



AMERICAN ARBITRATION ASSOCIATION
Consumer Arbitration Rules

In the Matter of the Arbitration between

Case Number: 01-24-0000-5086

Kim Muratori

-vs-

Mercedes-Benz of Fort Lauderdale

AWARD OF ARBITRATOR

I, Marc S Dobin, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, each represented by counsel (Eduardo A. Maura for the Claimant and Richard Ivers for the Respondent), at a virtual evidentiary hearing held on April 24 and 25, 2025, do hereby issue this INTERIM AWARD as follows:

The purchase of an automobile is likely the single largest purchase any person makes other than a house. In this case, the Claimant purchased an automobile for close to \$55,000, financing the balance remaining after her down payment of \$15,000. She executed a retail purchase agreement specifying that the mileage of the 2018 Mercedes E 400 coupe was 27,546. She was also told, and the contract specified, that the car was a certified preowned (“CPO”) vehicle. She purchased a warranty to extend the CPO warranty and other contracts to cover maintenance, dings, appearance, and tire damage. She signed a promissory note that provided for monthly payments of approximately \$901.54 for 60 months.

She initially brought the vehicle back to the dealership for what were essentially minor issues, including a second key to the vehicle that she was owed from the delivery on November 5, 2022. She was otherwise content with the vehicle until August 2023 when she was at a shopping center. Upon returning to her vehicle, which was parked tail in, she noticed that the front bumper cover was detached from the car. Upon further inspection, she discovered that the front bumper cover (or skin) was attached to the car using a zip tie. In a static situation, such as when parked, a loose front bumper skin is simply a cosmetic issue. However, if the bumper skin came loose at speed, it could become a safety issue.

She took the car to the dealer to have the loose bumper skin repaired. The loosening of the bumper skin is apparently such a common occurrence that Mercedes-Benz has a repair kit to remedy the situation. The Claimant was likely disappointed that her car was being held together in one spot by a zip tie, but the Respondent remedied the problem, whether it was required to do so under a warranty or not. The net result was that the Claimant did not have to pay for this repair. (R169, Invoice : 853297)

Later on, in November 2023, the Claimant noticed that the car was “running rough” in her words. She testified that she called her service advisor at Respondent’s dealership and he did not return the call. She testified that she was starting to feel uncomfortable with the dealership. She then took it to her trusted, independent, mechanic, Chrome Rose Automotive, with whom she had extensive prior dealings

for her prior car. Chrome Rose used a third-party automotive scanner to read error, codes, and other information from the car computer. This device is referred to as an Autel. The Autel diagnostic device advised the user of the displayed mileage on the odometer in the car's instrument cluster, but also displayed what it believed to be the mileage that was contained within computers in the car. The internal computers are believed to be more reliable than the instrument cluster, which can be replaced and forced to display an incorrect number.

The Autel device displayed significantly higher readings from the onboard computer than the instrument panel odometer.

In December 2023, the Claimant retained initial counsel (not trial counsel), who sent three demand letters to the dealership, which included a demand as required by the Florida Unfair and Deceptive Trade Practices Act ("FDUTPA"), advising the dealership of the mileage discrepancy as determined by the Autel diagnostic device. A second letter demanded insurance information and another letter revoked acceptance of the car and demanded that the dealer take the car back.

There was no response received to any of these letters.

In February 2024, the Claimant filed a demand under the consumer rules of the AAA by herself.

The Claimant retained the car and continued to drive it. However, around March 2024, the car developed a noise from the right front that concerned her. She took the car to a different independent mechanic, Davie Automotive, who advised her that the suspension components of the right front of the car were so deteriorated that the car was unsafe to drive. This was the same side of the car as the zip tie. Davie Automotive required that she sign a release so that she could drive it and they would be absolved of responsibility. (Cl.'s Exhibit 3)¹ As a result of the zip tie and mileage issues, and the Respondent's failure to respond to her lawyer's written demands, she felt uncomfortable having the respondent dealership, or any of the other dealerships under common ownership of AutoNation, working on the car. She took the car to Mercedes-Benz of Palm Beach where a written estimate was provided for the front-end suspension work as well as work on some underpanels of the body and reconditioning of the right front wheel. She chose to not have any of this work done, and her insurance company declined any insurance claim, as it was not related to a specific incident.

