OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2013 - September 2013 (3rd Quarter)

NONCONFORMITY 681.102(15), F.S.. (2013)

Razaghi v. Volkswagen/Audi of America, Inc., 2013-0141/TPA (Fla. NMVAB July 2, 2013)
The Consumer complained that intermittently, the driver's side window would not fully close in her 2012 Volkswagen Beetle. The window would go "only half way" up and then "drop" back down. When that occurred, she had to manually click the window up, or pull over to the side of the road, shut the engine off and restart. Eventually, the passenger front window would not fully close and the driver's front door would not close. She was concerned about rain and debris entering the vehicle. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle; alternatively, if there were a nonconformity, it was repaired within a reasonable number of attempts. The Manufacturer's witness testified that he was involved at the last three repair attempts. In his opinion, the "pinch protector" in the window motor was "too sensitive," causing resistance inside the motor which would prevent the window from moving all the way up. He believed that the last updated control module fixed the problem, because the dealership had not been able to duplicate the problem since it was installed. The Board concluded that the driver's side window not fully closing substantially impaired the use, value and safety of the vehicle, thereby constituting a nonconformity as defined by the statute and the applicable rule. Accordingly, the Consumer was awarded a refund.

Nguyen v. Hyundai Motor America, 2013-0119/ORL (Fla. NMVAB July 9, 2013)
The Consumers complained of a defective Infinity System in their 2012 Hyundai Santa Fe. The backup camera feature of the Infinity System did not work at the Consumer's house and garage, the navigation feature of the system gave incorrect directions, the radio did not work properly, the Bluetooth would "randomly unsync" with her phone so that she had to pull over and resync her phone, and sometimes the Bluetooth did not work at all. The navigation, Bluetooth and backup camera features were important to the Consumer when she made the choice to purchase the vehicle. She noted that her husband also had a Hyundai vehicle and the backup camera in his vehicle always worked at their house and garage. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the vehicle. The Manufacturer's representative at the hearing had no personal knowledge of the repairs made to the Consumers' vehicle and had merely reviewed the repair orders. The Manufacturer did not present any testimony from a technician or other witness with firsthand knowledge. The Board concluded that the defective Infinity System substantially impaired the use, value and safety of the vehicle, thereby constituting one or more nonconformities. Accordingly, the Consumers were awarded a refund.

Trindade v. Ford Motor Company, 2013-0093/WPB (Fla. NMVAB July 26, 2013)
The Consumer complained that intermittently, her 2010 Ford Mustang would not start on the first try. There were times when the vehicle did not start on the second try, either. Sometimes the "no-start" condition happened three times in one day, and at other times three or four days went by before it occurred again. The vehicle had exhibited the intermittent "no start" condition since the Consumer purchase it; however, it was not until after the engine would not start at all that she brought the vehicle to the Manufacturer's authorized service agent for repair. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. Although the word "verified" was written on a repair order prepared by the Manufacturer's authorized service agent, the Manufacturer's witness testified he really was not sure the Service Director actually "verified" the no-start condition; rather, he believed the word "verified" was written on the repair order so the dealership would receive payment from the Manufacturer. The Board concluded that the intermittent no-start condition substantially impaired the value of the vehicle, thereby constituting a nonconformity. The Consumer was awarded a refund.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), F.S.

Defect does not substantially impair use, value or safety of vehicle §681.104(4)(a), F.S.

Kasdaglis v. Hyundai Motor America, 2013-0096/ORL (Fla. NMVAB July 5, 2013)
The Consumer complained that his 2012 Hyundai Tucson did not achieve the fuel mileage represented at time of purchase. The Consumer asserted that he should be achieving 31 miles per gallon combined highway and city driving, but instead was getting 27 to 29 miles per gallon. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Hyundai District Parts and Service Manager pointed out that, according to his own testimony, the Consumer appears to be getting fuel mileage "well-within the range" expected. The Board concluded that the fuel mileage condition complained of by the Consumer did not substantially impair the use, value or safety of the vehicle so as to constitute one or more nonconformities as defined by the statute. Accordingly, the case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Mizrahi/Kelly v. BMW of North America, LLC., 2013-0116/FTL (Fla. NMVAB July 29, 2013)
The Consumers' 2011 BMW 335i was declared a "lemon" by the Board. The Consumers requested reimbursement of $150.00 for insurance charges paid when they rented cars that were not provided to them by the service agent, as incidental charges. The Board granted the request and awarded the Consumers the $150.00.

