

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0110 CAF**

**ANNMARIE K. WILLIAMS,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Annmarie K. Williams (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Ford Fiesta. The Complainant stated that the vehicle shuddered, hesitated, lunged, and rolled backwards on inclines. Ford Motor Company (Respondent) argued that the issues described by the Complainant were not defects, but rather inherent characteristics of the Ford Fiesta's PowerShift 6-speed dual dry-clutch automatic transmission. The hearings examiner concludes that the vehicle's issues are not the result of any defects, but rather are characteristics inherent to the vehicle's design. Accordingly, the Complainant is not eligible for repurchase/replacement relief.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on May 12, 2015, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Complainant, Annmarie Williams, represented herself. Additionally, David Williams, the Complainant's spouse, testified for the Complainant. Maria Diaz, Consumer Affairs Legal Analyst, represented Respondent. The hearing record was closed on May 12, 2015, at the conclusion of the hearing on the merits.

## II. Discussion

### A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is “unable to conform a motor vehicle to an applicable express warranty.”<sup>1</sup> Additionally, warranty repair under Texas Occupations Code § 2301.204 requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”<sup>2</sup> Accordingly, to be eligible for repurchase or replacement, or warranty repair, Ford’s warranty must cover the alleged defect.

### B. Complainant’s Evidence and Arguments

The Complainant purchased a new 2014 Ford Fiesta from Bluebonnet Motors, the Respondent’s authorized dealer in New Braunfels, Texas, on December 28, 2013.<sup>3</sup> The vehicle’s mileage at the time of sale was 7 miles.<sup>4</sup> The vehicle came with a 60 month or 60,000 mile powertrain limited warranty.<sup>5</sup> Complainant and Mr. Williams testified that they drove the vehicle daily. The Complainant was originally the primary driver but Mr. Williams became the primary driver after the Complainant experienced problems with the vehicle.

The Complainant testified that during the test drive at the dealership (before the vehicle’s sale), the Complainant noticed a burning smell and the vehicle sputtered when stepping on the gas pedal. The salesman at Bluebonnet Motors said these issues would disappear once the vehicle had been broken in. However, the transmission issues worsened after about two months of driving. Much of this driving was done in stop-and-go traffic. Mr. Williams stated that the Complainant first started complaining about the vehicle’s issues about two months of driving the vehicle. The Complainant described the nature of the problems as like driving a car with a manual transmission with a bad clutch. The most noticeable issues were clutch shudder, hesitation, and lunging. The vehicle also rolled backwards on inclines. The Complainant testified that the vehicle was supposed

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<sup>1</sup> TEX. OCC. CODE § 2301.604(a) (emphasis added).

<sup>2</sup> TEX. OCC. CODE § 2301.204 (emphasis added).

<sup>3</sup> Complainant’s Ex. 4, Texas Motor Vehicle Retail Installment Sales Contract.

<sup>4</sup> Complainant’s Ex. 2, Odometer Disclosure Statement.

<sup>5</sup> Complainant’s Ex. 28, 2014 Model Year Ford Warranty Guide.

to learn how she drove, but she had to learn how it drove. The Complainant testified about two major concerns, the first involved the vehicle's failure to move when stepping on the gas pedal as if the vehicle was in neutral. The Complainant testified that she experienced this same problem the morning of the day before the hearing in which the Complainant stepped on the gas at a busy intersection but the vehicle did not go forward and instead rolled backwards as if in neutral. The second significant concern involved the vehicle lunging forward with the foot on the brake. The Complainant testified that the night before the hearing, she had the vehicle in park in her driveway and took her foot off the brake and the vehicle lunged forward. The Complainant noted that the first time the lunging happened to her, she almost rear-ended the vehicle in front of her. The Complainant described the lunging as intermittent. The Complainant further testified that she noticed the issues more while driving with the air conditioning on and in stop-and-go traffic. The Complainant explained that she had to adapt to driving the vehicle like a manual and that she tended to wait to pull out into traffic until no other vehicles were around. The Complainant explained that the sputtering, hesitation, and rolling backwards occurred every time she drove the vehicle. Mr. Williams experienced all of the same issues as the Complainant after taking over as the vehicle's primary driver.

