

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0134 CAF**

**SHAHRIAR KASRAI,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Shahriar Kasrai (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 Cadillac Escalade. Complainant asserts that the vehicle is defective due to the rear seat heaters self-activating. Complainant argues that the issue is a safety hazard. General Motors LLC (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 27, 2015, in Mesquite, Texas, before Hearings Examiner Edward Sandoval. Complainant, Shahriar Kasrai, represented himself at the hearing. Tamay Velasquez, manager, appeared in person to offer testimony for Complainant. Ali Kasrai, son, and Arash Payrovan, nephew, also appeared telephonically to offer testimony for Complainant. Respondent was represented by Kevin Phillips, Business Resource Manager. David Williamson, District Manager of After Sales, and David Piper, Field Service Engineer, appeared to offer testimony 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 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 2015 Cadillac Escalade from Cadillac of Arlington, located in Arlington, Texas, on May 10, 2014.⁸ The vehicle's mileage at the time of delivery was 15.⁹ Respondent provided a limited warranty for the first four (4) year or 50,000 miles.¹⁰ In addition, Respondent provided a six (6) year or 70,000 mile powertrain warranty for the vehicle.

About one month after purchasing the vehicle, Complainant began experiencing an issue with the rear seat heaters coming on without anybody touching the heating, ventilation, and air

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, Motor Vehicle Installment Sales Contract dated May 10, 2014.

⁹ Complainant Ex. 2, Purchase Order dated May 10, 2014.

¹⁰ Respondent Ex. 1, Global Warranty, Summary of Work Performed, Mileage Chart, Field Service Engineer's Report, TSB #PIT5397, and Repair Order dated May 13, 2015, p. 2.

conditioning (HVAC) control system. Complainant took the vehicle to Crest Auto Group of Plano, Texas (Crest) on June 25, 2014, because of his concern with the back seat heaters, in addition to other concerns. Crest is an authorized dealer for Respondent. The rear seat heater control module had experienced an internal failure, so Crest's service technician replaced it.¹¹ The vehicle's mileage on this repair visit was 4,751.¹² The vehicle was in the dealer's possession until June 27, 2014.¹³ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Four days later, Complainant noticed that the rear seat heaters were again self-activating. The rear vents also started blowing hot air intermittently. Because he had already planned a trip, Complainant waited until July 11, 2014, before returning the vehicle to Crest. The Crest service technician replaced the rear HVAC control system per instructions from Respondent's Technical Assistance Center (TAC).¹⁴ The vehicle's mileage on this occasion was 6,127.¹⁵ The vehicle was in the dealer's possession until July 15, 2014.¹⁶ Complainant was provided with a loaner vehicle while his vehicle was being replaced.

A couple of days after that repair, Complainant experienced the same issue with the rear seat heaters. Complainant testified that the heater would turn on after driving the vehicle for about 20 minutes. Complainant returned the vehicle to Crest on July 17, 2014. Crest's service technician replaced the vehicle's rear HVAC panel per instructions from Respondent's TAC.¹⁷ The vehicle's mileage on this repair visit was 6,321.¹⁸ The vehicle was in the dealer's possession until July 25, 2014.¹⁹ Complainant was provided with a loaner vehicle while his vehicle was in the dealer's possession.

The rear seat heaters functioned properly for a few days, but then the problem returned. Complainant testified that he waited until August 12, 2014, to return the vehicle to Crest because he was busy. During this visit, the Crest service technician replaced the vehicle's auxiliary HVAC control module pursuant to instructions from Respondent's TAC.²⁰ The vehicle's mileage on this occasion was 8,710.²¹ The vehicle was in Crest's possession until August 14, 2014.²² Complainant was provided with a loaner vehicle while his vehicle was being repaired.

¹¹ Complainant Ex. 3, Repair Order dated June 25, 2014.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 4, Repair Order dated July 11, 2014.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 5, Repair Order dated July 17, 2014.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 6, Repair Order dated August 12, 2014.

²¹ *Id.*

²² *Id.*

On September 6, 2014, Complainant mailed written notice to Respondent of his dissatisfaction with the vehicle. In the letter, Complainant asked Respondent to contact him so that they could arrange a time to inspect the vehicle and make any necessary repairs.²³ Complainant filed a Lemon Law complaint on January 23, 2015. In the complaint, Complainant described two issues with the vehicle. The first issue was the rear seat heaters turning on by themselves. The second issue was with the air conditioning unit "jumping to 90 degrees by itself."²⁴

Approximately two months after filing his Lemon Law complaint, Complainant was contacted by Respondent. He was told to take the vehicle to Crest so that a final inspection and repair attempt could be undertaken. Complainant picked up the vehicle approximately two weeks after he turned it over to the dealer. He was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he was concerned for his safety while driving the vehicle due to the back seat heaters self-activating.