The Claimant retained subsequent counsel, who represented her throughout this proceeding. This counsel filed a detailed Statement of Claim setting out facts and claims in greater detail, including exhibits. The Respondent, represented by counsel, filed its answer and raised certain affirmative defenses.

The statement of claim specifies five individual counts. They are:

1. Violation of the Florida, Deceptive and Unfair Trade Practices Act ("FDUTPA");
2. Breach of express warranty;

¹ Respondent objected to the admission of Cl. Exh. 3 and it was admitted over objection. It was not admitted to demonstrate that the car was unsafe to drive. It was admitted to demonstrate the Claimant had taken it to a service shop and received an opinion on the state of some of the vehicle's components.

3. Fraud in the inducement;
4. Negligent misrepresentation; and
5. Promissory estoppel.

The Claimant introduced evidence and testimony that she purchased the specific car at issue because of its mileage and its status as a certified preowned car. She testified that her prior car lasted her for 180,000 miles. She stated that she likes to buy used cars, taking advantage of the depreciation hit that a prior owner may have taken, and then driving them for a long time. This car was attractive to her because of its mileage and CPO status. The mileage was set forth in the retail purchase agreement, and odometer disclosure and at least two different official applications to the state relating to title.

The government-mandated odometer disclosure contained a box that was checked. The document provided by the Respondent in discovery had an incomplete sentence associated with the check box. As it was displayed, the sentence made no sense. There is at least one other document in evidence that contains the entire sentence, which would have made the nonsensical sentence intelligible. However, in connection with both the Claimant's purchase, as well as the purchase by the prior owner, it appears that the Respondent checked this box. (R105 and R251) No explanation was given as to why this box was checked.

In the Motor Vehicle Title Reassignment Supplement (R117), the Respondent failed to check any box as to whether or not the odometer reading was accurate or inaccurate. Respondent did not check any box with respect to the prior owner's purchase of the vehicle (R115). However, what was clear from the testimony was that the Claimant relied upon the mileage reading contained in the retail purchase agreement. As such, this made the mileage reading a material part of the purchase contract between the Claimant and the Respondent.

As part of the purchase transaction, the Claimant acknowledged receipt of various documents, including a Carfax report, which is contained within the production and exhibits of the Respondent, and a CPO report, which is nowhere to be found. The Respondent produced a work order purporting to demonstrate that the car went through the CPO process in October 2022 (R120-123) but was unable to produce any records to show that all of the specific items were checked in the CPO checklist with respect to this car. In testimony, the representative of the Respondent told us that she is confident that the CPO checklist existed, and that we should simply take her word for it. The former general manager of the dealership testified that it was his practice to print out the Carfax and the CPO document, yet no CPO document has ever been located or re-printed. It should be obvious that a document that could be printed at the time of purchase should be capable of reprinting less than two years later. No reason has been given for the absence of the CPO checklist.

There was testimony that all repairs that the Claimant requested to have made on her car were covered under a warranty. While the disassembling bumper cover was troubling, it was fixed, and there was no testimony that it created a problem going forward. However, it clearly planted a seed in Claimant's mind that this car may not be what it was represented to be. Thus, when the Autel report showed that there was a discrepancy between the instrument cluster odometer reading and the onboard computer odometer reading, this created further question in her mind about whether this car was what it was represented to be when she purchased it.

The Claimant is experienced in business and knew that if this car was higher mileage and improperly maintained, it was worth less, and it may not have been eligible for a CPO warranty. It was acknowledged by both parties that a CPO warranty adds value to the car. As such, the Claimant rightly concluded that a problem with the odometer, combined with the bumper cover issue, might mean that the car was not what it was represented to be. Thus, she started investigating further into the condition of the car, while simultaneously retaining counsel and attempting to get the dealership to take back the car.

The Claimant acted promptly and reasonably in trying to determine the status of the car without involving the dealership that sold her the car, or its affiliates. After the arbitration was initiated, she dealt with both an independent shop as well as the franchise dealer in West Palm Beach. Both shops confirmed that there was a problem with suspension components in the car. There is a dispute as to whether or not the damage was due to misuse or simply wear items. The West Palm Beach dealer also documented damage to panels attached to the undercarriage of the car. The Claimant did not make any attempt to have the disputed suspension components repaired under warranty. The car has sat idle at the Claimant's residence for approximately one year while she continues to make payments on it and is driving alternate transportation that she purchased in approximately April 2024.

