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## AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Case Number: 01-15-0004-9083

[REDACTED] (“Claimants”)

-vs-

DriveTime Credit Company and (“Respondents”)

DriveTime Car Sales Company, LLC

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### AWARD OF ARBITRATOR

I, Linda Bond Edwards, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement dated August 23, 2014 entered into by the above-named parties, and having been duly sworn, and oral hearings having been waived in accordance with the Consumer Arbitration Rules, and having fully reviewed and considered the written documents submitted to me, do hereby, AWARD, as follows:

In August 2014, Claimants in this case, [REDACTED] purchased and financed a 2006 Ford Escape from Drive Time Car Sales and Drive Time Credit Company. The purchase price of the vehicle was \$13,381.33 less the \$800.00 down payment. Additional fees and costs brought the amount to be financed to \$17,034.43. The total sale price of the vehicle, including the down payment was \$32,306.05. Claimants agreed to pay 65 payments of \$477.37 and one payment of \$477.00 beginning on September 20, 2014.

By October 21, 2014, when Claimants failed to make any payments, Respondents repossessed the vehicle and sent Claimants a letter advising of future actions regarding the vehicle. Upon taking this action, Respondents triggered the requirements of Chapter 9 of the UCC, Florida Statutes Chapters 679.614 and 679.620. Because this repossession involved a consumer transaction, Section 679.620 (3)(b)(2) contains strict statutory requirements for Respondents to follow.

The notice that Respondents sent to Claimants is facially deficient. Claimants cite to *Muro v. Hermanos Auto Wholesalers*, 514 F.Supp. 1343 (S.D. Fla. 2007) as authority to establish their right to the statutorily defined damages.

In *Muro*, the court awarded the plaintiff statutory damages based on the defendant’s deficiencies regarding the notice of the sale of a repossessed vehicle. As Claimant correctly pointed out, all of the cases cited by Respondents are commercial transactions rather than consumer transactions.

According to the UCC commentary to § 679.614, “[a] notification that lacks any of the information set forth in paragraph (1) is insufficient as a matter of law.” Moreover, the damages provision set forth in 679.625 (3)(a)(b) are specific to consumer goods and states.

(3) Except as otherwise provided in s. 679.628:

(a) A person who, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for the person’s loss; and

(b) *If the collateral is consumer goods*, a person who was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit

service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price. [Emphasis added.]

Because Respondents do not dispute the non-compliance required by the Statute, Claimant is entitled to damages as follows:


Credit Service Charge:	\$14,471.62
10% of the principal amount of the obligation: (\$17,034.43)	1,703.44
Total Damages to Claimant	\$16,175.08

Claimant is also entitled to the payment of attorney fees and costs of \$6,080.00 incurred to litigate this action. Respondents shall also pay the costs of the arbitration in accordance with American Arbitration Association (AAA) rules. Payment of Claimant's damages and attorney fees shall be made within 30 days of the date of this Award.

The administrative fees of the AAA totaling One Thousand Seven Hundred Dollars and Zero Cents (\$1,700.00), and the compensation of the arbitrator totaling Seven Hundred Fifty Dollars and Zero Cents (\$750.00) shall be borne by Respondents. Therefore, in accordance with the parties' agreement, Respondents shall reimburse Claimants the sum of Two Hundred Dollars and Zero Cents (\$200.00), representing that portion of said fees in excess of the apportioned costs previously incurred by Claimants.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

5/26/16  
Date

  
Linda Bond Edwards, Arbitrator