

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0267 CAF**

TONY R. PEIRSOL,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Tony R. Peirsol (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Chevrolet Camaro. Complainant asserts that the vehicle's air conditioning system intermittently doesn't function properly. General Motors 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 December 9, 2015, in San Antonio Texas, before Hearings Examiner Edward Sandoval. Complainant, Tony R. Peirsol, was present to testify in the hearing. He was represented by Robert Falkenberg, attorney. Also present to testify for Complainant were Jody Peirsol, wife, and Edward Hester, Jr., Technical Inspector with Ed Hester and Associates. Appearing to testify for Complainant pursuant to subpoenas were Roy Kaeo, Service Consultant for ValMark Chevrolet, and Chris Young, General Sales Manager for ValMark Chevrolet. Respondent was represented by Samuel L. Snyder, attorney with Hartline, Dacus, Barger, Dreyer, LLP. Kevin Brown, Field Service Engineer; John Ferrell, Field Service Engineer; and Craig LaVigne, Respondent's District Manager, all appeared to testify for Respondent. Justin Kelley, Service Manager for ValMark Chevrolet, observed.

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

¹ Tex. Occ. Code § 2301.604(a).

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 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

1. Tony Peirsol's Testimony

Complainant purchased a 2014 Chevrolet Camaro SS from ValMark Chevrolet (ValMark) in New Braunfels, Texas on June 25, 2014, with mileage of 297 at the time of delivery.⁷ On the date of hearing the vehicle's mileage was 11,657. At this time, Respondent's warranty coverage for the vehicle remains in place, with "bumper-to-bumper" coverage for three years or 36,000 miles, whichever comes first.⁸ In addition, Respondent's powertrain warranty provides for coverage for the powertrain for five years or 100,000 miles.⁹

Complainant feels that the vehicle's air conditioning system doesn't function properly. He feels that the vehicle takes too long to cool off. Sometimes, the air conditioner fan will not blow air at the highest two speed levels. Complainant testified that it sometimes take up to 30 minutes for the vehicle to cool off in the summer.

² *Id.*

³ *Id.*

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, Motor Vehicle Purchase Order dated June 25, 2014.

⁸ Complainant Ex. 2, 2014 Chevrolet Limited Warranty and Owner Assistance Information manual.

⁹ *Id.*

Complainant first experienced a problem with the vehicle within a week of buying it. Complainant found water on the vehicle's floor board. So, on July 1, 2014, Complainant took the vehicle to ValMark to address the issue. ValMark's service technician determined that the air conditioning system's drain was plugged. When repairing the vehicle, the technician determined that the replacement HVAC case was cracked, so a second replacement had to be installed. The vehicle's mileage at the time of the repair visit was 557.¹⁰ The vehicle was in the dealer's possession for one (1) month. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Soon after getting the vehicle back from the dealer, Complainant turned on the vehicle's defroster. However, no heat came from the HVAC system. As a result, Complainant took the vehicle to ValMark to address the issue. The repair was performed on August 18, 2014. ValMark's service technician determined that a connector was not connected properly and reconnected it.¹¹ The vehicle's mileage on this repair visit was 1,938.¹² The vehicle was in the dealer's possession for four (4) days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant continued to feel that the vehicle's air conditioning system was not cooling the vehicle properly and the fan was not blowing cold air. So, on September 13, 2014, Complainant took the vehicle to ValMark to address the concern. ValMark's service technician checked the vehicle's air conditioning air flow temperature and could not duplicate the issue.¹³ The technician determined that the vehicle's air conditioning system was operating normally.¹⁴ The vehicle's mileage on this repair visit was 2,780.¹⁵ The vehicle was in the dealer's possession for the day during this repair visit. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant testified that he continued to have problems with the vehicle's air conditioning system. So, on October 28, 2014, he scheduled another appointment with ValMark for November 3, 2014, in order to address his concerns.

On November 3, 2014, Complainant took the vehicle to ValMark for repair. ValMark's service technician inspected the vehicle's air conditioning system, could not find any diagnostic trouble

¹⁰ Complainant Ex. 4, Repair Order dated July 1, 2014.

¹¹ Complainant Ex. 5, Repair Order dated August 18, 2014.

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated September 13, 2014.

