

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0076 CAF**

JOE DEVENPORT,
Complainant

v.

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

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Joe Devenport (Complainant) seeks repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged defect in his 2013 Honda CR-V. Complainant asserts that the defect causes excessive vibration in the steering wheel and interior body of the vehicle. American Honda Co., Inc. (Respondent) argues that the vehicle is operating as designed. The hearings examiner concludes that a preponderance of the evidence does not establish the existence of a warrantable defect in Complainant's vehicle. Accordingly, Complainant is not eligible for repurchase relief under the Texas Lemon Law.

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 on the merits in this case convened and closed on January 28, 2015 in Fort Worth, Texas, with Hearings Examiner Anne K. Perez presiding. Complainant appeared and represented himself. Attorney Abigail A. Mathews represented Respondent.

II. DISCUSSION

A. Undisputed Facts

1. Purchase Information

On January 19, 2013, Complainant purchased/leased a new 2013 Honda CR-V (the vehicle, or car) from Honda Cars of McKinney, Texas (Honda McKinney) via Honda Lease Trust, with mileage of 14 at the time of delivery. The lease is administered by American Honda Finance Corporation dba Honda Financial Services.¹

¹ Complainant Ex. 1, Vehicle Lease Agreement.

2. Warranty Coverage

Respondent manufactured the vehicle. On January 19, 2013, Respondent issued an express limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first. Respondent also issued a powertrain warranty covering defects in the vehicle's engine, transmission, and drive train for 60 months or 60,000 miles, whichever comes first.² On the date of hearing, both types of warranty coverage were in effect.

3. Lemon Law Complaint and Notice to Manufacturer

On September 29, 2014, Complainant provided written notice to Respondent of an alleged defect in the vehicle that causes vibration in the steering wheel and body of the car.³

On November 14, 2014, Complainant filed a petition for Lemon Law relief with the Texas Department of Motor Vehicles. The complaint's description of the vehicle's alleged defect is consistent with Complainant's written notice served on Respondent.⁴

B. Legal Standards

The manufacturer of a motor vehicle must repurchase or replace the vehicle 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.⁵ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁶ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁷

"Serious safety hazard" means a life-threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁸ A rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty if the defect creating a serious safety hazard continues to exist after being subject to repair two or more times and: (1) one of the repair attempts was made in the 12 months or 12,000 miles, whichever occurs first,

² The parties stipulated to the terms of Respondent's warranties applicable to the vehicle.

³ Complainant Ex. 10.

⁴ Complainant Ex. 2.

⁵ Tex. Occ. Code § 2301.604(a)(1) and (2).

⁶ Tex. Occ. Code § 2301.606(c)(1).

⁷ Tex. Occ. Code § 2301.606(c)(2).

⁸ Tex. Occ. Code § 2301.601(4).

following the date of original delivery to the owner; and (2) at least one other repair attempt was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.⁹

If a defect is not hazardous but substantially impairs the use or market value of the vehicle, a complainant may establish the same rebuttable presumption under Texas Occupations Code § 2301.605(a)(1). In the absence of controverting evidence, it is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same defect continues to exist after being subject to repair four or more times and: (A) 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 (B) 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.¹⁰

C. Complainant's Evidence

Complainant testified that he took delivery of the leased vehicle on January 19, 2013. A few weeks later, he noticed an excessive amount of vibration in the steering wheel and interior body of the car while traveling at speeds of 65 to 75 miles per hour (mph). He said the vibration is particularly noticeable when driving on smooth, asphalt road surfaces.

On February 16, 2013, Complainant brought the car in for service by Honda McKinney. He described the vehicle's symptomology of vibration to the service advisor but on this occasion, as well as the service visits that followed, he had "no first-hand knowledge that they even drove the vehicle." It seemed that service personnel typically approached his vibration concern by "immediately going into wheel balance and front-end alignment...the things they think might fix it." On February 16, 2013, the car was released to him after about three hours, and the repairs did not reduce the level of vibration.

The problem persisted over the next several months. He brought the vehicle back to Honda McKinney on June 5, 2013, and although he reported the same symptoms of vibration his concern was not properly documented by the dealer. Instead, the repair order incorrectly says Complainant "requested" that all four tires be rotated and balanced. Complainant stated that the services performed on June 5, 2013 did nothing to improve the excessive amount of vibration in the car.

