

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0009 CAF**

LAURA C. RODRIGUEZ,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Laura C. Rodriguez (“Complainant”) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2012 Ford Focus. Complainant asserts that the vehicle suffers from a lack of acceleration, jerks when being driven, and that the vehicle has died on her. Ford Motor Company (Respondent) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does not have a currently existing warrantable defect, and Complainant is not 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 January 14, 2016, in Austin, Texas before Hearings Examiner Edward Sandoval. The hearing record was closed the same day. Complainant represented herself in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs.

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 used 2012 Ford Focus from Carmax in Austin, Texas on December 3, 2014.¹ The vehicle's mileage was 22,453 at the time of purchase.² At the time of purchase, the vehicle's three (3) year or 36,000 mile bumper-to-bumper warranty was still in effect. On the date of hearing the vehicle's mileage was 44,772.

Complainant testified that soon after purchasing the vehicle, she began to hear a scraping noise whenever she made a turn in the vehicle. She took the vehicle back to Carmax for this issue about two (2) weeks after purchasing the vehicle. However, the service technician at Carmax was unable to duplicate the noise, so no repair was performed at the time.

Sometime in February of 2015, Complainant took the vehicle back to Carmax because she again heard a scraping noise when she made a turn in the vehicle. The Carmax technician informed Complainant that the sound could not be recreated and so no repair was performed. The technician also informed Complainant that the vehicle was still under the manufacturer's warranty and that she could take the vehicle directly to a Ford dealership whenever she had a warranty issue.

Sometime in June 2015, Complainant's husband was driving the vehicle and was slowing down at a stop light when the engine's RPM's revved up and the vehicle died. The vehicle's check engine light (CEL) illuminated when the vehicle died.

On June 29, 2015, Complainant took the vehicle to Respondent's authorized dealer, Mac Haik Ford (Mac Haik) in Georgetown, Texas, for repair. Complainant informed the dealer's service advisor that the vehicle's CEL had illuminated and that the "transmission would quit pulling at 2500 RPM's and when turning."³ The dealer's service technician performed diagnostics on the vehicle's transmission, reprogrammed the vehicle's computer, and performed a clutch adaptive relearn.⁴ The mileage on the vehicle at the time of the repair visit was 32,478.⁵

After the June 29, 2015, repair visit, Complainant experienced an incident where the vehicle seemed like it was going to die when she tried to accelerate from a green light. Complainant observed the engine RPM's rev up and go back down during this incident. So, she took the vehicle back to Mac

¹ Complainant Ex. 2, Used Vehicle Bill of Sale dated December 3, 2014.

² *Id.*

³ Complainant Ex. 3, Repair Order dated June 29, 2015.

⁴ *Id.*

⁵ *Id.*

Haik on July 24, 2015. On this occasion, Complainant indicated to the service advisor that the CEL illuminated and that the vehicle quit “pulling at 1500 RPM’s at times.”⁶ The dealer’s service technician replaced the vehicle’s transmission control module (TCM), reprogrammed the TCM and powertrain control module (PCM), and performed a clutch adaptive relearn.⁷ The vehicle’s mileage on this occasion was 33,400.⁸

Complainant testified that the vehicle felt okay for a while after the repair. However, she again began experiencing issues with the vehicle. She feels that the vehicle is exceptionally noisy. She can hear the vehicle revving up loudly. However, the vehicle has not died again. Complainant testified that the vehicle does not have acceleration and the transmission doesn’t have a smooth transition when shifting gears. She sometimes feels a jerk when the transmission shifts gears.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective September 4, 2015.⁹

During cross-examination, Complainant testified that she was not informed at the time of purchasing the vehicle that it had a dual clutch transmission. Complainant never received an owner’s manual for the vehicle.

C. Respondent’s Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs, testified for Respondent. She indicated that Complainant’s vehicle was provided with a three (3) year/36,000 mile bumper-to-bumper warranty when it was originally sold as a new vehicle. In addition, Respondent provided additional warranties for the vehicle, these are: a five (5) year/60,000 mile powertrain warranty, a ten (10) year/150,000 mile warranty for the powertrain control module, and a seven (7) year/100,000 mile warranty for the vehicle’s transmission input shaft seals.

