

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0179 CAF**

**CHRISTOPHER J. CHATMAN,
Complainant**

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BEFORE THE OFFICE

v.

OF

**FCA US LLC,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Christopher J. Chatman (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Dodge Avenger. Mr. Chatman's complaint alleged that the vehicle's suspension made popping and clunking noises, the vehicle made a clicking noise when turning, the brakes squealed, the passenger side taillight collected condensation and the vehicle vibrated at highway speeds. The clicking noise was resolved prior to the hearing and is no longer an issue. FCA US LLC (Respondent) argued that no defect existed and that a reasonable number of repair attempts were not undertaken. The hearings examiner concludes that the Complainant failed to prove by a preponderance that a defect exists and failed to undertake a reasonable number of repair attempts with regards to the brake, taillight and vibration issues. Accordingly, the Complainant's vehicle does not qualify for repurchase or replacement 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 July 2, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, Christopher J. Chatman, represented himself. Cynthia Chatman also appeared on behalf of the Complainant. Jan Kershaw, Early Resolution Case Manager, represented the Respondent. Timothy Mancini, Technical Advisor, testified for the Respondent.

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.”¹ Additionally, warranty repair under Section 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”² Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have a defect under an applicable warranty (warrantable defect). Mr. Chatman must prove the existence of a warrantable defect by a preponderance, that is, the evidence must show that a warrantable defect more likely than not exists.³

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect must either (1) create a serious safety hazard or (2) substantially impair the use or market value of the vehicle despite a “reasonable number of attempts” at repair.⁴ The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁵ Under the Lemon Law, a rebuttable presumption is established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the 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 (B) the other two repair

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.⁶

However, the statutory presumption does not preclude otherwise finding that a reasonable number of attempts to repair the vehicle have been undertaken.⁷

B. Complainant's Evidence and Arguments

Mr. Chatman purchased a new 2014 Dodge Avenger from Gillman Chrysler Jeep Dodge (Gillman) of Houston, Texas, on March 31, 2014.⁸ The vehicle's mileage at the time of purchase was 21.⁹ The vehicle came with a basic warranty that lasts for 36 months or 36,000 miles, whichever comes first.

On April 5, 2014, Mr. Chatman brought the vehicle back to Gillman because the vehicle made clicking noises on left turns. Gillman replaced the axle shaft on the left side. The antenna was also missing, so an antenna was installed. The vehicle did not make the clicking noise after this repair, but did make a clunking noise, which Gillman said was normal. The vehicle's mileage was 297.¹⁰

On April 21, 2014, Mr. Chatman took the vehicle to Northwest Chrysler Jeep Dodge Ram (Northwest) of Houston, Texas because Gillman advised him that the clunking noise he experienced during acceleration was a normal. Northwest's technicians discovered a noise coming from the sway link, so they replaced it. The vehicle's mileage was 852.¹¹

⁶ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies 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.

⁷ "[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite 'reasonable number of attempts.'" *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

⁸ Complainant's Ex. 22, Simple Finance Charge Statement.

⁹ Complainant's Ex. 14, Odometer Disclosure Statement.

¹⁰ Complainant's Ex. 3, Repair Order W62789 dated April 9, 2014.

¹¹ Complainant's Ex. 9, Repair Order 335564 dated April 29, 2014.

On May 6, 2014, Mr. Chatman returned to Northwest because the clunking noise had not been repaired. The technician at Northwest test drove the vehicle for two miles and experienced no issues. No repairs were made. The vehicle's mileage was 1,249.¹²

Mr. Chatman provided written notice of the noise issue to the Respondent prior to May 13, 2014, as confirmed by a letter from the Respondent acknowledging receipt of Mr. Chatman's notice.¹³ However, Mr. Chatman did not provide the notice itself for inclusion in the record. Mr. Chatman filed his Lemon Law complaint on February 25, 2015.

On April 28, 2015, Mr. Chatman brought the vehicle into Tomball Dodge of Tomball, Texas. Mr. Mancini, a Chrysler Technical Advisor, test drove the vehicle. No repairs were made with regard to the condensation buildup on the right rear taillight or the brake squeal. A headlamp contacting the fender was repaired to address the clunking sound. The vehicle's mileage was 16,162.¹⁴

During the test drive at the hearing, an attenuated clunking noise was audible. This noise was more pronounced when driving on rougher roads and over transitions in the pavement. Slight vibrations could be felt when driving at higher speeds. The brakes did not make any noise. An inspection of the taillight showed no visible moisture.

