OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2016 - March 2016 (1st Quarter)

JURISDICTION:

Motor Vehicle §681.102(14), F.S.

Mann v. Ferrari North America Inc., 2015-0506/MIA (Fla. NMVAB January 26, 2016)

The Consumer purchased a new 2013 Ferrari FF after an internet search conducted from her home in Miami Shores, Florida. She purchased the vehicle from Ken Garff Ferrari of Salt Lake, which is located in Salt Lake City, Utah. Negotiations for the vehicle were conducted by the Consumer from her Miami Shores residence. As part of the purchase, the Consumer paid Florida sales tax, as well as Florida title and registration fees; no taxes were paid to the State of Utah. The vehicle was registered and titled only in Florida, and was never issued a temporary plate from Utah. The Consumer testified that she viewed the sale as a Florida sale, because she would receive delivery of the vehicle in Florida, and she paid the Florida sales tax rather than the Utah tax. The boilerplate purchase documents from Utah were signed by the Consumer while in her home in Florida, and returned to the dealer in Utah using a prepaid Fed Ex envelope that was provided to her. The vehicle was delivered to the Consumer's residence in Florida by the Utah dealer, who had also arranged for pick up and transport of the Consumer's trade-in vehicle back to Utah. The Consumer did not go to Utah at any time during the negotiation or finalization of the purchase.

The Manufacturer asserted that the Consumer's claim should be dismissed "as a matter of law" because the subject vehicle was not sold in the State of Florida, and therefore did not meet the statutory definition of a "motor vehicle" pursuant to Section 681.102(15). The Manufacturer further argued that the Uniform Commercial Code, Sections 672.106(1) and 672.41(2), which provide that "title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods..." supports the contention that the sale occurred in Utah.

A majority of the Board found that the evidence established the Consumer was a Florida resident and she negotiated the purchase from her residence in Florida. The Consumer intended this to be a Florida sale, she intended that the vehicle be delivered to her residence in the State of Florida, and she paid the Florida sales tax. The vehicle never had a temporary plate from Utah and it was registered and titled in Florida. The statute does not otherwise define the phrase "sold in this state" and further, does not require purchase from or through a Florida dealer. Looking at the totality of the circumstances presented in this case, a majority of the Board concluded that the Consumer's vehicle was "sold in this state" and was therefore a "motor vehicle" as contemplated under section 681.102 (14), Florida Statutes.

Vara v. Ford Motor Company, 2016-0005/JAX (Fla. NMVAB March 11, 2016)

The Consumer testified that she was initially in contact with Lilliston Ford, which is located in Kingsland, Georgia, as a result of an internet search, from Florida, during which a used vehicle being offered by Lilliston Ford came to her attention. She drove to Georgia to test drive the used vehicle, decided against purchasing it, and returned home to Florida that day. Shortly after that, a representative from Lilliston Ford emailed her to see if she might be interested in the subject vehicle. She entered into negotiations for the purchase of the subject vehicle with a salesman with Lilliston Ford, via email from her office in Florida. They agreed on a price via email, and she called Lilliston Ford from her office in Florida to give them her credit card number for the down payment. The next day, the subject vehicle was transported from Bozard Ford in St. Augustine, Florida (where the vehicle had been located pursuant to the Window Sticker) to Lilliston Ford. Later that day, she drove to the dealership in Georgia, gave them her 2011 Cadillac, and was given the subject vehicle. The Buyer's Purchase Order and Retail Installment Contract were then mailed to the Consumers' home in Florida for signature. The Consumers signed the documents at their home in Florida, and a representative from Lilliston Ford subsequently drove to her office in Jacksonville, Florida, to pick up the signed documents. The Buyer's Purchase Order indicated that the Consumers' paid Florida taxes and paid a $3.00 Georgia Lemon Law fee. The vehicle was registered and titled in Florida and never had a temporary plate from Georgia.

In its Amended Answer, the Manufacturer asserted the Consumers were not qualified for repurchase relief because the vehicle was not sold in Florida, and as such, the vehicle did not constitute a "motor vehicle" as defined by Florida's Lemon Law. The Manufacturer argued that because the vehicle was purchased through a Georgia dealership, and since the Consumers paid the $3.00 Georgia Lemon Law fee, the vehicle should be considered to have been sold in Georgia. In addition, the Manufacturer argued that the sale took place in Georgia because Georgia was where the Consumers took delivery of the vehicle, and where they traded in their 2011 Cadillac to the dealership.

Based on the totality of the circumstances, a majority of the Board found the Consumers' vehicle was "sold in this state" and was therefore a "motor vehicle" as defined in Section 681.102(14), Florida Statutes. The majority found particularly compelling that the sale was negotiated electronically while the Consumers were in Florida, the down payment was made from the Consumers' office in Florida, the Consumers paid Florida taxes, and the fact that the signed documents were picked up by the dealership at the Consumers' office in Florida.

