

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0106 CAF**

ROSA E. GARZA,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Rosa E. Garza (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2013 Ford Taurus. Complainant asserts the vehicle has several issues including: the air conditioner blowing hot air, the navigation screen going black, the vehicle's gauges fluctuating, and the anti-lock braking system and air bag warning lights illuminating. Ford Motor Company (Respondent) argued that Complainant's concerns have been addressed and the vehicle has been repaired. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is not eligible for repurchase or replacement relief since she did not meet all of the statutory requirements for such relief under the 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 in this case convened and the record closed on May 13, 2015, in Pharr, Texas, before Hearings Examiner Edward Sandoval. Complainant was represented by her daughter, Yvonne Rosales, in the hearing. Complainant was also present to provide testimony at the hearing. Respondent was represented via telephone by Terrie Stone, Regulatory Compliance Specialist. Also present was Mario Davila, 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

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or 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, 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.⁵

B. Complainant's Evidence and Arguments

Complainant purchased a 2013 Ford Taurus, from Payne Rio Grande City Ford (Payne) in Rio Grande City, Texas, on March 29, 2014. The vehicle had mileage of 46 at the time of purchase.⁶ At this time, Respondent's basic express warranty for the vehicle is still in effect. Respondent's basic bumper to bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 7,844.

Complainant is not the primary driver of the vehicle. She purchased it for her daughter, Yvonne Rosales, who drives the vehicle on a daily basis.

Ms. Rosales testified that she has had several problems with the vehicle. The vehicle's air conditioner will intermittently blow hot air, the navigation screen will go black, the gauges will fluctuate, and warning lights will indicate that the anti-lock braking system (ABS) and air bags are not activated.

Ms. Rosales indicated that she began experiencing problems with the vehicle in May of 2014. Ms. Rosales would get a message on the Sync screen that stated: "System off to Save Battery," the Sync system would go black, the air conditioner would blow hot air, the instrument cluster

² *Id.*

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). 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.

⁶ Complainant Ex. 1, Motor Vehicle Purchase Order and Motor Vehicle Retail Installment Sales Contract dated March 29, 2014.

would go black, and the speedometer needle would drop when she was not changing speed. Ms. Rosales contacted the dealer from which she purchased the vehicle and spoke to the sales person who sold her the vehicle. He advised Ms. Rosales to take the vehicle to the dealer for repair. So, Ms. Rosales took the vehicle to Spikes Ford (Spikes) in Mission, Texas for repair. Ms. Rosales took the vehicle to Spikes on June 10, 2014. The vehicle was in Spikes possession until June 21, 2014. On June 12, 2014, Ms. Rosales was given a loaner vehicle by the dealership while her vehicle was being repaired. The dealer's service technicians could not duplicate the problems described by Ms. Rosales. However, they did perform a software update on the vehicle.⁷ Ms. Rosales was informed by Spikes' representative that they had never seen this type of problem in the past. The mileage on the vehicle when Ms. Rosales took it to Spikes was 2,204.⁸

Ms. Rosales testified that the day after the vehicle was returned to her, it began doing the same things. The vehicle would act normally for a period of time, then the Sync screen would go black, the speedometer needle would fluctuate, the air conditioner would blow hot air, and the instrument cluster would go black. In addition, Ms. Rosales would see the message that the system was turning off to save battery.

On June 30, 2014, Ms. Rosales spoke to Eddie Garza, the sales person with Payne who sold her the vehicle. Mr. Garza advised Ms. Rosales to take the vehicle to Payne for repairs. So, Ms. Rosales took the vehicle to Payne on July 8, 2014. The vehicle was in Payne's possession for two days. However, Payne did not provide a loaner vehicle to Ms. Rosales while her vehicle was being repaired. Payne's service technicians determined that the vehicle's modules were not communicating to each other properly. So, the technicians updated the accessory protocol interface module (APIM) during this visit and performed Sync updates.⁹ The vehicle's mileage when Ms. Rosales turned it over to Payne was 2,667.¹⁰ Ms. Rosales was informed when she picked up the vehicle that she shouldn't have any more problems with it.

