

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0242 CAF**

ANDREW JICHA,
Complainant

v.

FCA US LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Andrew Jicha (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Dodge Ram 1500 RT. Complainant asserts that the vehicle's driver's side window makes a popping noise whenever it is raised or lowered. FCA US LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on October 22, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Andrew Jicha, appeared and represented himself at the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Tymothy Mancini, Technical Advisor, appeared and testified for Respondent.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five 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.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2014 Dodge Ram 1500 RT from Mac Haik Dodge–Chrysler–Jeep–Ram in Houston, Texas (Mac Haik) on January 7, 2014, with mileage of 36 at the time of delivery.⁷ On the date of hearing the vehicle's mileage was 15,171. At this time, Respondent's warranty coverage for the vehicle remains in place, with coverage for three (3) years or 36,000 miles from the date of purchase, whichever comes first. In addition, Respondent's powertrain warranty provides for coverage for the powertrain for five (5) years or 100,000 miles from the date of purchase.

Complainant testified that he feels that there is a problem with the vehicle's driver's side window. He first noticed the problem in September or October of 2014. He noticed that whenever he raised the driver's side window he heard a popping noise. Whenever he lowered the window he would feel a vibration in the door panel. In addition, Complainant testified that he took the vehicle for repair approximately a week and a half before the hearing date and that the window has stopped making the noise and vibrating.

When Complainant first began hearing the noise from the window, he was not able to take the vehicle in for repair immediately because he was working two jobs and did not have time to do so.

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

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 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.

⁷ Complainant Ex. 1, Vehicle Purchase Order dated January 7, 2014.

On November 13, 2014, Complainant took the vehicle to Ron Carter Automotive Dealerships (Ron Carter) in Alvin, Texas, Respondent's authorized dealer, for repair. In addition, to his concern regarding the driver's side window making noises and vibrating, Complainant informed the dealer's service advisor that the vehicle's transmission would come out of gear and the PRNDL light on the knob would flash, that the vehicle had died at a stop, that the hands free system wouldn't show any text messages, and the map light would pulse and go out.⁸ All of the issues were addressed by the dealer's service technician (which included the need to special order a part for the map light).⁹ However, the technician could not duplicate Complainant's concern regarding the window noise and vibration.¹⁰ As a result, no action was taken on the window issue. The vehicle's mileage at the time of the repair was 8,411.¹¹ The vehicle was in the dealer's possession for eight days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant continued to hear noise from the driver's side window. So, on January 2, 2015, he took the vehicle to Ron Carter for repair to the window. The dealer's service technician verified Complainant's concern regarding the noise, determined that there was an internal failure in the window regulator, and replaced it.¹² The vehicle's mileage at the time of the repair was 9,450.¹³ The vehicle was in the dealer's possession for 13 days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

After the January 2, 2015, repair visit, Complainant could not raise or lower the driver's side window for a couple of days because the window tint had to be replaced. However, he continued to hear noise from the window when he was finally able to raise and lower it.

On February 5, 2015, Complainant took the vehicle back to Ron Carter for repair. He informed the dealer's service advisor that the vehicle's driver's side window was still making noise when he raised or lowered it. The dealer's service technician determined that the window channel was loose, so he installed glass clips to tighten up the channel.¹⁴ When the vehicle was returned to Complainant, the dealer representative had him raise and lower the window before he drove it off the lot. Complainant felt it was still making noise, although there was some improvement. The dealer's representative informed Complainant that the service technicians had done everything they were required to repair the vehicle, there was nothing else they could do, and the vehicle would have to stay the way it was. The vehicle's mileage on this occasion was 9,797.¹⁵ The

⁸ Complainant Ex. 2, Repair Order dated November 13, 2014.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 3, Repair Order dated January 2, 2015.

¹³ *Id.*

¹⁴ Complainant Ex. 4, Repair Order dated February 5, 2015.

¹⁵ *Id.*

vehicle was in the dealer's possession for five days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant was dissatisfied with the information provided to him by Ron Carter's representatives. On February 5, 2015, Complainant called Respondent's customer service line to voice his dissatisfaction with the dealer and the repairs performed by the dealer. He was given a case number and was informed that his complaint would be escalated to a representative. A few days later a service representative contacted Complainant to see if there was a way to address his concerns. Complainant informed the representative that the technicians had damaged the vehicle's window tinting, paint, and window, in addition to not being able to address his concerns regarding the driver's side window noise and vibration. Complainant agreed to take the vehicle for repair to a different dealership in order to address his concerns with the vehicle.