¹⁴ *Id.*

¹⁵ *Id.*

codes on the vehicle's computers, and determined that the vehicle was operating as designed.¹⁶ The vehicle's mileage was 5,245 at the time of the visit.¹⁷ The vehicle was in the dealer's possession for one (1) day. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant testified that by this point, he wanted the vehicle replaced. Complainant voiced his dissatisfaction with the vehicle to Chris Young, ValMark's General Sales Manager. Complainant testified that he felt that the air conditioning system was not working properly and he did not want to keep the vehicle. No arrangement was made to replace the vehicle.

On March 30, 2015, Complainant took the vehicle to ValMark to address the issue of the air conditioner's fan not blowing at maximum speed when the vehicle's voltage was below 13.¹⁸ ValMark's service technician reprogrammed the vehicle's HVAC control module as instructed by Respondent's Technical Assistance Center (TAC).¹⁹ The vehicle's mileage at the time of this repair visit was 9,138.²⁰ The vehicle was in the dealer's possession for one (1) day. Complainant was provided with a rental vehicle while his vehicle was being repaired.

On April 4, 2015, Complainant again took the vehicle to ValMark to address his concerns with the vehicle's air conditioning system. Complainant informed ValMark's service advisor that when the vehicle's voltmeter indicated that system voltage was 12.6 or below, then the air conditioner's fan would blow air at a lower speed.²¹ ValMark's service technician checked the vehicle's voltage system and did not find any trouble codes.²² The technician determined that the negative battery cable was out of specification, so he replaced it.²³ The vehicle's mileage on this repair visit was 9,400.²⁴ The vehicle was in the dealer's possession for eighteen (18) days. Complainant received a rental vehicle while his vehicle was being repaired.

On April 22, 2015, Complainant's attorney mailed a letter to ValMark notifying them of Complainant's dissatisfaction with the vehicle.²⁵ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on May 19, 2015.²⁶

¹⁶ Complainant Ex. 8, Repair Order dated November 3, 2014.

¹⁷ *Id.*

¹⁸ Complainant Ex. 9, Repair Order dated March 30, 2015.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 10, Repair Order dated April 4, 2015.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 11, Letter to ValMark Chevrolet dated April 22, 2015.

²⁶ Complainant Ex. 12, Lemon Law Complaint dated May 19, 2015. Complainant signed and dated the complaint on May 15, 2015. However, the complaint was not received by the Texas Department of Motor Vehicles until May 19, 2015, which is the effective date of the complaint.

Complainant testified that ValMark offered to repair the vehicle, not replace it. However, Complainant did not want to pursue a repair to the vehicle. On May 15, 2015, Complainant's attorney mailed a notice to Respondent informing them of Complainant's dissatisfaction with the vehicle.²⁷

Complainant testified that Respondent scheduled a final repair attempt on the vehicle for July 14, 2015. No repairs were recommended, but even if there had been repairs recommended, Complainant stated that he would not have allowed the repairs to be performed. He feels that the vehicle would not be completely repaired no matter what was done.

Complainant stated that he cannot tell when the air conditioner will blow cold or cool air. He feels that the vehicle has lost value due to the problems with the air conditioning system.

During cross examination, Complainant testified that his primary issue with the vehicle at the time of hearing was that the vehicle's HVAC system intermittently will not blow air at the two highest settings. He has not experienced any problems with the vehicle's radio, power seats, or seat heaters. The HVAC system's fan speeds one (1) through ten (10) all work properly, it's only speeds eleven (11) and twelve (12) that do not. Complainant testified that he received additional warranty coverage for the components in the vehicle from the dealer. This was provided to him at no charge. This coverage was initiated by the dealer from which Complainant purchased the vehicle.

Complainant testified that on hot days, it seems as if the vehicle's air conditioning system doesn't want to cool at 100% of its cooling capacity. Complainant had prior problems with the air conditioning system, but as of March of 2015, he was concerned primarily with the fact that the system's fan did not always work on its highest two fan settings. If the vehicle's battery voltage is above 14, then the fan will blow at its highest two settings.

Complainant testified that at this point he wants the vehicle repurchased. He no longer wants the vehicle repaired.

2. Roy Kaeo's Testimony

Roy Kaeo is employed as a service advisor for ValMark. He has approximately thirty (30) years experience in the automotive industry. Mr. Kaeo worked with Complainant for several months dealing with his complaints with the vehicle. Most of Complainant's issues with the vehicle had

²⁷ Complainant Ex. 13, Letter to General Motors Company dated May 15, 2015.

to deal with air conditioning problems initially. Recently, Complainant has raised concerns with the vehicle's charging system.