During cross examination, Complainant testified that he is the primary driver of the vehicle and that it is his primary vehicle. Complainant has taken a few long distance trips in the vehicle. The vehicle doesn't have any cracked glass. Complainant has not had any accidents in the vehicle. He's had a flat tire in the vehicle which was repaired. The vehicle still has the original tires. It does not have any interior damage or any damage to the undercarriage. Complainant testified that the vehicle has stalled a couple of times while he was driving it. However, he never took the vehicle for repair for stalling. Complainant has never had the vehicle towed to the dealer. He's never been stranded in the vehicle nor has he lost control while driving it.

Complainant testified that the last time he took the vehicle for repair for the back seat heater issue was in August of 2014. The only issues he raised on the Lemon Law complaint had to do with the back seat heaters and back seat air conditioning unit.

At the hearing, Tamay Velasquez, a manager at Complainant's company, testified that she has driven in the back seat of Complainant's vehicle many times. She testified that on occasion she would put her purse on the back seat and the rear seat heaters turned on.

During cross examination, Ms. Velasquez indicated that seat heaters could be controlled from the back seat. The controls are on the center console. Each seat can be controlled individually. She testified that they would turn the rear seat heaters off when they self-activated. Complainant has not ridden in the back seat of the vehicle since approximately February of 2015.

²³ Complainant Ex. 7, Written Notification to Manufacturer dated September 6, 2014.

²⁴ Complainant Ex. 8, Lemon Law Complaint Form dated January 23, 2015.

Ali Kasrai, Complainant's son, testified that the vehicle's rear seat heaters would turn on by themselves and grow uncomfortably warm.

During cross examination, Mr. Kasrai specified that he had not ridden in the back of Complainant's vehicle since 2014. Mr. Kasrai testified that the seats did not get hot enough to burn anyone.

Arash Payrovan, Complainant's nephew, testified that he sometimes sat in the rear seat of the vehicle. The vehicle's rear seat heaters sometimes turned on by themselves. He stated that the seats would slowly start to heat and then get very hot. Mr. Payrovan feels that the seat getting hot in such a manner is extremely dangerous.

During cross examination, Mr. Payrovan testified that he last rode in the back seat of Complainant's vehicle approximately three to four months prior to the hearing date. When he saw that the seat heaters turned on, he would turn them off. However, sometimes it was so hot that the driver had to pull over to let him out of the vehicle until seat cooled off.

C. Respondent's Evidence and Arguments

1. David Williamson's Testimony

David Williamson, District Manager for After Sales, has worked for Respondent for 33 years. He has worked in both sales and service for Respondent. He has an automotive management degree. He's worked as a Brand Quality Engineer in which he's responsible for the quality of vehicles as they are delivered to customers. In addition, he's worked as a warranty specialist and technician for Respondent. He's worked the last five (5) years as a district manager for after sales for Cadillac.

Mr. Williamson testified that Complainant was driving the vehicle approximately 83 miles per day which is on the higher end of average mileage for the vehicle. Mr. Williamson testified that in late February or early March of 2015, he received notice of Complainant's Lemon Law complaint. He was assigned responsibility to resolve Complainant's issues. Mr. Williamson spoke to Complainant and obtained information regarding his concerns. Mr. Williamson also obtained information from Respondent's TAC regarding Complainant's concerns. Mr. Williamson dispatched a field service engineer (David Piper) to Crest to perform the final repair attempt on the vehicle. An appointment was scheduled with Complainant for a final repair attempt on the vehicle. Mr. Williamson was present during the final repair attempt and inspected the vehicle during the repair attempt.

The vehicle's rear seat heater has three levels: low, medium, and high. The concerns raised by Complainant regarding the vehicle always had to do with the rear seat heater. This was the only issue addressed during the final repair attempt.

Mr. Williamson testified that a Technical Service Bulletin (TSB) provides information to support technicians in repairing vehicles. They can provide technical information, schematics, customer concerns, and conditions to the technicians. It is a public document and can be found in an e-commerce online tool.

During cross examination, Mr. Williamson testified that his primary responsibilities are to assist dealers in customer concerns. He does call on the dealers assigned to him personally. Mr. Williamson testified that he has not had any cases in his district where a customer raised a concern similar to Complainant's, except for Ms. Velaquez' complaint on her vehicle.

2. David Piper's Testimony

David Piper, Field Service Engineer, is under contract with Respondent. He's been a service technician since 1988. He's been in his current position since January of 2014. Mr. Piper has an Automotive Service Excellence (ASE) master certification. He has a GM World Class Technician certification.