The Claimant introduced evidence from the owner of Chrome Rose Automotive, Joseph Angouand. He testified that the Autel device that he used was the top of the line and that he maintained the necessary licensing from its manufacturer to use the most current software. He testified that the instrument cluster showed the mileage of 39,179 while the Autel diagnostic device showed that the internal computers were indicating mileage of 114,688 km (approximately 71,263 miles according to Google.com). Chrome Rose Automotive is not a Mercedes-Benz dealership so it does not have access to the Xentry device. The Xentry device is exclusively available to franchise dealerships such as the Respondent.

Mr. Angouand authenticated the report, and identified the discrepancy between the instrument panel odometer display and the internal computer odometer reading. He testified that in his career on auto mechanics, which was seven years, he had never seen this discrepancy before. He testified that, if there is a discrepancy in the numbers, he would trust the car's internal computer readout over the instrument panel cluster readout.

The dealership presented testimony from four witnesses. The first witness, VB, was the first operator of the car pursuant to a lease. He testified that he did not drive the car very often, due to the international nature of his job, and the fact that if he went anywhere with his wife, they would take her car which was easier for her to get into and out of. He identified his signature on the odometer statement when he turned the car in at the end of the lease. The mileage on the odometer statement was 10,804 (R224).

The second witness was BP. He acknowledged that he owned the car and stated that he did not drive the car that much because he had at least two other cars. However, between his purchase of the car and subsequent trade-in of the car, he accumulated approximately 17,000 miles in 20 months. During that same period, the car received virtually no service, unlike when it was in the possession of the first operator. BP traded the car in for a Tesla model X at the respondent dealership. He executed an odometer disclosure statement stating that the miles were 27,546. However, a box was checked that contained the aforementioned nonsensical statement blamed on some sort of electronic glitch. (R251)

Both of these witnesses denied rolling back the odometer or otherwise tampering with the car.

The third witness was Ms. Donnell, who is currently the service manager at the dealership and has

worked there for a number of years. She was also present during the testimony of the four witnesses described above. Ms. Donnell described her familiarity with the car, the diagnostic systems and was prompted to point out that the Autel diagnostic device may give inaccurate readings because it is not provided by Mercedes-Benz. The Mercedes device that would read all of the onboard computers is called Xentry. Respondent has such a device.

The Xentry device can do an overall scan of the car's network, but can also interrogate individual computer components contained within the car. Ms. Donnell was familiar with most of those components and stated that those components would be able to provide a definitive mileage reading. Ms. Donnell stated that there would have been no additional cost to the dealership, other than the labor involved, for the Respondent to connect the subject vehicle to the Xentry system to determine the exact mileage. It should be noted that the Respondent did request a specific deadline of December 6, 2024, to inspect the Claimant's vehicle.

No inspection took place and no reason was given for why Respondent waived the right to inspection.

Ms. Donnell was asked if there was a reason why the vehicle was never connected to the Xentry system, and she could not provide an explanation other than to state that the matter was being handled by counsel. However, the Claimant disputed the odometer reading in December 2023, four months before Respondent's counsel appeared in this case. Counsel entered an appearance in March 2024. It is clear that all parties agreed that the Mercedes device would provide the most accurate reading. Ms. Donnell denigrated the accuracy of the Autel device, without any documentary evidence or other support for her theory that the Autel diagnostic device was inaccurate.

The simple solution here would have been for the Respondent, at some point after receiving the December 2023 letter from Claimant's first counsel (which included a FDUTPA demand), to arrange for the car to be examined, even if it was by another dealership, to confirm or deny the existence of the claimed odometer discrepancy. Instead, the Respondent chose to rely on the very readout that was in question, the instrument cluster odometer, along with two witnesses who simply signed documents that were based upon the same questioned odometer, at least one of which was prepared by the Respondent.

The final witness for the respondent was MoMo Muratti, who was the general manager of the dealership at the time of the purchase. He did not recall meeting the Claimant specifically, and testified about the thousands of people who have gone through the various showrooms where he has worked from the beginning of November 2022 until now.

