

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0205 CAF**

LINDA EDE,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FORD MOTOR COMPANY	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Linda Ede (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Ford F-350 pickup. Complainant asserts that the vehicle is defective because the vehicle vibrates when it is driven at high speeds. Ford Motor Company (Respondent) argues that the vehicle does not have a defect and is performing as designed. The hearings examiner concludes that the vehicle has an existing warrantable defect. Therefore, Complainant is eligible for 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 August 11, 2015, in Uvalde, Texas, before Hearings Examiner Edward Sandoval. Complainant was represented by Paul Ede, Complainant's son. Also appearing to testify for Complainant was Nan Ede, Complainant's daughter-in-law. Respondent was represented by Maria Diaz, Legal Analyst for Consumer Affairs.

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 Ford F-350 pickup from Caraway Ford (Caraway) in Gonzales, Texas, on November 10, 2014.⁸ The vehicle's mileage at the time of delivery was 34.⁹ Respondent provided a basic limited warranty for the first three (3) years or 36,000 miles on the odometer, whichever comes first. In addition, Respondent provided a five (5) year or 60,000 mile powertrain warranty for the vehicle. The vehicle's mileage on the date of hearing was 30,711.

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 Buyer's Order and Odometer Disclosure Statement dated November 10, 2014.

⁹ *Id.*

Paul Ede, Complainant's son, is the primary driver of the vehicle. He testified that he first felt excessive vibration in the vehicle about two weeks after purchasing the vehicle. Mr. Ede testified that the vibration occurs intermittently and is sometimes bad enough to cause him to slow his speed when driving the vehicle.

On November 20, 2014, Mr. Ede took the vehicle to Griffith Ford, Respondent's authorized dealer, in Uvalde, Texas, for repair. Complainant indicated to the dealer's service advisor that he felt a vibration in the vehicle when driving at certain speeds. The dealer's service technician verified the concern and confirmed that there was excessive vibration. The technician rebalanced the vehicle's tires and road tested the vehicle.¹⁰ However, the vibration was still present. The technician did not perform any other repairs at the time, since he did not know how to resolve the issue. The vehicle's mileage at the time of the repair visit was 2,215.¹¹

On December 1, 2014, Mr. Ede took the vehicle to Bluebonnet Ford (Bluebonnet), Respondent's authorized dealer, in New Braunfels, Texas, for repair due to the vibration issue. The dealer's service technician checked the vehicle's tires and determined that they had excessive "road force."¹² Mr. Ede was informed that the tires had flat spots and that the tires were not covered under warranty. Mr. Ede was also told that the flat spots could be caused if the vehicle was allowed to sit too long without moving it. The technician recommended replacing the vehicle's tires, which Mr. Ede agreed to do. New tires were mounted and balanced on the vehicle at a cost of \$1404.09 to Mr. Ede.¹³ (Mr. Ede was later reimbursed \$1400 by Caraway for the cost of the tires.) The vehicle was in Bluebonnet's possession for three days while the vehicle was being repaired. Mr. Ede was not provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle at the time of this repair was 3,161.¹⁴

After picking up the vehicle from Bluebonnet, Mr. Ede still felt a vibration when driving it. So, he scheduled an appointment with Bluebonnet for December 9, 2014, for the service technician to have another look at the vehicle. On December 9, 2014, Bluebonnet's service technician performed a high speed balance on the tires and felt that they were good.¹⁵ Mr. Ede does not know whether the technician test drove the vehicle to verify Mr. Ede's concerns. The technician indicated to Mr. Ede that the high speed balance should fix the problem. The mileage on the vehicle at the time of the repair was 4,465.¹⁶

¹⁰ Complainant Ex. 2, Repair Order dated November 20, 2014.

¹¹ *Id.*

¹² Complainant Ex. 3, Repair Order dated December 1, 2014.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 4, Repair Order dated December 9, 2014.

¹⁶ *Id.*

Mr. Ede continued to drive the vehicle and continued to feel excessive vibration when driving at high speed. However, he felt that he did not have the time to take the vehicle for further repairs at the time.

Mr. Ede took the vehicle to Bluebonnet on February 23, 2015, to address the vibration issues. The dealer's service technician verified that the vehicle had a "bad vibration" when being driven at high speeds.¹⁷ The technician determined that two of the vehicle's tires had excessive road force.¹⁸ The tires in question were replaced at a cost of \$716.95 to Mr. Ede.¹⁹ The vehicle was in Bluebonnet's possession until March 9, 2015.²⁰ Mr. Ede was provided with a rental vehicle while his vehicle was in the dealer's possession. The mileage on the vehicle when taken to Bluebonnet for repair was 10,226.²¹

On March 26, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).²² Complainant also mailed a notice letter to Respondent on March 23, 2015, advising them of Complainant's dissatisfaction with the vehicle.²³

Mr. Ede was contacted by Respondent's representative in order to schedule a final repair attempt on the vehicle. Mr. Ede took the vehicle to Griffith Ford on the scheduled date and left it at the dealer for the repair attempt. Mr. Ede testified that Respondent's field service engineer test drove the vehicle for about 25 miles and determined that there was no vibration, so no repairs were performed.

