreement.

On August 14, 1983, defendant advertised the Fleetwood automobile for sale in the Akron Beacon Journal at \$ 20,450. Plaintiff knew the advertised sale price before the purchase.

Plaintiff seeks triple damages for the difference between the Fleetwood sales price and the advertised price, and his attorney fees, pursuant to the Ohio Consumer Sales Practices Act contained in R.C. Chapter 1345 [\*\*\*4] and the regulations thereunder.

15 Ohio Misc. 2d 1, \*, 473 N.E.2d 64, \*\*,  
1984 Ohio Misc. LEXIS 186, \*\*\*, 15 Ohio B. Rep. 243

### CONCLUSIONS OF LAW

The parties agreed that R.C. 1345.02 and Ohio Adm. Code 109:4-3-16 were applicable.

R.C. 1345.02(A) provides in part as follows:

"No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. \*  
\* \*"

Plaintiff contends that the following subsections in Ohio Adm. Code 109:4-3-16 were violated:

"(B) It shall be a deceptive and unfair act or practice for a dealer, in connection with the advertisement or sale of a motor vehicle, to:

\* \* \*

"(5) Advertise any motor vehicle for sale at a specific price or on specific terms and subsequently fail to show and make available for sale said vehicle as advertised;

\* \* \*

"(17) Raise or attempt to raise the actual purchase price of any motor vehicle to a specific consumer \* \* \*;

\* \* \*

"(22)

"[\*66] Fail to integrate into any written sales contract or offer, all material statements, representations or promises, oral or written, made prior to the written contract by the dealer;"

The defendant did advertise a motor vehicle for sale and failed to make it available as advertised in violation of Ohio Adm. Code 109:4-3-16(B)(5). [\*5] Defendant offered to sell the Fleetwood for \$ 20,450 in an advertisement and sold it to plaintiff for \$ 23,216.48.

Plaintiff failed to integrate into the sales agreement of August 27 all material statements, representations and promises made prior to that agreement in violation of Ohio Adm. Code 109:4-3-16(B)(22). The August 27 agreement was signed when incomplete, and it does not reflect the understanding between the parties.

[\*3] Plaintiff has proved by a preponderance of the evidence that defendant did commit deceptive and

unfair acts and practices in violation of R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-16(B)(5) and (22). Subsection (17) was not violated.

[HN1] The private remedies for violation of R.C. 1345.02(A) are contained in R.C. 1345.09. Subsection (B) provides that the consumer may recover three times the amount of his actual damages or \$ 200, whichever is greater.

What were the plaintiff's damages? The plaintiff received exactly what he bargained for. He requested that the defendant revise the original purchase so that he could buy the Fleetwood instead of the Eldorado. They both bargained in good faith and agreed on an additional amount of \$ 950 to switch [\*\*\*6] automobiles. Plaintiff knew the advertised price of the Fleetwood and settled on an amount with full knowledge of all the circumstances. The plaintiff has failed to prove, by a preponderance of the evidence, any damages.

Since the defendant did violate the Ohio Consumer Sales Practices Act, the plaintiff is entitled to recover the statutory minimum damages. There were two separate violations in this case, each caused by a separate act of the defendant. Plaintiff is entitled to recover the \$ 200 minimum damages for each violation, or \$ 400.

Plaintiff seeks to recover attorney fees. [HN2] R.C. 1345.09 provides in subsection (F) that the court may award reasonable attorney fees to the consumer if "(2) [t]he supplier has knowingly committed an act or practice that violates this section." The circumstances creating the violation by the defendant are unusual, and, at least in part, caused by the plaintiff. The facts do not support a finding that these violations were knowingly committed by the defendant. Further, the plaintiff did not offer any proof as to "reasonable attorney's fees," and it is this court's opinion that some evidence of attorney fees is required before the trier [\*\*\*7] of fact can consider the subject. See *Baber v. Dennis* (1979), 66 Ohio App. 2d 1.

Plaintiff has failed to prove by a preponderance of the evidence that he is entitled to reasonable attorney fees.

Plaintiff is entitled to a judgment for \$ 400.