He testified that it was his procedure to print out certain documents such as what the dealership prefers to as a "sales menu", recall notice, Carfax and CPO information. This information, in total, was referred to as the "deal jacket" by the witness. He did not testify to any interaction with the Claimant. He testified that the purchase agreement is prepared by the finance manager. All of the information that the witness was familiar with showed the odometer reading of 27,546. This reading comes from their system, which is recorded after a visual inspection of the instrument panel odometer readout. Neither one of the Respondent's employee witnesses testified that they use the Mercedes-Benz Xentry system to electronically verify that the instrument panel odometer readout is consistent with the onboard computers.

Mr. Muratti also testified that the CPO booklet would have been something that he printed out. However, that CPO booklet was **absent** from this arbitration. It was not produced by the Respondent to

the Claimant in discovery. It was not produced as an exhibit in this case. Ms. Donnell testified that she did not see it in the deal folder.

It is troubling to this arbitrator that a document identified by Mr. Muratti as one that he would have printed, which means it must have been stored, no longer exists in either electronic or hardcopy form. The logical conclusion, is that this document does not exist. While the records of the Respondent show that a CPO inspection was billed by the Service Department to the Pre-owned department, the Respondent did not produce a witness to verify that the work described on the work order, specifically the CPO inspection, was actually performed.

Mr. Muratti also testified that the used car manager, who is no longer employed by the dealership, or someone in their place, may have taken pictures of the vehicle when it was received in trade in September 2022. This would have been helpful to the arbitrator's inquiry. Furthermore, there was no testimony or evidence that the vehicle was put on a lift and examined from below. This was important because, in April 2024, Mercedes-Benz of Palm Beach discovered significant damage to underbody panels. Without either the checklist or testimony, the arbitrator is left to conclude that the thorough inspection of the car, as required by the CPO policies and brochure, did not occur in accordance with those policies and brochure. As a result, the baseline status of the car in November 2022 is unknown.

Based on the evidence and testimony presented, the arbitrator finds that it is understandable for the Claimant to believe that there was something wrong with the CPO process, and the verifiable status of the car. With no reliable evidence that an inspection was conducted, and uncontroverted evidence that the dashboard odometer display did not agree with the onboard computer read out, it is logical for the Claimant to conclude that there was something wrong with the car. This is particularly true after she discovered that the bumper skin was attached to the car with a zip tie, which is not a factory approved method of fastening this bumper skin.

The bumper skin itself is a significant topic. In the same work order for which the used car department was billed for CPO work, the technician noted by hand that the bumper skin needed work. (R124) Ms. Donnell agreed that the bumper skin was part of the sublet repairs listed on the work order. There is no evidence of the repairs performed by the independent repair shop. This unknown shop had possession of the car during a period of time and was unsupervised by the dealership. There was no testimony or evidence as to the problem with the bumper skin, but a logical conclusion is that there was damage to the skin and the independent shop chose to repair the situation with the unapproved zip tie.

The bumper skin, alone, would not be sufficient for this arbitrator to award any relief to the Claimant. However, the car was owned by someone who clearly did not maintain it for the 18 months in their possession, as the first operator, VB, did for his 3 years of use. According to the Carfax, even though BP drove the car for nearly 17,000 miles, no regular maintenance was performed on the car, including any oil change, until it was traded in.

The Car was taken in trade in September 2022. It needed new tires and new brakes. The technician performing this service noted that the brakes were vibrating. It is highly unlikely that the brakes were vibrating as soon as the car was traded in. Instead, this would have been a condition that existed during a period of time prior to the trade-in. BP, the second owner, did not take the time to have this common service performed. This was now going to be the third set of rotors and pads installed on this car in its five-year existence.

With this information as a backdrop, it seems that, at a minimum, the car had a hard life during the intervening period between the first operator's custody of the car and its sale to the Claimant.

The Claimant acted with proper speed after learning of the odometer discrepancy. She learned of the discrepancy in November 2023 and she retained a lawyer in December 2023 who made appropriate demands to the Respondent concerning the odometer discrepancy. The Respondent, after receiving the letter that alleged the odometer discrepancy, took no action. It would have been a simple matter of asking to Claimant to bring the car in, or take it to a neutral dealership, and connect the Xentry device to the OBD port and perform the proper inquiries. This was not done. To the extent that one wishes to attribute fault for why this arbitration was commenced, it primarily is placed with the Respondent. The Respondent's failure to properly and promptly address a customer complaint, making the serious allegation of an odometer discrepancy, clearly led to a loss of faith and confidence in the dealership and in the car.