Complainant took the vehicle to a different dealer, Honda Cars of Rockwall, Texas (Honda Rockwall), the next time it was serviced for excessive vibration. He explained that Honda McKinney was surrounded by ongoing road construction, and he wondered if the lack of "smooth" highways nearby and "what little driving they did" was preventing Honda McKinney technicians from observing the

⁹ Tex. Occ. Code § 2301.605(a)(2).

¹⁰ Tex. Occ. Code § 2301.605(a)(1).

vehicle's vibration issues. As a result, he requested that Honda Rockwall service the car for the problem on July 28, 2014.

On July 28, 2014, Complainant's description of the car's vibration symptomology prompted Honda Rockwall service technicians to contact Respondent's Tech Line. A Tech Line specialist advised technicians to "road force balance" the vehicle's tires. Honda Rockwall's "Hunter Road Force Balancing" machine was out of service at the time, so Complainant was directed to the nearest dealer (Toyota Rockwall) that possessed a working machine. On July 28, 2014, Complainant paid \$59.95 to have the car's tires "road force balanced" by Toyota Rockwall, and Respondent reimbursed Complainant for his out-of-pocket expense. Unfortunately, Complainant said the level of vibration in the vehicle was unchanged by "road force balancing" the tires.

Complainant brought the vehicle in for service to Honda Rockwall for the complained-of vibration twice more prior to hearing. On August 4, 2014, he told the dealer's service advisor that the issue was more prominent when the vehicle was traveling uphill. On August 14, 2014, he met with Respondent's District Parts and Service Manager (DPSM) John Kerrigan at Honda Rockwall, and they completed a 10-mile test drive of the car. Although the vehicle's tires were replaced at Mr. Kerrigan's direction, Complainant said that the repair did nothing to reduce the car's excessive vibration, which remains present.

The three dealers' repair orders for the vehicle reflect the following information:¹¹

Date	Mileage	Reported Concern	Dealer Name, Diagnostic Findings & Actions
2-16-2013	1,360	Steering wheel shakes at highway speeds	<u>Honda McKinney</u> ; Check & Advise; Imbalance in tires; Rebalanced tires
6-5-2013	3,857	Request tire rotation & for all 4 tires to be balanced & rotated	<u>Honda McKinney</u> : Performed as requested
7-28-2014 at 7:45 a.m.	12,990	When traveling at speeds of 65-70 mph there is vibration in steering wheel on smooth roads	<u>Honda Rockwall</u> : Called Tech Line & specialist recommended Road Force Balance
7-28-2014 at 10:27 a.m.	12,994	Requests that tires be rotated & balanced	<u>Toyota Rockwall</u> : Customer paid \$59.95 for road force balancing
8-4-2014	14,083	Vehicle vibrates when traveling at speeds of 40-75 mph or going up a hill	<u>DPSM inspection performed at Honda Rockwall</u> : Replaced tires per DPSM; Drives perfect at this time

¹¹ The repair orders were admitted as Complainants Exs. 3-6 and 8-9.

8-14-2014	14,703	There is vibration at highway speeds	<u>Honda Rockwall</u> : Advise DPSM John Kerrigan; Road-test with vehicle owner; Drove 10 miles until condition presented on asphalt only at 75 mph; Vibration presents in floor & wheel but no wheel wobble; also did a comparison with Stock Unit #546399; Condition presented the same on like vehicle; Condition is characteristic to vehicle
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Complainant testified that he does not know what is causing the vehicle's vibration issues; therefore, he cannot say whether the underlying problem poses a safety hazard. Nonetheless, he believes that excessive vibration should not be present in any vehicle, especially a new one. The issue "bugs" him every time he drives the car on a long highway trip. He does not notice the problem when driving for short periods of time at speeds of 35 to 40 mph. Similarly, he does not know whether the vibration concern adversely affects the car's market value, although he noted that a Carfax report would show how many times the vehicle was serviced for the issue.

On cross-examination, Complainant indicated that he mostly drives the vehicle when he and his spouse go on long trips. His wife is the primary driver of the vehicle "in-town," and she uses it to go to the grocery store, church, etc. Complainant primarily drives a 2002 Super Crew Cab pickup truck with a very "smooth" ride at highway speeds. The couple traded a Chrysler Town & Country Minivan when they leased the 2013 Honda CR-V. In past years Complainant usually drove larger, heavier vehicles, including a Chevrolet Tahoe and a Suburban. He agreed that different vehicle models exhibit different ride characteristics.