*Judgment accordingly.*

129DTS

Time of Request: Tuesday, January 31, 2012 13:23:39 EST  
Client ID/Project Name:  
Number of Lines: 149  
Job Number: 1828:330810913

Research Information

Service: LEXSEE(R) Feature  
Print Request: Current Document: 1  
Source: Get by LEXSEE(R)  
Search Terms: 47 Ohio App. 3d 105

Send to: TERMINAL, 3  
WOOD COUNTY LAW LIBRARY  
1 COURT HOUSE SQ  
BOWLING GREEN, OH 43402-2427

BODENBENDER,  
James

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07 Feb '13



**STEPHEN K. SNAVELY CO., L.P.A.**

**ATTORNEY & COUNSELOR AT LAW  
505 FOURTH STREET  
P.O. BOX 759  
DEFIANCE, OHIO 43512**

Stephen K. Snavely

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Toll-Free 1-888-782-8846  
Fax: (419) 784-5285

January 3, 2013

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

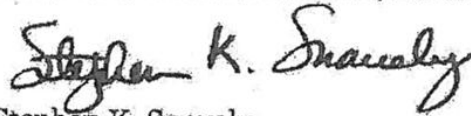
RE: James Bodenbender

Dear Mr. Searfoss:

I mailed a request to you on December 13, 2012. Enclosed is a copy of that letter. I have not received a response. I renew my request for Mr. Bodenbender that you provide me with an accounting and the refund of the unused portion of the retainer.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.



Stephen K. Snavely

SKS:mas

pc: James Bodenbender

LAW OFFICES OF ROBERT E SEARFOSS III  
321 N. MAIN STREET  
BOWLING GREEN, OH 43402  
PHONE: (419) 353-1856 • FAX: (419) 353-1858

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January 3, 2013

Stephen Snavelly, Esq.  
505 Fourth Street  
PO Box 759  
Defiance, Ohio 43512

Re: James Bodenbender

Mr. Snavelly,

Mr. Bodenbender and I had an oral agreement. I would bill \$250 per hour, accept a \$5,000 retainer, not ask for an additional retainer in expectation of recovering attorney fees from the opposition, and would take all action I deemed necessary.

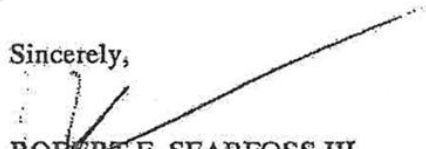
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I was retained in April, conducted extensive research through July and handled the consumer complaint with the Ohio Attorney General. Before filing suit, Mr. Bodenbender instructed me to do nothing until further notice. Months later I received your letter.

I have spent 25.6 hours towards the original objective of Mr. Bodenbender. I understand he now chooses to abandon his claims, but he is still liable for services rendered. I am without my original timesheet for this matter, but do have a note in the file regarding the total time as of July 2, 2012, being 25.6 hours.

I do not intend to invest any further time on this matter, and am closing the file. Please have your client pay the outstanding balance.

Sincerely,

  
ROBERT E. SEARFOSS III

RES: kgm

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Stephen K. Snavely

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December 13, 2012

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

RE: James Bodenbender

Dear Mr. Searfoss:

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Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.

  
Stephen K. Snavely

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December 3, 2012

James Bodenbender  
12426 Road 179  
Oakwood, OH 45973

Re: Termination of my services

Mr. Bodenbender,

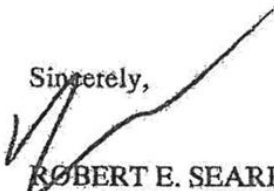
I am in receipt of your new attorney's correspondence dated November 28, 2012, terminating my services. I assume it is what it purports to be. If you have not, in fact, terminated by services through Mr. Snively, Esq., please notify me immediately.

The correspondence requests a refund for the unearned portion of the retainer you paid in April. There is no unearned portion. Instead, you have a balance of \$1,400. Pursuant to our agreement, all billings in excess of the \$5000 retainer would be kept on account, pending resolution. However, since you have terminated my services that amount is now due. Please pay within 30 days.

I would advise you to reconsider your decision to end our relationship, as you have already invested in my representation of you. If you do so reconsider, we can reinstate our former agreement.

If you do not, I wish you the best James.

Sincerely,

  
ROBERT E. SEARFOSS III

RES: kgm

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November 28, 2012

Mr. Robert E. Searfoss III, Esquire  
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Bowling Green OH 43502

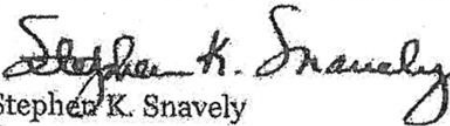
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Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.

  
Stephen K. Snavely

SKS:mas

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GAYLAN v. DAVE TOWELL CADILLAC, INC.