Mr. Kaeo could not recall who initially raised the issue with the vehicle's voltage. He called Respondent's TAC line to receive help with the issue. Mr. Kaeo testified that there are three (3) possible air conditioner issues: the evaporator case, which is a mechanical issue; refrigeration; and electrical. He feels that the first two issues were addressed and repaired. The only issue left in 2015 was an electrical issue. However, the electrical issue is a "load shedding" issue which causes the blower motor to slow down. He feels that the vehicle is repaired and is operating as designed.

During cross-examination, Mr. Kaeo testified that he has been an air conditioner technician since 1984. He is a General Motors' certified technician, as well as an Automotive Service Excellence (ASE) Master Technician. Mr. Kaeo does not feel that the air conditioner blower has any issues. He feels that it's operating as designed.

3. Chris Young's Testimony

Chris Young is employed as a general sales manager for ValMark.

Mr. Young testified that he recalls a repair on Complainant's vehicle which involved water on the vehicle's passenger side floorboard. After that issue was resolved, Mr. Young spoke to Complainant about an issue with the vehicle's air conditioner's fan speed. Mr. Young recalls that Complainant has been to the dealer for repair to his vehicle a few times. He did have a couple of discussions with Complainant about repairing the vehicle and that there is a process to follow if he was unhappy with the vehicle. Mr. Young told Complainant that he had the option to file a Lemon Law complaint. Mr. Young was aware that Complainant was frustrated with his problems with the vehicle.

During cross examination, Mr. Young testified that he informed Complainant of the option of filing a Lemon Law complaint. However, he did not state to Complainant that the vehicle qualified as a "lemon."

4. Craig LaVigne's Testimony

Craig LaVigne is the district manager for after-sales for the San Antonio area. He is Respondent's employee. His job duties include handling all of the fixed operations for fourteen

(14) dealerships in his district, this includes retention, warranty administration, assisting with dealership or customer issues.

Mr. LaVigne testified that he was familiar with Complainant's concerns with the vehicle. He was notified of the issues with the vehicle by Justin Kelley, ValMark's service manager. Mr. LaVigne testified that Respondent was notified of Complainant's unhappiness with the vehicle by Complainant's attorney. Mr. LaVigne was subsequently notified of Complainant filing a Lemon Law complaint. Mr. LaVigne was present during the final repair attempt on the vehicle. He was involved in the test drive with Kevin Brown, Respondent's field service engineer. Mr. Lavigne went on the test drive with Mr. Brown to see if Complainant's concern could be duplicated. Mr. LaVigne rode along in the passenger seat. He did not observe anything unusual on the test drive. He feels that the vehicle was operating normally. Mr. LaVigne indicated that he was trying to find volume changes with the air blowing out of the air conditioner's vents. He went on two test drives that day. After the second test drive, Mr. LaVigne left the dealer and went to perform other tasks.

During cross examination, Mr. LaVigne testified that his role in a customer issue is to support the field service engineer and whatever their doing. He attempts to resolve issues and fix any problems. Mr. LaVigne has no technical background and does not perform any repairs on vehicles for Respondent.

5. Edward Hester, Jr.'s Testimony

Edward Hester, Jr. has worked in the automotive industry for 46 years. He has worked as a service technician, a service manager, and a shop foreman. He has worked as an instructor in Automotive Technology for Cedar Valley College since 1982. Mr. Hester still performs work on vehicles periodically. He has 20 Automotive Service Excellence (ASE) certifications and was classified as a World Class Technician in the mid-1990's.

Mr. Hester testified that he inspected Complainant's vehicle on November 6, 2015. Respondent's representative showed up about 20 to 30 minutes after the inspection began. During the inspection, Complainant drove the vehicle in order to allow Mr. Hester to check a meter that he had attached to the vehicle. The inspection and test drive took approximately 40 to 50 minutes. After the test drive, Mr. Hester attached a voltmeter to the vehicle to check the battery voltage.

Mr. Hester testified that the vehicle's charging system seemed to operate properly for 60 seconds or less upon startup of the vehicle. He testified the vehicle's voltage should be about 14 volts and instead the battery's voltage was staying around 12.4. Mr. Hester testified that he thought that the

vehicle's body control module (BCM) wasn't sending a correct signal to the alternator to up the voltage.