Complainant stated that on August 14, 2014, the day he and Mr. Kerrigan met at Honda Rockwall, they test-drove another 2013 Honda CR-V in addition to Complainant's vehicle. He acknowledged that the like vehicle displayed the same "harmonic" vibration as his own 2013 Honda CR-V while traveling at highway speeds on a smooth road surface. He further agreed that Mr. Kerrigan told him the complained-of vibration was a characteristic of this vehicle model, and that no employee of a Honda dealership has ever suggested that the vehicle's vibration poses a safety hazard.

D. Test Drive at Hearing

On the date of hearing mileage was at 19,059. Complainant, Mr. Kerrigan, Ms. Mathews, and the hearings examiner completed a 43-mile test-drive of the vehicle after Complainant's direct case presentation. While traveling 65 to 75 mph on smooth asphalt road surfaces, the vehicle's steering wheel exhibited visible vibration.

E. Respondent's Evidence

Respondent presented the testimony of John Kerrigan, its DPSM of the Dallas-Fort Worth metroplex area.

Mr. Kerrigan testified that he has worked in the automotive industry for 38 years. He was employed as an automotive service technician at a dealership for four years, followed by a 17-year stint as the service manager. He became a service director for Respondent in 2003 and has been a DPSM for the past 8 years. As a DPSM he performs vehicle diagnostic inspections, assists dealer service technicians with diagnostic problems, and resolves warranty and customer satisfaction issues.

Mr. Kerrigan indicated that Honda Rockwall contacted him regarding the complained-of vibration in Complainant's vehicle. On August 4, 2014, Mr. Kerrigan said he authorized replacement of the vehicle's tires at no charge because his review of the "road force" tire measurements showed two tires that were slightly higher than average.¹²

Following replacement of the vehicle's tires on August 4, 2014, Mr. Kerrigan said he and Complainant met and completed a test-drive of the vehicle on August 14, 2014. He testified that during this test-drive, Complainant demonstrated the complained-of vibration while the vehicle was traveling at 65 to 75 mph on a smooth asphalt road surface. He agreed that the same vibration was observable in Complainant's vehicle during the test-drive completed at hearing. According to Mr. Kerrigan, the vibration is a normal ride characteristic of the Honda CR-V model in all years from 2012 forward. The vibration is not the result of a defect in the vehicle, and it does not create a safety hazard.

F. Analysis

In order to prevail in his request for repurchase relief, Complainant bears the burden of proving that Respondent has not conformed the car to an applicable express warranty because Respondent cannot repair a defect in the vehicle. In addition, Complainant must show that the nonconformity creates a serious safety hazard, or substantially impairs the use or market value of the vehicle. Neither of these statutory elements was established by the required standard of proof.

Complainant credibly testified that the vehicle exhibits "harmonic" vibration while traveling at speeds of 65 to 75 mph on smooth asphalt road surfaces. During the test-drive completed at hearing, he demonstrated the presence of visible vibration in the steering wheel while the vehicle was being driven under the described conditions. Respondent's factory representative acknowledged that the complained-

¹² Mr. Kerrigan explained that in "road-force balancing," the tires are balanced against the wheels by applying pressure to the tires, as opposed to "regular tire balancing," where the vehicle's tires are balanced against each other.

of vibration is present in the vehicle, but testified that it is a normal characteristic of the Honda CR-V model in years 2012 forward.

That Complainant finds the vibration annoying is understandable, particularly since he rarely drives the vehicle except while traveling for long periods of time at highway speeds. A consumer who is used to driving a larger, heavier vehicle with a smoother ride might even find the vibration present in a newer-model Honda CR-V intolerable. However, the question is not whether the vibration is noxious, but whether it is the result of a defect that creates a safety hazard, or that substantially impairs the use or market value of the vehicle. This is where Complainant's case fails.