The Claimant continued to drive the car until she started to experience a drivability issue, most notably, a noise coming from the car when she would turn the steering wheel. She took the car to an independent mechanic who diagnosed the problem as a suspension issue. The Claimant brought the car to another dealership for analysis, and repair, and the repair was treated by that dealership as a collision repair, not warranty. There was no testimony as to why this occurred.

Having been advised that the suspension components in the right front were worn, and not receiving any response from the Respondent to the initial demand letter, the Claimant decided to park the car, not drive it, and obtain an alternate form of transportation – – A Mini that she purchased for \$12,000.

This is likely an instance where poor customer service, and the lack of responsiveness of the dealership, led to litigation.

AAA Consumer Rule R-44 provides

The arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law(s) that applies to the case.

The arbitration clause in the Retail Purchase Agreement states, in pertinent part:

The arbitration will be conducted by a single arbitrator ("Arbitrator") who shall follow controlling law and issue a reasoned decision in writing with a supporting opinion based on applicable law.

An arbitrator sits in equity. An arbitrator is not bound by traditional remedies and may fashion their own. Fla. Stat. 682.11(3)

As to all remedies other than those authorized by subsections (1) and (2), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under s. 682.12 or for vacating an award under s. 682.13.

FDUTPA (Fla. Stat. 501.976).

As the Claimant pointed out, FDUTPA designates an “unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to”:

(3) Represent the previous usage or status of a vehicle **to be something that it was not**, or make usage or status representations **unless the dealer has correct information** regarding the history of the vehicle to support the representations. [emphasis added]

(4) Represent the quality of care, regularity of servicing, or **general condition of a vehicle unless known by the dealer to be true and supportable by material fact**. [emphasis added]

(5) Represent orally or in writing that a particular vehicle has not sustained structural or substantial skin damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or her or her agent to determine whether the vehicle has incurred such damage.

As to subparagraph (3), the arbitrator makes several findings. Initially, it should be noted that Respondent’s Exhibit 114, the title application, misrepresents the prior use of the vehicle. There is a series of check boxes for prior use. The box marked personal was checked. There was also a box that should have been checked for “long-term lease”. This box was not checked. While the Claimant testified that it would not have mattered if the car had come off lease, she actually anticipated that it was likely a leased car. This is indicative of the sloppiness with which this transaction was handled.

Furthermore, the mileage on this application was taken from the odometer. The simple step of connecting the Xentry device to ensure that there was no tampering with the onboard computer system, including changing the odometer reading, was not performed. According to the work order, the technician spent 2.2 hours looking at the car. The record is devoid of any description of the work performed, if any. The arbitrator is unable to determine if this was a standard charge of 2.2 hours or for work actually performed. Without the CPO checklist, the arbitrator cannot conclude that any of this work was performed. The only conclusion based on this evidence is that the service department charged the used car department, but cannot prove that an actual physical inspection was performed. Therefore, with the current allegation of an odometer discrepancy, as well as the lack of the CPO checklist, I find that the dealership violated section 501.976 (3) of FDUTPA.

As to section 4, the dealer was not permitted to represent the quality of the vehicle, unless the quality was known to be true and supportable by material fact. In this case, the dealer represented that the vehicle was a CPO vehicle, which implied certain inspections, but is unable to prove the details of the inspection through the CPO checklist. The dealership can prove that there was an internal charge for an inspection, but there is no evidence that anything but a cursory inspection was conducted of the vehicle. Therefore, a representation that the vehicle was a CPO vehicle, without the required Mercedes-Benz CPO brochure, which includes signature lines for acknowledgment from the technician, service manager, used car manager and the customer, the sale of this vehicle violated 501.976 (4) of FDUTPA.

As to section 5, the dealership was prohibited from making representations about substantial skin damage to the car, unless the dealership knew for a fact that there was no such substantial damage. The

evidence demonstrates that the bumper skin of the vehicle was an area of concern for the technician who performed the visual inspection.² The evidence also indicates that the bumper skin was likely a sublet repair for which the vehicle left the possession of the dealership. There is no indication or testimony that, upon its return, the vehicle was further inspected as to the quality of the repairs. Based on the evidence, it appears that an unauthorized method of repair was used, either by a prior owner or the independent shop, that was undiscovered by the dealership or the independent shop.

