

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0237 CAF**

<b>JOSE A. FERNANDEZ,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>AMERICAN HONDA MOTOR CO.,</b>	§	
<b>INC.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Jose A. Fernandez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged defects in his 2012 Honda Civic EX. Complainant asserts that the vehicle shakes excessively while idling and at high speed. American Honda Motor Co., Inc. (Respondent) argued that there are no defects with the vehicle and that it is operating appropriately. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and closed on September 4, 2014, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Respondent was represented by Abigail Mathews, Attorney. Also present at the hearing for Respondent was Christian Cruz, District Parts and Service Manager.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>1</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the

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<sup>1</sup>Tex. Occ. Code § 2301.604(a)(1) and (2).

manufacturer.<sup>2</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>3</sup>

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>4</sup>

### **B. Complainant's Evidence and Arguments**

Complainant purchased a 2012 Honda Civic EX from El Paso Honda in El Paso, Texas on March 3, 2012, with mileage of 17 at the time of delivery.<sup>5</sup> On the date of hearing the vehicle's mileage was 32,503. At this time, Respondent's warranty coverage for the vehicle remains in place, with "bumper to bumper" coverage for three years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides for coverage for the powertrain for five years or 60,000 miles.<sup>6</sup>

Complainant testified that he first noticed the vehicle shaking excessively about nine months after he purchased it. However, he did not take the vehicle to an authorized dealer for this issue until January of 2014.

Complainant first took the vehicle to Respondent's authorized dealer on June 1, 2012. Complainant advised the dealership's service adviser that the check engine light had illuminated. The vehicle was inspected by one of the dealer's service technicians. The technician tightened the fuel cap on the vehicle which resolved the issue. The service engine light was reset and the codes

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<sup>2</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>4</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>5</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Agreement, Odometer Disclosure Statement dated March 3, 2012.

<sup>6</sup> Respondent Ex. 6, New Vehicle Limited Warranty.

were cleared from the vehicle's computers. The vehicle's mileage when he took it to the dealership on this occasion was 2,969.<sup>7</sup>

Complainant did not take the vehicle to a dealership for repairs again until December 26, 2013. The check engine light had illuminated which prompted Complainant to have the vehicle repaired. In addition, Complainant felt that the vehicle was "popping" into gear. When driving the vehicle did not change gears smoothly, but would seem to jerk into gear. When a service technician scanned the vehicle's computer system, a diagnostic trouble code was discovered. The vehicle had a faulty transmission pressure switch which was replaced. However, the dealership did not have the necessary part on December 26, 2013, so Complainant was required to return on a later date to get the repairs done, which was January 10, 2014.<sup>8</sup> When the repairs were done, the service technician also cleared the codes on the vehicle's computers and determined that there was no other problem with the vehicle at the time. The mileage on the vehicle when Complainant took it to the dealership on this occasion was 23,138.<sup>9</sup> The vehicle was returned to Complainant on the same date, January 10, 2014.

Soon thereafter, Complainant noticed that the vehicle was shaking inordinately and was idling rough. On January 20, 2014, Complainant took the vehicle to Respondent's authorized dealer because of the vibrations and shaking he was experiencing while driving the vehicle. When the vehicle was inspected by the dealer's service technician, it was discovered that a side mount had broken. The broken side mount was replaced and the vehicle was returned to Complainant. The vehicle's mileage when Complainant took it to the dealership was 23,684.<sup>10</sup>

After this last repair, the vehicle seemed fine. However, after a few weeks, Complainant again felt that the vehicle was shaking excessively and again began feeling that the vehicle was idling rough. On March 1, 2014, Complainant again took the vehicle to Respondent's authorized dealer. The vehicle was inspected by a service technician and it was determined that another side mount had broken. The dealer did not have the necessary parts to repair the mount at the time, so the replacement parts had to be ordered. The mileage on the vehicle on this occasion was 25,096.<sup>11</sup>

On March 21, 2014, Complainant took the vehicle back to the dealership to repair the side mount because the dealer had received the required replacement parts. At this time, Complainant also indicated that he heard a ticking noise by the right front wheel when he was driving. The dealer's service technician test drove the vehicle to see if he could hear the noise, but was unable to duplicate the problem. As a result, the only repair done to the vehicle was the replacement of the

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<sup>7</sup> Complainant Ex. 2, Repair and Service Orders for 2012 Honda Civic EX.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

side mount. The mileage on the vehicle on this date was 25,783.<sup>12</sup> The vehicle has not been taken back to the dealer with any other concerns since this date, except to allow Respondent an opportunity to inspect the vehicle pursuant to the Lemon Law complaint filed by Complainant.

