Federal
Consumer Laws
Military Consumers

American Bar Association
Legal Assistance for Military Personnel
DWAIN ALEXANDER, II
Disclaimer

The comments herein are those of Dwain Alexander and do not represent the Department of Defense or the United States Navy.
CASE FACTS

- Client – junior enlisted purchases a vehicle. Comes to your office to because he feels he was taken advantage of by the dealership.

  1. The Vehicle is over priced
  2. The dealership would not let the SM leave with purchase documents to show command
  3. SM was told he was financed and then forced to return to sign documents with new terms
  4. The vehicle exhibits problems with power train and electrical systems
  5. The vehicle is sold with a warranty
  6. The vehicle was financed by third party or direct lender
Why Automobile Transactions

- Usually the second largest purchase after buying a home
- Long Term Obligation - impacts next 4 - 6 years of finances
- Contain multiple variables in the transaction
- Challenging negotiation
- Serious individual consequences
- Significant impact on mission readiness
High Value Target

- E-4 and below are the preferred customers
  - Geographically displaced
  - Limited Education
  - Lack Financial Experience
  - Predisposed to comply with authority and trust military affiliations
  - Guaranteed employment/income
  - Easy access to credit
  - “Cash delivery System”
How some dealerships work the transaction

- Affinity Presentation
- Unique Customer
- Misinformation
Dealer Philosophy

- You don’t leave the lot without a car
- Max out loan potential
  - 125% to 140% of FMV
  - Add on sales
- Max out profit on sale
  - Inventory
  - Warranties/As Is
- Financing
  - Sub-prime
  - Credit Union
Dealer Tactics

- Confuse
- Exhaust
- Bait and Switch
- Price gouging
- YoYo
- Warranties
- Add-on sales
- Misrepresentation
Legal

- Truth in Lending Act - 15 USC 1601
- Equal Credit Opportunity Act 15 USC 1691
- Uniform Commercial Code  2-608
- Preservation of Consumer Claims and Defenses Rule 16 CFR 433.1
- State Consumer Protection Laws
Interplay of Laws

- **Bad Purchase**
  - Truth in Lending Act – Disclosure
  - Equal Credit Opportunity Act – Finance
  - Preservation of Consumer Claims and Defenses
  - State Consumer Protection Laws

- **Bad Vehicle**
  - Magnuson-Moss Warranty Act
  - Uniform Commercial Code
  - Preservation of Consumer Claims and Defenses
  - State Consumer Protection Laws
Manage Client Expectations

- Why is the client in your office
- What does the client want from you
  - Cancel the deal
    - Principles / co conspirator
  - Re-negotiate price/financing
  - Different vehicle
- Time
- Sweat equity
- Source for Payment
Client Reality Check

- Basic contract law
  - Signed these documents
  - Agreed to pay for the car
  - Bought it
  - Responsibility

- Fraud
  - Hard to prove
  - Witnesses help
Client Responsibility

- Consumer Complaint Process
- Copy of all documents (make two copies)
- Complete thorough narrative
- Complaints
  - AFDCB
  - BBB
  - Consumer Financial Protection Bureau
  - State AG
- Educate / Train
Contacting The Dealership

- Plan conversation
  - Identify goal of communication
    - Obtain Facts – Research the company
    - Establish relationship
    - Negotiate
  - Understand business model
    - Passion / Ego /
    - Respect / Control
- Initial contact
  - Fishing
- Second Contact
  - Assert case
Documentation

- Buyer’s order
- Retail Installment Sales Contract (RISC)
- Promissory Note
- GAP
- Service Contracts
The Buyers Order

- Front and Back
- On the Front,
  - The Numbers
  - Analysis
- On the Back,
  - Details
  - Clients Obligations
  - Legal
**Buyers Order**

<table>
<thead>
<tr>
<th>TRADE-IN INFORMATION AND/OR OTHER CREDITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>YEAR</strong></td>
</tr>
<tr>
<td>-----------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>BALANCE OWED ON TRADE</strong></td>
</tr>
</tbody>
</table>


## Promissory Note

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Loan Balance(s) (if any)</td>
<td>$6,812.60</td>
</tr>
<tr>
<td>Interest and Other Fees on Old Loan Balance(s)</td>
<td>$34.60</td>
</tr>
<tr>
<td>Cash to Applicant</td>
<td>$22,692.99</td>
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<tr>
<td>Amount Financed</td>
<td>$29,540.19</td>
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</tbody>
</table>