Ms. Rosales testified that the vehicle worked fine for a few days and then she began experiencing problems with it. The air conditioner would blow hot air and the Sync system wouldn't turn on at all. So, Ms. Rosales took the vehicle back to Payne for further repairs on July 28, 2014. The vehicle was in Payne's possession until August 6, 2014. Ms. Rosales was not provided with a loaner vehicle for the period of time that the vehicle was in Payne's possession. The dealer's service technicians contacted Respondent's technical hotline for assistance in determining what was causing the problems with the vehicle. The technicians determined that the vehicle's body control module (BCM) had suffered an internal failure.¹¹ So, the technicians

⁷ Complainant Ex. 2, Repair Order dated June 10, 2014.

⁸ *Id.*

⁹ Complainant Ex. 3, Repair Order dated July 8, 2014.

¹⁰ *Id.*

¹¹ Complainant Ex. 4, Repair Order dated July 28, 2014.

replaced the BCM.¹² The vehicle's mileage when Ms. Rosales turned it over to Payne was 3,120.¹³

Ms. Rosales testified that the vehicle seemed to work fine for about three to four weeks before the problems started occurring again. The Sync system's screen would indicate that the system was updating, the vehicle's gauges were fluctuating (going up and down), the needle on the speedometer was fluctuating, and the air conditioner was blowing hot air. Ms. Rosales contacted Payne again to see what could be done to repair the vehicle. Payne's representative could not guarantee that Ms. Rosales would be able to be provided with a loaner vehicle if she took her vehicle in for repairs. So, Ms. Rosales decided not to take the vehicle back for further repairs.

As a result of the problems with the vehicle, Ms. Rosales decided to file a Lemon Law complaint. She filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle with an effective date of December 22, 2014.¹⁴ Ms. Rosales never mailed a letter to Respondent informing them of her concerns with the vehicle. However, she testified that she sent an e-mail complaint about the vehicle to Respondent sometime in early September of 2014, prior to the filing of the Lemon Law complaint.

Ms. Rosales spoke to Respondent's representative in February of 2015, regarding Respondent's request to perform a final repair attempt on the vehicle. On March 26, 2015, Sandy Culwell, Dispute Resolution Specialist for Respondent, contacted Ms. Rosales by e-mail to inform her that an appointment for the final repair attempt could be scheduled for either April 30, 2015 or May 20, 2015. Ms. Rosales indicated that April 30, 2015, would be acceptable to her. Ms. Rosales did not receive a response or another phone call about the final repair attempt. On May 10, 2015, Ms. Rosales contacted Respondent via e-mail indicating that she had not received a response regarding the final repair attempt. On May 11, 2015, Ms. Rosales was contacted by Respondent's representative that an engineer had been waiting at Payne on April 30, 2015, in order to perform the final inspection and that Ms. Rosales had not appeared. In addition, the representative informed Ms. Rosales that the engineer and the dealer had both attempted to contact Ms. Rosales via phone and she had not responded. Ms. Rosales testified that she did not know that the field service engineer was going to be at Payne and that she had not missed any calls that day. However, she did indicate that she is a school teacher and cannot receive personal calls at work. Her work hours are 7:45 a.m. to 4:45 p.m.

Ms. Rosales testified that she is still experiencing the same problems with the vehicle. During a test drive with the hearings examiner, the vehicle exhibited the issues raised by Ms. Rosales. The

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 5, Lemon Law complaint signed September 1, 2014. Although the complaint was signed by Complainant on September 1, 2014, it was not received by Texas Department of Motor Vehicles until December 22, 2014, which is the effective date of the complaint.

vehicle's air conditioner blows hot air, the sync system does not work properly and the speedometer needle was observed fluctuating for no reason.

