

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0227 CAF**

**JOHN D. WILLIAMS AND  
FAYE H. WILLIAMS,  
Complainants**

v.

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

John D. Williams and Faye H. Williams (“Complainants”) seek relief pursuant to Texas Occupations Code § 2301.601-2301.613 (Lemon Law) for alleged defects in their 2013 Ford Focus SE. Complainants assert that the vehicle’s transmission slips which causes the vehicle to hesitate and shudder when it’s being driven. Ford Motor Company (“Respondent”) argued that the vehicle has been repaired and no defect exists in the vehicle. The hearings examiner concludes that the vehicle does not have a currently existing warrantable defect. As such, Complainants are not eligible 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 August 20, 2015, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by John D. Williams at the hearing. Also present as a witness for Complainants was Faye H. Williams. Respondent was represented by Maria Diaz, Legal Analyst for Consumer Affairs. Present as a witness for Respondent was Zachary LaTour, Field Service Engineer.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code with a comparable vehicle if the following conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>1</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the

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<sup>1</sup> Tex. Occ. Code § 2301.604(a)(1) and (2).

manufacturer.<sup>2</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>3</sup>

In addition to the five above referenced 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.<sup>4</sup>

## **B. Complainants' Evidence and Arguments**

Complainants purchased a new 2013 Ford Focus SE from Five Star Ford (Five Star) in North Richland Hills, Texas on February 5, 2013. The vehicle's mileage was 3 at the time of purchase.<sup>5</sup> Respondent's original warranty provided bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever comes first.<sup>6</sup> In addition, Respondent also provided a powertrain warranty for five (5) years or 60,000 miles.<sup>7</sup> On the date of hearing the vehicle's mileage was 30,508.

### **1. John Williams' Testimony**

John D. Williams testified that the vehicle's transmission appears to be slipping when he or his wife drive the vehicle. The vehicle makes an unusual grinding noise and has difficulty accelerating. The problem seems to be intermittent. Faye Williams first noticed the problem when the vehicle's mileage was approximately 12,000. Ms. Williams informed Mr. Williams of her concerns with the vehicle, but he waited a few months before contacting a dealer in order to have repairs performed on the vehicle because he wanted to be sure that the problems were occurring often enough so that they could be duplicated by a technician.

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<sup>2</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>4</sup> 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.

<sup>5</sup> Complainants Ex. 2, Odometer Disclosure Statement dated February 5, 2013.

<sup>6</sup> Complainants Ex. 9, Warranty Booklet for 2013 Ford Focus, p. 8.

<sup>7</sup> *Id.*

Mr. Williams contacted a representative with Ford Country of Lewisville (Ford Country), Respondent's authorized dealer, to inquire about getting the vehicle to the dealer for repair. Mr. Williams stated that it took about a month before an appointment was scheduled. Mr. Williams took the vehicle in for repair to Ford Country on August 25, 2014. Mr. Williams informed the dealer's service advisor that the vehicle's transmission "jerked" from a stop.<sup>8</sup> The dealer's service technician determined that vehicle was leaking oil and that the vehicle's clutch needed to be cleaned.<sup>9</sup> In addition, he decided to replace the inner input shaft seals.<sup>10</sup> The vehicle's mileage on this repair visit was 18,491.<sup>11</sup> The vehicle was in the dealer's possession for three days during this repair visit. Complainants were not provided with a rental or loaner vehicle while the vehicle was being repaired.