Mr. Hester observed that when the vehicle's voltage is lower the vehicle's top two fan speeds don't work. He feels that the air conditioner system needs optimum voltage in order for the blower motor to operate properly. Mr. Hester testified that he doesn't feel that air conditioner system is operating properly and it doesn't meet industry or Respondent's standards.

During cross-examination, Mr. Hester testified that he performed his inspection after Respondent's final repair attempt. He stated that the industry standard for a fully charged battery is 12.6 volts. He also testified that the only problem that manifested was that the air conditioner blower fan would not blow more air on the 11 and 12 levels when the vehicle's voltage was below 14.6.

Mr. Hester testified that he did not check to see if any diagnostic trouble codes were present on the vehicle's computers during his inspection. He did indicate that the check engine light was not illuminated during the inspection.

6. Jody Peirsol's Testimony

Jody Peirsol is Complainant's wife. She agrees with Complainant that the vehicle's air conditioner is unreliable. She has been in the vehicle when the air conditioner did not blow at the high speed. She doesn't feel that the air conditioning system operates properly.

7. John Ferrell's Testimony

John Ferrell is a contract field service engineer who is employed by Hewlett-Packard. He was present on November 6, 2015, when Mr. Hester performed an inspection of the vehicle in question. Mr. Ferrell arrived at the inspection location about 20 minutes late on the date in question. The inspection by Mr. Hester had already commenced by the time that Mr. Ferrell arrived.

Mr. Ferrell testified that he rode along on a test drive in the vehicle during the inspection. He observed that the vehicle's windshield wipers were on during part of the test drive, but that the radio was off. He observed that the vehicle's air conditioning system was blowing cold air. When they returned to the inspection site, Mr. Ferrell saw Mr. Hester connect a digital voltmeter to the vehicle. He observed that the meter was initially set improperly and then was adjusted to correct the error. He saw that the vehicle's voltage was at 12.4. Mr. Ferrell testified that the

voltmeter was connected to the positive junction block and to the bolt on the manifold's heat shield.

During cross examination, Mr. Ferrell testified that he did not feel that the setup of the voltmeter was optimal. He felt that if the meter was not connected directly to the vehicle's battery, it was possible that the readings would be skewed and provide false results. Mr. Ferrell did not witness the vehicle's fan blower speed decrease or change.

C. Respondent's Evidence and Arguments

Kevin Brown is a contract field service engineer for Respondent. He's employed by Hewlett-Packard. He is a General Motors' Master Certified Technician in all ten (10) available fields. He is also a General Motors' World Class Certified Technician.

Kevin Brown testified that among his duties he was lead technical advisor in helping to resolve customer complaints and issues. If dealer technicians are unable to resolve issues with Respondent's vehicles, then the technicians will reach out to Mr. Brown for aid in resolving the issues.

Mr. Brown performed the final repair attempt on the vehicle on June 23, 2015. The final repair attempt was performed at ValMark. Mr. Brown testified that he was initially told that the problem with the vehicle's air conditioner occurred at fan speeds 4 and 5. These were under Roman numeral II on the air conditioner's dash control. He was later informed that this information was incorrect, the problem was at fan speeds 11 and 12, under Roman numeral IV. Mr. Brown testified that on a second test drive, he tested the air conditioner's maximum blower speeds.

Mr. Brown drove the vehicle for approximately 103 miles during the final repair attempt. He observed the vehicle's voltage drop to 12.6 during the test drive. Mr. Brown testified that the reason that this occurs was to increase fuel economy for the vehicle. When the vehicle's computer deems it necessary, the air conditioning system's fan will not blow air at the 11 and 12 speeds, but at the 10 speed. This is due to "load shedding" by the vehicle's charging system. The air conditioning system is designed to operate this way. Mr. Brown did consult with Respondent's HVAC team and was informed that when the vehicle has lower voltage, the air conditioner's blower speed will be affected. During the final repair attempt, Mr. Brown did not observe any diagnostic trouble codes from the vehicle's computers.

Mr. Brown feels that the vehicle is operating as designed. He does not feel that the vehicle has a defect. He does not feel that the issue raised by Complainant has any impact on the vehicle's value. He does not feel that there is a problem with the vehicle's charging system.

