

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0322 CAF**

**ESTEBAN RODRIGUEZ,**  
Complainant

v.

**CHRYLSER GROUP LLC,**  
Respondent

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Esteban Rodriguez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2013 Dodge Dart. Complainant asserts that the vehicle is defective due to issues starting the vehicle and desires to have the vehicle repurchased. Chrysler Group LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. 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 the record was closed on November 20, 2014, in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Also present as witnesses for Complainant were Olga Rodriguez, Complainant's wife, and Iskra Rodriguez, Complainant's daughter. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Also present as witnesses for Respondent were Gabriela Roman, Service and Parts Area Manager, and Jeff Kornmaier, Service Manager for All American Chrysler – Jeep – Dodge of Odessa.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or

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

condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</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>5</sup>

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

Complainant purchased a 2013 Dodge Dart from All American Chrysler – Jeep – Dodge of Odessa, Texas (All American) on March 2, 2013,<sup>6</sup> with mileage of twelve (12) at the time of delivery.<sup>7</sup> On the date of hearing the vehicle's mileage was 18,335. 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 100,000 miles.<sup>8</sup>

Complainant testified that he was unhappy with the vehicle because on several occasions after purchasing the vehicle it would not start. On one occasion he had gone to dinner at a restaurant and when he went to leave, the vehicle failed to start. He left the vehicle at the restaurant that evening. The next morning Complainant went to try to start the vehicle again and it started. In

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<sup>2</sup> *Id.*

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>5</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>6</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated March 2, 2013.

<sup>7</sup> Respondent Ex. 1, VIP Summary Report dated November 13, 2014.

<sup>8</sup> Respondent Ex. 3, Dodge 2013 Warranty Information – All Vehicles.

addition, the vehicle's warning lights (the check engine light, transmission light, and air bags light) would turn on periodically. The lights would stay on for awhile and then turn off.

The problems with the vehicle began about five to six months after the purchase date, in approximately August or September of 2013. He took the vehicle to the dealer for repairs three or four times.

On September 27, 2013, Complainant took the vehicle to All American for service. An oil change and courtesy inspection were performed on that date. Also, the repair order indicated that the powertrain control module needed to be reprogrammed. However, the work was not performed at that time.<sup>9</sup> Complainant was not sure why the module needed to be reprogrammed. He thought that it was because the transmission light had been turning on. Complainant also indicated that he believed that the vehicle was in the dealer's possession for one to two weeks.<sup>10</sup> The vehicle's mileage on this occasion was 6,902.<sup>11</sup>

Complainant testified that he got the vehicle back from the dealer and it worked fine for awhile, but then started acting up again. In June of 2014, Complainant took the vehicle back to All American for service. On June 2, 2014, Complainant left the vehicle with All American for repairs due to the issues he was experiencing with the vehicle. He informed the dealer's service adviser that the trouble lights were coming on and that the vehicle would not start at times.<sup>12</sup> The vehicle was at All American until August of 2014.<sup>13</sup> During the time that the vehicle was being repaired Complainant did not receive a loaner or rental vehicle. The mileage on the vehicle on this occasion was 18,240.<sup>14</sup>

In August, another repair order was opened for Complainant's vehicle because the air bag light came on. On August 21, 2014, the vehicle was left with All American again. The service technician determined that a "poor" connection caused the light to come on.<sup>15</sup> The connection was repaired and it was determined that the vehicle was operating as designed.<sup>16</sup> The mileage on

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<sup>9</sup> Complainant Ex. 2, Repair Order dated September 27, 2013.

<sup>10</sup> Although Complainant testified that he thought that the vehicle was in the dealer's possession for at least a week, the repair order indicated that the vehicle was taken in at 11:58 a.m. on September 27, 2013 and returned to Complainant that same date at 1:26 p.m. *Id.*

<sup>11</sup> Complainant Ex. 2, Repair Order dated September 27, 2013.

<sup>12</sup> Complainant Ex. 4, Repair Order dated June 2, 2014.

<sup>13</sup> *Id.*

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

<sup>15</sup> Complainant Ex. 3, Repair Order dated August 21, 2014.

<sup>16</sup> *Id.*

the vehicle on this occasion was 18,302.<sup>17</sup> Complainant felt that a second repair order was done in August of 2014 because the car failed to start at the dealership after he was told that the car had been repaired.

Complainant never went back to All American to pick up the vehicle, since he doesn't want the vehicle any more. The vehicle has been at All American since June of 2014, although he was told that the vehicle was ready for pick up on August 27, 2014. Complainant was not given a loaner or rental vehicle while his vehicle was in the dealer's possession and, in fact, purchased another vehicle for his wife to drive, as she needs a vehicle for her work as a salesperson. Complainant never asked for a loaner or rental vehicle.