Mr. Williams testified that the vehicle drove fine for a short time after the August 25, 2014 repair. However, the vehicle again began to hesitate and make noises. Mr. Williams took the vehicle to Ford Country for repair on October 23, 2014. Mr. Williams informed the service advisor that the vehicle's gear shifts were occurring "too early, too late, too often" and that he noticed "a jerk or hesitation at slow speeds especially when taking off from a stop."<sup>12</sup> The dealer's service technician replaced the vehicle's clutch assembly and reprogrammed the vehicle's powertrain control module (PCM) and transmission control module (TCM).<sup>13</sup> The vehicle's mileage on this occasion was 20,468.<sup>14</sup> The vehicle was in the dealer's possession until October 31, 2014.<sup>15</sup> Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Mr. Williams testified that that the vehicle seemed to be working fine after the October 23, 2014, repair. However, in early 2015, the vehicle began to make grinding noises and seemed to hesitate when being driven. Mr. Williams took the vehicle to Ford Country on April 2, 2015, due to his concerns. Mr. Williams informed the service advisor that he felt a "shudder on initial acceleration, especially in stop and go traffic or when taking off from a stop light."<sup>16</sup> The service technician replaced the vehicle's clutch assembly and reprogrammed the vehicle's PCM and TCM.<sup>17</sup> The vehicle's mileage on this date was 25,251.<sup>18</sup> The vehicle was in the dealer's possession for four days during this repair visit. Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

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<sup>8</sup> Complainants Ex. 3, Repair Order dated August 25, 2014.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Complainants Ex. 4, Repair Order dated October 23, 2014.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Complainants Ex. 5, Repair Order dated April 2, 2015.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Mr. Williams testified that the vehicle seemed to drive more smoothly after the April 2, 2015, repair. However, the vehicle did not seem to have as much “get up and go” as it had prior to the repair.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective April 13, 2015.<sup>19</sup> In addition, Complainants mailed a letter to Respondent on April 7, 2015, advising them of their dissatisfaction with the vehicle.<sup>20</sup>

On April 9, 2015, Mr. Williams contacted Respondent’s customer service center to inquire as to whether Respondent would repurchase the vehicle from Complainants. Respondent’s representative informed Mr. Williams that repurchase of the vehicle could not be done.

On April 15, 2015, Maria Diaz, Legal Analyst for Consumer Affairs for Respondent, phoned Mr. Williams regarding his complaints with the vehicle. Ms. Diaz asked if Mr. Williams wanted a final repair attempt on the vehicle. Mr. Williams initially declined the offer because the vehicle had just been repaired and was operating fine at the time. However, he later contacted Ms. Diaz on April 29, 2015, and requested that a final repair attempt on the vehicle be performed.

The final repair attempt was scheduled for May 15, 2015, at Ford Country. However, the appointment was rescheduled for May 19, 2015. Mr. Williams was provided with a loaner vehicle while the final repair attempt was performed. On May 29, 2015, Mr. Williams received a call from Ms. Diaz regarding the final repair attempt. Ms. Diaz informed Mr. Williams that Respondent’s field service engineer determined that there was not an issue with the vehicle.

On June 10, 2015, Ms. Williams was driving the vehicle and the check engine light illuminated. That evening, Mr. Williams took the vehicle to Ford Country. However, the service technician could not find a trouble code, since the check engine light was no longer illuminated.

On June 14, 2015, Mr. Williams was driving the vehicle in Kerrville, Texas when the check engine light illuminated. He took the vehicle to an O’Reilly Auto Parts store in the area and was able to get a trouble code reading. On the following day, Mr. Williams took the vehicle to Ken Stoepel Ford in Kerrville for repair. However, Mr. Williams was advised by the dealer’s service advisor that there were ten vehicles with transmission issues before him. So, Mr. Williams decided to return to the vehicle to Ford Country in Lewisville. Mr. Williams was able to get the vehicle to Ford Country that same day. Mr. Williams informed the service advisor that the check engine light illuminated and that the transmission was “banging into gear and grinding.”<sup>21</sup> The

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<sup>19</sup> Complainants Ex. 6, Lemon Law complaint dated April 13, 2015. Complainants actually signed the form on April 7, 2015. However, it was not received by Texas Department of Motor Vehicles until April 13, 2015, which is the effective date of the complaint.

<sup>20</sup> Complainants Ex. 7, Letter to Respondent dated April 7, 2015.