**Truth-in-Lending Disclosure**
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Price</td>
<td>$13,000.00</td>
</tr>
<tr>
<td>Processing Fee</td>
<td>$400.00</td>
</tr>
<tr>
<td>Sub Total (Taxable)</td>
<td>$13,400.00</td>
</tr>
<tr>
<td>Trade Allowance</td>
<td>$5,500.00</td>
</tr>
<tr>
<td>Approx. Balance</td>
<td>$5,500.00</td>
</tr>
<tr>
<td>Trade Equity (6-7)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Trade Difference (5-8)</td>
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</tr>
<tr>
<td>VA Title Tax (3% of line 5)</td>
<td></td>
</tr>
<tr>
<td>Taxable for Business License (5-6) (12)</td>
<td></td>
</tr>
<tr>
<td>Dealer’s Business License Tax % of line 12 (13)</td>
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<tr>
<td>Service Contract</td>
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</tr>
<tr>
<td>Service Contract</td>
<td></td>
</tr>
<tr>
<td>Purchasers On-Line Systems Filing Fee</td>
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<tr>
<td>Subtotal (9+10+11+13+14+15)</td>
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<tr>
<td>Deposit with Order (18)</td>
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<tr>
<td>Payment Due On Delivery (19)</td>
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<tr>
<td>Total Down Payment (18+19)</td>
<td>$2,000.00</td>
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<tr>
<td>BALANCE TO BE FINANCED (17-20)</td>
<td>$13,150.00</td>
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</tbody>
</table>
The Retail Installment Sales Agreement

- Truth in Lending Act
- Disclosure (meaningful)
  - Percentage Rate
  - Amount financed
  - Finance charge
  - Total Payments
  - Total Sales Price
  - Number of payments
  - Amount of payments
Creditor / Seller

The dealership writes the deal and as creditor/seller the terms can be extreme (34%). The contract is sold. The real power lies with the assignee.

Look for buy/sell agreements

May contain promissory note language

Negative Equity
TILA

- Check to see if the amounts as disclosed are accurate - tax, down payment, and trade-in

- TILA strict liability
  - Even where the consumer assisted in the fraud the dealer is still liable

- Damages
The Equal Credit Opportunity Act and the Fair Credit Reporting Act require notices to consumers when adverse action is taken on a credit application.

- A notice is required if the dealer, as the creditor prepares and executes a RISC and then takes an adverse action.
UCC 2-608 Revocation of Goods

2-608
(1) The buyer may revoke his or her acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him or her if he or she has accepted it:

(a) assumption that nonconformity would be cured; or
(b) Without discovery if acceptance was reasonably induced either by the difficulty of discovery or seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time. It is not effective until the buyer notifies the seller of it.
Magnuson-Moss Warranty Act

- Must provide names and addresses of the warrantors or service contract provider
- List the products or parts covered
- Explain what the warrantor will do in the event of a defect, malfunction, or failure, who will be responsible for the expense, and the period of time covered by the warranty or service contract
- Exceptions and exclusions from the terms of the warranty or service contract
Magnuson-Moss Warranty Act 2

- Cannot be conditioned on the consumer’s using, any product or service
- Cannot disclaim or modify any implied warranty the product if written warranty or at the time of sale, or within 90 days thereafter, sells a service contract
- Can limit the terms of Implied warranties to the express warranty or service contract
Preservation of Consumers' Claims and Defenses

- 16 CFR 433.1

- ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER
Tactic 1. Follow the Money

- Title is not conveyed until the dealer has the money – no title no sale
- Call the finance company
  - intercept the financing
- Damages if the vehicle is returned
- Cost of actual law suit v. settlement
Tactic 2. Negotiation

- Unless state law requires its return, keep the vehicle during negotiation- if dealer has the money and vehicle they have all the tokens in the game
- Call the general manager and owner
- Acknowledge that there are two sides to the story, listen, ask questions, be professional, be polite
- What does the dealership want? Sales to the military and this sale
- Did they cross a line - legal or other?
- Is it in their best interest to settle
- Damages define settlement - commission/fees
Tactic 3. Set an Example

- You only have to knockdown one bully to gain respect on the playground
- Track the operations and tactics of the dealership – let them know
- Get more data - network with other services and agencies (Navy Relief, FFSC, DMV, Legal Aid, BBB, State AG)
- Work with the State AG, AFDCB, and Consumer law attorneys to set up a case
Resources

- Data
  - NADA / Kelly’s Blue Book / Edmonds
  - Car Fax/ Auto Check/ NMVTIS

- Relationships
  - Dealerships
  - Local/ State Automobile Dealers Association
  - Lenders/Credit Union/ Banks/ Sub Prime

- Enforcement
  - DMV / MVDB / AG / Civilian Counsel
  - Federal support – FTC, DOJ, CFPB

- ABA LAMP, NACA MCJP, NCLC
Take Away

- Make Connections
- ABA LAMP
- State Bar Associations / Military Law
- NACA
- AILA
- The ABA Legal Guide for military families
- Ripped OFF
- JAGs