During cross examination, Complainant stated that the Lemon Law complaint that he filed was correct in that the first time he took the vehicle to a dealer for repair for the check engine light and failure to start was in January of 2014, when the vehicle had mileage of 12,109 miles.<sup>18</sup> He also stated that he had taken the vehicle to a dealer for repairs only two times. The second repair was performed in June of 2014 and Complainant refused to pick up the vehicle after this repair.

Iskra Rodriguez, Complainant's daughter, testified that she had been out of town when Complainant first began having trouble with the vehicle. She first became involved in the situation in June of 2014. Complainant took the vehicle to the dealer for repairs in June and the dealer kept it for about three months. Her mother, who was the principle driver of the vehicle, did not have a vehicle to use while her vehicle was being repaired. Ms. Rodriguez went to the dealer to ask for a copy of the repair order to see what was going to be done to the vehicle. They could not provide the repair order to her because the mechanic assigned to work on the vehicle was not available and he was the only person who knew what work was being performed. The dealer never called Complainant to inform him that the vehicle was ready for pickup. Complainant's son went by the dealership sometime in August and he was told at that time that the vehicle was ready. So, they picked up the vehicle and drove it home and it failed to start again. The air bag light came on and when Complainant's wife tried to start the vehicle again, it wouldn't start. As a result, Complainant took the vehicle back to the dealer the same day. They left the vehicle with the dealer again. During this visit the dealer offered Complainant a loaner vehicle. However, he refused it, since he had bought another vehicle. Complainant later received a call from the dealer advising him that the vehicle had been repaired. At that point, Complainant refused to pick up the vehicle from the dealer, because he did not think that the

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<sup>17</sup> *Id.*

<sup>18</sup> Complainant Ex. 5, Lemon Law complaint, undated. Agency records indicate that the complaint was filed on July 29, 2014.

dealer was credible, since he had been told in the past that the vehicle had been fixed when it wasn't.

### C. Respondent's Evidence and Arguments

Jan Kershaw, Early Resolution Case Manager, testified that that the vehicle has been repaired and is working fine now. During the inspection of the vehicle at the time of hearing, the car started four times and no trouble lights illuminated.

Jeff Kornmaier, Service Manager for All American, testified that the first time that Complainant took the vehicle to the dealer for service was for an oil change on September 27, 2013. While the vehicle was in the shop, the service technician ran a VIP (Vehicle Information Inquiry) report on the vehicle (this report indicates if any recalls have been issued for a vehicle) and searched for RRT's (Rapid Response Transmittals) for the vehicle (this is a communication to the dealer that there are updates for a specific vehicle). If a vehicle is taken to the dealer for any service, then the service technician will run the RRT report to determine if there have been any updates that need to be performed. If one is found, then a "skilled" technician needs to perform the required update. So, on the date in question, when the technician ran the RRT report, he found that the vehicle needed a software update to the powertrain control module (PCM). (The powertrain control module directly affects the shifting of the vehicle's transmission.) A skilled technician was not available at the dealership that day due to the dealer backlog, so the work was not performed at that time.

On January 20, 2014, Complainant took the vehicle back to All American for an oil change and to complain about the vehicle not starting intermittently.<sup>19</sup> No work was done on the failure to start issue. In addition, the service technician noted that there was a recall for the vehicle regarding an electrical issue. The repair work for the recall was not done because the repair shop had a several month long backlog on work. The vehicle was retained by All American until February 1, 2014, approximately two weeks. Complainant was not provided with a rental or loaner vehicle while his vehicle was being repaired. The mileage on the vehicle when it was delivered to All American was 12,109.<sup>20</sup>

On June 2, 2014, Complainant took the vehicle to All American for repair work. When Complainant presented the vehicle to the service advisor for repairs, he indicated that the check engine light was on, that the vehicle wouldn't start at times, the coolant light had come on, and

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<sup>19</sup> Respondent Ex. 2, Repair Order dated January 20, 2014.

<sup>20</sup> *Id.*

the service transmission light had also come on. The service technician upon inspecting the vehicle determined that the transmission control module (TCM) had shorted internally, so he replaced it and reprogrammed all the systems affected by the TCM. In addition, the technician performed the update required by the RRT which had been initially diagnosed in September of 2013. Also, the recall which had been identified in January was also performed. The repair on the TCM addressed the warning lights issues. Regarding the engine failing to start, the technician referred to a Technical Service Bulletin (TSB). Mr. Kornmaier indicated that a TSB was like another form of an RRT. The TSB indicated that the technician needed to "flash" the radio frequency (RF) hub.<sup>21</sup> This has to do with the key fob. The key fob's software had to be updated. This was done by the technician in order to correct the vehicle's failure to start. The vehicle was retained by All American for approximately two and a half months before being returned to Complainant. Complainant was not provided with a rental or loaner vehicle during this period of time.