First, there is no evidence that a defect is causing Complainant's vehicle to display the complained-of vibration. The repair orders demonstrate that the vibration continued to exist despite "regular" tire balancing, then "road-force" tire balancing, and finally the replacement of all four tires. Second, there is no indication that the vibration raises safety concerns with the vehicle. Complainant did not testify that the vibration makes it difficult to steer the vehicle, or to control the vehicle while traveling at high speeds. Likewise, his annoyance with the steering wheel's vibration does not appear to have substantially impaired the use of the vehicle, since he indicated that both he and his spouse continue to drive the car. That the vibration is present in all newer-model Honda CR-Vs further indicates that the market value of Complainant's vehicle remains intact. Again, Complainant is required to show that an existing defect in the vehicle creates a serious safety hazard, or substantially impairs the use or market value of the vehicle. The required standard of proof has not been met in this case.

In summary, a preponderance of the evidence does not demonstrate that a warrantable defect in Complainant's vehicle currently exists. Rather, the evidence supports the conclusion that the vehicle is operating as designed, that no repairs are needed, and that no safety concerns are present. The use and market value of the vehicle are unaffected by the complained-of condition. Complainant is therefore ineligible for the requested relief.

II. FINDINGS OF FACT

1. On January 19, 2013, Joe Devenport (Complainant) purchased/leased a new 2013 Honda CR-V (the vehicle) from Honda Cars of McKinney, Texas (Honda McKinney) via Honda Lease Trust, with mileage of 14 at the time of delivery. The lease is administered by American Honda Finance Corporation dba Honda Financial Services.
2. American Honda Motor Co., Inc. (Respondent) manufactured the vehicle.
3. On January 19, 2013, Respondent issued an express limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first; Respondent also issued a powertrain warranty covering defects in the

vehicle's engine, transmission, and drive train for 60 months or 60,000 miles, whichever comes first.

4. Honda McKinney is an authorized dealer of Respondent.
5. The vehicle's mileage on the date of hearing was 19,059.
6. At the time of hearing, the vehicle was covered by Respondent's basic limited warranty and its powertrain warranty.
7. Within a few days of purchase, Complainant noticed vibration in the steering wheel and the body of the vehicle while traveling at speeds of 65 to 70 miles per hour (mph).
8. The vehicle was serviced for vibration in the steering wheel and the vehicle's body by Honda McKinney on the following dates:
 - a. February 16, 2013, at 1,360 miles; and
 - b. June 5, 2013, at 3,857 miles.
9. Honda Cars of Rockwall, Texas (Honda Rockwall) is an authorized dealer of Respondent.
10. The vehicle was serviced for vibration in the steering wheel and the vehicle's body by Honda Rockwell on the following dates:
 - a. July 28, 2014, at 12,990 miles; and
 - b. August 4, 2014, at 14,083 miles.
11. On July 28, 2014, Honda Rockwall contacted Respondent's "Tech Line" concerning the vehicle's reported vibration issues, and a Tech Line specialist advised that the vehicle's tires should be "road force balanced." Because Honda Rockwall's "Road Force Balancing" machine was out of service that day, the recommended service was performed by a nearby Toyota dealership. Respondent subsequently reimbursed Complainant's out-of-pocket expense for "road force balancing" of the vehicle's tires at the Toyota dealership.
12. On August 14, 2014, Respondent was given an opportunity to inspect and cure the alleged defect in Complainant's vehicle.
13. The vibration in Complainant's vehicle is characteristic of the Honda CR-V model in years 2012 forward.
14. The complained-of vibration in the vehicle is not the result of a warrantable defect.

15. The complained-of vibration in the vehicle does not create a safety hazard.
16. The complained-of vibration does not substantially impair the vehicle's use or market value.
17. On September 19, 2014, Complainant provided written notice to Respondent of the alleged defect in the vehicle.
18. On November 14, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
19. On December 17, 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.
20. The hearing convened and closed on January 28, 2015 in Fort Worth, Texas, with Hearings Examiner Anne K. Perez presiding. Complainant appeared and represented himself. Attorney Abigail A. Mathews represented Respondent.

III. CONCLUSIONS OF LAW

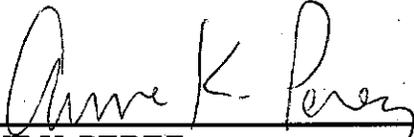
1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision 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 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.
6. 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 February 23, 2015.



ANNE K. PEREZ
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES