

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0076 CAF**

DANIEL KNEPPER,
 Complainant

v.

GENERAL MOTORS LLC,
 Respondent

§ **BEFORE THE OFFICE**
§
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Daniel Knepper (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for an alleged defect in his 2013 Chevrolet Traverse LTZ. Complainant asserts that the vehicle’s air conditioning system is not working properly. General Motors LLC (Respondent) asserts that the air conditioning system has been repaired. The hearings examiner concludes that the vehicle has been repaired and Complainant is not eligible for repair relief at this time.

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 March 10, 2016, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Daniel Knepper, represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Also present to testify for Respondent were Allen Moore, Huffines Chevrolet’s Service Director; Irfaun Bacchus, Field Service Engineer; and John Jacob, District Manager for After-Sales.

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 2013 Chevrolet Traverse LTZ from Classic Chevrolet Buick GMC in Granbury, Texas, on March 29, 2014, with mileage of 10,473 at the time of delivery.^{1,2} Respondent provided a basic warranty for the vehicle for the first three (3) years since original date of purchase or the first 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 29,687.

In June of 2014, Complainant was informed by his wife that the vehicle's air conditioner was not blowing cold air. As a result, Complainant took the vehicle to the Respondent's authorized dealer, Huffines Chevrolet (Huffines), on June 26, 2014. The dealer's service technician verified the concern and determined that there was a Freon leak from the air conditioning system's condenser.³ The technician replaced the condenser and recharged the system.⁴ The mileage on the vehicle on this date was 13,154.⁵ The vehicle was returned to Complainant the same day.

The vehicle's air conditioning system worked fine for about a year. In June of 2015, Complainant and his family drove the vehicle to Houston, Texas. On the way, the air conditioner stopped blowing cold air. When Complainant returned to his home, he took the vehicle to Huffines for repair to the air conditioner. The vehicle was delivered to Huffines on June 22, 2015. The service technician could not duplicate Complainant's concern.⁶ However, he decided to recalibrate the air conditioner system's actuators for "customer satisfaction."⁷ In addition, a dealer representative instructed Complainant on the proper method to use the air conditioner. The mileage on the vehicle when Complainant took it to the dealer on this occasion was 23,468.⁸ The vehicle was returned to Complainant on the following day, June 23, 2015. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

On August 10, 2015, Complainant took the vehicle to Huffines because the air conditioner was not blowing cold air. The dealer's technician verified Complainant's concern and determined that

¹ Complainant Ex. 1, Buyer's Order and Motor Vehicle Retail Installment Sales Contract dated March 29, 2014.

² Complainant Ex. 2, Odometer Disclosure Statement dated March 29, 2014.

³ Complainant Ex. 4, Repair Order dated June 26, 2014.

⁴ *Id.*

⁵ *Id.*

⁶ Complainant Ex. 5, Repair Order dated June 22, 2015.

⁷ *Id.*

⁸ *Id.*

the passenger's side actuator was faulty.⁹ The technician replaced the actuator and recalibrated the air conditioner system.¹⁰ The mileage on the vehicle when Complainant delivered it to the dealer on this occasion was 24,268.¹¹ The vehicle was returned to Complainant on August 12, 2014. Complainant was not provided with a loaner vehicle while his vehicle was in the dealer's possession.

On October 14, 2015, Complainant returned the vehicle to Huffines because the air conditioner stopped blowing cold air. The vehicle was inspected by a service technician who found a Freon leak in the air conditioner system's rear evaporator core.¹² The technician replaced the actuator core in order to address the concern.¹³ The vehicle's mileage on this occasion was 25,302.¹⁴ Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles (TxDMV) on October 22, 2015.¹⁵ In addition, Complainant wrote a letter to Respondent on October 19, 2015, in which he indicated his dissatisfaction with the vehicle.¹⁶

Complainant testified that on Monday, March 7, 2016, Respondent performed a final repair attempt on the vehicle. Complainant was informed that the air conditioning system did not have any leaks and that the air conditioner was performing correctly.

Complainant testified that the vehicle's air conditioner currently seems to be cooling as expected. He's not aware if the air conditioner has had any problems since October of 2015.

During cross-examination, Complainant stated that his wife is the primary driver of the vehicle. The vehicle has not had any flat tires. There have been no insurance claims for collisions for the vehicle. The vehicle has not been towed. There have not been any police reports for the vehicle. There have been no after-market items added to the vehicle. The vehicle's check engine light has not illuminated. Complainant also stated that he has never seen a "Service Air Conditioner" or "Engine Hot, A/C off" message illuminate on the vehicle.

⁹ Complainant Ex. 6, Repair Order dated August 10, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 7, Repair Order dated October 14, 2015.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 8, Complainant's Lemon Law complaint dated October 22, 2015. Although the complaint was signed by Complainant on October 19, 2015, it was not received by Texas Department of Motor Vehicles until October 22, 2015, which is the effective date of the complaint.

¹⁶ Complainant Ex. 9, Letter to General Motors Company dated October 19, 2015.

