

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0089 CAF**

**JESUS M. CANABA,
Complainant**

v.

**VOLKSWAGEN GROUP OF
AMERICA, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jesus M. Canaba (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Volkswagen Jetta Sedan. Complainant asserts that the vehicle fails to start on occasion. Complainant argues that the issue substantially impairs the use of his vehicle. Volkswagen Group of America, Inc. (Respondent) argues 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. Therefore, 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 closed on May 21, 2015, in El Paso, Texas. Complainant, Jesus M. Canaba, was represented by his daughter, Sandra Canaba. Sandra Canaba and Jesus Canaba, Complainant's son, offered testimony for Complainant. Respondent was represented by Adrian Guerrero, Arbitration Specialist. Also present was Margarita Lozano, who provided Spanish interpretive services for Complainant.

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 value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these conditions, Section 2301.605 of the Occupation Code specifies that there are three tests which can establish a rebuttable presumption that a reasonable number of attempts have been undertaken by a Respondent to conform a motor vehicle to an applicable express warranty. The first test provides that 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, then Complainant has established that Respondent has been provided with a reasonable number of attempts to repair the vehicle.⁵ The second test applies to a nonconformity that creates a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupation Code. The third test provides that Complainant can establish a rebuttable presumption that a reasonable number of attempts to conform a motor vehicle to an applicable express warranty if a nonconformity continues to exist which substantially impairs the vehicle's use or market value and (1) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner and (2) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.⁶ However, the Occupations Code also provides that the 30 day period described by this section does not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.⁷

B. Complainant's Evidence and Arguments

Complainant purchased a new 2014 Volkswagen Jetta Sedan from Rudolph Volkswagen (Rudolph) in El Paso, Texas on May 3, 2014, with mileage of 34 at the time of delivery.⁸ The new vehicle limited warranty on the vehicle is 3 years or 36,000 miles, whichever occurs first.⁹ In addition, Respondent has provided the vehicle with a five (5) year or 60,000 mile powertrain warranty.

Sandra Canaba, Complainant's daughter, is the primary driver of the vehicle. In July of 2014, the vehicle failed to start. Ms. Canaba testified that on this occasion the vehicle failed to start

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁶ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

⁷ Tex. Occ. Code § 2301.605(c).

⁸ Complainant Ex. 1, Contract of Sale dated May 3, 2014.

⁹ Respondent Ex. 3, USA Warranty and Maintenance, Model Year 2014.

multiple times. When the vehicle did finally start, all of the warning indicator lights came on. Ms. Canaba took the vehicle to Rudolph for repair. The dealer's service technicians were able to duplicate the problem, but did not have the necessary parts to repair the vehicle. As a result, they had to special order a part for the vehicle.¹⁰ The vehicle's mileage at the time was 6,196.¹¹ Complainant was not provided with a rental or loaner vehicle while her vehicle was in the dealer's possession.

The vehicle then failed to start twice in the month of August. On one of these occasions, Ms. Canaba pushed the start button three times over a span of a few minutes, but the vehicle refused to start. At this point, she had to borrow a car to take her nieces to school. She tried to start the vehicle once more after she returned to her home. It started on this attempt. She took the vehicle to Rudolph on August 19, 2014. The part ordered in July had arrived and the electronic control module (ECM) and power control module (PCM) were replaced and relearned. The vehicle was test driven and the repairs were verified.¹² The vehicle's mileage on this occasion was 10,937.¹³ Complainant was not provided with a rental or loaner vehicle while her vehicle was in the dealer's possession on this occasion.

The vehicle worked fine for a few days. However, the vehicle failed to start again on August 25, 2014. Ms. Canaba took the vehicle to Rudolph that same day. The dealer's service technicians checked for detrimental technical codes (DTCS) and found multiple communication faults. The faults were cleared and the vehicle road tested. The dealer's service technician did not discover any other issues with the vehicle. The vehicle was starting correctly when it was returned to Ms. Canaba.¹⁴ The vehicle's mileage on this occasion was 11,133.¹⁵ Complainant was not provided with a rental or loaner vehicle while her vehicle was in the dealer's possession on this occasion.