<sup>21</sup> Complainants Ex. 8, Repair Order dated June 15, 2015.

service advisor determined that the vehicle's TCM needed to be replaced. However, the TCM had to be special ordered. The vehicle was returned to Mr. Williams on June 18, 2015. Mr. Williams returned the vehicle to Ford Country on June 30, 2015, for the TCM to be replaced. The vehicle was in the dealer's possession until July 2, 2015. Complainants were not provided with a loaner vehicle while their vehicle was being repaired. The vehicle's mileage at the time of the repair was 28,136.<sup>22</sup>

Mr. Williams testified that the vehicle fails to find the proper gear when being driven at higher speeds. If he decelerates in the vehicle and then steps on the gas pedal, the vehicle's engine will rev up to 4000 RPM, but the vehicle will continue to slow down. This occurs two to three times per week.

Mr. Williams testified that Respondent has extended the warranty for the vehicle's PowerShift 6-speed automatic transmission. The warranty was extended to seven (7) years or 100,000 miles from the original warranty start date.<sup>23</sup>

Mr. Williams feels that the vehicle is unsafe. The same issues seem to arise repeatedly and the vehicle doesn't ever seem to get fixed. He also feels that Respondent knows that there's a problem with the vehicle and this knowledge is evidenced by the fact that Respondent has provided an extended warranty for the vehicle's transmission. Mr. Williams does not trust the vehicle. He's never sure that if he's driving the vehicle that he can safely pass other vehicles on the road, since he's concerned about his vehicle's hesitation and lack of acceleration. Mr. Williams is concerned about his children's safety when they're passengers in the vehicle.

## 2. Faye Williams' Testimony

Faye Williams testified that she could not recall specifically when she first began experiencing problems with the vehicle. However, she thinks that she began noticing the issues after driving the vehicle for three to four months. She said that the vehicle would "choke" or jerk while she was driving it and that it would make an unusual noise.

Ms. Williams stated that whenever she attempted to accelerate when driving the vehicle, it would jerk and make unusual noises. Ms. Williams is the primary driver of the vehicle and drives it to and from work on a daily basis. She stated that when she's stopped at a light in the vehicle, it doesn't seem to want to accelerate. However, it's an intermittent issue. She does feel nervous when driving the vehicle because it doesn't always seem to accelerate when necessary.

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<sup>22</sup> *Id.*

<sup>23</sup> Complainants Ex. 10, Customer Satisfaction Program 14MO1.

Ms. Williams testified that Complainants were unable to find time to get the vehicle to the dealer for repair more promptly because of her work schedule. She was not paying attention to the number of miles that she was driving and kept feeling that the vehicle would start driving better.

### **C. Respondent's Evidence and Arguments**

#### **1. Zachary LaTour's Testimony**

Zachary LaTour, Field Service Engineer, has five (5) years of automotive repair experience. He worked for an independent automotive repair company for three (3) years prior to being hired by Respondent. He's worked for Respondent for the past two and a half years. He specializes in transmission drive trains. Mr. LaTour has received on-the-job and classroom training in automotive repair.

Mr. LaTour testified that he was contacted by Ms. Diaz in May of 2015 and instructed to conduct a final repair attempt on Complainants' vehicle. The repair attempt was performed at Ford Country on May 19, 2015. Mr. LaTour testified that he drove the vehicle and no trouble lights illuminated. There did not appear to be any issues with the vehicle. He then connected a scan tool to the vehicle to see if the vehicle's clutch operation was within Respondent's specifications.<sup>24</sup> Mr. LaTour determined that the vehicle performed within Respondent's specifications. He did not see the need for any repair to the vehicle at the time.

#### **2. Maria Diaz' Testimony**

Maria Diaz, Legal Analyst for Consumer Affairs, testified that she first became aware of Complainants' concerns with the vehicle after Respondent received the notification letter from Complainants in April of 2015. On April 15, 2015, Ms. Diaz contacted Complainants to arrange a final repair attempt on the vehicle in question. Mr. Williams informed Ms. Diaz that they wanted to wait until the vehicle acted up again before schedule a final repair. On April 29, 2015, Mr. Williams called Ms. Diaz to inform her that he was ready to schedule the final repair attempt. The final repair was initially scheduled for May 15, 2015, but there was miscommunication and the repair attempt was scheduled for the wrong dealership location. The final repair attempt was conducted on May 19, 2015, at Ford Country. Ms. Diaz testified that since Complainants' concerns could not be duplicated during the final repair attempt and since the repair performed on June 15, 2015, replaced the vehicle's clutch actuator and TCM, that the vehicle has been repaired and no relief is warranted.