C. Respondent's Evidence and Arguments

1. Allen Moore's Testimony

Allen Moore is the service director for Huffines Chevrolet. He testified that he has worked in the automotive industry for over 20 years. He has repaired vehicles, supervised technicians, and managed and supervised technicians through his career.

Mr. Moore testified that the air conditioning system's temperature actuators deflect air to and away from the system actuators in order to regulate the air temperature. The actuators open and close air circulation doors and sometimes may not work properly. He also testified that Complainant was never charged for any repairs performed on the air conditioning system because the concerns were all covered by the vehicle's express warranty.

Mr. Moore also stated that after the June 26, 2014, repair on the vehicle's air conditioning system, Complainant took the vehicle back to Huffines on three (3) separate occasions (prior to the second repair on June 22, 2015) for other issues and never indicated that there was a problem with the vehicle's air conditioner. Also, Complainant took the vehicle to Huffines for a lube job and tire rotation on January 11, 2016, and did not indicate that he was having any issues with the vehicle's air conditioner.

During cross-examination, Mr. Moore testified that the air conditioning system's warning lights may or may not illuminate depending on what the issue may be with the system. He also stated that the problems with the air conditioning system have different causes and the repairs were not for the same issue each time.

2. Irfaun Bacchus' Testimony

Irfaun Bacchus is a field service engineer employed by Respondent. He has been in the automotive industry for 14 years. He worked for four (4) years as a service technician, ten (10) years as a team leader, and two and a half (2½) years as a field service engineer.

Mr. Bacchus performed a final repair attempt on the vehicle on March 7, 2016. The final repair attempt was conducted at Huffines Chevrolet. Mr. Bacchus checked the vehicle's air conditioning system for leaks and did not find any.¹⁷ He determined that the air conditioner pressures were within range.¹⁸ He evacuated the system and performed a vacuum test on it, which the system

¹⁷ Respondent Ex. 6, Vehicle Legal Inspection dated March 7, 2016.

¹⁸ *Id.*

passed.¹⁹ Mr. Bacchus then road tested the vehicle.²⁰ Mr. Bacchus did not find any problems with the air conditioning system and determined that there were no defects with the system.

D. Analysis

In order to determine whether Complainant has a remedy under Section 2301.204 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. The evidence provided by the parties establishes that there have been past problems with the vehicle's air conditioning system. Respondent's authorized dealer has performed at least three repairs to the system within the past year and a half. The system's condenser assembly was replaced due to a Freon leak. In addition, a fault was discovered in the passenger side temperature actuator and the actuator was replaced. Finally, the rear evaporator core was leaking and had to be replaced. However, at the time of hearing, the vehicle's air conditioning system was repaired and working as designed. This was substantiated by Complainant's own testimony. Since there is no existing defect with the vehicle, the hearings examiner must hold that repair relief cannot be granted for Complainant.

Respondent's warranty applicable to Complainant's used vehicle provides coverage for three (6) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 29,687 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.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Daniel Knepper (Complainant) purchased a used 2013 Chevrolet Traverse LTZ on March 29, 2014, from Classic Chevrolet Buick GMC in Granbury, Texas, with mileage of 10,473 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent) issued a bumper to bumper warranty for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 29,687.
4. At the time of hearing the vehicle was still under warranty.

¹⁹ *Id.*

²⁰ *Id.*

5. Complainant has had several problems with the vehicle's air conditioning system not cooling properly.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Huffines Chevrolet in Lewisville, Texas, on the following dates because of Complainant's concerns regarding the vehicle's air conditioner system not performing properly:
 - a. June 26, 2014, at 13,154 miles;
 - b. June 22, 2015, at 23,468 miles;
 - c. August 10, 2015, at 24,268 miles; and
 - d. October 14, 2015, at 25,302 miles.
7. On June 26, 2014, the dealer's service technician found a Freon leak in the air conditioner's condenser. The technician replaced the condenser and recharged the system.
8. On June 22, 2015, the dealer's service technician could not duplicate the concern regarding the air conditioner not blowing cold air. However, he did recalibrate the system's actuators in an attempt to address the concern.
9. On August 10, 2015, the dealer's service technician determined that the air conditioner's passenger side temperature actuator was faulty and replaced it. He also recalibrated the air conditioning system.
10. On October 14, 2015, the dealer's service technician determined that the air conditioner's rear evaporator core was leaking. The technician replaced the evaporator core.
11. On October 22, 2015, Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
12. On December 15, 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.
13. On March 7, 2016, Respondent performed a final repair attempt on the vehicle.

14. After the final repair attempt, Respondent's field service engineer determined that the vehicle's air conditioning system was working properly and that no repairs were necessary.
15. The hearing in this case convened and the record closed on March 10, 2016, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Daniel Knepper, represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Also present to testify for Respondent were Allen Moore, Huffines Chevrolet's Service Director; Irfaun Bacchus, Field Service Engineer; and John Jacob, District Manager for After-Sales.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204(a) (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 failed to prove by a preponderance of the evidence that the vehicle has an existing verifiable defect or condition that is covered by Respondent's warranty and which has not been repaired. 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 relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED March 23, 2016.



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