Infantas v. Hyundai Motor America, 2015-0595/MIA (Fla. NMVAB March 15, 2016)

The Manufacturer asserted the Consumer was not qualified for repurchase relief under the Lemon Law because the vehicle was not sold in Florida, and as such, the vehicle did not constitute a "motor vehicle" as defined by Florida's Lemon Law. The Manufacturer, through its representative, argued that the sale took place in South Carolina as evidenced by the sales contract and the fact that the Consumer paid South Carolina State taxes. Additionally, the Manufacturer asserted that the sales contract specifically provided, in bold letters, that the arbitration laws of the South Carolina Uniform Arbitration Act apply to the sale. Based upon those facts, the Manufacturer asserted that the vehicle was sold in South Carolina.

The Consumer asserted that the vehicle was sold in Florida and testified that she understood that she purchased the vehicle in Florida, as she had never been to South Carolina. She stated that the sales contract was signed in her house in Florida, and that the vehicle was driven to Florida from the dealer. The Consumer's husband testified that his daughter danced with a girl whose father owns a car dealership in South Carolina, and that he directly contacted the father, looking for this particular vehicle. He stated that the gentleman who delivered the vehicle, along with the paperwork, took the trade-in vehicle back to South Carolina; however, he acknowledged that he paid the full delivery fee for the vehicle, a fee that was not included in the vehicle's purchase price or otherwise reflected on the purchase documents. He also acknowledged that the vehicle came with a temporary tag from South Carolina, and he paid the State of Florida registration fee for the Florida tag.

Upon consideration of the totality of the evidence presented, the Board concluded that because (1) the Consumer paid the full measure of the South Carolina sales tax; (2) there were no Florida Lemon Law fees paid in the transaction; (3) the delivery fee was not part of the sales transaction; (4) the shipper was a delivery agent for the Consumer; (5) the delivery of the vehicle occurred in South Carolina; and (6) the trade-in vehicle was given to the shipper to take back to South Carolina; the Consumer's vehicle was not a "motor vehicle" under for purposes of Chapter 681, Florida Statutes, because it was not "sold in this state," and the Consumer was not qualified for the relief requested.

Warranty §681.102(22)F.S.

Santare v. Volkswagen/Audi of America Inc., 2015-0355/FTL (Fla. NMVAB January 12, 2016)

The Consumer complained of poor fuel economy in his 2014 Volkswagen Jetta. The Manufacturer, through its Attorney, argued that the case should be dismissed because: the gas mileage estimates provided by the Environmental Protection Agency and given on the window sticker were not warranted by the Manufacturer, and the Consumer's claim that his vehicle did not attain those estimates was outside the scope of the Board's authority. The Consumer objected to the Manufacturer's request. Upon consideration, the Board denied the Manufacturer's request as it had the authority to hear whether or not the vehicle had a defect or condition that affected the fuel consumption of the vehicle.

Dittman v. Volkswagen/Audi of America Inc., 2015-0459/JAX (Fla. NMVAB January 4, 2016)

The Consumers complained that their 2014 Volkswagen Passat did not comply with applicable emissions standards. The Manufacturer asserted that the Florida New Motor Vehicle Arbitration Board did not have the jurisdiction to adjudicate regulatory matters currently being investigated and decided by the Federal EPA, or should at least defer arbitration in this matter until the EPA concluded its work; and that the Florida New Motor Vehicle Arbitration Board did not have the jurisdiction to hear the Consumers' claim because the definition of "warranty" contained in Section 681.102(22), Florida Statutes, was limited to issues of vehicle material or workmanship, and did not include design concerns related to emissions. A majority of the Board found that the Manufacturer's assertion that the Board did not have jurisdiction to hear the Consumers' claim should be rejected.

NONCONFORMITY 681.102(15), F.S.

Gensemer v. Mercedes-Benz USA, LLC, 2015-0493/WPB (Fla. NMVAB February 5, 2016)

The Consumer complained of a defect with the body/trim that caused a whistling noise when the vehicle was driven at highway speeds. The Consumer testified that she traveled on the turnpike daily, and that there was a constant whistling noise coming from the windshield that starts when she hit about 68 mph. She further testified that she was a surgeon and frequently got calls regarding patient care while she was driving, and that the noise was very distracting. None of the loaner vehicles that she had been given made the noise.

The Manufacturer asserted that the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's representative testified that he was involved at the Final Repair Attempt and took a test drive in the motor vehicle. He did not hear the whistling noise complained of by the Consumer; however, he explained that not everyone hears at the same frequency. He also contacted the Manufacturer's engineering section, and learned that the temporary solution that had been performed on the Consumer's vehicle at the third repair attempt had been developed as a result of two complaints in the United States for that particular problem, but that there was not yet a solution. Since he did not hear the whistling noise at issue, it would serve no purpose to reapply the temporary fix. He testified that, shortly before the arbitration hearing, the Manufacturer had identified a corrective measure for the problem, but that information had not been available at the time of the final repair attempt.

The Board found that the evidence established that the whistling noise that occurred when the vehicle was driven at highway speeds substantially impaired the use, value or safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The Manufacturer's assertion to the contrary was rejected. Accordingly, the Consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.:

Final Repair Attempt §681.104(1)(a), F.S.; §§681.104(1)(a), 681.104(3)(a)1., F.S.