Prinz Von Sachsen v. Mercedes-Benz USA, LLC., 2013-0122/WPB (Fla. NMVAB September 5, 2013)
The Consumer's 2012 Mercedes-Benz CL63 was declared a "lemon" by the Board. The Consumer requested reimbursement of the following as an incidental charge: $117.47 for a one-night hotel stay in Baton Rouge, Louisiana on April 24, 2013, where the vehicle broke down and had to be towed as a result of the nonconformities. The Manufacturer objected to reimbursement for the hotel stay, arguing that, since the Consumer was on his way back to Florida from a trip to California when the car broke down, he would have incurred hotel charges as a result of the trip regardless; therefore, the charge was not caused by the nonconformities. The Consumer testified that the breakdown of the vehicle occurred at night and he had to wait three hours for the tow truck to arrive. On April 25, 2013, he had to get a loaner vehicle from the Baton Rouge dealer to finish his trip, because his car had to remain at the Louisiana dealership for several more days. The Board awarded the Consumer the $117.47 for the one-night hotel stay in Baton Rouge, Louisiana, which was directly caused by the nonconformities.

Net Trade-in Allowance §681.102(19), F.S.

Halverson v. Mercedes-Benz USA, LLC., 2013-0183/FTL (Fla. NMVAB August 23, 2013)
To acquire the "lemon" vehicle, the Consumer traded-in a used 2007 BMW 750Li, encumbered by debt in the amount of $24,621.70, for which a gross trade-in allowance of $17,000.00 was assigned, resulting in a net trade-in allowance of $(7,621.70), according to the lease agreement. The net trade-in allowance reflected in the lease agreement was not acceptable to the Consumer. Pursuant to Section 681.102(18), Florida Statutes, the Manufacturer produced the NADA Official Used Car Guide (Southeastern Edition) (NADA Guide) in effect at the time of the trade-in. According to the NADA Guide, the trade-in vehicle had a base retail price of $30,950.00. Adjustment for mileage and accessories as testified to by the Consumer and/or reflected in the file documents, resulted in a total retail price of $28,350.00. Deduction of the debt resulted in a net trade-in allowance of $3,728.30. The Manufacturer, through counsel, requested that the Board utilize the gross trade-in allowance reflected in the lease agreement or, alternatively, that the Board reduce the NADA Guide total retail price assigned to the Consumer's trade-in vehicle, because the vehicle had been in two accidents. Section 681.102(18), Florida Statutes, states, in pertinent part:

> "[A]ny allowance for a trade-in vehicle" means the net trade-in allowance as reflected in the purchase contract or lease agreement if acceptable to the consumer and manufacturer. If such amount is not acceptable to the consumer and manufacturer, then the trade-in allowance shall be an amount equal to 100 percent of the retail price of the trade-in vehicle as reflected in the NADA Official Used Car Guide (Southeastern Edition) ... in effect at the time of the trade-in. The manufacturer shall be responsible for providing the applicable NADA book. [Emphasis added.]

The only alternative to the net trade-in allowance reflected in the lease agreement was the retail price in the applicable NADA Guide. The Manufacturer provided the pertinent pages of the applicable NADA Guide as required by the above-quoted statutory provision. The Board declined the Manufacturer's request.

Reasonable Offset for Use §681.102(20), F.S.

Halverson v. Mercedes-Benz USA, LLC., 2013-0183/FTL (Fla. NMVAB August 23, 2013)
The Consumer's 2013 Mercedes-Benz C250 was declared a "lemon" by the Board. The agreed upon value in the lease agreement, for the purpose of calculating the statutory reasonable offset for use, was $35,695.28. Mileage attributable to the Consumer up to the date of the New Motor Vehicle Arbitration Board hearing was 13,125. Application of the statutory formula resulted in a reasonable offset for use of $3,904.17. The Consumer requested that the Board use the mileage up to the date of a settlement offer letter she had received from the Manufacturer, although she acknowledged that she did not accept the offer. The Manufacturer, through counsel, objected to the Board using that date, arguing that it did not reach a settlement agreement with the Consumer; therefore, the Board should use the mileage up to the date of the arbitration hearing to compute the offset. Since there never was a settlement agreement between the parties, the Board denied the Consumer's request that the mileage up to the date of the settlement offer letter be used to calculate the offset.