No. 83 CVF 10437

STATE OF OHIO, AKRON MUNICIPAL COURT, SUMMIT COUNTY

15 Ohio Misc. 2d 1; 473 N.E.2d 64; 1984 Ohio Misc. LEXIS 186; 15 Ohio B. Rep. 243

March 8, 1984, Decided

**SUBSEQUENT HISTORY:** [\*\*\*1] Reporter's Note: No appeal has been taken from the decision of the court.

**DISPOSITION:** *Judgment accordingly.*

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff consumer sought to recover from defendant car dealer triple damages and attorney fees, pursuant to the Ohio Consumer Sales Practices Act contained in Ohio Rev. Code Ann. § 1345.02.

**OVERVIEW:** The consumer proved by a preponderance of the evidence that the car dealer did commit deceptive and unfair acts and practices in violation of Ohio Rev. Code Ann. § 1345.02(A) and Ohio Adm. Code 109:4-3-16(B)(5) and (22). However, the consumer did not establish that he was damaged or that he incurred attorney fees. The court awarded the minimum damages provided by the statute and did not award attorney fees.

**OUTCOME:** The court held that the car dealer employed deceptive trade practices and awarded the minimum amount of damages.

**CORE TERMS:** attorney fees, advertised, motor vehicle, sale price, consumer, dealer, deceptive, unfair, preponderance, allowance, trade-in, Ohio Consumer Sales Practices Act, advertisement, advertise, integrate, knowingly, supplier, commit, failed to prove, entitled to recover, sales tax, calculation, bargained, license

LexisNexis(R) Headnotes

*Antitrust & Trade Law > Trade Practices & Unfair Competition > General Overview*

*Torts > Business Torts > Unfair Business Practices > General Overview*

[HN1] The private remedies for violation of Ohio Rev. Code Ann. § 1345.02(A) are contained in Ohio Rev. Code Ann. § 1345.09(B) which provides that the consumer may recover three times the amount of his actual damages or \$ 200, whichever is greater.

*Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > General Overview*

*Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > Statutory Awards*

*Torts > Business Torts > Unfair Business Practices > General Overview*

[HN2] Ohio Rev. Code Ann. § 1345.09 (F)(2) provides that the court may award reasonable attorney fees to the consumer if the supplier has knowingly committed an act or practice that violates Ohio Rev. Code Ann. § 1345.02(A). Some proof as to reasonable attorney fees is required before the trier of fact can consider the subject.

**HEADNOTES**

*Sales -- Ohio Consumer Sales Practices Act -- Deceptive and unfair practices -- R.C. 1345.02 and Ohio Adm. Code 109:4-3-16(B) violated when automobile dealer fails to sell at advertised price -- Damages recoverable by consumer -- Attorney fees awarded, when -- R.C. 1345.09 (B) applied.*

**SYLLABUS**

1. A car dealer commits deceptive and unfair practices in violation of the Ohio Consumer Sales Practices

Act when it fails to sell an automobile at the advertised price and when it fails to integrate into the sales agreement all prior material statements, representations, and promises. R.C. 1345.02, Ohio Adm. Code 10:4-3-16(B)(5) and (22).

2. Under the Ohio Consumer Sales Practices Act the consumer may recover the greater of three times the amount of his actual damages or \$ 200 for each violation.

3. Under the Ohio Consumer Sales Practices Act, the court may award attorney fees to the consumer only when the dealer knowingly violates the Act and to the extent reasonable attorney fees are proved. R.C. 1345.09(B)(1).

COUNSEL: Mr. Robert H. McDowell, for plaintiff.

Mr. Timothy [\*\*\*2] P. Assaf, for defendant.

JUDGES: SCHNEIDERMAN, J.

OPINION BY: SCHNEIDERMAN

OPINION

[\*1] [\*\*65] Plaintiff, Anthony Gaylan, seeks to recover \$ 7,248.75 in damages, plus attorney fees, from the defendant, Dave Towell Cadillac, Inc. Defendant denies plaintiff's claim.

FINDINGS OF FACT

Defendant is a corporation and doing business as a motor vehicle dealer selling new and used motor vehicles. Defendant is a franchise dealer for Cadillac automobiles.