Mr. Piper first became involved in the present case when he received an e-mail dispatch on March 2, 2015, to perform the final repair attempt on the vehicle. The inspection and final repair attempt took place at Crest Cadillac in Plano, Texas on March 6, 2015. He found that the HVAC control system would turn on if something passed by the control screen too closely. The module in question was over-sensitive and would be activated by someone or something brushing in front of the screen. The original HVAC control system's screen was designed to have a three (3) millimeter air gap and could be activated without anyone actually touching the system's controls. This was part of the design of the system; it was not a defect. However, it was an undesirable feature due to the fact that a cellphone charger cable, purse, or pant leg could activate the HVAC control system. Because customers were complaining about the feature, Respondent was willing to replace Complainant's oversensitive module with a purely touch screen module during the final repair attempt.

Mr. Piper testified that Respondent issued a TSB for Complainant's issue on April 6, 2015, subsequent to the repair being performed on Complainant's vehicle. Mr. Piper was able to repair the vehicle pursuant to the later instructions from the TSB by dealing with Respondent's Brand Quality Manager (BQM) who informed Mr. Piper of the availability of a new module that would be touch controlled only.

Mr. Piper testified that the vehicle has been repaired. He would not have any problems driving the vehicle or having his family members in the vehicle's back seat. Mr. Piper also testified that there was no danger of a fire in the vehicle because the seat's heating system turned on. He did state that the seat would get warm and, if someone were not paying attention, could cause possibly a first degree burn on an individual.

Mr. Piper testified that there is no defect with the vehicle and that any past defects have been repaired.

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 10, 2014, and presented the vehicle to Crest Auto Group on June 25, 2014, after the vehicle's rear seat heaters began self-activating. Complainant returned on three other occasions for the same problem: July 11, 2014; July 17, 2014; and August 12, 2014. After the August 12, 2014 repair visit, Complainant did not seek any other repairs for this issue until the final repair attempt on March 6, 2015.

Complainant asserts that the vehicle's rear seat heaters self-activate and that this causes a safety issue with the vehicle. However, this issue has not been duplicated since the final repair attempt on March 6, 2015, when the rear seat HVAC control system module was replaced. Respondent argues that the oversensitive HVAC module may have been an undesirable feature, but that it was a design issue, not a defect. Moreover, Respondent asserts that the issue was resolved when a touch only rear seat HVAC module was installed in the vehicle during the final repair attempt. During the test drive, the rear seat HVAC control system worked properly. Complainant has not satisfied his burden of proof to establish the existence of a defect in the vehicle that has not been repaired. The hearing examiner thus finds that there is no defect with the vehicle since it has 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 four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage

was 31,545 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. Shahriar Kasrai (Complainant) purchased a new 2015 Cadillac Escalade on May 10, 2014, from Cadillac of Arlington, located in Arlington, Texas, with mileage of 15 at the time of delivery.
2. Respondent issued a four (4) year or 50,000 mile bumper to bumper warranty for the vehicle. In addition, Respondent provided a six (6) year or 70,000 mile powertrain warranty for the vehicle.
3. The vehicle's mileage on the date of hearing was 31,545.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Crest Auto Group (Crest) of Plano, Texas on the following dates in order to address the issue of the rear seat heaters self-activating:
 - a. June 25, 2014, at 4,751 miles;
 - b. July 11, 2014, at 6,127 miles;
 - c. July 17, 2014, at 6,321 miles; and
 - d. August 12, 2014, at 8,710 miles.
6. On June 25, 2014, Crest's service technician determined that the vehicle's rear seat heater module had suffered an internal failure. As a result, the module was replaced.
7. On July 11, 2014, Crest's service technician replaced the vehicle's rear heater control module, after discussing the issue with Respondent's Technical Assistance Center (TAC).
8. On July 17, 2014, Crest's service technician replaced the vehicle's seat heater control module, after discussing the issue with Respondent's TAC.
9. On August 12, 2014, Crest's service technician replaced the rear auxiliary climate control module, after discussing the issue with Respondent's TAC.
10. On January 23, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

11. On March 6, 2015, Respondent's field service engineer performed a final repair attempt on the vehicle. At this time, the rear HVAC module was replaced with a touch only module.
12. 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.
13. The hearing in this case convened and the record closed on May 27, 2015, in Mesquite, Texas, before Hearings Examiner Edward Sandoval. Complainant, Shahriar Kasrai, represented himself at the hearing. Tamay Velasquez, manager, appeared in person to offer testimony for Complainant. Ali Kasrai, son, and Arash Payrovan, nephew, also appeared telephonically to offer testimony for Complainant. Respondent was represented by Kevin Phillips, Business Resource Manager. David Williamson, District Manager of After Sales, and David Piper, Field Service Engineer, appeared to offer testimony 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.
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 18, 2015



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