

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0238 CAF**

LUIS A. SANCHEZ,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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**BEFORE THE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Luis A. Sanchez. (“Complainant”) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2012 Ford Focus. Complainant asserts that the vehicle has transmission problems that create a loud noise when he drives it and which causes the vehicle to jerk or shudder when being driven. Ford Motor Company (Respondent) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect, and Complainant is eligible for repair 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 on August 6, 2015, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself in the hearing. Respondent was represented by Maria Diaz, Consumer Affairs Legal Analyst, who participated by telephone. Also present was Nancy Cantu, who provided Spanish interpretive services for Complainant. The hearing record closed on September 4, 2015, upon receipt of an additional requested exhibit from Respondent.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a **new motor vehicle** to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief is available for purchasers of used vehicles under Occupations Code §

2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

Complainant purchased a certified, pre-owned 2012 Ford Focus from Randall Reed’s Planet Ford (Planet Ford) in Humble, Texas on July 31, 2012. The vehicle’s mileage was 38,173 at the time of purchase.¹ At the time of purchase, Respondent provided Complainant with a three (3) year or 100,000 mile extended service warranty.² In addition, Respondent provided a seven (7) year or 100,000 mile powertrain warranty. On the date of hearing the vehicle’s mileage was 103,141.

Complainant testified that, when he purchased the vehicle, he was assured by the salesperson with Planet Ford that the vehicle was in good condition. About three weeks after purchasing the vehicle, Complainant testified that the vehicle began experiencing transmission problems. During acceleration the vehicle would make a loud shaking sound and he felt that the vehicle was dangerous to drive. Complainant contacted the salesperson who told him that the dealer would repair the vehicle. After taking the vehicle to the dealer several times for repair, Complainant was told that the vehicle was fine. Complainant’s daughter is the primary driver of the vehicle.

On August 24, 2012, Complainant took the vehicle to Respondent’s authorized dealer, Champion Ford (Champion) in Katy, Texas, for repair. Complainant informed the dealer’s service advisor that the vehicle was “run[ning] rough at idle and when coming to stop seem[ed] to surge.”³ The dealer’s service technician was unable to duplicate Complainant’s concerns, so no repairs were done at the time. The mileage on the vehicle at the time of the repair visit was 40,422.⁴

After the August 24, 2012, repair visit, Complainant felt that there was no change in the way the vehicle was behaving. So, he took the vehicle back to Champion on October 3, 2012. On this occasion, Complainant indicated to the service advisor that he was hearing a “grinding” or “clicking” noise from the transmission during acceleration.⁵ The dealer’s service technician checked the vehicle and performed a road test with it.⁶ He determined that the vehicle’s

¹ Complainant Ex. 2, Odometer Disclosure Statement dated July 31, 2012.

² Complainant Ex. 14, Three Year/100,000 Mile Limited Warranty, LNR 3353404.

³ Complainant Ex. 3, Repair Order dated August 24, 2012.

⁴ *Id.*

⁵ Complainant Ex. 4, Repair Order Detail – Internal Copy dated October 3, 2012.

⁶ *Id.*

transmission control module (TCM) was making noise, so he replaced it.⁷ The vehicle's mileage on this occasion was 43,841.⁸ Complainant testified that he was provided with a rental vehicle by the dealer while his vehicle was being repaired.

Complainant did not feel that the repairs performed on October 3, 2012, had solved the issues he was having with the vehicle and he was still hearing unusual noises when he drove it. So, he took the vehicle to Planet Ford for repair on November 27, 2012. Complainant informed the dealer's service advisor that he heard a "popping" noise when making a turn in the vehicle.⁹ In addition, Complainant told the advisor that he heard a roaring noise when driving the vehicle.¹⁰ The dealer's service technician replaced the vehicle's front coil springs and strut bearings in order to address the "popping" noise.¹¹ The technician also determined that the roaring noise that Complainant heard was due to the fact that the vehicle needed four new tires and an alignment.¹² Complainant declined to buy new tires at the time.¹³ The vehicle's mileage on this occasion was 48,105.¹⁴

After the repairs performed on November 27, 2012, Complainant felt that the vehicle drove fine for a short while. However, Complainant again began hearing unusual noises when driving the vehicle. Complainant took the vehicle to Planet Ford for repair on December 5, 2012. Complainant indicated to the dealer's service advisor that he was now hearing a "buzzing" noise from the passenger side rear door.¹⁵ The concern was verified by the dealer's service technician who determined that the noise was being caused by the fact that the vehicle's tires needed to be replaced.¹⁶ The bad tires were causing a roaring noise when the vehicle was being driven which, in turn, was creating a noise from the vehicle's trunk wall hinge and spring area.¹⁷ No repairs were performed on the vehicle at the time. The vehicle's mileage on this occasion was 48,639.¹⁸