A representation concerning the body skin and the safety of the vehicle is integral to a representation that the vehicle was a CPO vehicle. Therefore, even though the dealership cannot demonstrate that the CPO procedures were followed, the evidence is clear that the vehicle was represented to the Claimant as a CPO vehicle, implying such an inspection. As a result, the arbitrator finds that the Claimant has sustained her burden of proof as to 501.976 (5) pf FDUTPA.

The Respondent introduced the Vehicle Master Inquiry (“VMI”) (R176) to demonstrate that the car was registered with Mercedes-Benz as a CPO vehicle. Respondent claimed that the car could not be registered as CPO without the performance of the inspection. Yet, there is no evidence of the inspection or the compliance with Mercedes-Benz procedures. The VMI is dated April 11, 2023. The Mercedes-Benz CPO Policy manual, (R259), has strict procedures for the processing of the CPO checklist. It is supposed to be stored either in hard copy, electronically, or both. It is required to be made available for inspection by Mercedes-Benz. This important checklist, with its required signatures, was never produced.

Having proved the liability elements of her case, the only step left was for the Claimant to prove her damages. While the position of the Respondent is correct, that the Claimant failed to introduce evidence of the value of the car had it been properly represented, there is evidence of damages incurred by virtue of the above-described misrepresentations. These amounts are described in the Retail Purchase Agreement (R6). These include the MB CPO extended warranty, the prepaid maintenance, two protection packages, the tire and wheel package, in addition to assorted fees and taxes. None of these provable and demonstrable amounts would have been expended if the Respondent had properly represented the nature and quality of the car.

As such, the Arbitrator finds in favor of the Respondent under FDUTPA in the amount of \$14,254.62.

This is not an award of damages on the price of the car. This is an award of damages for the misrepresentation of the car, in violation of FDUTPA, that resulted in the Claimant’s expenditure of unnecessary sums. The Respondent is correct that the purchase of the car, itself, cannot be addressed through FDUTPA, but the ancillary expenses that directly resulted from Respondent’s misconduct are quantifiable. As such, damages are properly awarded.

Having found that the Claimant has prevailed on her FDUTPA claim, the Claimant is entitled to her attorneys’ fees. The Claimant shall submit a fee application within fourteen days of the service of this award. The Respondent shall serve a rebuttal to the amount of fees within fourteen days of service of

² The work order demonstrates that the technician at least performed a perfunctory exterior examination of the car. The items noted by hand on the work order would not require anything more than a walk-around of the car and a tire tread depth gauge.

Claimant's application.

Breach of Express Warranty

A claim under Florida law for Breach of Express Warranty requires the Claimant to show:

The seller makes an affirmation of fact, a promise, or a description relating to the goods;

That affirmation, promise, or description becomes part of the basis of the bargain; and

The goods fail to conform to that affirmation, promise, or description.
Royal Typewriter Company v. Xerographic Supplies Corporation, 719 F.2d 1092 (11th Circuit, 1983)

The arbitrator finds that, based upon the un rebutted evidence that the stated mileage at the time of purchase was not accurate, the dealership breached an express warranty.

The dealership expressly warranted, in the contract, that this vehicle had 27,564 miles. The Claimant presented evidence based on the car's own electronics proving that the mileage on the instrument panel odometer was disputed. The Respondent had any number of opportunities to definitively disprove the Claimant's assertion and deliberately chose not to. One can only assume that the dealership chose not to do so because it was concerned about the result.

Since the dealership did not produce any evidence, other than evidence based upon the questioned instrument panel odometer, the arbitrator finds that the representation that the mileage was 27,564 was inaccurate.

By failing to introduce the best evidence of the true mileage on the car, when afforded the opportunity to do so, the Respondent left itself open to the un rebutted testimony of Mr. Abouang that the instrument panel odometer was inaccurate.

The lengthy discussion of the representation of the CPO status of the car in the FDUTPA section, above, applies here as well. The representation of CPO status is a breach of an express warranty in the contract. (R44, Section 3)

Since this transaction would not have occurred but for the express warranty on its condition, rescission is the appropriate remedy here. The rescission damages are outlined below.

Fraud in the Inducement

A claim under Florida law for Fraud in the Inducement requires the Claimant to show

1. False Statement of a Material Fact;
2. Knowledge of Falsity;
3. Intent to Induce Reliance;

4. Justifiable Reliance; and
5. Damages

Based upon the un rebutted testimony concerning the odometer reading, the Claimant proved every element except that of “Knowledge of falsity”. While the dealership may have been grossly negligent in failing to use the Xentry device each time the vehicle was remarketed, this does not meet the burden for “knowledge.”

However, as to the representation that the car was a CPO vehicle, the lack of evidence that the CPO check was actually performed, including the lack of the signed CPO brochure from the technician, service manager and pre-owned manager, creates a reasonable presumption that the work was not done. The General Manager should have determined that the car was represented as a CPO car when he did not have the signed CPO brochure in his possession. This creates a presumption of knowing blindness to the falsity of the representation.

Even though a CPO warranty was in place, having a warranty that fixes an otherwise non-certified car would not accomplish the Claimant’s stated goals. The CPO representation is commonly seen as a car that has been checked in accordance with the program. Other than the billing, which does not specify that the exact work specified by the Mercedes-Benz program was done, there is no evidence that the car was inspected with the level of detail represented by the program brochure.

Reliance and damages then followed as a result of a transaction that would not have occurred if the dealership had disclosed that the CPO work was not performed. Rescission is available as a remedy in this situation as well. *Mazzoni Farms, Inc., etc., Et Al., V. E.I. Dupont De Nemours and Company, etc.* 761 So.2d 306 (Fla., 2000)

Damages are measured under Florida law by placing the injured party in the position they would have occupied had the misrepresentation not occurred. See *Rollins, Inc. v. Butland*, 951 So. 2d 860 (Fla. 2d DCA, 2006). Since the Claimant would not have bought the car in the first place, rather than negotiate a lower price due to its non-certified status, rescission is appropriate.

Negligent Misrepresentation

A claim under Florida law for Negligent Misrepresentation requires the Claimant to show:

1. A misrepresentation of a material fact;
2. The defendant either knew the statement was false, made the statement without knowledge of its truth or falsity, or should have known the statement was false;
3. Intent to induce reliance;
4. Justifiable reliance by the plaintiff; and
5. Damages

The misrepresentation of material fact is twofold. First, there is the odometer reading. Because of the un rebutted testimony as to the computer readout from the car, the Arbitrator finds that the mileage

represented in the contract was materially misrepresented. The dealership did not independently verify the odometer statements executed by the two prior users of the car through use of the device that the Respondent exclusively controls. The testimony was that it would take approximately 15 minutes to hook up the machine and obtain the mileage reading. There were individual components that could also be interrogated, in case there was a wide variation. The testimony was that this was not done prior to the sale of the car. In fact, this has never been done, even though the dealership maintains that the Xentry machine would be the most accurate measure of the mileage on the car. And the dealership was well aware that the mileage of the vehicle was a central issue in this case.

Additionally, the dealership should have known that the representation that the car was fully inspected under the CPO program was false, or made the statement without knowledge as to its truth or falsity. This is demonstrated by the absence of the signed checklist that is part of the procedure for the CPO inspection. The absence of this business record can be reasonably interpreted against the dealership as it is a required business practice to maintain this record. The technician would have known this. The general manager of the dealership would have known this. The used car manager would have known this. And the service manager would have known this. Nowhere in the sales process did anyone point out that there is no evidence that the inspection actually took place. Furthermore, there is no evidence that the Claimant was asked to sign an acknowledgment in the CPO checklist.

As to the element of intent to induce reliance, this was a car that had been on the road just under five years and only had 27,000 miles on its odometer, according to the contract. Thus, an average of 5400 miles per year, which is a low mileage car. This would increase the value of the car, even without the CPO representation on top of it. With the CPO representation, that a thorough inspection was conducted, this representation was made to induce the plaintiff to pay more money for the purchase of the car and also to provide assurance to the Claimant that she was buying a car that had been thoroughly inspected. However, the dealership did not produce the relevant, specific, evidence indicating that a thorough inspection was, in fact, conducted.

This CPO representation, which induced the contract, also enabled the dealership to sell almost \$10,000 worth of additional packages.

With these facts in mind, as to both the mileage and the CPO inspection, the Claimant was justified in relying on the representations made by the dealership. Her damages could be measured in several ways, but this transaction was voidable *ab initio* because of the misrepresentations made at the time of formation of the contract. There was no meeting of the minds. Therefore, the contract can be voided at the Claimant's option, which her prior counsel demanded in December 2023.

The arbitrator finds that the appropriate remedy in this case is rescission as described below.

Promissory Estoppel

Generally, under Florida, a promissory estoppel claim cannot exist where there is a written contract. This is to honor the sanctity of contracts.

As the Claimant has asserted, and prevailed upon, a claim for Fraud in the Inducement, there is no need to engage in a tortured analysis of Promissory Estoppel and any exception that may apply.

In this case, the arbitrator chooses to abide by the well-recognized position that Promissory Estoppel

does not apply where a written contract exists. Accordingly, the Claimant's claim for Promissory Estoppel is denied.

Remedy Ordered

1. Claimant is awarded the sum of \$14,254.62 under FDUTPA (the "FDUTPA Damages"). Claimant, as the prevailing party, is entitled to an award of attorneys' fees. The defined term, FDUTPA Damages, does not include attorneys' fees, which are a separate award.
2. It should be noted that, in addition to the damages demand under FDUTPA, Claimant's first counsel also revoked "acceptance" of the vehicle in a separate communication. This communication was not controverted by the Respondent. It was clear from the communications made in December 2023 that the Claimant wished to return the car in exchange for a return of the consideration given to purchase it. Therefore, a requirement to take the car back under this award should come as no surprise to the Respondent. The Respondent would then be free to use the Xentry device to confirm the actual mileage and make the necessary representations to any subsequent purchasers as to the car's CPO status and odometer accuracy.

Respondent produced a CarFax report that attributes a value of over \$28,000 to the vehicle. This assumes, of course, that the odometer is accurate and that there are no other problems with the vehicle.

The dealership shall pay to the Claimant the sum of \$51,971.82 (the "Rescission Damages") upon the return of the vehicle to the dealership and execution of the necessary documents to transfer title to the dealership. As the vehicle may not be in roadworthy condition, the dealership shall, at its own expense, arrange for the vehicle to be towed to its facility. The awarded amount shall be increased by \$901.54 for each loan payment made by the Claimant after April 25, 2025 until the dealer takes possession of the vehicle and satisfies the monetary portion of this award. In the event that the Respondent pays to Claimant any or all of the FDUTPA Damages, then the Rescission Damages shall be reduced by such payment.

The Respondent may take issue with rescission as the remedy. The Statement of Claim sought "...any such further relief that the Arbitrator deems just and proper." The Respondent's Answer and Affirmative Defenses requested "...such other and further relief as is just and proper." The arbitrator finds that it is just and proper to return the Claimant's purchase price less a deduction for some use of the vehicle. The arbitrator finds it is more than just and proper to require the Respondent to figure out a way to market the vehicle once it is in Respondent's possession because it is clear to the arbitrator that there was a 15-minute fix to this problem that the Respondent failed to implement.

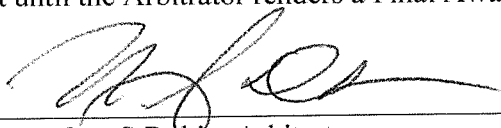
Interest shall accrue on the entire award, including any loan payments, at the Florida judgment rate commencing thirty days from the issuance of this award.

3. All other requested relief, except for Claimant's amount of attorneys' fees, is denied.

This Interim Award is in full settlement of the merits of all claims submitted to this Arbitration, except for the determination of reasonable attorney fees and costs in favor of the Claimant as set forth above. The Arbitrator retains jurisdiction to address Claimant's claims for reasonable attorney fees and costs. Claimant shall submit their accounting of such reasonable attorney fees and costs and any

supporting documents related thereto to the Arbitrator within fourteen (14) days of the date of this Interim Award. Respondent shall submit any responsive statement and supporting documents within fourteen (14) days of this Interim Award. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.
This Interim Award shall remain in full force and effect until the Arbitrator renders a Final Award.


May 23, 2025
Date



Marc S Dobin, Arbitrator

I, Marc S Dobin, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my Award.

May 23, 2025
Date



Marc S Dobin, Arbitrator