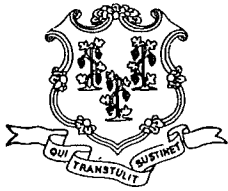


In the matter of arbitration entitled:

Thompson vs. Hyundai

Case Number: 2016-1407



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, Esq., having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Allen T. Thompson and Marie S. Thompson (collectively, the "Consumers") purchased a **2015 Hyundai Sonata** (the "vehicle") from **Lia Hyundai** located at **40 Palomba Drive in Enfield, Connecticut, 06082** (the "Dealership"). The Consumers took delivery of this vehicle on **September 8, 2015**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The manufacturer of the subject vehicle, Hyundai Motor America (the "Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, August 25, 2016**, during which Mr. Tim Clark served as the State's Technical Expert. Mr. Loi Nguyen served as third party representative of the Manufacturer. The Consumers represented themselves at the hearing.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumers set forth the following complaint with the subject vehicle in their Request for Arbitration: A vibration at specific speeds when the vehicle was driving up hills. The Consumers claimed that the alleged defect continued to exist as of the date of the hearing. As a result of the complaint, the Consumers made multiple visits to the Dealership for diagnosis, testing, and repair. Said vehicle concern met the statutory presumption for eligibility as it was subject to a five (5) repair attempts during just the first year of ownership. A listing of the Dealership repair visits for this complaint follows below:

<u>Repair Date</u>	<u>Miles</u>	<u>Complaint</u>
<u>02-25-2016</u>	<u>3,786</u>	<u>Vibration felt while driving up a grade at certain speeds</u>
<u>04-26-2016</u>	<u>4,782</u>	<u>Vibration felt while driving up a grade at certain speeds</u>
<u>05-13-2016</u>	<u>5,045</u>	<u>Vibration felt while driving up a grade at certain speeds</u>
<u>06-06-2016</u>	<u>5,489</u>	<u>Vibration felt while driving up a grade at certain speeds</u>
<u>06-08-2016</u>	<u>5,545</u>	<u>Vibration felt while driving up a grade at certain speeds</u>

Given the facts presented, the Consumers' concern that a defect existed was reasonable. This is especially indicated by the multiple test drives performed by Dealership technicians and Manufacturer representatives. I note that the Manufacturer did not contest the initial eligibility of the vehicle in this case, and that the Manufacturer's representative Mr. Nguyen acknowledged the existence of a vibration in the vehicle during his opening remarks at the hearing. The Consumers were therefore found to have met the eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes for a substantial impairment to use.

III. DECISION

The arbitrator **finds adversely to the Consumers** and orders that **no action** be taken by the Manufacturer.

IV. REASONING

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, this arbitrator carefully reviewed and considered the Consumers' Request for Arbitration, the Manufacturer's Statement, the written repair records, the Technical Expert's comments, and the oral testimony and closing statements that the parties provided at the hearing. The Consumers claimed that the vibration caused a substantial impairment to the use and safety of the vehicle (see page 9A of the Consumers' Request for Arbitration, at paragraph 1). The arbitrator construed all of the Consumers' claims in their favor, including all claims made within the Request for Arbitration, together with all statements at the hearing. However, even in giving heightened deference to all of the Consumers' assertions and arguments, there is no actionable claim for relief pursuant to Chapter 743b.

The vibration concern was the sole claim presented by the Consumers. Studying the repair orders and listening to the live testimony of the Consumers and Mr. Nguyen, the existence of a vibration was clearly proven. The remaining issue was to gauge the extent of the vibration and determine if it impacted the safety of the vehicle or the Consumers' use of the vehicle in a substantial manner. Therefore, this arbitrator ordered a test drive which was performed by Mr. Clark on the day of the hearing. The vehicle was driven fourteen (14) miles under the conditions described by the Consumers which were said to bring about the vibration (Refer to the recording @1:00:00). Mr. Clark had stated that he was very familiar with the Hyundai Sonata model because he had recently driven several examples which he would be using as a comparison with the Consumers' vehicle. Mr. Clark took the vehicle up various degree grades, and with careful throttle pressure, Mr. Clark caused the engine to be under a load, meaning that he purposely held the transmission at a higher gear to produce additional demands upon the engine. When holding the vehicle at certain speeds, he was able to make the car vibrate and to produce a combination noise and vibration that he described as a "drone inside the body" (Refer to recording @ 1:01:40). More particularly, the vehicle was found to vibrate at thirty-four (34) miles per hour when in "Eco" mode, and again at forty-four (44) miles per hour when driven in "Sport" mode (Refer to recording @ 1:05:15). However, Mr. Clark also stated that the Consumers' Hyundai Sonata felt the same as the other similar Hyundai Sonatas that he had driven (Refer to recording @1:05:00).