On May 15, 2014, the Complainant went to Bluebonnet Motors due to her concerns with the transmission and burning smell. The service advisor could not duplicate the concern and noted that the vehicle was operating within normal specifications.<sup>6</sup> The Complainant returned on August 5, 2014, because the car continued to hesitate on acceleration and experience clutch shudder. The service advisor noted that the clutch RPM slippage was below 250 RPM and thus within an acceptable range.<sup>7</sup>

On August 10, 2014, the Complainant contacted Ford via the Ford website because of her concern about the transmission issues and burning smell. In the message, the Complainant asked Ford to repair her vehicle or repurchase it.<sup>8</sup> The Respondent did not repair the vehicle. The Complainant testified that two months later, on October 15, 2014, her vehicle stalled while trying

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<sup>6</sup> Complainant's Ex. 19, Invoice 178619 dated May 19, 2014.

<sup>7</sup> Complainant's Ex. 17, Invoice 193710 dated August 5, 2014.

<sup>8</sup> Complainant's Ex. 22, Ford Website Submission & Confirmation.

to make a left turn across traffic from a stopped position on an incline. The Complainant further testified that the vehicle continued to shudder for the rest of the Complainant's trip home.<sup>9</sup>

The Complainant's next visited Bluebonnet Motors on November 12, 2014. The service advisor noted that the hesitation was a normal characteristic of the new transmission design. Also, the clutch slippage was under 250 RPM, so there was nothing to fix with respect to that issue.<sup>10</sup>

On November 23, 2014, the Complainant sent a notice letter via certified mail to the Respondent. In the letter, the Complainant requested that the Respondent correct the following problems: "transmission shuddering/stuttering, constant hesitation, loss of power, lurching forward, RPM's rev up to redline, but car isn't accelerating, jerking, not shifting gears at right time, like someone who's just learning to drive a stick is driving it."<sup>11</sup> The vehicle's mileage was 14,229 miles at that time.

On December 16, 2014, a Ford field service engineer inspected the vehicle at Bluebonnet Motors. The field service engineer determined that the vehicle was "operating within normal characteristics."<sup>12</sup> Subsequently, on December 30, 2014, the Texas Department of Motor Vehicles received the Complainant's Lemon Law Complaint Form.<sup>13</sup>

### C. Respondent's Evidence and Arguments

The Respondent requested that the Complainant's claim be dismissed since there is no non-conformity or defect with the vehicle. Alternatively, the Respondent argued any defects that may have been present did not substantially impair the safety or value of the vehicle.<sup>14</sup>

On December 16, 2014, an inspector from Ford, Mr. Castleberry, inspected the vehicle. Mr. Castleberry drove 18 miles, primarily at a stop-and-go pace, and determined that "no abnormal behavior was demonstrated by [the] vehicle." Accordingly, he did not recommend any repairs at that time. His report concluded that transmission shudder, hesitation, and lunging are characteristic

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<sup>9</sup> Complainant's Ex. 16, Note dated December 15, 2014.

<sup>10</sup> Complainant's Ex. 15, Invoice 209890 dated November 12, 2014.

<sup>11</sup> Complainant's Ex. 5, Notice Letter to Ford dated November 23, 2014.

<sup>12</sup> Complainant's Ex. 14, Invoice 217084 dated December 22, 2014.

<sup>13</sup> Complainant's Ex. 23, Lemon Law Complaint Form.

<sup>14</sup> Respondent's Ex. 2, Manufacturer Response Form.

of the transmission in the Ford Fiesta.<sup>15</sup> Ms. Diaz explained that the vehicle uses a dry clutch transmission (which she characterized as a hybrid transmission with similarities to a manual transmission) that tends to exhibit unique starting and shifting characteristics. Ms. Diaz noted that the Complainant's description of the vehicle's performance was characteristic of the transmission's design and was not a defect.

#### D. Analysis

To qualify for replacement or repurchase or for warranty repair, the law requires the existence of a warrantable defect (a defect covered by an applicable warranty).<sup>16</sup> Under 43 TEX. ADMIN. CODE § 215.206.66(d), the Complainant bears the burden of proving by a preponderance of evidence that a warrantable defect exists. In this case, the evidence shows that the characteristics associated with the vehicle's transmission are not a warrantable defect, but are a consequence of the vehicle's intended design. Accordingly, replacement/repurchase relief does not apply in this case.

Ford's warranty states that it applies to malfunctions or failures due to a "manufacturing defect in factory-supplied materials or factory workmanship."<sup>17</sup> Accordingly, for the warranty to apply, the complained of issue must result from a manufacturing defect rather than the vehicle's design. However, the evidence in this case indicates that the issues with the vehicle arise from the vehicle's design, specifically the transmission.