On August 25, 1983, plaintiff and defendant entered into a retail contract whereby plaintiff agreed to purchase, for cash, a 1983 Cadillac Eldorado automobile (Eldorado), less a trade-in allowance for his 1979 Cadillac. The agreement provided as follows:

Sales price	\$ 22,316.00
Rust inhibitor	200.00
Document fee	15.00
Cash sale price	\$ 22,531.00
State and local taxes	
License, license transfer, title, registration fee	\$ 726.83
Total price	6.00
	\$ 23,263.83
Trade-in allowance	
Balance in cash	9,316.00
	\$ 13,947.83

[\*2] On August 27, 1983, and before plaintiff took possession of the Eldorado, he asked about purchasing the 1983 Cadillac four-door Fleetwood Brougham (Fleetwood) which [\*\*\*3] was in the showroom. The parties negotiated, and it was agreed that plaintiff would purchase the Fleetwood instead of the Eldorado for an additional \$ 950. Plaintiff paid that difference in cash and subsequently took delivery.

An agreement was prepared for the purchase of the Fleetwood; however, the calculation was done after the plaintiff signed the agreement. The sales price and the sales tax were determined by working backwards, using the total amount plaintiff paid, the trade-in allowance, the cost for rustproofing, document fee and transfer of

title fees, and defendant "plugged in" the sales price and sales tax. The sales price for the Fleetwood was \$ 23,216.48. Plaintiff knew defendant was doing the calculation in this manner and both parties were relying on the August 25 agreement.

On August 14, 1983, defendant advertised the Fleetwood automobile for sale in the Akron Beacon Journal at \$ 20,450. Plaintiff knew the advertised sale price before the purchase.

Plaintiff seeks triple damages for the difference between the Fleetwood sales price and the advertised price, and his attorney fees, pursuant to the Ohio Consumer Sales Practices Act contained in R.C. Chapter 1345 [\*\*\*4] and the regulations thereunder.

### CONCLUSIONS OF LAW

The parties agreed that R.C. 1345.02 and Ohio Adm. Code 109:4-3-16 were applicable.

R.C. 1345.02(A) provides in part as follows:

"No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. \*  
\* \* \*

Plaintiff contends that the following subsections in Ohio Adm. Code 109:4-3-16 were violated:

"(B) It shall be a deceptive and unfair act or practice for a dealer, in connection with the advertisement or sale of a motor vehicle, to:

\* \* \*

"(5) Advertise any motor vehicle for sale at a specific price or on specific terms and subsequently fail to show and make available for sale said vehicle as advertised;

\* \* \*

"(17) Raise or attempt to raise the actual purchase price of any motor vehicle to a specific consumer \* \* \*;

\* \* \*

"(22)

["\*66] Fail to integrate into any written sales contract or offer, all material statements, representations or promises, oral or written, made prior to the written contract by the dealer;"

The defendant did advertise a motor vehicle for sale and failed to make it available as advertised in violation of Ohio Adm. Code 109:4-3-16(B)(5). [\*\*\*5] Defendant offered to sell the Fleetwood for \$ 20,450 in an advertisement and sold it to plaintiff for \$ 23,216.48.

Plaintiff failed to integrate into the sales agreement of August 27 all material statements, representations and promises made prior to that agreement in violation of Ohio Adm. Code 109:4-3-16(B)(22). The August 27 agreement was signed when incomplete, and it does not reflect the understanding between the parties.

[\*3] Plaintiff has proved by a preponderance of the evidence that defendant did commit deceptive and

unfair acts and practices in violation of R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-16(B)(5) and (22). Subsection (17) was not violated.

[HN1] The private remedies for violation of R.C. 1345.02(A) are contained in R.C. 1345.09. Subsection (B) provides that the consumer may recover three times the amount of his actual damages or \$ 200, whichever is greater.

What were the plaintiff's damages? The plaintiff received exactly what he bargained for. He requested that the defendant revise the original purchase so that he could buy the Fleetwood instead of the Eldorado. They both bargained in good faith and agreed on an additional amount of \$ 950 to switch [\*\*\*6] automobiles. Plaintiff knew the advertised price of the Fleetwood and settled on an amount with full knowledge of all the circumstances. The plaintiff has failed to prove, by a preponderance of the evidence, any damages.

Since the defendant did violate the Ohio Consumer Sales Practices Act, the plaintiff is entitled to recover the statutory minimum damages. There were two separate violations in this case, each caused by a separate act of the defendant. Plaintiff is entitled to recover the \$ 200 minimum damages for each violation, or \$ 400.