Ms. Canaba did not have any problems with the vehicle starting for a few days. On September 2, 2014, the vehicle did not start. Ms. Canaba attempted to start it three or four times. When the vehicle finally started later that day, Ms. Canaba took it to Rudolph. The failure to start was duplicated at the dealership. The dealer's service technician performed a Guided Fault Finding (GFF) diagnostic test and found multiple communication faults. The technician then contacted the VW tech line. Respondent's Quality Technical Manager (QTM) directed the technician to replace the main fuse and power supply relay. The faults were cleared, as well.¹⁶ The vehicle started fine after the repairs were performed and was returned to Ms. Canaba. The vehicle's

¹⁰ Respondent Ex. 1, Repair Order dated July 23, 2014.

¹¹ *Id.*

¹² Complainant Ex. 2, Repair Order dated August 19, 2014.

¹³ *Id.*

¹⁴ Complainant Ex. 3, Repair Order dated August 25, 2014.

¹⁵ *Id.*

¹⁶ Complainant Ex. 4, Repair Order dated September 2, 2014.

mileage on this occasion was 11,523.¹⁷ The vehicle was in Rudolph's possession until September 9, 2014. Ms. Canaba was provided with a loaner vehicle during this repair visit.

Ms. Canaba testified that the vehicle was fine for about a month. The vehicle failed to start again on October 27, 2014. On October 28, 2014, Ms. Canaba took the vehicle to Rudolph. Two DTCS were found by the dealer's service technician. The technician determined that the vehicle's fuel cap was incorrectly installed. The fuel cap was re-secured and the repairs were verified.¹⁸ The vehicle's mileage on this occasion was 14,067.¹⁹ The vehicle was in Rudolph's possession until November 3, 2014. Ms. Canaba was provided with a loaner vehicle while her vehicle was being repaired.

On November 7, 2014, Complainant mailed a letter to Respondent providing thirty (30) days to correct the issue with the vehicle failing to start. The letter indicates repurchase is desired if the problem cannot be corrected.²⁰ A Lemon Law complaint was received by the Texas Department of Motor Vehicles on November 26, 2014.²¹

On December 4, 2014, Ms. Canaba took the vehicle to Rudolph for inspection by Respondent's representative. She indicated to the dealer's service advisor that when she drove the vehicle she felt like it was going to stall.²² She did not raise the issue of the vehicle not starting at the time of the inspection. The vehicle was ready for pickup on the following day, but due to her work schedule, Ms. Canaba was not able to pick up the vehicle until December 8, 2014.²³ The vehicle's mileage at the time was 15,820.²⁴ Complainant was provided with a rental vehicle while her vehicle was being inspected. Ms. Canaba feels that the representative was inspecting the wrong issue during this visit. She was concerned with the vehicle not starting, not with the stalling issue.

On December 20, 2014, Ms. Canaba and a friend, Victor Munoz, attended a football game between the University of Texas at El Paso and the University of New Mexico in Albuquerque, New Mexico. After the game was finished, the vehicle failed to start. The vehicle was taken to Rudolph on December 23, 2014. No faults were found and the vehicle started without issue.²⁵ The vehicle's mileage on this occasion was 16,686.²⁶ Ms. Canaba was provided with a rental vehicle during this repair visit. Complainant has not experienced any issues with the vehicle failing to start since the incident in Albuquerque.

¹⁷ *Id.*

¹⁸ Complainant Ex. 5, Repair Order dated October 28, 2014.

¹⁹ *Id.*

²⁰ Complainant Ex. 9, Letter dated November 7, 2014.

²¹ Complainant Ex. 8, Lemon Law Complaint Form dated November 26, 2014.

²² Complainant Ex. 6, Repair Order dated December 4, 2014.

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 7, Repair Order dated December 23, 2014.

