

THE DISTRICT OF COLUMBIA BAR

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SECTION

Antitrust, Trade Regulation
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Antitrust
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Mr. Donald G. Murray
Acting Director
D.C. Department of Consumer
and Regulatory Affairs
614 "H" Street, N.W.
Washington, D. C. 20001

and

Edith Barksdale Sloan, Esquire
Chair
D.C. Board of Consumer Claims
Arbitration
614 "H" Street, N.W.
Washington, D. C. 20001

Re: The D. C. Board of Consumer Claims
Arbitration

Dear Mr. Murray and Ms. Sloan:

It has come to the attention of this Committee^{1/} that consumers who seek to recover incidental and consequential damages such as car rental expenses or loss of wages through the D.C. Board of Consumer Claims Arbitration ("the Board") are advised that the Board has no authority to award same.

^{1/} The views expressed herein represent only those of the Consumer Affairs Committee of Section 2 (Antitrust, Trade Regulation and Consumer Affairs) of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

This may be illustrated by the case of Semple v. Volkswagen of America, Case No. 86-1982. In Semple, the consumer filed a Complaint seeking to obtain a refund or replacement of a car she alleged was a "lemon." She also sought compensation for the expenses she incurred for transportation while her alleged "lemon" was in the shop for (unsuccessful) repairs, and for the time she missed from work. The Board's staff indicated to the consumer that incidental and consequential damages such as these could not be part of the arbitration. The case then went forward on her request for a refund or replacement. Following a hearing, the Board found in her favor. It awarded her the option to elect a refund or comparable replacement vehicle. However, the Board never considered her claim for reimbursement of her expenses for alternative transportation, or her claim for compensation for the time she missed from work.

In Semple, and apparently in other cases as well, a consumer's claim is processed without any mention of the consumer's request for incidental and consequential damages. These damages in individual cases may easily exceed \$1,000.00 and will be of great concern to the consumer.

In our view, the Board not only has the authority to award incidental and consequential damages in a proper case, it has the duty to do so. In establishing the Board, the Council wished to create a forum for the inexpensive and quick resolution of consumer disputes and to encourage consumers to utilize the Board in an effort to resolve their problems, rather than having to hire a lawyer to file suit. Consistent with this objective, the Council provided in D.C. Code § 40-1303(q) (2) that:

The arbitrator or arbitration panel may award the relief provided by this act, any relief available under any other law, and reasonable attorneys' fees....(emphasis supplied)

By including language which empowers the Board to award "any relief available under any other law," the Council sought to make the Board a forum co-equal to that of D.C. Superior Court. If, however, the Board will consider awarding consumers only a fraction of the expenses or damages they have incurred, consumers may well opt to bypass the Board and simply file suit in D.C. Superior Court, which can award the full relief they seek. Clearly, the Council sought to avoid this scenario by enabling the Board to award anything the Court could award. Were consumers to file suit without first seeking a resolution of their complaints through the Board, the purpose of the Automobile Consumer Protection Act of 1984 would be frustrated.

Under D.C. Code §§ 28:2-714 and 28:2-715, consumers who have a valid claim for breach of an express or implied warranty usually are entitled to recovery of incidental and consequential damages. Moreover, pursuant to D.C. Code §§ 28:3904(x) and 28:3905(k)(1), where a consumer proves a breach of warranty, the defendant manufacturer has committed an unlawful trade practice which exposes it to liability for treble damages.

This Committee believes that the D.C. Department of Consumer and Regulatory Affairs should advise consumers who file a Complaint with the Board of their entitlement to seek all remedies provided by law, and should assure that the Board's staff is fully cognizant and protective of these rights. The remedies available through the Board include not just the lemon law remedy of refund or replacement, but also a consumer's right to recover such incidental and consequential damages as towing and car rental expenses, and treble damages. The Board's rules should spell this out for the benefit of interested parties.

We would appreciate learning your views on the matters raised by this letter.

Sincerely,

Mark H. Steinbach

Paul Pumpian
Co-chairpersons
Consumer Affairs Committee

MHS:PP:vb