During the hearing, Mr. Chatman testified that the brake squealed when left overnight but the squeal would stop after the vehicle warmed up. Mr. Chatman testified that the brakes had squealed the morning of the hearing and that the taillight contained condensation after the last rain storm. Mr. Chatman stated that he noticed suspension noise during long distance driving, during stop and go driving in heavy traffic. Mr. Chatman noted that the noise became more noticeable on uneven pavement and speed bumps. Mr. Chatman said he would hear noise from the suspension every day.

C. Respondent's Evidence and Arguments

Tymothy Mancini has worked as a Technical Advisor for four years. He has six years of experience as a technician and is currently has two classes remaining to become certified as a

¹² Complainant's Ex. 8, Repair Order 336888 dated May 13, 2014.

¹³ Complainant's Ex. 11, Letter to Complainant dated May 13, 2014.

¹⁴ Complainant's Ex. 20, Repair Order 185524 dated April 30, 2015.

master technician. Mr. Mancini inspected and test drove the vehicle in April 2015, while at Tomball Dodge. During his inspection, he noticed that the right front fender touched the headlamp. This contact caused a clunking noise, so he ordered an adjustment to the headlamp's position. After repairing the headlamp, Mr. Mancini did not hear anything other than normal suspension travel noise. Mr. Mancini also inspected the suspension and the brakes. However, Mr. Mancini did not find any other repairs necessary and found all other conditions to be normal.

Mr. Mancini explained that condensation in the taillight may normally occur in humid areas like Houston, especially after a rain storm. According to FCA's service bulletin, condensation in a taillight would only be a warrantable defect if the condensation stayed and did not clear up. In the present case, the condensation evaporated by the time of the hearing, despite being present the day before.

The humidity also caused the brake squeal. Mr. Mancini explained that moisture on the brake rotors caused rust to form on the rotors overnight but the first few applications on the brake would clear off the rust.¹⁵ Therefore, according to the Respondent, the climate and not any defect caused the brake squeal.

D. Analysis

The Lemon Law does not apply to every issue that may occur with a vehicle, such as conditions arising from the design of the vehicle or conditions resulting from the environment or other issues unrelated to defects from the manufacturing process. Instead, the Lemon Law only applies to warrantable defects, i.e. manufacturing defects. Put another way, if a correctly manufactured vehicle identical to the subject vehicle would exhibit the same conditions as the subject vehicle, then those conditions are not manufacturing defects but are a consequence of the vehicle's design. And if the design of a vehicle's suspension causes unwanted noise, as opposed to a defective part or incorrect assembly causing the noise, the noise is not a warrantable defect. To qualify for replacement or repurchase or for warranty repair, the law requires the existence of a defect covered by an applicable warranty.¹⁶ Under 43 TEX. ADMIN. CODE § 215.206.66(d), Mr. Chatman bears the burden of proving by a preponderance of evidence that a warrantable defect

¹⁵ Respondent's Ex. 1, STAR Report.

¹⁶ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

exists. In this case, Mr. Chatman identified the following issues: the vehicle's suspension made popping and clunking noises, the vehicle made a clicking noise when turning, the brakes squealed, the passenger side taillight collected moisture and the vehicle vibrated at highway speeds. Mr. Chatman testified that the clicking noise was successfully repaired, leaving the suspension noise, brake squeal, taillight moisture and vehicle vibration issues for resolution.

1. Suspension Noise

In this case, the evidence shows that the currently existing noise associated with the vehicle's suspension does not arise from any manufacturing defects. Mr. Mancini, as well as technicians from the dealerships, found the suspension noise to be normal. During the test drive, the vehicle exhibited the suspension noise which Mr. Chatman identified as the complained of noise. However, the noise appeared to result from the vehicle's normal interaction with the road and not from any manufacturing defect. As would be expected, the suspension noise became more pronounced as the vehicle drove over rougher and more irregular surfaces. Significantly, the noise did not appear to affect the vehicle's performance during the test drive. Although the vehicle's suspension noise may be undesirable, the evidence indicates that the noise results from the vehicle's normal interaction with the road and not from a manufacturing defect. Because the suspension noise is not due to a manufacturing defect, the vehicle does not qualify for repurchase/replacement or warranty repair relief under TEX. OCC. CODE § 2301.604(a) and § 2301.204.

