

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0092 CAF**

LYNVAL ROBBINS	§	BEFORE THE OFFICE
and BRIANNA ROBBINS,	§	
Complainants	§	
v.	§	OF
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Lynval and Brianna Robbins (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.204 (Warranty Performance) for an alleged defect in their 2014 Ford Focus. Complainants assert that the vehicle hesitates when shifting gears at a low speed and will sometimes lunge forward at a stop. Ford Motor Company (Respondent) asserts that the vehicle does not have any defects and is operating as designed. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is 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 30, 2016 in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Greg Eyster, attorney for Hill, Gilstrap, P.C. Testifying at the hearing were Complainants, Lynval and Brianna Robbins; Bethany Parker, Brianna Robbins' roommate; Richard Robbins and Crystal Robbins, Brianna Robbins' parents. Respondent was represented 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

1. Brianna Robbins' Testimony

Complainants purchased a used 2014 Ford Focus from Vandergriff Toyota in Arlington, Texas, on September 6, 2014, with mileage of 22,368 at the time of delivery.¹ Respondent provided a bumper-to-bumper warranty for the vehicle for the first three (3) years or the first 36,000 miles, whichever comes first.² In addition, Respondent has provided a five (5) year/60,000 mile powertrain warranty for the vehicle.³ On the date of hearing the vehicle's mileage was 49,448. The bumper-to-bumper warranty for the vehicle has expired, but the powertrain warranty is still in effect.

Brianna Robbins, co-Complainant, is the primary driver of the vehicle. Ms. Robbins testified that during the drive home after purchasing the vehicle, she noticed that the vehicle seemed to hesitate during acceleration and lunged at stops. She likens it to a roller coaster jerking. The problem occurs most often when driving at slower speeds in stop and go traffic.

Ms. Robbins stated that she took the vehicle to the Respondent's authorized dealer, AutoNation Ford (AutoNation) in Burleson, Texas on September 27, 2014, in order to repair the vehicle. AutoNation's service technician verified the concern and determined that the vehicle's clutch had a shudder at 400 RPM.⁴ The technician determined that the vehicle's clutch needed to be replaced, but the part had to be special ordered. The mileage on the vehicle on this date was 23,470.⁵ The vehicle was in the dealer's possession for two days on this occasion. Complainant was not provided with a loaner or rental vehicle during this period of time.

Ms. Robbins testified that she took the vehicle back to AutoNation on October 2, 2014, in order to replace the clutch. AutoNation's service technician updated and reprogrammed the vehicle's power control module (PCM) and transmission control module (TCM).⁶ In addition, the technician removed and replaced the vehicle's dual clutch assembly and inner and outer input

¹ Complainant Ex. 1, Purchase Agreement dated September 6, 2014.

² Complainant Ex. 11, 2014 Model Year Ford Warranty Guide, p. 8.

³ *Id.*

⁴ Complainant Ex. 2, Repair Order dated September 27, 2014.

⁵ *Id.*

⁶ Complainant Ex. 3, Repair Order dated October 2, 2014.

shaft seals.⁷ The mileage on the vehicle when Ms. Robbins took it to AutoNation on this occasion was 23,568.⁸ The vehicle was returned to Ms. Robbins on October 10, 2014.⁹

Ms. Robbins testified that the vehicle drove fine for about a month and a half, but then began to hesitate and lunge again. So, she took the vehicle to AutoNation on December 30, 2014. AutoNation's technician verified that the vehicle would shudder and hesitate during acceleration.¹⁰ The technician had to special order another clutch assembly for the vehicle before it could be repaired. The mileage on the vehicle when Ms. Robbins delivered it to the dealer on this occasion was 27,717.¹¹ The vehicle was returned to Ms. Robbins that same day.¹²

On February 4, 2015, Ms. Robbins returned the vehicle to AutoNation to install the special ordered part and to complete the repair began on December 30, 2014. AutoNation's service technician determined that the vehicle's PCM and TCM did not need additional updates and then replaced the vehicle's dual clutch assembly.¹³ The vehicle's mileage when it was turned over to the dealer on this occasion was 29,344.¹⁴ The vehicle was in the dealer's possession for two to three days. Ms. Robbins was not provided with a loaner or rental vehicle while her vehicle was being repaired.

Ms. Robbins stated that the vehicle drove fine after the clutch assembly was replaced and that she did not experience any shudder in the vehicle for about three (3) months. After that, however, the vehicle again began shuddering gradually. Ms. Robbins took the vehicle to AutoNation on June 15, 2015. AutoNation's service technician test drove the vehicle and verified Ms. Robbins' concern. The technician updated and reprogrammed the PCM and TCM to the latest level.¹⁵ However, the technician determined that the clutch assembly needed to be replaced again and he had to special order the necessary part.¹⁶ The mileage on the vehicle when it was taken to AutoNation on this occasion was 36,964.¹⁷ The vehicle was returned to Ms. Robbins the same day.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Complainant Ex. 4, Repair Order dated December 30, 2014.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 5, Repair Order dated February 4, 2015.

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order dated June 15, 2015.

¹⁶ *Id.*

¹⁷ *Id.*

Ms. Robbins testified that she did not hear back from anyone with AutoNation for a few months. In October of 2015, Ms. Robbins contacted AutoNation's service advisor, Anthony Vanderford, to inquire about the special ordered part. Mr. Vanderford informed Ms. Robbins that the part had arrived and to take the vehicle in for repair.

On October 31, 2015, Ms. Robbins took the vehicle to AutoNation in order to have the clutch assembly replaced again. The technician updated and reprogrammed the vehicle's PCM and TCM.¹⁸ In addition, the technician replaced the vehicle's clutch assembly.¹⁹ The vehicle's mileage on this occasion was 43,670.²⁰

Ms. Robbins testified that the vehicle drove fine for awhile, but then began to hesitate and shudder after about three (3) months.

Complainants filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (TxDMV) on November 10, 2015.²¹ Complainants also mailed a letter indicating their dissatisfaction with the vehicle to Ford Motor Company's Customer Relationship Center on November 3, 2015.²²

On January 11, 2016, Ms. Robbins took the vehicle to AutoNation in order to allow Respondent's representative to inspect the vehicle. After the inspection, Respondent's engineer indicated that the vehicle was within the manufacturer's specifications. The vehicle's mileage when it was delivered to the dealer for the inspection was 46,126.²³

Ms. Robbins testified she wants the vehicle to be fully repaired. She stated that the vehicle has recently not been hesitating as much as in the past. However, the vehicle has lunged forward three (3) times in the past two (2) months. The most recent incident occurred on March 29, 2016. Ms. Robbins also stated that she is afraid that when the vehicle lunges that she will hit someone else's vehicle. In addition, when she's pulling into an intersection, she's afraid that her vehicle may get hit because the vehicle is hesitating as she accelerates. The hesitation seems to occur at lower speeds. However, she's never lost control of the vehicle. Finally, Ms. Robbins indicated that she looked up the Kelley Blue Book value of the vehicle and that it currently would be valued at approximately \$8000.

¹⁸ Complainant Ex. 7, Repair Order dated October 31, 2015.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 8, Complainants' Lemon Law complaint dated November 10, 2015. Although the complaint was signed by Complainants on November 4, 2015, it was not received by Texas Department of Motor Vehicles until November 10, 2015, which is the effective date of the complaint.

²² Complainant Ex. 9, Letter to Ford Motor Company dated November 3, 2015.

²³ Complainant Ex. 10, Repair Order dated January 11, 2016.

2. Richard Robbins' Testimony

Richard Robbins is Brianna Robbins' father. He testified that he was present when the vehicle was purchased. However, he did not participate in a test drive of the vehicle. After arriving home from purchasing the vehicle, Ms. Robbins indicated to Mr. Robbins that the vehicle made a stuttering motion while she was driving it. Mr. Robbins contacted the dealer from whom the vehicle was purchased about the concern. The dealer representative informed Mr. Robbins that the vehicle needed to be taken to a Ford dealership in order for any warranty repairs to be performed. Mr. Robbins feels that the vehicle is not safe because it lurches and hesitates whenever someone drives it.

3. Lynval Robbins' Testimony

Lynval Robbins, co-Complainant, is Brianna Robbins' grandfather. Although his name is on the purchase agreement, he does not drive the vehicle. He co-signed the contract so that Ms. Robbins would be able to get the vehicle. Mr. Robbins was not present when the vehicle was purchased.

Mr. Robbins noticed a problem with the vehicle when he rode in it with Ms. Robbins to the dealership to re-sign paperwork for the purchase of the vehicle. During the drive to the dealership, Mr. Robbins noticed that the vehicle hesitated during acceleration and in the middle of an intersection. In addition, he observed the vehicle leap forward at a stop. He's concerned for Ms. Robbins' safety. Mr. Robbins feels that the vehicle is dangerous and that it needs to be repaired. He does not feel that the vehicle is within the manufacturer's specifications.

During cross-examination, Mr. Robbins testified that he is aware that the vehicle has a DPS6 transmission. However, he stated that the vehicle should not hesitate or drive the way it does if it's within manufacturer's specifications.