A few weeks later, on December 17, 2012, Complainant took the vehicle to Planet Ford for additional repairs. On this occasion, Complainant told the dealer's service advisor that he was feeling a shudder or vibration when the vehicle shifted to second gear.¹⁹ The dealer's service technician verified Complainant's concerns and determined that there was a leak at the vehicle's

⁷ *Id.*

⁸ *Id.*

⁹ Complainant Ex. 5, Repair Order dated November 27, 2012.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order dated December 5, 2012.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 7, Repair Order dated December 17, 2012.

bell housing.²⁰ The vehicle's clutch assembly and seal assemblies were replaced.²¹ In addition, the vehicle's power control module (PCM) and TCM were updated.²² The vehicle's mileage on this repair visit was 49,574.²³

Complainant testified that the vehicle drove better after this last repair. However, the vehicle soon began making noises again. Complainant took the vehicle to Planet Ford on January 23, 2013, for repair. Complainant informed the dealer's service advisor that he heard a noise from under the vehicle when making a turn in the vehicle.²⁴ The dealer's service technician could not duplicate the problem, so no repairs were performed at the time.²⁵ The vehicle's mileage on this repair visit was 50,896.²⁶

During 2013, Complainant began hearing a strong noise coming from the area of the vehicle's transmission. The noise was intermittent. On October 15, 2013, Complainant took the vehicle to AutoNation Ford (AutoNation) in Katy, Texas, for repair. Complainant told the dealer's service advisor that the vehicle's transmission felt bad.²⁷ The dealer's service technician replaced the vehicle's clutch assembly and inner and outer input shaft seals.²⁸ The technician reprogrammed the vehicle's PCM and the TCM.²⁹ The mileage on the vehicle at the time of repair was 68,643.³⁰ The vehicle was in the dealer's possession for six days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

On March 23, 2015, Complainant took the vehicle to AutoNation for repair. Complainant informed the dealer's service advisor that the vehicle shuddered during acceleration and that it sometimes seemed as if the vehicle's engine wanted to die when making a turn.³¹ The dealer's service technician inspected the vehicle and performed a road test in it.³² He could not duplicate Complainant's concerns, so no repairs were performed at the time.³³ The vehicle's mileage on this repair visit was 94,978.³⁴

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 8, Repair Order dated January 23, 2013.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 9, Repair Order dated October 9, 2013.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Complainant Ex. 10, Repair Order dated March 23, 2015.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

On April 8 2015, Complainant mailed a letter to Respondent informing them of his dissatisfaction with the vehicle.³⁵ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective April 21, 2015.³⁶

C. Respondent's Evidence and Arguments

Maria Diaz, Consumer Affairs Legal Analyst, testified for Respondent. She indicated that Complainant's vehicle was provided with a three (3) year/36,000 mile warranty when it was originally sold as a new vehicle. However, when Complainant purchased the vehicle as a certified, pre-owned vehicle he was provided with an additional three (3) year/100,000 mile extended service contract for the vehicle.

Ms. Diaz testified that the vehicle is equipped with a DP 6 automatic transmission. This transmission is considered to be a hybrid transmission with some characteristics of a manual transmission, as well as an automatic transmission. Ms. Diaz stated that the noises heard by Complainant are normal for the vehicle, as the noises are associated with the way the transmission normally works.

Ms. Diaz testified that Complainant took the vehicle for repair to AutoNation on September 23, 2014. He indicated to the service advisor that the vehicle was experiencing hesitation. The dealer's service technician performed an update to the vehicle's PCM and TCM and a relearn strategy for the transmission, but did nothing else at the time.³⁷

D. Analysis

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since the vehicle was purchased by Complainant as a used vehicle. In order to determine whether Complainant has a remedy under this section of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

Complainant's Lemon Law complaint and his testimony specify that Complainant was concerned that the vehicle has transmission problems that create a loud noise when he drives it and which causes the vehicle to jerk or shudder when being driven. The evidence indicates that Respondent has replaced the vehicle's clutch assembly twice and that the vehicle still makes unusual noises. In addition, the vehicle did jerk or shudder during an inspection and test drive of

³⁵ Complainant Ex. 12, Letter to Ford Motor Company dated April 8, 2015.

³⁶ Complainant Ex. 11, Lemon Law complaint signed April 5, 2015. Although the complaint was signed by Complainant on April 5, 2015, it was not received by Texas Department of Motor Vehicles until April 21, 2015, which is the effective date of the complaint.

³⁷ Respondent Ex. 1, Claim Detail Report dated September 3, 2015.

the vehicle at the time of hearing. The hearings examiner must hold that Complainant has met his burden of proof to establish that there is a defect or condition in the vehicle that has not been repaired by Respondent or its authorized dealers. As such, Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the cause of the issues with the vehicle and perform any necessary repairs to conform the vehicle to the express warranty.