Mr. Clark stated that the vehicle's transmission shifted quickly in order to be driven in the highest-number (lowest ratio) gear possible. The main reason for the vehicle's quick shift pattern is for increased fuel economy (Refer to the recording @ 1:00:59). The shift pattern is determined by the factory programming. It is not uncommon for electronically-controlled transmissions to be reprogrammed to improve or modify the shift quality. The Dealership had re-set the adaptive programming, but that would not address the particular vibration issue presented (Refer to the recording at 1:04), as the "adaptive" features of this transmission would not dramatically impact the shift patterns. An engine software update was also performed. Software updates are not to be automatically viewed as "defects" or "nonconformities" pursuant to Chapter 743b. Updates may be the result of a manufacturer listening to customer input and acting upon it. Changes in shift patterns can only go so far, as these updates may impact fuel economy, and if an update were to negatively impact fuel economy, it would thereby require difficult approval by the federal Environmental Protection Agency, commonly known by the abbreviation "EPA."

The subjective experiences of a consumer are important in reaching a determination pursuant to Chapter 743b. As an example, Mr. Clark said that a vibration issue such as in this case may impact one consumer, but fifty others may not have any concern at all. In this case, driving style correlates to the occurrence of the vibration, as a driver who uses light throttle will experience the vibration issue more than one who has a "heavy foot." If a driver were increase the engine RPM when experiencing the vibration, it could be eliminated. Two ways to accomplish this are to use the vehicle's selective shifting feature to select a lower gear instead of having the transmission chose the gear, or by merely pressing the accelerator (Refer to the

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recording @ 1:07:05). The two Consumers stated that they both drive the vehicle in a similar manner, employing light throttle (Refer to recording @ 53:38). Before purchasing the subject vehicle, the Consumers regularly drove a 1997 Buick LeSabre and a 1997 Buick Regal (Refer to recording @ 27:40), vehicles which drive and shift differently than the subject vehicle, and which were not subject to the same electronic controls or EPA requirements. Mr. Thompson mentioned that he hears the "drone" in his ears when the vibration occurs. However, no other reference was made to the vibration impacting the Consumers' use, drivability, or safety of the vehicle in a substantial manner, as is required by Chapter 743b.

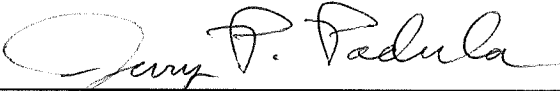
The Manufacturer's representative Mr. Nguyen claimed during the hearing that the vehicle had no defects in materials or workmanship and was performing as designed. He acknowledged the existence of a vibration under certain conditions, but described it to be "normal operation" of the subject vehicle. There was no Manufacturer "fix" that could be applied, because the vehicle was operating as designed. The Dealership had repeatedly referred to the issue as a shifting concern, although the Consumers had reported it as a vibration issue. Mr. Clark experienced the vibration complaint as he went through his test drive, and recognized it as a normal transmission shifting characteristic of the Hyundai Sonata model. Given the testimony of the Manufacturer that the Consumers' vehicle is operating as designed, as well as Mr. Clark's testimony and his test drive report, I find that the subject vehicle is not deemed to be "substantially impaired" in any way under the definition provided Chapter 743b of the Connecticut General Statutes.

Convincing evidence that the claimed vibration or shifting concern caused a substantial impairment to the use, value, or safety of the vehicle was not presented. Relief pursuant to Chapter 743b is not warranted in this case. I remind the parties that the vehicle remains under warranty in the circumstance that any issue arises that may cause a substantial loss of use, value, or safety. It was obvious that the Consumers were inconvenienced because of the number of visits for repair attempts, as well as having the noted transmission shift issue appear under certain uphill driving conditions. However, the inconveniences experienced by the Consumers cannot be the basis for relief pursuant to the statute.

V. CONCLUSION

Given the above facts, the Consumers did not present substantial evidence that the claimed defect or defects caused a substantial impairment to the vehicle's use, value, or safety. Based upon the evidence, I do not find a violation of Chapter 743b. I agree with the Manufacturer's assessment of the vehicle, as presented during the arbitration hearing and as listed in their Manufacturer's Statement, and hold that the Consumers' application will not allow relief pursuant to Chapter 743b. Accordingly, no action is being ordered on this application.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat.2183 (1975), U.S.C. 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to Connecticut Superior Court within 30 days of receiving this decision to have the decision vacated, modified, or corrected, or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, 52-419, and 52-420 of the Connecticut General Statutes.



Jerry P. Padula, Esq. - Arbitrator

09-16-2016

Date