

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0037 CAF**

NATRAJ RACHAKONDA,
Complainant

v.

**AMERICAN HONDA MOTOR
COMPANY, INC.,**
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Natraj Rachakonda (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Honda Odyssey. Complainant asserts that the vehicle is defective because there is a “rattling” noise that occurs in the back of the vehicle when he drives on bumpy roads and because there was a wind noise from the front driver’s side of the vehicle. American Honda Motor Company, Inc. (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 February 12, 2015, in Austin, Texas, before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Respondent was represented by Abigail Mathews, Attorney with Francis Mathews PLLC. Steve Tuleja, District Parts and Service Manager, testified for Respondent.

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.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

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.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2014 Honda Odyssey from First Texas Honda (First Texas) in Austin, Texas on August 17, 2013, with mileage of sixty-six (66) at the time of delivery.⁷ On the date of hearing the vehicle's mileage was 16,475.

Complainant testified that several months after purchasing the vehicle, he began to notice that the vehicle began to make unusual noises. There was a wind noise coming from the driver's side window and a rattling noise from the rear hatch door. He noticed the noises primarily when driving in the city in stop and go traffic. The noises were always bothering him when he drove the vehicle and he could not drive it comfortably. So, on June 13, 2014, Complainant took the vehicle to First Texas to have his concerns addressed. The dealer's service technician determined that the windshield needed to be resealed in order to address the wind noises Complainant was hearing. In addition, the technician removed the rear cargo trim and side trim panel and installed felt tape to address the noise coming from the rear of the vehicle.⁸ The

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 1, Retail Installment Contract, Purchase Order, and Odometer Statement dated August 17, 2013.

⁸ Complainant Ex. 2, Repair Order dated June 13, 2014.

vehicle's mileage when Complainant turned it over to the dealer on this occasion was 9,251.⁹ Complainant was provided with a loaner vehicle while his vehicle was in the dealer's possession.

Complainant drove the vehicle for a week, but continued to hear the noises from the same areas on the vehicle. He returned the vehicle to First Texas on June 20, 2014. On this occasion, the dealer's service technician determined that the windshield noise was due to outside turbulence around the mirror and ordered a cowl for the vehicle.¹⁰ However, the service technician could not duplicate the noise Complainant was hearing from the rear of the vehicle, so no repair was attempted on this issue.¹¹ First Texas had the vehicle in their possession for five days. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle was 9,892.¹²

Complainant took the vehicle home and drove it while waiting for the ordered cowl to arrive at First Texas. He took the vehicle back to First Texas on July 24, 2014, after the ordered part arrived. The new cowl was installed in order to address the concern regarding the wind noise from the driver's side window. Complainant also indicated to the dealer's representative that he was still hearing a rattling noise from the rear of the vehicle when driving in the city. However, the service technician could not recreate the noise during the repair visit.¹³ The vehicle was retained by First Texas for seven days and was returned to Complainant on July 31, 2014. Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant turned it over to First Texas was 10,356.¹⁴

Complainant drove the vehicle for about two months after the July repair visit. However, he began to again hear the noises when driving the vehicle. On September 3, 2014, Complainant took the vehicle to First Texas to have his concerns addressed. Complainant test drove the vehicle with a representative from First Texas. The representative was able to hear the rattling noise from the rear of the vehicle that caused Complainant's concern. In order to resolve the issue, the dealer's service technician installed a new power tailgate motor.¹⁵ In addition, Complainant indicated that he was still hearing a wind noise from the front of the vehicle, despite the earlier repair performed by the dealer. The dealer's service technician determined that the left rear sliding door rear panel was not attached and the front door seal was deformed. So, the dealer's technician installed a new front door seal, left rear door C pillar outside trim, and lower trim on the vehicle.¹⁶ The vehicle was in the dealer's possession until September 10, 2014.

⁹ *Id.*

¹⁰ Complainant Ex. 3, Repair Order dated June 20, 2014.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated July 24, 2014.

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated September 3, 2014.

¹⁶ *Id.*

Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle when he delivered it to First Texas on this occasion was 11,349.¹⁷

Complainant felt that the repairs performed on the September 3, 2014, resolved the issue of the wind noises from the front of the vehicle. However, Complainant still was able to hear a rattle from the rear of the vehicle. As a result, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on October 8, 2014.¹⁸ In addition, Complainant wrote a complaint letter to Respondent outlining his unhappiness with the vehicle. Respondent received the letter on November 6, 2014.