During cross examination, Complainant verified that there were occasions when the vehicle was taken to the dealer for service, but parts were not available and had to be ordered. On those occasions, Complainant would take the vehicle home and continue driving it while waiting for the replacement parts to arrive at the dealership. Once the parts arrived, Complainant would then take the vehicle back to the dealer for the repairs to be performed. Complainant filed a Lemon Law complaint regarding the vehicle on April 13, 2014. On July 16, 2014, Complainant's wife met with Respondent's representative, Christian Cruz, to allow him to inspect the vehicle and to determine whether there were any lingering concerns or conditions. The inspection report prepared by Mr. Cruz indicated that the vehicle's front tires' tread had been worn down to the wear bars and needed to be replaced.<sup>13</sup> These are the original tires and have over 30,000 miles on them. The tires had not been replaced by the date of the hearing. Complainant's wife is the primary operator of the vehicle and drives it to and from work. The vehicle is operable and there has been no danger of fire or explosion. Complainant testified that the vibration in the vehicle is primarily at high speeds, over 65 miles per hour.

### C. Respondent's Evidence and Arguments

Christian Cruz, District Parts and Service Manager, has worked for Respondent for the past eight (8) years. Prior to his last period of employment, he had worked at several car dealerships for about nine (9) years. He has worked as a service advisor in the past. He consults dealerships on all the parts and service operations, performs technical training, trains service advisors, and financials. His job requires that he becomes involved in warranty disputes between customers and dealerships when an issue cannot be resolved. In those situations, it's his responsibility to determine if an issue is covered by warranty.

Respondent's mediation department informed Mr. Cruz of the complaint and made arrangements for him to inspect the vehicle in July of 2014. Complainant's wife appeared at Respondent's authorized dealer's location with the vehicle on July 16, 2014. She informed a dealer service advisor of each of her concerns with the vehicle. Then, Mr. Cruz and Complainant's wife took the vehicle for a test drive. The Complainant's first concern was that the air conditioner would make a "ticking" noise when the vehicle was started cold.<sup>14</sup> The noise would last for a few seconds and then go away. This noise was not able to be duplicated during the test drive. The

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<sup>12</sup> *Id.*

<sup>13</sup> Respondent's Ex. 5, Inspection Report dated July 16, 2014, prepared by Christian Cruz.

<sup>14</sup> *Id.*

second concern dealt with vibration in the steering wheel when the vehicle was idling. Mr. Cruz asked Complainant's wife if she was experiencing the vibration at the end of the test drive and she indicated that she was feeling it. Mr. Cruz did not discern any unusual shaking or vibration at the time. In addition, the test drive included driving at highway speeds. Mr. Cruz again did not discern any unusual shaking or vibration at the higher speed. One additional concern was raised by Complainant's wife regarding lack of acceleration. She informed the service advisor that the vehicle lacked power. When Mr. Cruz asked when the last time this had occurred, Complainant's wife indicated that it was when the battery had failed a few months earlier. She also indicated that this had not recurred since the battery had been replaced at that time. During the test drive, Mr. Cruz felt that the drive was indicative of any drive in a similar vehicle. At the end of the test drive, Mr. Cruz walked around the vehicle to visually inspect it and determined that the front tires on the vehicle were showing excessive wear. Mr. Cruz testified that whenever a customer complains about drive quality of a vehicle, it's common to inspect the tires to see if they might be affecting the ride. Replacing tires can improve drive quality. The average life span for a set of original tires for Respondent's vehicles in this model vehicle is 30,000 to 40,000 miles. Respondent does not have any open service bulletins for this make and year vehicle. However, there is a warranty extension for the paint for the vehicle, if it meets the required criteria. Mr. Cruz also testified that broken side mounts can cause excessive vibration when a vehicle is idling. The vibration is very noticeable when the mounts are broken.