Ms. Diaz testified that the vehicle is equipped with a DP 6 automatic transmission. The transmission allows the vehicle to learn the driver’s driving habits. This is called “adaptive learning.” After the transmission has gone through the adaptive learning process, it tries to predict what the driver is going to do when they’re driving and will adjust the vehicle’s ride to conform to the driver’s habits. Ms. Diaz testified that a hesitation in the vehicle is a by-product of the adaptive learning program.

Ms. Diaz testified that Respondent performed a final repair attempt for the vehicle on November 5, 2015, at Mac Haik Ford–Lincoln in Georgetown, Texas. The final repair attempt was performed by

⁶ Complainant Ex. 4, Repair Order dated July 24, 2015.

⁷ *Id.*

⁸ *Id.*

⁹ Complainant Ex. 1, Lemon Law complaint dated September 4, 2015.

Brett Castleberry, Respondent's field service engineer. Two (2) issues were addressed by Mr. Castleberry. The first issue was that the vehicle acted like it was stalling out and jerking when it was being driven.¹⁰ The second issue was a grinding noise from the transmission.¹¹ Mr. Castleberry determined that the vehicle was driving as it was designed and did not exhibit a loss of power during his inspection, so no repair was performed for the first issue.¹² He also determined that the noise heard by Complainant was due to loose baffles in the vehicle's horn assembly.¹³ This was not covered under warranty, so no repair was performed for this issue.¹⁴

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 her testimony specify that Complainant was concerned that the vehicle was stalling, had no acceleration, and hesitated when being driven. The evidence indicates that the vehicle has not died or stalled since before the second repair attempt which occurred on July 24, 2015. As such, this issue seems to have been repaired. The evidence also indicates that the other issues complained of are a by-product of the DP-6 automatic transmission's design. As such, they are not considered to be defects and are not grounds to rule in Complainant's favor. However, if the issues do become worse, any repairs should still be covered under warranty and Respondent is obligated to make any necessary repairs for those issues.

Complainant did not specify on the Lemon Law complaint that the vehicle made a grinding noise whenever she made a turn in it. As such, the issue cannot be addressed in this decision.

Complainant's request for repair relief is denied.

Respondent's warranty applicable to Complainant's vehicle still provides coverage for five (5) years or 60,000 miles on the vehicle's powertrain, ten (10) years or 150,000 miles on the powertrain control module, and seven (7) years or 100,000 miles for the vehicle's transmission input shaft seals. Respondent is liable to repair the vehicle whenever there is any other problem covered by the vehicle's warranties.

¹⁰ Respondent Ex. 1, Vehicle Inspection Report dated November 5, 2015.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

III. FINDINGS OF FACT

1. Laura C. Rodriguez (Complainant) purchased a used 2012 Ford Focus on December 3, 2014, with mileage of 22,453 from Carmax in Austin, Texas.
2. The vehicle's mileage on the date of hearing was 44,772.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, a five (5) year or 60,000 mile warranty on the vehicle's powertrain, a ten (10) year or 150,000 mile warranty on the powertrain control module, and a seven (7) year or 100,000 mile warranty for the vehicle's transmission input shaft seals.
4. At the time of hearing the warranties for the powertrain, powertrain control module and the transmission input shaft seals were still in effect.
5. Complainant was concerned with a grinding noise when she made turns in the vehicle and with the vehicle hesitating and dying. She also has noticed a lack of acceleration when driving the vehicle.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Mac Haik Ford (Mac Haik) in Georgetown, Texas on the following dates:
 - a. June 29, 2015, at 32,478 miles; and
 - b. July 24, 2015, at 33,400 miles.
7. On June 29, 2015, Complainant took the vehicle to Mac Haik because the vehicle's check engine light illuminated and the vehicle lacked acceleration. The service technician reprogrammed the vehicle's transmission control module and performed an adaptive relearn on the vehicle.
8. On July 24, 2015, Complainant took the vehicle to Mac Haik because the vehicle's check engine light illuminated and the vehicle lacked acceleration. The service technician replaced the vehicle's transmission control module, reprogrammed the powertrain control module and the transmission control module, and performed an adaptive relearn on the vehicle in order to address Complainant's concerns.
9. On September 4, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

10. On October 27, 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.
11. The hearing in this case convened on January 14, 2016, in Austin, Texas before Hearings Examiner Edward Sandoval. The hearing record was closed the same day. Complainant represented herself in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (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 has not 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 **DENIED**. Respondent is still liable to repair the vehicle whenever there is any other problem covered by the vehicle's warranties.

SIGNED February 1, 2016



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