Plaintiff seeks to recover attorney fees. [HN2] R.C. 1345.09 provides in subsection (F) that the court may award reasonable attorney fees to the consumer if "(2) [t]he supplier has knowingly committed an act or practice that violates this section." The circumstances creating the violation by the defendant are unusual, and, at least in part, caused by the plaintiff. The facts do not support a finding that these violations were knowingly committed by the defendant. Further, the plaintiff did not offer any proof as to "reasonable attorney's fees," and it is this court's opinion that some evidence of attorney fees is required before the trier [\*\*\*7] of fact can consider the subject. See *Baber v. Dennis* (1979), 66 Ohio App. 2d 1.

Plaintiff has failed to prove by a preponderance of the evidence that he is entitled to reasonable attorney fees.

Plaintiff is entitled to a judgment for \$ 400.

*Judgment accordingly.*



Time of Request: Tuesday, January 31, 2012 13:23:39 EST  
Client ID/Project Name:  
Number of Lines: 149  
Job Number: 1828:330810913

129DTS

Research Information

Service: LEXSEE(R) Feature  
Print Request: Current Document: 1  
Source: Get by LEXSEE(R)  
Search Terms: 47 Ohio App. 3d 105

Send to: TERMINAL, 3  
WOOD COUNTY LAW LIBRARY  
1 COURT HOUSE SQ  
BOWLING GREEN, OH 43402-2427

BODENBENDER,

James

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07 Feb '13

**STEPHEN K. SNAVELY CO., L.P.A.**

**ATTORNEY & COUNSELOR AT LAW  
505 FOURTH STREET  
P.O. BOX 759  
DEFIANCE, OHIO 43512**

Stephen K. Snavely

Telephone: (419) 782-8846  
Toll-Free 1-888-782-8846  
Fax: (419) 784-5285

January 3, 2013

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

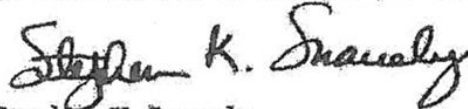
RE: James Bodenbender

Dear Mr. Searfoss:

I mailed a request to you on December 13, 2012. Enclosed is a copy of that letter. I have not received a response. I renew my request for Mr. Bodenbender that you provide me with an accounting and the refund of the unused portion of the retainer.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.



Stephen K. Snavely

SKS:mas

pc: James Bodenbender

LAW OFFICES OF ROBERT E SEARFOSS III  
321 N. MAIN STREET  
BOWLING GREEN, OH 43402  
PHONE: (419) 353-1856 • FAX: (419) 353-1858

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January 3, 2013

Stephen Snavelly, Esq.  
505 Fourth Street  
PO Box 759  
Defiance, Ohio 43512

Re: James Bodenbender

Mr. Snavelly,

Mr. Bodenbender and I had an oral agreement. I would bill \$250 per hour, accept a \$5,000 retainer, not ask for an additional retainer in expectation of recovering attorney fees from the opposition, and would take all action I deemed necessary.

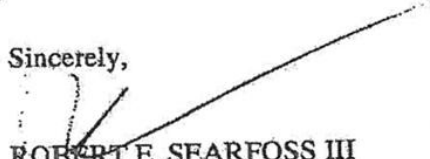
At the initial meeting, I informed Mr. Bodenbender that I would intend to do substantial research and preparation *before* filing the complaint and that we would also need to exhaust administrative remedies first. He concurred.

I was retained in April, conducted extensive research through July and handled the consumer complaint with the Ohio Attorney General. Before filing suit, Mr. Bodenbender instructed me to do nothing until further notice. Months later I received your letter.

I have spent 25.6 hours towards the original objective of Mr. Bodenbender. I understand he now chooses to abandon his claims, but he is still liable for services rendered. I am without my original timesheet for this matter, but do have a note in the file regarding the total time as of July 2, 2012, being 25.6 hours.

I do not intend to invest any further time on this matter, and am closing the file. Please have your client pay the outstanding balance.

Sincerely,

  
ROBERT E. SEARFOSS III

RES: kgm

**STEPHEN K. SNAVELY CO., L.P.A.**

**ATTORNEY & COUNSELOR AT LAW  
505 FOURTH STREET  
P.O. BOX 759  
DEFIANCE, OHIO 43512**

Stephen K. Snavely

Telephone: (419) 782-8846  
Toll-Free 1-888-782-8846  
Fax: (419) 784-5285

December 13, 2012

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

RE: James Bodenbender

Dear Mr. Searfoss:

James Bodenbender and I are confused by your letter dated December 3, 2012. In your letter, you refer to "our agreement". Please provide me with the copy of your agreement with Mr. Bodenbender for your legal services. I am renewing my request for the accounting for your legal services.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.