C. Respondent's Evidence and Arguments

Terrie Stone, Regulatory Compliance Specialist, testified that the vehicle's bumper to bumper warranty is good for three (3) years or 36,000 miles. The warranty start date was the date of purchase of the vehicle, March 29, 2014. The vehicle purchased by Complainant was subject to a Customer Satisfaction Program by Respondent. The program is similar to a recall but is not performed in conjunction with the National Highway Traffic Safety Administration (NHTSA) as a recall would. The Customer Satisfaction Program for Complainant's vehicle required that the Sync system be updated using a flash drive to improve the system's functionality. The update was performed on August 16, 2013, before the vehicle was sold.

Ms. Stone testified that during the repair performed on Complainant's vehicle by Spikes on July 8, 2014, Ms. Rosales' concerns could not be duplicated. No repairs were performed on this occasion. On July 28, 2014, Ms. Rosales took the vehicle to Payne for repairs. The service technician performed updates to the vehicle and reprogrammed the APIM and the instrument panel cluster (IPC). On the July 28, 2014, repair visit, Payne's service technicians replaced the vehicle's BCM.

On September 9, 2014, Respondent's Customer Relations Center received an e-mail from Ms. Rosales indicating her dissatisfaction with the vehicle. Respondent's representatives made three attempts to contact Ms. Rosales as a result of the complaint. The representatives sent e-mails to Ms. Rosales on September 9, 2014 and September 15, 2015. Ms. Rosales did not respond to either e-mail. On October 6, 2014, Respondent's representative called Ms. Rosales at 3:49 p.m. EDT to discuss the complaint. Mr. Rosales did not answer the phone. Since the representatives were unable to contact Ms. Rosales, the complaint was closed on October 8, 2014.

On January 14, 2015, Respondent received notice of the Lemon Law complaint. On that date, one of Respondent's representatives attempted to contact Complainant by telephone to schedule a final repair attempt. However, they were unable to contact Complainant. Two other attempts to contact Complainant were made on January 16, 2015 and January 22, 2015. However, Complainant never responded to those calls.

Ms. Stone testified that she was not aware of any confusion regarding the April 30, 2015, final repair attempt. She thought that everything had been arranged for the attempt on that date.

Complainant's vehicle has been out of service for a total of twelve (12) days. Ms. Rosales has been provided with a rental or loaner vehicle on nine (9) of those twelve days.

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 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 29, 2014, and presented the vehicle to Respondent's authorized dealers due to her concerns with the Sync system, among other issues, on the following dates: June 10, 2014; July 8, 2014; and July 28, 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 2301.605(a) specifies 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." The evidence presented at the hearing establishes that Complainant has not met the requirements of this test since Complainant has presented the vehicle for repair only three times since the date of purchase. As such, Complainant has not met the presumption that Respondent has been provided with a reasonable number of attempts to repair the vehicle.

In addition, the evidence presented at the hearing indicates that Complainant did not provide written notice to Respondent that she was dissatisfied with the vehicle nor did she provide Respondent with a final opportunity to cure the defect with the vehicle. Occupations Code § 2301.606(c) provides that "an order issued under this subchapter [Subchapter M, Lemon Law] may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity." Complainant never mailed Respondent written notice of her dissatisfaction with the vehicle. The only notice to Respondent provided by Complainant was via e-mail at least a month prior to the filing of the Lemon Law complaint. In addition, after Respondent was notified of the filing of the Lemon Law complaint by the Department in December of 2014, Respondent attempted to arrange a final repair attempt of the vehicle. Respondent's representatives made three attempts to contact Complainant to schedule the final repair attempt, but were unable to speak to Complainant. Respondent was able to schedule a final repair attempt

on April 30, 2015, after the pre-hearing conference conducted on March 18, 2015. Complainant alleges that although she knew the date of the final repair attempt, she was not aware of the location or time of the appointment. However, Complainant made no effort to ascertain the location or time until May 10, 2015, ten days after the final repair attempt was scheduled to take place. In addition, Respondent's representatives made attempts to contact Complainant on April 30, 2015, when she failed to appear at the dealer's location for the final repair attempt. Complainant's failure to present the vehicle for the final repair attempt was not due to circumstances beyond her control, since she could have been more proactive in determining the location and time of the appointment.