#### **D. Analysis**

Under Texas' Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on March 3, 2012 and presented the vehicle to an authorized dealer of Respondent due to his concerns that the vehicle was shaking excessively on the following dates: December 26, 2013, January 20, 2014, and March 1, 2014. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.604(a) goes on to specify that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles,

whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.” Complainant has not met the requirements of this test. Complainant did not present the vehicle for repairs to an authorized dealer for Respondent on two occasions within the first year or 12,000 miles from purchase. The first indication that Complainant had a concern with what he felt was the vehicle’s excessive vibration was when he took the vehicle for repairs on December 26, 2013, when the vehicle’s mileage was 23,138. So, the first attempt to repair the vehicle was approximately 21 months after the vehicle was originally delivered to Complainant. Since there was no evidence that a repair attempt on the vehicle for excessive vibration was made during the first year or 12,000 miles from delivery to the Complainant, he was unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent. Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code and, as such, is not grounds to grant repurchase or replacement relief for Complainant.

Respondent’s express warranty applicable to Complainant’s vehicle provides “bumper to bumper” coverage for 3 years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for 5 years or 60,000 miles. On the date of hearing, the vehicle’s mileage was 32,503 and it remains under this warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant’s request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Jose A. Fernandez (Complainant) purchased a new 2012 Honda Civic EX on March 3, 2012 from El Paso Honda in El Paso, Texas, with mileage of 17 at the time of delivery.
2. The manufacturer of the vehicle, American Honda Motor Co., Inc. (Respondent) issued a warranty for 3 years or 36,000 miles, whichever occurs first and a separate powertrain warranty for 5 years or 60,000 miles.
3. The vehicle’s mileage on the date of hearing was 32,503.
4. At the time of hearing the vehicle was still under warranty.
5. Approximately nine (9) months after purchase, Complainant noticed that the vehicle seemed to shake excessively.

6. Complainant took his vehicle to Respondent's authorized dealers in order to address the vibration and shaking issues on the following dates:
  - a. December 26, 2013, at 23,138 miles;
  - b. January 20, 2014, at 23,684 miles; and
  - c. March 1, 2014, at 25,096 miles.
7. Complainant took the vehicle to Respondent's authorized dealer on June 1, 2012, because the check engine light had illuminated. This visit did not have anything to do with the vehicle shaking or vibrating.
8. On December 26, 2013, Complainant took the vehicle to Respondent's authorized dealer because the vehicle's check engine light had illuminated and because he felt that the vehicle's transmission was "popping" into gear. It was determined that the vehicle had a faulty transmission pressure switch which needed replacement.
9. On January 10, 2014, the transmission repair switch was replaced in the vehicle.
10. On January 20, 2014, Complainant took the vehicle to Respondent's authorized dealer because the vehicle started shaking and vibrating while it was idling. It was determined that a broken side mount was causing the shaking and vibrating. The mount was replaced on that date.
11. Complainant took the vehicle to Respondent's authorized dealer on March 1, 2014, because it was shaking and vibrating. It was determined that another side mount had broken.
12. On March 21, 2014, the vehicle's side mount was replaced, since the dealer did not have the part when the vehicle was initially presented to the dealer on March 1, 2014.
13. Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles on April 13, 2014.
14. On July 16, 2014, after the filing of the Lemon Law complaint, Complainant's vehicle was inspected by Respondent's representative. During this inspection it was determined by Respondent's representative that the vehicle was driving as designed.

15. On July 14, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
16. The hearing convened on September 4, 2014, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself in the hearing. Respondent was represented by Abigail Mathews, Attorney. Also present at the hearing for Respondent was Christian Cruz, District Parts and Service Manager. The hearing adjourned and the record closed that same day.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

**SIGNED September 25, 2014**



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**EDWARD SANDOVAL  
CHIEF HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**