On March 4, 2015, Complainant took the vehicle to Ron Carter Chrysler–Jeep–Dodge–Ram in Dickinson, Texas for repair to the driver's side window. This location for the repair was agreed upon by Complainant and Respondent's customer service representative. The dealer's service technician verified that the driver's side window made a "popping" noise whenever the window was lowered.¹⁶ The technician replaced the driver's side window regulator and a panel carrier plate in order to address the issue.¹⁷ The vehicle's mileage on this occasion was 10,239.¹⁸ The vehicle was in the dealer's possession for seven days during this repair. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant testified that the window was better after the March 4, 2015, repair. However, about four or five days after the repair, Complainant heard the window, when being lowered up and down, was still making a noise. Complainant contacted Respondent's customer service representative again to voice his displeasure and to inform her that he intended to file a Lemon Law complaint. The service representative asked him to take the vehicle back to Ron Carter in Dickinson and to ask the service manager to verify the concern. Complainant took the vehicle to Ron Carter in Dickinson about three weeks after the March 4, 2015 repair visit and allowed the dealer's service manager to listen to the window to verify the noise. The service manager verified that there was a noise and informed Complainant that a part was missing under the window in the track. However, Complainant refused to allow a repair to be made at the time. Complainant did not receive a repair order for this repair visit. Complainant, however, assumed that a repair attempt was made on the vehicle.

¹⁶ Complainant Ex. 5, Repair Order dated March 4, 2015.

¹⁷ *Id.*

¹⁸ *Id.*

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on April 27, 2015.¹⁹ On April 22, 2015, Complainant mailed a letter to Respondent informing them of his dissatisfaction with the vehicle.

After filing the Lemon Law complaint, Complainant was contacted by Jan Kershaw, Early Resolution Case Manager for Respondent, in regard to a final repair attempt on the vehicle. The final repair attempt was scheduled for June 29, 2015, at the Ron Carter dealership in Alvin. Respondent's technical advisor determined that the driver's side window was working as designed.²⁰ In addition, the technical advisor identified two scratches on the driver's side door that needed to be repaired, the driver's side front window needed to be re-tinted, and checked to see if the radio needed any updates.²¹ The vehicle's mileage on this occasion was 13,170.²² The vehicle was in the dealer's possession for nine days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant spoke to Ms. Kershaw again after the final repair attempt and informed her that the vehicle's driver's side window was still making noise. In addition, he informed her that the vehicle had been damaged while in the dealer's possession. Complainant took the vehicle back to Ron Carter for repair on October 12, 2015, due to the damage performed during the final repair attempt. Most of the complained of items were repaired at the time. One of the repairs required a replacement of the driver's door panel.²³ The vehicle's mileage on this occasion was 14,949.²⁴ Complainant was provided with a rental vehicle while his vehicle was in the dealer's possession.

Complainant testified that he added after-market items to the vehicle: a trailer hitch, LED lights to the rear of the vehicle, a performance air filter, rubber floor mats, a universal tailgate lock, and a spray in bed liner.

Complainant testified that the vehicle was in the dealer's possession for repair for 37 days during the four repair attempts which took place prior to the filing of the Lemon Law complaint.

During cross-examination, Complainant testified that the vehicle's driver's side window is no longer making the complained of noise when he raises or lowers it and that it's possible that it's been repaired. In addition, he testified that he's been burned in the past and doesn't want to take a chance on the vehicle. If the vehicle's power windows don't go up or down then the vehicle's

¹⁹ Complainant Ex. 6, Lemon Law complaint dated April 27, 2015. Complainant signed and dated the complaint on April 17, 2015. However, the complaint was not received by the Texas Department of Motor Vehicles until April 27, 2015, which is the effective date of the complaint.

²⁰ Complainant Ex. 8, Repair Order dated June 29, 2015.

²¹ *Id.*

²² *Id.*

²³ Complainant Ex. 9, Repair Order dated October 12, 2015.

²⁴ *Id.*

resale value can be affected. He has no confidence that the window won't fall down in the track when he's driving the vehicle, although that has never been a problem in the past. He feels that this could be a potential safety issue.

C. Respondent's Evidence and Arguments

1. Jan Kershaw's Testimony

Jan Kershaw, Early Resolution Case Manager, testified that the final repair attempt on Complainant's vehicle took place on June 29, 2015. Timothy Mancini, Technical Advisor, performed the final repair attempt. He was unable to duplicate Complainant's concerns regarding the driver's side window.