  
Stephen K. Snavely

SKS:mas

pc: James Bodenbender

LAW OFFICES OF ROBERT E SEARFOSS III  
321 N. MAIN STREET  
BOWLING GREEN, OH 43402  
PHONE: (419) 353-1856 • FAX: (419) 353-1858

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December 3, 2012

James Bodenbender  
12426 Road 179  
Oakwood, OH 45973

Re: Termination of my services

Mr. Bodenbender,

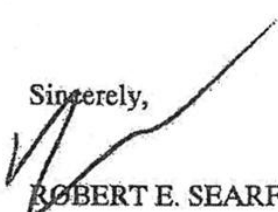
I am in receipt of your new attorney's correspondence dated November 28, 2012, terminating my services. I assume it is what it purports to be. If you have not, in fact, terminated by services through Mr. Snively, Esq., please notify me immediately.

The correspondence requests a refund for the unearned portion of the retainer you paid in April. There is no unearned portion. Instead, you have a balance of \$1,400. Pursuant to our agreement, all billings in excess of the \$5000 retainer would be kept on account, pending resolution. However, since you have terminated my services that amount is now due. Please pay within 30 days.

I would advise you to reconsider your decision to end our relationship, as you have already invested in my representation of you. If you do so reconsider, we can reinstate our former agreement.

If you do not, I wish you the best James.

Sincerely,

  
ROBERT E. SEARFOSS III

RES: kgm

**STEPHEN K. SNAVELY CO., L.P.A.**

**ATTORNEY & COUNSELOR AT LAW  
505 FOURTH STREET  
P.O. BOX 759  
DEFIANCE, OHIO 43512**

Stephen K. Snavely

Telephone: (419) 782-8846  
Toll-Free 1-888-782-8846  
Fax: (419) 784-5285

November 28, 2012

Mr. Robert E. Searfoss III, Esquire  
321 N. Main Street  
Bowling Green OH 43502

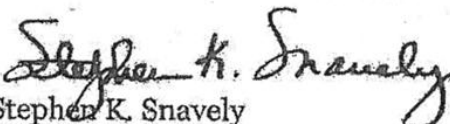
RE: James Bodenbender

Dear Mr. Searfoss:

James Bodenbender advised me that he retained you to represent him to pursue an automobile warranty issue and that on April 19, 2012 he mailed to you a retainer of \$5,000.00. Mr. Bodenbender now wants to terminate your services and his pursuit of his claim. Please terminate all legal services immediately, make an accounting for the legal services and cost to date and return the unused portion of the retainer to James Bodenbender, 12426 Road 179, Oakwood OH 45973.

Yours truly,

STEPHEN K. SNAVELY CO., L.P.A.

  
Stephen K. Snavely

SKS:mas

pc: James Bodenbender



GAYLAN v. DAVE TOWELL CADILLAC, INC.

No. 83 CVF 10437

STATE OF OHIO, AKRON MUNICIPAL COURT, SUMMIT COUNTY

15 Ohio Misc. 2d 1; 473 N.E.2d 64; 1984 Ohio Misc. LEXIS 186; 15 Ohio B. Rep. 243

March 8, 1984, Decided

**SUBSEQUENT HISTORY:** [\*\*\*1] Reporter's Note: No appeal has been taken from the decision of the court.

**DISPOSITION:** *Judgment accordingly.*

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff consumer sought to recover from defendant car dealer triple damages and attorney fees, pursuant to the Ohio Consumer Sales Practices Act contained in Ohio Rev. Code Ann. § 1345.02.

**OVERVIEW:** The consumer proved by a preponderance of the evidence that the car dealer did commit deceptive and unfair acts and practices in violation of Ohio Rev. Code Ann. § 1345.02(A) and Ohio Adm. Code 109:4-3-16(B)(5) and (22). However, the consumer did not establish that he was damaged or that he incurred attorney fees. The court awarded the minimum damages provided by the statute and did not award attorney fees.

**OUTCOME:** The court held that the car dealer employed deceptive trade practices and awarded the minimum amount of damages.

**CORE TERMS:** attorney fees, advertised, motor vehicle, sale price, consumer, dealer, deceptive, unfair, preponderance, allowance, trade-in, Ohio Consumer Sales Practices Act, advertisement, advertise, integrate, knowingly, supplier, commit, failed to prove, entitled to recover, sales tax, calculation, bargained, license.