Mr. Ede feels that the vibration is caused by an issue with the vehicle's frame or driveshaft. He does not feel that it is a tire issue.

Nan Ede, Mr. Ede's wife, testified that she has noticed excessive vibration when riding in the vehicle with Mr. Ede. The last time prior to the hearing that she experienced the vibration was approximately two to three weeks prior to the hearing date. She and Mr. Ede were driving on the highway at approximately 75 mph and the vehicle began to vibrate. Mr. Ede, who was driving, slowed down and then stopped the vehicle. Ms. Ede felt a constant shaking in the passenger's seat as a result of the vibration.

¹⁷ Complainant Ex. 5, Repair Order dated February 23, 2015.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Complainant Ex. 3, Lemon Law Complaint dated March 26, 2015. Although the complaint was signed by Complainant on March 23, 2015, it was not received by the Department until March 26, 2015, which is the effective date of the complaint.

²³ Complainant Ex. 7, Letter to Ford Motor Company dated March 23, 2015.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs, testified for Respondent. She indicated that she first became involved with this complaint in early April of 2015, after Respondent received Mr. Ede's complaint letter. Ms. Diaz spoke to Mr. Ede on April 2, 2015, and discussed the possibility of Respondent performing a final repair attempt on the vehicle.

Respondent performed a final repair attempt on the vehicle on May 1, 2015. Kurt Kindler, Field Service Engineer, performed the final repair attempt at Griffith Ford. He performed a 25 mile road test on the vehicle.²⁴ Mr. Kindler indicated that he could not feel any abnormal vibration when driving the vehicle.²⁵ He indicated that the ride in the vehicle was comparable to a "like stock unit."²⁶ No repairs were performed on the vehicle at the time.

Ms. Diaz testified that the vehicle's tires are not covered under warranty. In addition, she indicated that Complainant was provided with a rental vehicle during the final repair attempt on Complainant's vehicle.

D. Analysis

Under Texas' 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 November 10, 2014, and presented the vehicle to an authorized dealer of Respondent due to his concerns with an excessive vibration issue on November 20, 2014; December 1, 2014; December 9, 2014; and February 23, 2015. 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) goes on to specify 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

²⁴ Respondent Ex. 1, Vehicle Inspection Report dated May 1, 2015.

²⁵ *Id.*

²⁶ *Id.*

attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.” Complainant has met the requirements of this test and Respondent has been provided a reasonable number of attempts to conform Complainant’s vehicle to the applicable express warranty.

Respondent argues that the vehicle does not have excessive vibration at high speeds and, therefore, has no defect. However, the evidence reveals that the dealers’ various service technicians were able to verify a vibration in the vehicle when driving at high speeds. In fact, on two occasions Complainant was instructed to purchase new tires for the vehicle in order to address the concern. Complainant purchased four new tires when the vehicle had mileage of 3,161 (December 1, 2014) and then two new tires just 7,065 miles later (February 23, 2015). It appears that the dealers’ technicians keyed on the tires as causing the vibration and did not investigate to see if there could be another cause for it. It stretches the imagination to think that the vehicle could have had six bad tires installed on it within less than five months. In addition, Mr. and Ms. Ede’s first hand testimony established that the issue was intermittent and was severe enough to cause them to drive more slowly and to actually stop the vehicle on occasion.

The evidence further demonstrates that the defect (excessive vibration in the vehicle at high speeds) in Complainant’s vehicle creates a serious safety hazard. The intermittent nature of the condition increases the safety risk and substantially impedes Complainant’s ability to control or operate the vehicle for ordinary use or intended purposes. Complainant has met his burden of proof to establish a warrantable and existing defect or condition that creates a serious safety hazard.

Moreover, the defect in Complainant’s vehicle substantially impairs its use and market value. An unimpaired vehicle with similar mileage should not behave in such a manner. Complainant cannot rely on the vehicle on long distance drives, as he cannot be aware when it may start acting up.

Finally, Complainant did serve written notice of his dissatisfaction with the vehicle to Respondent when he filed the Lemon Law complaint. Respondent was provided with a final opportunity to repair the vehicle on May 1, 2015.

When a complainant establishes that relief under the Lemon Law is appropriate, the manufacturer may be required to repurchase the motor vehicle, or replace the motor vehicle with a comparable motor vehicle. Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case.