2. Brake Squeal

Mr. Mancini testified that the brake squeal resulted from rust developing on the brake rotors, a condition caused by the environment and not any manufacturing defect. Mr. Chatman's description of the brake squeal precisely matches the noise that would occur from rust. Mr. Chatman noted that the brakes would squeal when first operating the vehicle after the vehicle had been sitting overnight, but would not continue to make the noise. The initial squealing after sitting overnight corresponds to squealing from rust forming over time from moisture on the rotors. Further, Mr. Chatman noted that the brakes stopped squealing after initially making noise, which corresponds to the application of the brakes clearing off the rust and thereby eliminating the noise. In this case, moisture from the environment caused the brake squeal. Because the brake squeal is due to environmental conditions and not due to a manufacturing defect, the vehicle does not qualify

for repurchase/replacement or warranty repair relief under TEX. OCC. CODE § 2301.604(a) and § 2301.204. Additionally, the vehicle is ineligible for repurchase/replacement because a reasonable number of repair attempts were not undertaken. Under TEX. OCC. CODE § 2301.605(a), Mr. Chatman would have needed to make at least four repair visits with regard to the brake issue. The evidence shows only one repair attempt for this issue, the service visit on April 28, 2015.

3. Taillight Moisture

Mr. Mancini testified that, and according to the manufacturer's service bulletin, moisture in the tail light only constitutes a defect if it fails to dissipate. In this case, the evidence showed that the moisture evaporated on its own. Accordingly, this condition does not constitute a warrantable defect. Additionally, the vehicle is ineligible for repurchase/replacement because a reasonable number of repair attempts were not undertaken. Under TEX. OCC. CODE § 2301.605(a), Mr. Chatman would have needed to make at least four repair visits with regard to the taillight issue. The evidence shows only one repair attempt for this issue, the service visit on April 28, 2015.

4. Vehicle Vibration

Mr. Mancini's inspection of the vehicle in April 2015 did not find any abnormal conditions other than the headlamp making contact with the fender. Further, the test drive at the hearing did not reveal any abnormal conditions. During the test drive, Mr. Chatman identified some vibration at highway speeds as the complained of issue, but that vibration did not appear abnormal and instead appeared to be the result of the vehicle's interaction with the road's surface. Since the vibration does appear to result from any defect, the vehicle does not qualify for repurchase/replacement or warranty repair relief under TEX. OCC. CODE § 2301.604(a) and § 2301.204. Additionally, the vehicle is ineligible for repurchase/replacement because a reasonable number of repair attempts were not undertaken. Under TEX. OCC. CODE § 2301.605(a), Mr. Chatman would have needed to make at least four repair visits with regard to the vibration issue. The repair orders in evidence do not show any repair attempts for this issue. Moreover, the Lemon Complaint form in this case also shows no repair attempts for this issue.

III. Findings of Fact

1. The Complainant purchased a new 2014 Dodge Avenger from Gillman Chrysler Jeep Dodge (Gillman) of Houston, Texas, on March 31, 2014. The vehicle's odometer showed 21 miles at the time of purchase.
2. The vehicle came with basic warranty coverage for three years, or 36,000 miles.
3. The Complainant took the vehicle to a dealer on the following dates to address the suspension noise:
 - a. April 5, 2014, at 297 miles;
 - b. April 21, 2014, at 852 miles;
 - c. May 6, 2014, at 1,249 miles; and
 - d. April 28, 2015, at 16,162 miles.
4. The Complainant took the vehicle to a dealer on April 28, 2015, to address the brake squeal and moisture in the taillight.
5. The vehicle did not have any repair attempts addressing the vehicle vibration.
6. On February 25, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
7. The vehicle did not exhibit any unusual characteristics during the inspection and test drive at the hearing.
8. On June 1, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the 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.
9. The hearing in this case convened and the record closed on July 2, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, Christopher J. Chatman, represented himself. Cynthia Chatman also appeared on behalf of the Complainant. Jan Kershaw, Early Resolution Case Manager, represented the Respondent. Timothy Mancini, Technical Advisor, testified for the Respondent.

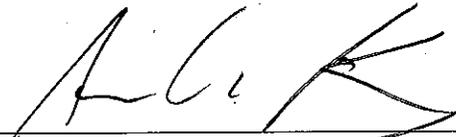
IV. Conclusions of Law

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. The Complainants 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainant failed to undertake a reasonable number of repair attempts with regard to the brake and taillight issues. TEX. OCC. CODE § 2301.605.
7. The Complainant has failed to show that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.
9. The 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 the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED August 28, 2015



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