LexisNexis(R) Headnotes

*Antitrust & Trade Law > Trade Practices & Unfair Competition > General Overview  
Torts > Business Torts > Unfair Business Practices > General Overview*

[HN1] The private remedies for violation of Ohio Rev. Code Ann. § 1345.02(A) are contained in Ohio Rev. Code Ann. § 1345.09(B) which provides that the consumer may recover three times the amount of his actual damages or \$ 200, whichever is greater.

*Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > General Overview  
Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > Statutory Awards  
Torts > Business Torts > Unfair Business Practices > General Overview*

[HN2] Ohio Rev. Code Ann. § 1345.09 (F)(2) provides that the court may award reasonable attorney fees to the consumer if the supplier has knowingly committed an act or practice that violates Ohio Rev. Code Ann. § 1345.02(A). Some proof as to reasonable attorney fees is required before the trier of fact can consider the subject.

**HEADNOTES**

*Sales -- Ohio Consumer Sales Practices Act -- Deceptive and unfair practices -- R.C. 1345.02 and Ohio Adm. Code 109:4-3-16(B) violated when automobile dealer fails to sell at advertised price -- Damages recoverable by consumer -- Attorney fees awarded, when -- R.C. 1345.09 (B) applied.*

**SYLLABUS**

1. A car dealer commits deceptive and unfair practices in violation of the Ohio Consumer Sales Practices



Act when it fails to sell an automobile at the advertised price and when it fails to integrate into the sales agreement all prior material statements, representations, and promises. R.C. 1345.02, Ohio Adm. Code 10:4-3-16(B)(5) and (22).

2. Under the Ohio Consumer Sales Practices Act the consumer may recover the greater of three times the amount of his actual damages or \$ 200 for each violation.

3. Under the Ohio Consumer Sales Practices Act, the court may award attorney fees to the consumer only when the dealer knowingly violates the Act and to the extent reasonable attorney fees are proved. R.C. 1345.09(B)(1).

COUNSEL: Mr. Robert H. McDowell, for plaintiff.

Mr. Timothy [\*\*\*2] P. Assaf, for defendant.

JUDGES: SCHNEIDERMAN, J.

## OPINION BY: SCHNEIDERMAN

### OPINION

[\*1] [\*\*65] Plaintiff, Anthony Gaylan, seeks to recover \$ 7,248.75 in damages, plus attorney fees, from the defendant, Dave Towell Cadillac, Inc. Defendant denies plaintiff's claim.

### FINDINGS OF FACT

Defendant is a corporation and doing business as a motor vehicle dealer selling new and used motor vehicles. Defendant is a franchise dealer for Cadillac automobiles.

On August 25, 1983, plaintiff and defendant entered into a retail contract whereby plaintiff agreed to purchase, for cash, a 1983 Cadillac Eldorado automobile (Eldorado), less a trade-in allowance for his 1979 Cadillac. The agreement provided as follows:

Sales price	\$ 22,316.00
Rust inhibitor	200.00
Document fee	15.00
Cash sale price	\$ 22,531.00
State and local taxes	\$ 726.83
License, license transfer, title, registration fee	6.00
Total price	\$ 23,263.83
Trade-in allowance	9,316.00
Balance in cash	\$ 13,947.83

[\*2] On August 27, 1983, and before plaintiff took possession of the Eldorado, he asked about purchasing the 1983 Cadillac four-door Fleetwood Brougham (Fleetwood) which [\*\*\*3] was in the showroom. The parties negotiated, and it was agreed that plaintiff would purchase the Fleetwood instead of the Eldorado for an additional \$ 950. Plaintiff paid that difference in cash and subsequently took delivery.

An agreement was prepared for the purchase of the Fleetwood; however, the calculation was done after the plaintiff signed the agreement. The sales price and the sales tax were determined by working backwards, using the total amount plaintiff paid, the trade-in allowance, the cost for rustproofing, document fee and transfer of

title fees, and defendant "plugged in" the sales price and sales tax. The sales price for the Fleetwood was \$ 23,216.48. Plaintiff knew defendant was doing the calculation in this manner and both parties were relying on the August 25 agreement.

On August 14, 1983, defendant advertised the Fleetwood automobile for sale in the Akron Beacon Journal at \$ 20,450. Plaintiff knew the advertised sale price before the purchase.

Plaintiff seeks triple damages for the difference between the Fleetwood sales price and the advertised price, and his attorney fees, pursuant to the Ohio Consumer Sales Practices Act contained in R.C. Chapter 1345 [\*\*\*4] and the regulations thereunder.