Based on the above analysis, the hearings examiner orders Respondent to replace Complainant’s vehicle as further detailed in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. Linda Ede (Complainant) purchased a new 2014 Ford F-350 pickup truck from Caraway Ford in Gonzales, Texas, on November 10, 2014. The vehicle's mileage was 34 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a limited warranty for the vehicle for the first three (3) years or 36,000 miles, whichever comes first.
3. The vehicle's mileage on the date of hearing was 30,711.
4. At the time of hearing the vehicle's basic express warranty was still in effect.
5. The primary driver of the vehicle is Complainant's son, Paul Ede.
6. Mr. Ede feels that the vehicle has excessive vibration at high speeds.
7. Mr. Ede took the vehicle to Respondent's authorized dealers on the following dates in order to address the vibration issue:
 - a. November 20, 2014, at 2,215 miles;
 - b. December 1, 2014, at 3,161 miles;
 - c. December 9, 2014, at 4,465 miles; and
 - d. February 23, 2015, at 10,226 miles.
8. On November 20, 2014, Griffith Ford's service technician verified Complainant's concern and rebalanced the tires to address the issue. He indicated that the vehicle was still vibrating at high speeds after the wheel balance and took no further action to address the issue.
9. On December 1, 2014, Bluebonnet Ford's service technician determined that the tires had excessive road force and recommended that Complainant purchase four new tires in order to address the concern.
10. Mr. Ede purchased four new tires for the vehicle at a cost of \$1404.09, for which he as later reimbursed \$1400 by Caraway Ford.

11. On December 9, 2014, Bluebonnet Ford's service technician performed a high speed balance of the tires in order to address Complainant's concerns regarding the excessive vibration issue.
12. On February 23, 2015, Bluebonnet Ford's service technician recommended that two tires on the vehicle be replaced because of excessive road force in order to address the vibration issue.
13. Mr. Ede purchased two new tires for the vehicle during the February 23, 2015, repair visit.
14. On March 26, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. May 1, 2015, Kurt Kindler, Field Service Engineer, performed a final repair attempt and inspection on the vehicle.
16. During Respondent's final repair attempt, Mr. Kindler determined that the vehicle was operating as designed and that no repairs were required.
17. On May 8, 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.
18. The hearing in this case convened and the record closed on August 11, 2015, in Uvalde, Texas, before Hearings Examiner Edward Sandoval. Complainant was represented by Paul Ede, Complainant's son. Also appearing to testify for Complainant was Nan Ede, Complainant's daughter-in-law. Respondent was represented by Maria Diaz, Legal Analyst for Consumer Affairs.

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 hearing 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's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
10. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to replace Complainant's 2014 Ford F-350 with a comparable motor vehicle. Tex. Occ. Code § 2301.604(a)(1).
11. Complainant is not entitled to reimbursement of incidental expenses. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

IT IS THEREFORE ORDERED that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainant's 2014 Ford F-350 (the reacquired vehicle) with Complainant's choice of any comparable motor vehicle.

2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainant under the following terms:
 - (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);
 - (b) The trade-in value of Complainant's 2014 Ford F-350 shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainant's use of the vehicle;
 - (c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2) (the use allowance is \$7,675.95);
 - (d) The use allowance paid by Complainant to Respondent shall be reduced by \$35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **\$7,640.95**, which is the amount that Complainant must be responsible for at the time of the vehicle exchange).
3. Respondent's communications with Complainant finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.
4. Respondent shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department.²⁷
5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (*e.g.*, hanging from the rear view mirror). Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

²⁷ Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, Ph. (512) 465-4076.

7. Respondent shall repair the defect or condition that was the basis of the 2014 Ford F-350's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.
8. Upon replacement of Complainant's 2014 Ford F-350, Complainant shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):
 - (a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and
 - (b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainant will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.
9. Complainant shall be responsible for obtaining financing, if necessary, to complete the transaction.
10. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainant's 2014 Ford F-350 pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$48,425.40**. The refund shall be paid to Complainant and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to Complainant.

Purchase price, including tax, title, license and registration	\$56,066.35
Delivery mileage	34
Mileage at first report of defective condition	2,215
Mileage on hearing date	30,711
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$56,066.35			
Mileage at first report of defective condition	2,215			
Less mileage at delivery	<u>-34</u>			
Unimpaired miles	2,181			
Mileage on hearing date	30,711			
Less mileage at first report of defective condition	<u>-2,215</u>			
Impaired miles	28,496			
Reasonable Allowance for Use Calculations:				
Unimpaired miles				
	<u>2,181</u>			
	120,000	X	\$56,066.35	= \$1,019.01
Impaired miles				
	<u>28,496</u>			
	120,000	X	\$56,066.35	X .5 = <u>\$6,656.94</u>
Total reasonable allowance for use deduction:				\$7,675.95
Purchase price, including tax, title, license and registration	\$56,066.35			
Less reasonable allowance for use deduction	-\$7,675.95			
Plus filing fee refund	<u>\$35.00</u>			
TOTAL REPURCHASE AMOUNT	\$48,425.40			

11. If Complainant's 2014 Ford F-350 is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainant's vehicle.

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 **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED September 4, 2015



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