During cross-examination, Mr. Brown testified that the vehicle is set up to charge whatever components are needed and is designed to regulate the vehicle's alternator input. If the vehicle had a charging issue, then other systems or components would be affected and this has not been the case with Complainant's vehicle. So, Mr. Brown feels that there is no charging issue with the vehicle.

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.

The evidence presented at the hearing established that the vehicle's air conditioning system is working as designed and that there is no defect in the vehicle. Respondent's testimony established that the change in voltage is due to "load shedding" of the vehicle's charging system. When voltage is decreased or increased the air conditioner's blower motor will change speeds according to the amount of voltage supplied to it. This is not evidence of a defect in the vehicle, but is a design issue. In addition, there has been no evidence of an electrical issue with the vehicle, since no other components are affected when the vehicle's battery voltage drops below 13. If there were an electrical issue, then it would seem that other components would not work properly. The hearing examiner must hold that Complainant has not established the existence of a defect in the vehicle. As such, Complainant is not entitled to repurchase or replacement relief.

Respondent's express warranty applicable to Complainant's vehicle provides "bumper-to-bumper" coverage for 3 years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for 5 years or 100,000 miles. On the date of hearing, the vehicle's mileage was 11,657 and it remains under this warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Tony Peirsol (Complainant) purchased a new 2014 Chevrolet Camaro on June 25, 2014, from ValMark Chevrolet (ValMark) in New Braunfels, Texas, with mileage of 297 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent) issued a bumper-to-bumper warranty for 3 years or 36,000 miles, whichever occurs first and a separate powertrain warranty for 5 years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 11,657.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Respondent's authorized dealer, ValMark, in order to address his concern with the vehicle's air conditioning system not operating properly on the following dates:
 - a. July 1, 2014, at 557 miles;
 - b. August 18, 2014, at 1,938 miles;
 - c. September 3, 2014, at 2,780 miles;
 - d. November 3, 2014, at 5,245 miles;
 - e. March 30, 2015, at 9,138 miles; and
 - f. April 4, 2015, at 9,400 miles.
6. On July 1, 2014, ValMark's service advisor replaced the vehicle's HVAC case in order to address a water leak in the vehicle.
7. On August 18, 2014, ValMark's service technician determined that a connector was not connected correctly which was causing the vehicle's heater to not operate properly.
8. On September 3, 2014, ValMark's service technician could not find a problem with the vehicle's air conditioner not blowing cold air. The technician determined that the system was operating normally.
9. On November 3, 2014, ValMark's service technician determined that the vehicle's air conditioning system was working as designed. No repair was performed.

10. On March 30, 2015, ValMark's service technician reprogrammed the vehicle's HVAC module to address Complainant's concern regarding the vehicle's air conditioner not blowing air at maximum speed.
11. On April 4, 2015, ValMark's service technician replaced the vehicle's negative battery cable in order to address Complainant's concern regarding the voltage dropping in the vehicle.
12. On May 19, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On June 23, 2015, Respondent performed a final repair attempt on the vehicle in order to address Complainant's concern regarding the vehicle's air conditioner fan not operating at levels 11 and 12 when the vehicle's voltage dropped below 13.
14. Respondent's field service engineer determined during the final repair attempt that the vehicle was operating as designed, so no repairs were recommended or performed.
15. On July 6, 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.
16. The hearing in this case convened and the record was closed on December 9, 2015, in San Antonio Texas, before Hearings Examiner Edward Sandoval. Complainant, Tony R. Peirsol, was present to testify in the hearing. He was represented by Robert Falkenberg, attorney. Also present to testify for Complainant were Jody Peirsol, wife, and Edward Hester, Jr., Technical Inspector with Ed Hester and Associates. Appearing to testify for Complainant pursuant to subpoenas were Roy Kaeo, Service Consultant for ValMark Chevrolet, and Chris Young, General Sales Manager for ValMark Chevrolet. Respondent was represented by Samuel L. Snyder, attorney with Hartline, Dacus, Barger, Dreyer, LLP. Kevin Brown, Field Service Engineer; John Ferrell, Field Service Engineer; and Craig LaVigne, Respondent's District Manager, all appeared to testify for Respondent. Justin Kelley, Service Manager for ValMark Chevrolet, observed.

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 Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED January 19, 2016



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