After the final repair attempt, Complainant informed Ms. Kershaw that more damage had been done to the vehicle while in the dealer's possession. Ms. Kershaw informed Complainant to speak to the dealer's service representative about the damage. In addition, Ms. Kershaw contacted the dealer's representative to help facilitate repairs for the damage done while in the dealer's possession. Complainant took the vehicle back to Ron Carter on October 12, 2015, so that the damage could be repaired. She feels that the window noise issue may have been repaired when the dealer replaced the driver's side door panel.

2. Timothy Mancini's Testimony

Timothy Mancini, Technical Advisor, has worked for the past four years for Respondent as a technical advisor. Prior to being hired by Respondent, Mr. Mancini had worked six years as an automotive technician for an independent repair company. He has Automotive Service Excellence (ASE) certifications in five disciplines. In addition, he is fully trained to perform repairs on all of Respondent's vehicles.

Mr. Mancini testified that he performed the final repair attempt on Complainant's vehicle. The final repair attempt took place on June 29, 2015, at Ron Carter's Automotive Dealerships in Alvin, Texas. During the repair attempt, Mr. Mancini played with the driver's side window, raising it up and down and listening for any noise that the window was making. Mr. Mancini did note that there was damage to the vehicle which may have been done at the dealership prior to his arrival at the dealership. Mr. Mancini spent a couple of hours inspecting the vehicle. He did not take a test drive in the vehicle. However, he could not duplicate Complainant's concerns with the driver's side window. He determined that the window was operating as designed.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on January 7, 2014 and presented the vehicle to Respondent's authorized dealers due to his concerns with the driver's side window making an unusual noise and vibrating when he raised or lowered it, on the following dates: November 3, 2014; January 2, 2015; February 5, 2015; and March 4, 2015. The vehicle was repaired in October of 2015 and Complainant has indicated that the window is no longer making a noise or vibrating when he raises or lowers it.

Occupations Code § 2301.603 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." In the present case, the evidence indicates that Complainant is concerned that the vehicle has lost value due to the issues with the driver's side window. Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. A loss of value to the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.²⁵ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 100,000 miles. On the date of hearing, the vehicle's mileage was 15,171 and it remains under this warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

²⁵ Tex. Occ. Code § 2301.605.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Andrew Jicha (Complainant) purchased a new 2014 Dodge Ram 1500 RT on January 7, 2014, from Mac Haik Dodge–Chrysler–Jeep–Ram in Houston, Texas, with mileage of 36 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent) issued a warranty for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 15,171.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Respondent's authorized dealer, Ron Carter Automotive Dealerships, in Alvin, Texas, in order to address his concerns with the driver's side window making an unusual noise and vibrating on the following dates:
 - a. November 13, 2014, at 8,411 miles;
 - b. January 2, 2015, at 9,450 miles; and
 - c. February 5, 2015, at 9,797 miles.
6. On November 13, 2014, the dealer's service technician could not duplicate Complainant's concern regarding the driver's side window making noise when being raised or lowered. No repair was performed on this issue.
7. On January 2, 2015, the dealer's service technician determined that the driver's side window regulator was making a popping noise when rolling the window down. The technician replaced the regulator in order to address the concern.
8. On February 5, 2015, the dealer's service technician inspected the driver's side window and determined that the window channel was loose, so he attached some glass clips to prevent the noise from occurring.

9. On March 4, 2015, Complainant took the vehicle to Ron Carter Chrysler–Jeep– Dodge– Ram in Dickinson, Texas, Respondent’s authorized dealer, for repair to the driver’s side window. The dealer’s service technician replaced the driver’s side window regulator and the panel carrier plate in order to address Complainant’s concerns.
10. On April 27, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On June 29, 2015, Respondent’s technical advisor, Tymothy Mancini, performed a final repair attempt on the vehicle. Mr. Mancini determined that the vehicle’s driver’s side window was operating as designed.
12. On October 12, 2015, Complainant took the vehicle to Ron Carter in Alvin, Texas in order to repair damage to the vehicle which occurred on a prior repair visit. During this repair visit, the driver’s side door panel was removed and replaced.
13. The vehicle has been repaired and the driver’s side window is no longer making any unusual noise when being raised or lowered.
14. On July 22, 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.
15. The hearing in this case convened and the record was closed on October 22, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Andrew Jicha, appeared and represented himself at the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Tymothy Mancini, Technical Advisor, appeared and testified for Respondent.

IV. CONCLUSIONS OF LAW


1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED November 3, 2015



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