Complainant picked up the vehicle and drove it home. However, it again failed to start and Complainant returned the vehicle to All American. The vehicle was retained by All American from August 21, 2014, until they contacted Complainant in late August of 2014, to inform him that the vehicle was ready for pick up. The repair order indicated that the vehicle was ready on August 26, 2014.<sup>22</sup> There was an electrical issue with the air bag which was investigated by the service technician who determined that there was an open electrical circuit. The technician corrected the issue and completed the repair.

Gabriela Roman, Service and Parts Area Manager, testified that she spoke to Complainant over the phone on September 8, 2014, when he called Respondent to complain about the vehicle. Complainant indicated to Ms. Roman that he was concerned that the repairs performed to the vehicle were not done properly. Ms. Roman told Complainant that she would have a representative of Respondent test drive the vehicle. So, Ms. Roman went to Midland on September 16, 2014, and test drove the vehicle with Marland Tyler, the shop foreman from All American. The vehicle started instantly. None of the trouble lights came on. She test drove the vehicle for approximately 10 minutes. It seemed to her that the vehicle was operating as designed. So, Ms. Roman called Complainant about a week later to inform him that she had driven the vehicle and it was operating fine. She apologized to Complainant for the fact that he had been required to return the vehicle to All American in August after being told that it had been repaired. Ms. Roman then asked Complainant to pick up the vehicle from All American. Complainant indicated to Ms. Roman that he was not going to pick up the vehicle.

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<sup>21</sup> Complainant Ex. 4, Repair Order dated June 2, 2014.

<sup>22</sup> Complainant Ex. 3, Repair Order dated August 21, 2014.

**D. Analysis**

Under the 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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on March 2, 2013, and presented the vehicle to an authorized dealer of Respondent due to his concerns with the fact that it had failed to start on various occasions and that some of the trouble lights had illuminated. The vehicle was repaired in August of 2014 and Respondent indicated that the vehicle was fully repaired and there is no longer any problem with the vehicle. Complainant refused to pick up the vehicle from the dealer and cannot state with any certainty whether it has been repaired.

Texas Occupations Code § 2301.603 provides that “a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” In the present case, the evidence indicates that Complainant is unhappy with the vehicle and he wants to return it to Respondent, rather than retain possession of it. Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer’s warranty. If a vehicle has been repaired then no relief can be possible. Just because someone no longer wants a vehicle and wants to return it to the manufacturer does not warrant relief under the Lemon Law when the vehicle has been repaired. The Lemon Law requires that in order for a vehicle to be determined to be a “lemon” the “nonconformity continues to exist” after the manufacturer has made repeated repair attempts.<sup>23</sup> In the present case, the evidence indicates that the vehicle has been fully repaired and that it currently conforms to the manufacturer’s warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

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<sup>23</sup> Tex. Occ. Code § 2301.605.

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 100,000 miles. On the date of hearing, the vehicle's mileage was 18,335 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.

Complainants' request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Esteban Rodriguez (Complainant) purchased a new 2013 Dodge Dart on March 2, 2013, from All American Chrysler – Jeep – Dodge of Odessa, Texas, with mileage of twelve (12) at the time of delivery.
2. The manufacturer of the vehicle, Chrysler Group LLC (Respondent), issued a bumper to bumper warranty for 3 years or 36,000 miles, whichever occurs first and a separate powertrain warranty for 5 years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 18,335.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Respondent's authorized dealer, All American Chrysler – Jeep – Dodge of Odessa, Texas, on January 14, 2014, in order to address his concerns with the vehicle intermittently failing to start.
6. Although the vehicle was kept by the dealer for about two weeks during the January repair visit, no repairs were done to alleviate the issue of the vehicle failing to start.
7. Complainant took the vehicle to All American on June 2, 2014, because the vehicle intermittently failed to start and because several of the trouble lights illuminated.
8. During the June repair visit, the dealer replaced the vehicle's transmission control module, updated the vehicle's powertrain control module, and flashed the key fob's radio frequency hub.
9. Complainant picked up the vehicle from All American in August after the repairs had

been completed. However, they returned the vehicle the same day due to the fact that it failed to start.

10. A new work order for the vehicle was commenced by All American on August 21, 2014. The work performed during this repair visit involved a repair to an open electrical circuit.
11. Complainant refused to pick up the vehicle after this final repair.
12. On July 29, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On October 15, 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.
14. The hearing in this case convened and the record was closed on November 20, 2014, in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainant, Esteban Rodriguez, represented himself at the hearing. Also present for Complainant was Olga Rodriguez, his wife, and Iskra Rodriguez, his daughter. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Also present for Respondent were Gabriela Roman, Service and Parts Manager, and Jeff Kornmaier, Service Manager for All American Chrysler – Jeep – Dodge of Odessa, Texas.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (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 Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a 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, 2301.603.
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 Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED December 10, 2014.**



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