### CONCLUSIONS OF LAW

The parties agreed that R.C. 1345.02 and Ohio Adm. Code 109:4-3-16 were applicable.

R.C. 1345.02(A) provides in part as follows:

"No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. \*  
\* \* \*

Plaintiff contends that the following subsections in Ohio Adm. Code 109:4-3-16 were violated:

"(B) It shall be a deceptive and unfair act or practice for a dealer, in connection with the advertisement or sale of a motor vehicle, to:

\* \* \*

"(5) Advertise any motor vehicle for sale at a specific price or on specific terms and subsequently fail to show and make available for sale said vehicle as advertised;

\* \* \*

"(17) Raise or attempt to raise the actual purchase price of any motor vehicle to a specific consumer \* \* \*;

\* \* \*

"(22)

["\*\*66] Fail to integrate into any written sales contract or offer, all material statements, representations or promises, oral or written, made prior to the written contract by the dealer;"

The defendant did advertise a motor vehicle for sale and failed to make it available as advertised in violation of Ohio Adm. Code 109:4-3-16(B)(5). [\*\*\*5] Defendant offered to sell the Fleetwood for \$ 20,450 in an advertisement and sold it to plaintiff for \$ 23,216.48.

Plaintiff failed to integrate into the sales agreement of August 27 all material statements, representations and promises made prior to that agreement in violation of Ohio Adm. Code 109:4-3-16(B)(22). The August 27 agreement was signed when incomplete, and it does not reflect the understanding between the parties.

[\*3] Plaintiff has proved by a preponderance of the evidence that defendant did commit deceptive and

unfair acts and practices in violation of R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-16(B)(5) and (22). Subsection (17) was not violated.

[HN1] The private remedies for violation of R.C. 1345.02(A) are contained in R.C. 1345.09. Subsection (B) provides that the consumer may recover three times the amount of his actual damages or \$ 200, whichever is greater.

What were the plaintiff's damages? The plaintiff received exactly what he bargained for. He requested that the defendant revise the original purchase so that he could buy the Fleetwood instead of the Eldorado. They both bargained in good faith and agreed on an additional amount of \$ 950 to switch [\*\*\*6] automobiles. Plaintiff knew the advertised price of the Fleetwood and settled on an amount with full knowledge of all the circumstances. The plaintiff has failed to prove, by a preponderance of the evidence, any damages.

Since the defendant did violate the Ohio Consumer Sales Practices Act, the plaintiff is entitled to recover the statutory minimum damages. There were two separate violations in this case, each caused by a separate act of the defendant. Plaintiff is entitled to recover the \$ 200 minimum damages for each violation, or \$ 400.

Plaintiff seeks to recover attorney fees. [HN2] R.C. 1345.09 provides in subsection (F) that the court may award reasonable attorney fees to the consumer if "(2) [t]he supplier has knowingly committed an act or practice that violates this section." The circumstances creating the violation by the defendant are unusual, and, at least in part, caused by the plaintiff. The facts do not support a finding that these violations were knowingly committed by the defendant. Further, the plaintiff did not offer any proof as to "reasonable attorney's fees," and it is this court's opinion that some evidence of attorney fees is required before the trier [\*\*\*7] of fact can consider the subject. See *Baber v. Dennis* (1979), 66 Ohio App. 2d 1.

Plaintiff has failed to prove by a preponderance of the evidence that he is entitled to reasonable attorney fees.

Plaintiff is entitled to a judgment for \$ 400.

*Judgment accordingly.*

129DTS

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LAW OFFICES OF ROBERT E SEARFOSS III

321 N. MAIN STREET

BOWLING GREEN, OH 43402

PHONE: (419) 353-1856 • FAX: (419) 353-1858

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January 28, 2013

James Bodenbender  
12426 Road 179  
Oakwood, OH 45973

Re: Ohio Attorney General's Office

Mr. Bodenbender,

I received a call from David Strawser at the Ohio Attorney General's office relating to your complaint that I initiated over the summer. His number is 614.995.1578. I do not intend to take any action.

Sincerely,

ROBERT E. SEARFOSS III

RES: kgm

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing answer was emailed to Patrick Cavanaugh, Esq. ([patrick.cavanaugh@kitch.com](mailto:patrick.cavanaugh@kitch.com)), on this 8th day of December, 2016.

/s Emily C. Samlow  
Emily C. Samlow (0082201)  
Counsel of Record