From the evidence presented, it is apparent that Complainant has not met the requirements for replacement or repurchase relief under the Occupations Code, since only three repair attempts were made on the vehicle prior to filing the complaint and because she did not give written notice of the defect to Respondent and she failed to allow Respondent a final opportunity to repair the vehicle. However, there is obviously an issue with the vehicle, since the problems complained of by Complainant manifested during a test drive taken at the time of hearing. Respondent's express warranty applicable to Complainant's vehicle provides "bumper to bumper" coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 7,844 and it remains under this warranty. As such, the Respondent is under an obligation to repair the vehicle under the terms of the express warranty and correct the issues which presented themselves at the time of hearing.

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

III. FINDINGS OF FACT

1. Rosa E. Garza (Complainant) purchased a 2013 Ford Taurus on March 29, 2014, from Payne Rio Grande City Ford in Rio Grande City, Texas with mileage of 46 at the time of purchase.
2. The vehicle's mileage on the date of hearing was 7,844.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued an express warranty for the vehicle for three (3) years or 36,000 miles.
4. At the time of hearing the express warranty for the vehicle was still in effect.
5. The primary driver of the vehicle is Yvonne Rosales, Complainant's daughter.
6. Ms. Rosales first began experiencing problems with the vehicle in May of 2014, when she noticed that the air conditioner would blow hot air, the navigation screen would go

- black, the vehicle's gauges would fluctuate, and the anti-lock braking system and air bag warning lights would illuminate.
7. On June 10, 2014, Ms. Rosales took the vehicle to Respondent's authorized dealer, Spikes Ford, in Mission, Texas, for repairs. The vehicle's mileage was 2,204 at the time.
 8. On June 10, 2014, the dealer's service technicians could not duplicate the concerns raised by Ms. Rosales (i.e., the vehicle's Sync screen would show a message stating that the system was off to save the battery, the navigation (Sync) screen and instrument cluster would go black, the air conditioner would blow hot air, and the speedometer needle would drop when she was driving). However, the technician did perform a software update on the vehicle.
 9. Complainant's vehicle was serviced by Respondent's authorized dealer, Payne Rio Grande City Ford (Payne), on the following dates because of Complainant's concerns with the vehicle:
 - a. July 8, 2014, at 2,667 miles; and
 - b. July 28, 2014, at 3,120 miles.
 10. On July 8, 2014, Ms. Rosales took the vehicle for repair at Payne for the issues described in Finding of Fact 6. The dealer's service technician determined that vehicle's modules were not communicating with each other, so he updated the vehicle's accessory protocol interface module (APIM) and updated the Sync system.
 11. On July 28, 2014, Ms. Rosales took the vehicle to Payne for repair for the issues described in Finding of Fact 6. The dealer's service technician determined that the vehicle's body control module (BCM) had suffered an internal failure and replaced it.
 12. On December 22, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 13. Respondent scheduled a final repair attempt on the vehicle for April 30, 2015. However, Ms. Rosales did not take the vehicle to the dealer for the repair attempt.
 14. On January 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 closed on May 13, 2015, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by her daughter, Yvonne Rosales, in the hearing. Complainant was also present to provide testimony at the hearing. Respondent was represented via telephone by Terrie Stone, Regulatory Compliance Specialist. Also present was Mario Davila, who provided Spanish interpretive services for Complainant.

IV. CONCLUSIONS OF LAW

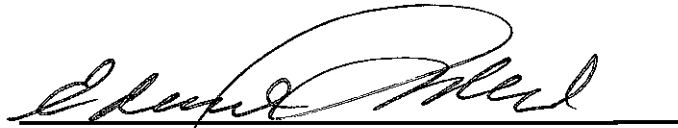
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including 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 proved 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. Complainant did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. Tex. Occ. Code § 2301.605(a).
8. Complainant did not mail written notice of the defect to Respondent. Tex. Occ. Code § 2301.606(c)(1).
9. Complainant did not provide Respondent with a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
10. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

11. 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 June 2, 2015



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