²⁶ *Id.*

C. Respondent's Evidence and Arguments

Adrian Guerrero, Arbitration Specialist, testified that the vehicle has been down nineteen (19) days which is short of the thirty (30) days required under the Texas Lemon Law. Complainant's use of the vehicle has not been impaired which can be proven by the fact that Complainant has put 17,000 miles on the vehicle in eight months. Mr. Guerrero feels that the vehicle does not currently have a defect for Respondent to cure. The only occasion on which Respondent's authorized dealer was able to duplicate the issue of the vehicle failing to start was the visit on September 2, 2014. There have been two repair attempts made since that time. Moreover, the vehicle has started without issue for the past five months. Respondent's position is that there is no existing defect and therefore Complainant's Lemon Law claim must fail.

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 May 3, 2014, and his daughter presented the vehicle to an authorized dealer of Respondent on July 23, 2014, after the vehicle failed to start. Complainant's daughter returned to the dealership with the same problem on five subsequent occasions: August 19, 2014; August 25, 2014; September 2, 2014; October 28, 2014; and December 23, 2014. Only on one of these occasions (September 2, 2104) was the issue able to be duplicated by the dealer's service technicians.

Complainant admits that the last time the vehicle failed to start was over five months ago. Respondent argues that there is no defect to correct. If there was a defect, Respondent argues that it was repaired. The vehicle started without issue at the hearing. Complainant has not proven that the vehicle has an existing defect. 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.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage

was 29,979 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. Jesus M. Canaba (Complainant) purchased a new 2014 Volkswagen Jetta Sedan on May 3, 2014, from Rudolph Volkswagen (Rudolph) in El Paso, Texas, with mileage of 34 at the time of delivery.
2. The manufacturer of the vehicle, Volkswagen Group of America, Inc. (Respondent) issued a New Vehicle Limited Warranty for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 29,979.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Rudolph, Respondent's authorized dealer, on the following dates in order to address the issue of the vehicle failing to start:
 - a. July 23, 2014, at 6,196 miles;
 - b. August 19, 2014, at 10,937 miles;
 - c. August 25, 2014, at 11,133 miles;
 - d. September 2, 2014, at 11,523 miles;
 - e. October 28, 2014, at 14,067 miles; and
 - f. December 23, 2014, at 16,686 miles.
6. On July 23, 2014, Complainant took the vehicle to Rudolph. The dealer's service technicians did not have the parts required to repair the vehicle, so they ordered the necessary parts for later installation.
7. On August 19, 2014, Complainant took the vehicle for repair to Rudolph. At this time, the parts ordered previously were installed. The dealer's service technicians replaced the vehicle's electronic control module (ECM) and power control module (PCM).
8. On August 25, 2014, Complainant took the vehicle to Rudolph for repair. The dealer's service technicians could not duplicate Complainant's concerns, so no repairs were performed beyond clearing fault codes from the vehicle's computers.

9. On September 2, 2014, Complainant took the vehicle to Rudolph for repair. The dealer's service technicians replaced the vehicle's main fuse and power relay in order to address Complainant's concerns.
10. On October 28, 2014, Complainant took the vehicle to Rudolph for repair. The service technicians determined that the vehicle's fuel cap was improperly tightened and that this had caused the vehicle to fail to start.
11. On November 26, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. Respondent, during the final repair attempt on December 4, 2014, found no faults with the vehicle. The vehicle started without hesitation.
13. On December 23, 2014, Complainant took the vehicle to Rudolph for repair. However, the dealer's service technicians were unable to duplicate Complainant's concerns.
14. On March 30, 2015, 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.
15. The hearing in this case convened and the record was closed on May 21, 2015, in El Paso, Texas, before Hearings Examiner Edward Sandoval. Complainant, Jesus M. Canaba, was represented by his daughter, Sandra Canaba. Sandra Canaba and Jesus Canaba, Complainant's son, offered testimony for Complainant. Respondent was represented by Adrian Guerrero, Arbitration Specialist. Also present was Margarita Lozano, who provided Spanish interpretive services for Complainant.

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

SIGNED June 17, 2015



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