

DARLING’S,)	
Petitioner,)	
v.)	Maine Motor Vehicle
)	Franchise Board 03-01
FORD MOTOR COMPANY,)	
Respondent,)	

Procedural History

Darling’s originally filed the two pending claims as part of an Amended Complaint of February 24, 2005. The two matters, contained in Count IV, were based upon warranty claims 2002-236992 and 2002-219021. Darling’s had earlier sued Ford, but had settled the claims, accepting a check in “full and final settlement” of the pending matters.

On August 22, 2005, Ford filed a Motion for Summary Judgment based upon accord and satisfaction. The Board did not then address that Motion. Rather, it dismissed the two claims by Order of September 14, corrected September 16, 2005, when it granted Ford’s motion for Partial Summary Judgment based upon a lack of standing. By Decision of August 29, 2007, the Superior Court reversed the Board Order dismissing the two claims based upon a lack of standing, and remanded the claims to the Board.

On Remand, Ford pressed its August 22, 2005, Motion for Summary Judgment based upon accord and satisfaction. Following arguments of counsel, the Board granted that Motion on September 8, 2008, and dismissed the two claims based upon accord and satisfaction. On Appeal, on March 7, 2011, the Business and Consumer Court reversed that decision of the Board and remanded the two claims for hearing. The parties tried but were unable to resolve these matters and the undersigned held a Conference of Counsel on February 13, 2012.

A hearing was held on April 11, 2012. The Maine Motor Vehicle Franchise Board which presided was comprised of Dealer Members Charles Gaunce, William Sowles, and Adam Lee along with Public Member William Dowling, Manufacturer Member John Knight and Chairman John McCurry. Russell McLellan, a recently appointed Manufacturer Member, attended the hearing but took no part in the deliberations and did not vote. Darling's presented two witnesses, George Delle Chiaie, Service Director and Warranty Manager, and John Darling.

In the earlier proceedings, 130 exhibits had been admitted. They were not considered by the Board in reaching this Decision. Rather, several of them were supplied to the Board as Exhibits 1, 33, 37, 47, and 67. New Exhibits 131-157 were offered along with 136A, 144A, 156A, 157A, and 158. Exhibits 131-136, 136A, 137-144, 144A, 145, 146, 148, 149, 153-157, and 157A were admitted without objection. Exhibits 150-152 were admitted over Ford's objection. Exhibit 158 was admitted over Darling's objection.

Each party offered a single submission as part of its closing argument. Darling's offered a December 29, 1998, Order Concerning Scope of Reference signed by Chief United States District Judge Hornby. Ford offered a copy of its Closing Statement to the Board on Counts IV and V, dated October 20, 2005. Attached to that Closing Statement was Ford's December 18, 2006, Brief to the Superior Court and a compendium of decisions and orders issued by courts and administrative bodies between 1991 and 2010, in litigation involving Darling's and Ford. These two will remain in the record as Board Exhibits 1 and 2.

Count IV of Darling's Complaint alleges that Ford violated 10 M.R.S.A. §§ 1174(1) and 1176 in its handling of warranty repairs 2002-219021 and 2002-236992. Darling's seeks an assessment of civil penalties against Ford pursuant to 10 M.R.S.A. § 1188(3), and an award of costs and attorney's fees pursuant to 10 M.R.S.A. §§ 1173 and 1188(4), the Franchise Law.

Following the testimony of the witnesses and the arguments of counsel, the Board considered the evidence and found that Ford had violated the law in its handling of Repair Order 236992, the recall repair. Board Members Charles Gaunce, William Sowles, Adam Lee and William Dowling voted in favor of that finding, and John Knight abstained. The Board then voted unanimously to impose a

\$ 1,000.00 civil penalty.

Considering Ford's handling of Repair Order 219021, the leaky vehicle, the Board found that Ford had violated the law. Board Members Charles Gaunce, William Sowles, Adam Lee and William Dowling voted in favor of that finding, and John Knight abstained. The Board then voted to impose a \$ 10,000.00 civil penalty, with Board Members Charles Gaunce, William Sowles and Adam Lee voting in favor, and John Knight and William Dowling voting against that level of penalty.

Based upon the testimony and exhibits, the Board makes the following findings of fact and conclusions of law.

Findings of Fact

1. Petitioner Darling's ("Darling's") is new automobile dealer licensed and doing business in Maine under Title 10, Ch. 204 of the Maine Revised Statutes.
2. Ford Motor Company ("Ford") is a manufacturer of new automobiles, licensed and doing business in Maine under Title 10, Ch. 204 of the Maine Revised Statutes.

The Recall Repair

3. On August 7, 2002, a customer brought her 1995 Ford Contour to Darling's and said that Ford had notified her that there were two safety recalls on her car. Darling's checked on Ford's OASIS information system and found that one of the recalls did not apply, but confirmed that her vehicle was the subject of one open safety recall. A defective engine cooling fan created the danger of a fire. (T.25-31; Ex. 142, 145)
4. Darling's submitted the implied warranty claim for \$ 63.23 on Repair Order 236992 to Ford on August 7, 2002. Ford denied payment for the repair that same night. (T.30-35; Ex. 144)
5. Ford denied payment because another dealer had replaced the defective fan before Darling's did so. However, that first replacement had not been entered on the OASIS

information system by August 7, 2002. When Darling's checked OASIS before replacing the fan, the system indicated that the safety recall was open on that vehicle. (T. 32-35; Ex. 145)

6. Having apparently recognized that such duplicate claims for warranty recall work would arise, Ford had instructed dealers on how to obtain payment when they performed duplicate warranty work. Darling's followed those instructions, but, Ford again refused to pay Darling's for the work. Darling's then resubmitted the claim with a note. Ford again denied it. (T. 35-39; Ex.144A, 145, 157A)
7. Next Darling's discussed the matter with the Ford Representative, Mr. Brandon Cuadra. He approved the claim, entered his approval code on the Repair Order and signed that document. Ford again denied it. (T. 38-41; Ex. 142, 143)
8. Darling's requested mediation under § 1173-A of the Franchise Law on January 2, 2003. Ford did not respond to that request. John Darling then spoke with Mr. Lopez, Ford's Dealer Operations Manager who supervised Mr. Cuadra. Mr. Lopez agreed that Repair Order 236992 should be paid, but that someone above him would have to authorize it. (T. 125; Ex.135)
9. On March 26, 2003, Darling's sought \$ 63.23 in Small Claims Court. The matter was set for a hearing on September 12, 2003, but just before that date, Ford agreed to pay the claim. On February 26, 2004, Ford paid the claim and Darling's costs and attorney's fees for a total of \$ 1049.79 (T. 126; Ex. 135-141)
10. No Ford representative questioned the fact that Darling's had performed the implied warranty work which Repair Order 236992 represented.

The Leaky Vehicle Repair

11. In April, 2002, Darling's supplied parts for and performed 21.2 hours of labor on a new 2001 Ford Focus as recorded in Repair Order 219021. The car was under warranty and its windshield was leaking. (T. 42-47; Ex. 135-141)

12. Darling's followed the Ford Technical Services Bulletin (TSB) issued to address this known problem when it performed the work. In billing Ford, Darling's followed Ford's Warranty and Policy Manual and billed the time it actually spent on the repair. (T. 42-50; Ex. 154, 157)
13. Darling's repaired the leak which was the subject of the TSB. But its work went beyond what that Bulletin outlined, because the vehicle had actually been built incorrectly. In order to stop the leak in the new vehicle, Darling's had to dismantle much of the car, remove the original heater box, cut slot holes in the cowl, retrofit a new heater box with parts from the old one, install the new box and reassemble the car. (T. 46-51, 60-61; Ex. 154, 157, 157A)
14. Darling's timely submitted the warranty claim to Ford in the amount of \$ 1784.09. Ford timely paid \$ 1232.09 in June, 2002. Ford balked at the time Darling's spent working on the vehicle, and therefore paid \$ 552.00 less than the \$ 1784.09 Darling's sought. (Ex. 138)
15. Darling's appealed that payment to Ford, and received another \$ 120.00 payment on the claim. (T. 50-54; Ex. 141)
16. Anne Greene, the Ford Representative who worked with Darlings on the claim, authorized the additional labor time which Ford had refused to pay. (T. 62-63; Ex. 136A)
17. Darling's continued to seek the unpaid balance of \$432. 00 from Ford and Ford continued to deny the claimed labor time as excessive. On November 19, 2002, Stephen Lopez of Ford added that the claim was also denied because it was over 120 day limit. (T. 51-57; Ex. 137)
18. Darling's requested mediation under § 1173-A of the Franchise Law on January 2, 2003, but Ford did not respond to that request. John Darling then spoke with Steve Lopez, Ford's Dealer Operations Manager who supervised Ms. Greene. Mr. Lopez agreed that Repair Order 236992 should be paid, but that someone above him would

have to authorize it. (T. 125; Ex.135)

19. On March 26, 2003, Darling's sought the remaining \$ 432.00 in Small Claims Court. The matter was set for a hearing on September 12, 2003, but just before that date, Ford agreed to pay the claim. On September 16, 2003, Ford paid the claim along with Darling's costs and attorney's fees for a total of \$ 944.40. (T. 126; Ex. 135-141)
20. No Ford representative questioned whether Darling's had performed the warranty work which Repair Order 219021 represented, nor did Ford question the number of hours Darling's spent doing the work.
21. Section 1174(1) of the Franchise Law prohibits manufacturers from engaging in "...any action which is arbitrary, [or] in bad faith or unconscionable and which causes damage to any..." motor vehicle dealer.
22. In *Darling's Bangor Ford v. Ford Motor Company*, 1998 ME 232, ¶ 14, 719 A.2d 111, 116, the Law Court looked to a First Circuit Court of Appeals decision which had construed these three terms.

the Legislature intended the generally accepted meanings of the terms to apply. In *Schott Motorcycle Supply, Inc. v. American Honda Motor Co., Inc.*, 976 F.2d 58, 63 (1st Cir. 1992), "arbitrary, in bad faith, or unconscionable" was defined as follows: "arbitrary" has been defined as "selected at random and without reason," and "unconscionable" as "shockingly unfair or unjust." Webster's New Collegiate Dictionary. And although the Maine statute does not define "bad faith," [**14] it does provide a definition of "good faith": "honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade" as defined and interpreted in § 2-103(1)(b) of the U.C.C. A party presumably acts in bad faith when one of these two elements is missing.

23. The Court in *Coady Corp. v. Toyota Motor Distributors, Inc.*, 346 F. Supp. 2d. 225, 237, considered the term arbitrary more fully.

The word "arbitrary" means "arising from unrestrained exercise of the will, caprice, or personal preference" or "based on random or convenient

selection or choice rather than on reason or nature." Webster's Third New Int'l Dictionary 110 (1993); see also Black's Law Dictionary 100 (7th ed. 1999) (providing similar definition). This district court, interpreting a New Hampshire statute modeled after and similar in purpose and scope to *Chapter 93B*, defined arbitrary as follows:

The term "arbitrary" may be defined as being synonymous with bad faith or failure to exercise honest judgment. *Black's Law Dictionary* 96 (5th ed. 1979). And "bad faith", the opposite of "good faith", may be defined to imply the conscious doing of a wrong because of a dishonest purpose. *Id.* at 127.

New Hampshire Auto. Dealers Ass'n v. General Motors Corp., 620 F. Supp. 1150, 1157 n.20 (D. Mass. 1985); see also *Schott Motorcycle Supply v. Amer. Honda Motor Co., Inc.*, 976 F.2d 58, 63 (1st Cir. 1992) (defining "arbitrary" as "selected at random and without reason" for purposes of interpreting Maine statute).

Conclusions of Law

24. The parts supplied and the labor done on each of these automobiles are governed by § 1176 of the Franchise Law.
25. No Ford representative questioned whether Darling's had indeed performed the repairs on the two vehicles, nor did they question the amount of repair time spent on the leaky vehicle. Ford simply refused to pay the amounts Darling's sought.
26. Ford's refusal to pay Darling's the time it spent in labor on the recall vehicle, for which Darling's submitted Repair Order 236992, was arbitrary and in bad faith. Brandon Cuadra, Ford's on-site representative, approved the repair and his boss, Steve Lopez, told John Darling that he too believed that Ford should pay Darling's.
27. Ford's actions were arbitrary, it chose to dispute the claim without having a reason for doing so. Ford acted in bad faith, it failed to observe reasonable commercial standards of fair dealing in the trade. *Darling's Bangor Ford v. Ford Motor Company*, 1998 ME 232, ¶ 14, 719 A.2d 111, 116, and see *Coady Corp. v. Toyota Motor Distributors, Inc.*, 346 F. Supp. 2d. 225, 237.

28. Ford's refusal to pay Darling's the time it spent in labor on the leaky vehicle, for which Darling's submitted Repair Order 219021, was arbitrary and in bad faith. Anne Greene, Ford's on-site representative approved the time spent on the repair and her boss, Steve Lopez, told John Darling that he too believed that Ford should pay Darling's for the time.
29. In refusing to pay Darling's for the additional repair time on Repair Order 219021, Ford's actions were arbitrary, it chose to dispute the time without having a reason for doing so. Ford acted in bad faith, it failed to observe reasonable commercial standards of fair dealing in the trade. *Darling's Bangor Ford v. Ford Motor Company*, 1998 ME 232, ¶ 14, 719 A.2d 111, 116, and see *Coady Corp. v. Toyota Motor Distributors, Inc.*, 346 F. Supp. 2d. 225, 237.

Assessment of Penalties

30. When this Board finds that a manufacturer has violated the law, §1171-B requires it to impose a civil penalty of not less than \$1,000, nor more than \$10,000 for each violation. In determining the amount of the civil penalty, the Board considers the factors set out in 10 M.R.S.A. §1171-B (3):
- (a) the seriousness of the violation, including, but not limited to, the nature, circumstance, extent, and gravity of the prohibited act and the harm or potential harm created to the safety for the public;
 - (b) the economic damage to the public caused by the violation;
 - (c) any previous violations;
 - (d) the amount necessary to deter future violations;
 - (e) efforts made to correct the violation; and
 - (f) any other matters that justice may require.”
31. The Board considered the nature and circumstances of Ford's refusal to pay Darling's for its performance of the recall repair, Repair Order 236992, and all Board Members voted to impose a \$ 1, 000.00 civil penalty.

32. In the matter of the leaky vehicle, Repair Order 219021, the Board considered the nature and circumstances of Ford's refusal to pay Darling's for all of the time required to make the repair, along with Ford's previous violations and the fact that Ford did nothing to correct the violation until a Small Claims hearing was scheduled. The Board voted to impose a \$ 10, 000.00 civil penalty, with Board Members Charles Gaunce, William Sowles and Adam Lee voting in favor, and John Knight and William Dowling voting against that level of penalty.

At a public meeting on June 20, 2012, Board Members Adam Lee, John Knight, Bill Dowling and Bill Sowles voted to adopt this as the Decision and Order of the Franchise Board in this matter.

Wherefore,

Ford shall pay civil penalties in the amount of \$ 11, 000.00 to the Highway Fund pursuant to § 1171-B (3).

So Ordered.

Dated _____

Chairman, Maine Motor
Vehicle Franchise Board