Respondent's warranty applicable to Complainant's vehicle provides coverage for three (3) years or 100,000 miles whichever comes first. Respondent is liable to repair the vehicle whenever there is any other problem covered by the vehicle's warranty.

III. FINDINGS OF FACT

1. Luis A. Sanchez (Complainant), purchased a certified, pre-owned 2012 Ford Focus on July 31, 2012, with mileage of 38,173 from Randall Reed's Planet Ford (Planet Ford) in Humble, Texas.
2. The vehicle's mileage on the date of hearing was 103,141.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued an express warranty for the used vehicle for three (3) years or 100,000 miles.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant began experiencing transmission issues with the vehicle soon after purchasing it.
6. Complainant's vehicle was serviced by Respondent's authorized dealers on the following dates:
 - a. August 24, 2012, at 40,422 miles;
 - b. October 3, 2012, at 43,841 miles;
 - c. November 27, 2012, at 48,105 miles;
 - d. December 5, 2012, at 48,639 miles;
 - e. December 17, 2012, at 49,574 miles;
 - f. January 23, 2013, at 50,896 miles;
 - g. October 9, 2013, at 68,643 miles;
 - h. September 23, 2014, at 86,931 miles; and
 - i. March 23, 2015, at 94,978 miles.

7. On August 24, 2012, Complainant took the vehicle to Champion Ford in Katy, Texas because the vehicle was running rough and seemed to surge when coming to a stop. The dealer's service technician could not recreate the problems at the time, so no repairs were performed.
8. On October 3, 2012, Complainant took the vehicle to Champion Ford because he was hearing a clicking or grinding noise from the vehicle's transmission during acceleration. The dealer's service technician replaced the vehicle's transmission control module in order to address Complainant's concern.
9. On November 27, 2012, Complainant took the vehicle to Planet Ford for repair because he heard a popping noise when making a turn in the vehicle. In addition, Complainant indicated to the dealer's service advisor that he heard a roaring noise when driving the vehicle.
10. The dealer's service technician replaced the vehicle's front coil springs and strut bearings in order to address the issue of the popping noise during the November 27, 2012, repair visit. The technician determined that the roaring noise was due to the fact that the vehicle needed four new tires and an alignment.
11. On December 5, 2012, Complainant took the vehicle to Planet Ford because he was hearing a buzzing noise from the vehicle's right rear door area. The dealer's service technician determined that the noise was being caused by the tires which had not been replaced causing a roaring noise which, in turn, was creating a noise from the vehicle's trunk wall hinge and spring area.
12. No repairs were performed during the December 5, 2012, repair visit.
13. On December 17, 2012, Complainant took the vehicle to Planet Ford because he felt a shudder or vibration when he shifted the vehicle's transmission to second gear. The dealer's service technician determined that there was a leak at the vehicle's bell housing.
14. During the December 17, 2012, repair visit, the service technician replaced the vehicle's clutch assembly and seal assemblies. In addition, he updated the vehicle's power control module (PCM) and transmission control module (TCM).
15. On January 23, 2013, Complainant took the vehicle to Planet Ford because he heard a noise from under the area of the vehicle's transmission whenever he made a turn in the vehicle. The service technician could not duplicate the problem, so no repairs were performed.

16. On October 15, 2013, Complainant took the vehicle to AutoNation Ford in Katy, Texas, for repair because he thought that the vehicle's transmission felt bad. The service technician replaced the vehicle's clutch assembly and inner and outer input shaft seals, as well as reprogrammed the PCM and TCM in order to address Complainant's concerns.
17. On September 23, 2014, Complainant took the vehicle to AutoNation Ford for repair because the vehicle was hesitating during acceleration and almost stalling. The service technician updated the vehicle's PCM and TCM and learned strategy to address the concerns.
18. On March 23, 2015, Complainant took the vehicle to AutoNation for repair because he felt the vehicle shuddering during acceleration and it sometimes seemed as if the engine wanted to die when he was making a turn in the vehicle. The service technician could not duplicate Complainant's concerns, so no repairs were performed during this visit.
19. On April 8, 2015, Complainant mailed a letter to Respondent indicating his dissatisfaction with the vehicle.
20. On April 21, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
21. On June 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.
22. The hearing in this case convened on August 6, 2015, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself in the hearing. Respondent was represented by Maria Diaz, Consumer Affairs Legal Analyst, who participated by telephone. Also present was Nancy Cantu, who provided Spanish interpretive services for Complainant. The hearing record closed on September 4, 2015, upon receipt of an additional requested exhibit from Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).

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 established by a preponderance of the evidence that the vehicle currently has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to determine the cause of any abnormal noises caused by the vehicle's transmission and the cause of the jerk or shudder sensation felt by Complainant when driving the vehicle and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

SIGNED September 4, 2015


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