In addition, Ms. Diaz testified that the vehicle is safe. The vehicle is driveable and the transmission is still under warranty.

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<sup>24</sup> Respondent Ex. 1, Vehicle Inspection Report dated May 19, 2015.

#### **D. Analysis**

Under Texas' Lemon Law, Complainants bear the burden of proof to establish by a preponderance of evidence that an existing defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainants must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainants are 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, Complainants are entitled to have the vehicle repurchased or replaced.

Complainants purchased the vehicle on February 5, 2013, and presented the vehicle to an authorized dealer of Respondent due to their concerns on the following dates: August 25, 2014; October 23, 2014; and April 2, 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 attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." Complainants have not met the requirements of this test.

Complainants did not present the vehicle for repairs to an authorized dealer for Respondent within the first year or 12,000 miles from purchase. Complainants have not established that a reasonable number of attempts to repair the vehicle were conducted by Respondent, since the first repair visit did not occur until after the vehicle had been driven over 18,000 miles and more than a year after it was purchased.

As such, Complainants were unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent. Therefore, the hearings examiner finds that repurchase or replacement relief for Complainants is not warranted.

Respondent's express warranty applicable to Complainants' vehicle provides "bumper to bumper" coverage for 3 years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 30,508. The vehicle's basic express warranty is still in effect. In addition, the extended warranty provided by Respondent for the vehicle's transmission under Customer Satisfaction Program 14MO1 is still in effect. Respondent is under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

Complainants' request for repurchase or replacement relief is denied. If there is still a problem with the vehicle, Complainants are encouraged to take it to Respondent's authorized dealer for repair.

### III. FINDINGS OF FACT

1. John D. Williams and Faye H. Williams (Complainants) purchased a new 2013 Ford Focus SE on February 5, 2013, with mileage of 3 from Five Star Ford of Texas (Five Star) in North Richland Hills, Texas.
2. The vehicle's mileage on the date of hearing was 30,508.
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 vehicle's basic express warranty was still in effect.
5. A few months after purchasing the vehicle, Complainants' vehicle seemed to hesitate and make an unusual grinding noise.
6. Complainants' vehicle was serviced by Respondent's authorized dealer, Ford Country of Lewisville, Texas, (Ford Country) on the following dates:
  - a. August 25, 2014, at 18,491 miles;
  - b. October 23, 2014, at 20,468 miles; and
  - c. April 2, 2015, at 25,251 miles.
7. On August 25, 2014, the dealer's service technician replaced both of the vehicle's inner input shaft seals and cleaned the vehicle's clutch.
8. On October 23, 2014, the dealer's service technician replaced the vehicle's clutch assembly and reprogrammed the vehicle's powertrain control module (PCM) and transmission control module (TCM).
9. On April 2, 2014, the dealer's service technician replaced the clutch assembly a second time and reprogrammed the vehicle's PCM and TCM.
10. On April 13, 2015, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

11. On May 19, 2015, Respondent's field service engineer, Zachary LaTour, performed a final repair attempt on the vehicle. He was unable to duplicate the concern, so no repairs were performed on the vehicle.
12. On June 15, 2015, Complainants took the vehicle to Ford Country for repair because the transmission was "banging into gear" and because the vehicle's check engine light had illuminated.
13. On June 15, 2015, the dealer's service technician replaced the vehicle's transmission control module in order to address Complainants' concerns.
14. On June 11, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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 August 20, 2015, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by John D. Williams at the hearing. Also present as a witness for Complainants was Faye H. Williams. Respondent was represented by Maria Diaz, Legal Analyst for Consumer Affairs. Present as a witness for Respondent was Zachary LaTour, Field Service Engineer.

#### **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. 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. Complainants bear the burden of proof in this matter.

6. Complainants have not established by a preponderance of the evidence that the vehicle currently 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. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
8. Complainants' 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 Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED September 25, 2015**



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