

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIANE M. BOULDS, Appellant,) No. ED92967
)
vs.) Appeal from the Circuit Court of
) St. Louis County
DICK DEAN ECONOMY CARS, INC.,)
Respondent.) Filed: January 12, 2010

OPINION SUMMARY

Diane M. Boulds appeals from the judgment of the Circuit Court of St. Louis County granting Dick Dean Economy Cars, Inc.'s ("Dean's") motion to dismiss her claim under the Missouri Merchandising Practices Act ("MMPA") based on the arbitration agreement contained in the parties' contract to purchase a car. Boulds contends that the trial court erred in granting Dean's motion because: (1) Dean waived its right to enforce the arbitration agreement by refusing to arbitrate upon Boulds' demand and failing to comply with the American Arbitration Association's ("AAA's") Consumer Rules as required by the parties' agreement; and (2) the one-year limitations period contained in the arbitration agreement is unconscionable and should not be enforced.

REVERSED and REMANDED

Division Two Holds: The trial court erred in granting Dean's motion to dismiss based on the parties' arbitration agreement because Dean waived its right to enforce the agreement by: (1) having knowledge of its rights under the arbitration agreement; (2) acting inconsistently with those rights by refusing to arbitrate upon Boulds' demand and failing to comply with the arbitration agreement's procedural provisions; and (3) thereby prejudicing Boulds by leaving her no option other than to seek resolution of her claims in circuit court. Additionally, Dean's belief that Boulds' demand for arbitration was untimely does not excuse its refusal to arbitrate. The question of whether a demand for arbitration is untimely is within the exclusive province of the arbitrator.

Opinion by: Patricia L. Cohen, J. Sherri B. Sullivan, P.J., Robert G. Dowd, Jr., concur.

Attorney for Appellant: Mitchell B. Stoddard

Attorney for Respondent: Charles H. Steib

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**