Lenis v. Ford Motor Company, 2015-0434/FTL (Fla. NMVAB February 25, 2016)

The Board found that the Consumer's complaint regarding a defective transmission in his 2013 Ford F150 substantially impaired the use, value and safety of the vehicle, thereby constituting a nonconformity. The Consumer explained that he sent notification to the Manufacturer regarding the problem with his vehicle, and then he coordinated a date for the final repair attempt with the dealer representative. The Consumer added that he left his vehicle at the dealer on March 20, 2015, and he picked it up when it was ready on March 30, 2015. According to the Service Manager at Sawgrass Ford, the vehicle was brought in for repair by the Consumer on March 20, 2015, the technician found a problem with the transmission which required it to be overhauled, and the vehicle was ready for pick up by the Consumer on March 30, 2015, 11 days later.

Section 681.104(1)(a), Florida Statutes, requires that:

> [a]fter three attempts have been made to repair the same nonconformity, the consumer shall give written notification, by registered or express mail, to the manufacturer, of the need to repair the nonconformity to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall have 10 days, commencing upon receipt of such notification, to respond and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility within a reasonable time after the consumer's receipt of the response. The manufacturer shall have 10 days, ... commencing upon the delivery of the motor vehicle to the designated repair facility by the consumer, to conform the motor vehicle to the warranty. If the manufacturer fails to respond to the consumer and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

The Consumer took the vehicle to the Manufacturer's authorized service agent for repair of the same nonconformity on at least three occasions prior to sending the written notification; thereafter, a final repair was attempted. The evidence established that, pursuant to instruction by the Manufacturer, the Consumer delivered the motor vehicle to the Manufacturer's designated repair facility for the final repair attempt on March 20, 2015. The Manufacturer failed to complete the repairs within the 10 days required by statute; therefore, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. The Manufacturer failed to correct the nonconformity after a reasonable number of attempts; accordingly, the Consumer was entitled to the requested relief under the Lemon Law and was awarded a refund.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(7), F.S.

Uribe v. Ford Motor Company, 2015-0536/MIA (Fla. NMVAB March 1, 2016)

The Consumer's 2014 Ford Focus was declared a "lemon" by the Board. The Consumer requested reimbursement of the following incidental charges: $16.00 for postage; $885.43 for the cost of transportation via Lyft and Uber; $254.95 for public transit costs; and $700.00 for two months prospective Uber and Lyft expenses to be incurred by the Consumer while awaiting the final outcome in the present case. The Manufacturer objected to the $700.00 two month prospective Uber and Lyft expenses. The Board rejected the Manufacturer's argument. The Board awarded the Consumer everything she requested which included $16.00 for postage, $885.43 for the cost of transportation using Lyft and Uber; $254.95 for public transit costs; and $700.00 for two months prospective Uber and Lyft expenses to be incurred by the Consumer.

Brester v. Volkswagen/Audi of America Inc., 2015-0550/MIA (Fla. NMVAB February 22, 2016)

The Consumer's 2015 Audi A5 was declared a "lemon" by the Board. The Consumer requested reimbursement of the following as an incidental charge: $101.99 for car rental from October 29, 2015 through November 2, 2015. The Manufacturer objected to this amount as

unreasonable on the basis that the subject vehicle was not inoperable or at the service agent for repair of a nonconformity during the period in which the rental charge was incurred. The Consumer's request for reimbursement of $101.99 for car rental from October 29, 2015 through November 2, 2015 was denied by the Board as unreasonable.

Collateral Charges §681.102(3), F.S.

Molina v. FCA US LLC, 2015-0237/MIA (Fla. NMVAB January 26, 2016)

The Consumer's 2013 Chrysler 300 was declared a "lemon" by the Board. The Consumer requested reimbursement of the following as a collateral charge: $100.00 for window tint. The Manufacturer objected to the request as the Consumer did not provide any receipt for the charge. The Board awarded the Consumer the $100.00 for window tint as a collateral charge.

Reasonable Offset for Use §681.102(19), F.S.

Crocker v. Volkswagen/Audi of America Inc., 2016-0056/MIA (Fla. NMVAB March 29, 2016)

The Consumer's 2015 Audi Q7 was declared a "lemon" by the Board. For purposes of calculating the reasonable offset for use, mileage attributable to the Consumer up to the date of the Better Business Bureau Autoline hearing was 2,020 miles (2,301 odometer miles reduced by 35 miles at delivery, and 246 other miles not attributable to the Consumer). The Manufacturer objected to use of the mileage figure included on the Better Business Autoline documents, arguing that the mileage used to calculate the offset should be the miles attributable to the Consumer "as of" the date of the hearing before the Florida New Motor Vehicle Arbitration Board, as the Better Business Bureau Autoline hearing was a "documents only hearing." The Manufacturer's argument concerning the appropriate mileage figure to be used in calculation of the offset was rejected by the Board. The Board used the mileage as of the Better Business Bureau Autoline hearing.