As a result of the complaint letter, Respondent arranged to have the vehicle inspected by one of their service technicians. The Complainant testified that the vehicle was inspected on December 19, 2014 at First Texas. Complainant was provided with a loaner vehicle while the inspection was taking place. Respondent attempted a final repair to alleviate Complainant's concerns regarding the rattling noise he was hearing from the rear of the vehicle. It was determined that the power tailgate arm had too much "play." As a result, the rear tailgate arm was replaced pursuant to instructions provided by a service bulletin issued by Respondent.¹⁹

Complainant has continued to hear the rattling noise from the rear of the vehicle, although it has improved somewhat. He feels that there is a moving part in the hatch door that causes the sound. He hears the noise particularly on rough and bumpy roads.

During cross examination, Complainant testified that during a test drive conducted by the hearings examiner and the parties at the time of hearing, he heard the same rattling noise that he had been hearing since January of 2014. However, he did not take the vehicle to be repaired until June of 2014, approximately six months after he first began to hear the noise. Complainant never informed the dealer's service advisor that the noises he had been hearing had been getting worse. Complainant was provided with several loaner vehicles by First Texas on the occasions that he took the vehicle in for repairs. Some of the vehicles created more noise and some less noise than the vehicle owned by Complainant.

Complainant is an electrical engineer. He has no special knowledge in automotive engineering and has never worked as an auto mechanic. This vehicle at issue is the first vehicle Complainant has owned that has a power tailgate. Complainant feels that although the rattling noise seemed to largely disappear after the repairs performed in December of 2014, the noise problem has worsened since then. He feels that the rattling sound is about 60% better than before those

¹⁷ *Id.*

¹⁸ Complainant Ex. 6, Lemon Law Complaint. Complainant signed and dated the complaint on October 1, 2014. However, the complaint was not received by the Texas Department of Motor Vehicles until October 8, 2014, which is the effective date of the complaint.

¹⁹ Complainant Ex. 7, Repair Order dated December 19, 2014.

repairs were performed. During a pre-hearing teleconference conducted in January of 2015, Complainant had stated that the sound was about 97% better than before the repairs.

Complainant testified that he signed his Lemon Law complaint on October 1, 2014 and indicated at the time that there were two issues: the noise from the front driver's side of the vehicle and the rattling noise from the rear of the vehicle. However, the noise from the front of the vehicle had been repaired and was no longer occurring when the complaint was filed. He included the issue because he did not know whether the noise would come back, since he wasn't sure whether the issue had been completely addressed. He included the issue although it wasn't a problem at the time of the filing of the complaint and was not occurring at the time of hearing.

The vehicle makes no unusual noises on the highway or on smooth roads. Complainant feels that the noise he hears has affected the value of the vehicle. However, he has not attempted to sell it. The noise bothers Complainant and distracts him from his driving. He feels that he can't focus on driving because of the sound. Complainant does not feel that the issue is a safety concern, but that there is an excessive amount of noise.

C. Respondent's Evidence and Arguments

Steve Tuleja, District Parts and Service Manager, has worked for Respondent in the same position for twelve years. He has a BS degree in automotive technology and works as a liaison between Respondent and their authorized dealers. Mr. Tuleja also worked for Mitsubishi Motor Company for two and a half years in their parts and accessories marketing department and for Toyota Motor Sales in their quality assurance department.

Mr. Tuleja testified that he was first contacted by Simon Ng from Respondent's mediation group regarding Complainant's dissatisfaction with the vehicle. Mr. Ng made arrangements for Mr. Tuleja to meet with Complainant to test drive Complainant's vehicle. On November 7, 2014, Mr. Tuleja, David Heenan (First Texas' dealership service drive manager), and Complainant took a test drive in the vehicle. They all agreed that they could hear a rattling noise from the back of the vehicle. In addition, they all test drove a new vehicle comparable to Complainant's to see if it made a similar rattling noise. The comparable vehicle made a noise similar to that heard by Complainant when driving his vehicle. Mr. Tuleja then asked Complainant what his expectations were. Complainant indicated that he thought that there should not be any noise at all. Mr. Tuleja indicated that he would inform Mr. Ng about Complainant's expectations and to discuss what action Respondent would take on Complainant's concerns. No repairs were performed at the time.

In mid-December of 2014, Mr. Ng informed Mr. Tuleja that Respondent was working on an improved rear tailgate arm of certain model vehicles, which included the model Complainant had

purchased. The tailgate arm had been improved and Mr. Ng arranged for the installation of the new tailgate arm in Complainant's vehicle to see if it would resolve his concerns regarding the rattling noise he was hearing from the rear of his vehicle. So, Complainant took the vehicle to First Texas on December 19, 2014, to have the tailgate arm installed on his vehicle.

Mr. Tuleja indicated that he did hear a rattling noise from the rear of Complainant's vehicle during the test drive taken at the time of hearing. However, he could not recall if that was the same sound he heard when he took the test drive in the vehicle in November of 2014. He does not feel that the sound is unusual, since he test drove a new vehicle comparable to Complainant's vehicle in November of 2014 and heard a similar sound while driving that vehicle. He does not feel that because there is a rattling noise that it indicates that there's a problem with the vehicle. Mr. Tuleja also indicated that replacing a tailgate arm on a vehicle does not affect the operation of a vehicle. He does not feel that it's unusual for a vehicle's components to rattle somewhat when driving on a bumpy or rough road. It's a common occurrence for most vehicles. He doesn't feel that the rattling noise he heard during the test drive was excessive. In his opinion, the noise doesn't affect the fair market value of the vehicle. Most people wouldn't be disturbed by the noise that's being heard by Complainant. The noise is not out of characteristic for the vehicle.

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.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. ~~Complainant initially had two concerns regarding the vehicle and these both involved noises that he was hearing when driving the vehicle. The first concern was with a wind noise that seemed to come from the driver's side window. This concern was addressed by Respondent's authorized dealer and resolved prior to the filing of the Lemon Law complaint. Complainant has not heard the wind noise since the September 3, 2014 repair and so is no longer an issue.~~

Complainant's second concern involved a "rattling" noise that comes from the rear of the vehicle when driving on rough or bumpy roads. Complainant indicated that the noise does not occur on

smooth roads or on the highway. This noise was still occurring at the time of hearing and, in fact, was heard by the hearings examiner and the parties during the test drive of the vehicle. It is understandable that the noise can be annoying and Complainant testified as much. However, the rattling noise does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the rattling noise does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the rattling noise would affect the purchase price, since most people would not even notice it.

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.

On the date of hearing, the vehicle's mileage was 16,475 and it remains under warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Natraj Rachakonda (Complainant) purchased a new 2014 Honda Odyssey on August 17, 2013, from First Texas Honda in Austin, Texas, with mileage of 66 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 16,475.
3. The vehicle was manufactured by American Honda Motor Company, Inc. (Respondent).
4. Complainant took the vehicle to Respondent's authorized dealer, First Texas Honda in Austin, Texas, in order to address his concerns regarding noises coming from the driver's side window and the rear tailgate on the following dates:
 - a. June 13, 2014, at 9,251 miles;
 - b. June 20, 2014, at 9,892 miles;
 - c. July 24, 2014, at 10,356 miles; and
 - d. September 3, 2014, at 11,349 miles.

5. On June 13, 2014, the dealer's service technician removed the vehicle's rear cargo trim and side trim panel and installed felt tape in an attempt to alleviate the rattling noise heard from the back of the vehicle. No work was done to correct Complainant's concern regarding the wind noise from the front driver's side of the vehicle.
6. On June 20, 2014, the dealer's service technician determined that in order to address the issue regarding the wind noise from the driver's side of the vehicle, the vehicle's cowl needed to be replaced. The replacement cowl was ordered. The service technician could not duplicate the rattling sound from the back of the vehicle on this service visit.
7. On July 24, 2014, the replacement cowl was installed on the vehicle. The service technician could not recreate the rattle from the rear of the vehicle, so no other repair work was performed.
8. On September 3, 2014, the dealer's service technician installed a new front door seal, left rear C pillar outside trim, and lower trim in order to address the wind noise coming from the driver's side window. In addition, the service technician installed a new rear tailgate motor in order to address the issue regarding the rattling noise from the rear of the vehicle.
9. On October 8, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On November 7, 2014, Respondent performed a final inspection on the vehicle to see if there were any repairs that could be performed to address Complainant's concerns regarding the rattling noise he was hearing from the rear of the vehicle. Respondent's district parts and service manager determined that the rattling noise was not unusual and no repairs were done.
11. On December 19, 2014, in a final repair attempt, Respondent had their authorized dealer install a new, improved rear tailgate arm on the vehicle to see if this would address Complainant's concerns regarding the rattling noise he was hearing from the rear of the vehicle.
12. The vehicle no longer has a wind noise coming from the driver's side window, although Complainant still hears a rattling noise from the rear of the vehicle.
13. On December 9, 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 February 12, 2015, in Austin, Texas, before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Respondent was represented by Abigail Mathews, Attorney with Francis Mathews PLLC. Steve Tuleja, District Parts and Service Manager, testified for Respondent.

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.
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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 Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED February 19, 2015



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