During the test drive, the vehicle exhibited some of the qualities described by the Complainant, such as faster revving between gearshifts, shuddering, and hesitation. However, these characteristics appear inherent to the design of the vehicle and not the result of a manufacturing defect. The evidence showed that Ford's PowerShift transmission exhibits characteristics like a manual transmission. Furthermore, the vehicle's quick start guide actually contemplates that the vehicle will behave as described by the Complainant:

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<sup>15</sup> Respondent's Ex. 1, Vehicle Inspection Report dated December 16, 2014.

<sup>16</sup> TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>17</sup> Complainant's Exhibit 28, 2014 Model Year Ford Warranty Guide at 9 (emphasis added).

You may notice the following characteristics of this technology: • Mechanical noises . . . during some transmission shifting events. . . • Firm gearshifts. . . slight vibrations when accelerating from low speeds . . . .

Additionally, the quick start guide indicates that the vehicle may roll backwards on inclines:

Hill start assist makes it easier to pull away when your vehicle is parked on a slope without using a parking brake. When active, this feature allows your vehicle to remain stationary on a slope for up to two to three seconds after you release the brake pedal, thereby giving you time to move your foot to the accelerator and pull away.<sup>18</sup>

In other words, the vehicle will remain stationary no more than two or three seconds on an incline after releasing the brake.

Although the vehicle's complained of characteristics may be undesirable, these characteristics result from the vehicle's intended design (specifically, the dual dry-clutch automatic transmission) and not from any manufacturing defect. Because the vehicle's characteristics are not due to a manufacturing defect, Ford's warranty does not apply and the vehicle does not qualify for repurchase/replacement or warranty repair relief under TEX. OCC. CODE § 2301.604(a) and § 2301.204.

### III. Findings of Fact

1. Annmarie K. Williams (Complainant) purchased a 2014 Ford Fiesta on December 28, 2013, from Bluebonnet Motors in New Braunfels, Texas, with mileage of 7 at the time of purchase.
2. The vehicle's manufacturer, Ford Motor Company, the Respondent, provided a 60 month or 60,000 mile powertrain limited warranty.
3. Respondent's warranty covers malfunctions or failures due to manufacturing defects in factory-supplied materials or factory workmanship.
4. The vehicle employs a dry clutch automatic transmission, which exhibits characteristics similar to that of a manual transmission.

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<sup>18</sup> Complainant's Exhibit 27, Quick Reference Guide (emphasis added).

5. On May 15, 2014, the Complainant's vehicle was inspected at Bluebonnet Motors after she complained of clutch shudder and a burning smell. The concerns could not be duplicated at the dealership.
6. On August 5, 2014, the Complainant took her vehicle to Bluebonnet Motors to address hesitation and gear shifting issues. No repairs were made during this visit because no problems were identified.
7. On October 3, 2014, the Complainant took in her vehicle because it was lunging forward when coming to a stop, shuddering, and hesitating. Bluebonnet Motors performed an adaptive transmission relearn.
8. On November 23, 2014, the Complainant sent a notice letter via certified mail to the Respondent. This letter detailed her transmission issues and requested a final repair.
9. On December 16, 2014, a Ford Field Service Engineer determined that the vehicle was operating within normal parameters. On that date, the vehicle's mileage was 15,377.
10. The Complainant's Lemon Law Complaint Form was received on December 30, 2014. The issues listed were clutch shudder, hesitation, and lunging.
11. On April 15, 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.
12. The hearing convened on May 12, 2015, in San Antonio, Texas before Hearings Examiner Andrew Kang. Complainant, Annmarie K. Williams represented herself. Maria Diaz, Consumer Affairs Manager, represented the Respondent. The hearing record was closed upon the conclusion of the hearing on May 12, 2015.

#### **IV. Conclusions of Law**

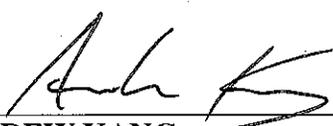
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).

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 her Lemon Law complaint. TEX. OCC. CODE § 2301.606(d).
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. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. Complainant failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition covered by Respondent's warranty 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.
8. Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.

#### V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

**SIGNED June 30, 2015**

  
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**ANDREW KANG**  
**HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**