4. Bethany Parker's Testimony

Bethany Parker is Brianna Robbins' roommate. Ms. Parker testified that she rides in the vehicle several times a week. She has observed and experienced the way the vehicle drives as a passenger. Ms. Parker stated that she has been in the vehicle as a passenger and it lurched forward while at a stop. She testified that this is a common occurrence.

5. Crystal Robbins' Testimony

Crystal Robbins is Brianna Robbins' mother. She was present with Ms. Robbins when the vehicle was purchased. Crystal Robbins noticed the vehicle shuddering and surging forward when she was a passenger in the vehicle. On at least one occasion, she was afraid that they were going to get into an accident in the vehicle.

Ms. Robbins testified that the vehicle feels like it's bogging down and that the gears are trying to catch, but are not always successful. She doesn't feel that the vehicle is safe. She wants the vehicle to be repaired and that the manufacturer be required to replace any items necessary to fully repair the vehicle.

During cross-examination Ms. Robbins testified that she has driven the car and ridden in it as a passenger. She has felt the issues with the vehicle's transmission. Ms. Robbins feels that there is something wrong with the vehicle and that it's not performing the way it should be.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs, first became involved with Complainant's Warranty Performance complaint in November of 2015. Ms. Diaz attempted to contact Brianna Robbins in order to discuss the concerns regarding the vehicle. On December 21, 2015, Ms. Diaz spoke to Ms. Robbins and made arrangements for a final repair attempt to be performed on the vehicle.

The final repair attempt was conducted on January 11, 2016, at AutoNation. No rental vehicle was provided as Ms. Robbins did not request one. David Green, Field Service Engineer for Respondent, performed the final repair attempt. He determined that the vehicle's transmission was operating within the manufacturer's specifications. He did not suggest that any repairs be performed on the vehicle. Ms. Diaz has never seen the vehicle nor has she ever driven it.

Ms. Diaz testified that the vehicle contains a DPS6 powershift transmission. This is an automatic transmission that operates like a manual transmission. The purpose of the transmission is to provide the vehicle's owner a more fuel efficient vehicle. The transmission has been installed in the Fiesta and Focus vehicle models. The transmission has two separate clutches which automatically change when instructed by the vehicle's PCM. Respondent began using the transmission in some of its vehicles in 2010. Ms. Diaz also stated that the transmission functions differently than ordinary automatic transmissions and that this creates certain driving characteristics that Respondent feels are acceptable.

Ms. Diaz also testified that the vehicle was provided with a three (3) year or 36,000 mile bumper-to-bumper warranty. In addition, Respondent has provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain and a ten (10) year or 150,000 mile warranty for the vehicle's TCM.

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 the vehicle at the time of hearing may be acting inappropriately. Ms. Robbins' testimony established that the vehicle has been hesitating during acceleration, although not as much as in the past. In addition, the vehicle lunged forward at a stop three (3) times in the two (2) months prior to the hearing date. The last occasion Ms. Robbins experienced the vehicle lunging was on March 29, 2016, the day prior to the hearing

The hearings examiner must hold that Complainants have met their 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.

Complainants' 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 bumper-to-bumper warranty has expired. However, Respondent is still liable to repair the vehicle's transmission if the problem raised by Complainants recurs.

III. FINDINGS OF FACT

1. Lynval and Brianna Robbins (Complainants) purchased a used 2014 Ford Focus on September 6, 2014, from Vandergriff Toyota in Arlington, Texas, with mileage of 22,368 at the time of delivery.
2. Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty and a five (5) year or 60,000 mile powertrain warranty for the vehicle.

3. The vehicle's mileage on the date of hearing was 49,448.
4. At the time of the hearing, the bumper-to-bumper warranty for the vehicle had expired, but the powertrain warranty was still in effect.
5. Soon after purchasing the vehicle in question, Complainants noticed that the vehicle hesitated or shuddered during acceleration and that sometimes while at a stop the vehicle will lunge forward.
6. Complainant's vehicle was serviced by AutoNation Ford in Burleson, Texas, one of Respondent's authorized dealers, on the following dates because of Complainants' concerns regarding the hard shudder of the vehicle upon takeoff:
 - a. September 27, 2014, at 23,470 miles;
 - b. October 2, 2014, at 23,568 miles;
 - c. December 30, 2014, at 27,717 miles;
 - d. February 4, 2015, at 29,344 miles;
 - e. June 15, 2015, at 36,964 miles; and
 - f. October 31, 2015, at 43,670 miles.
7. On September 27, 2014, AutoNation's service technician determined that the vehicle's clutch needed to be replaced. A new clutch assembly was ordered and the clutch was installed in the vehicle on October 2, 2014. In addition, the vehicle's power control module (PCM) and transmission control module (TCM) were updated and reprogrammed and the inner and outer input shaft seals were replaced.
8. On December 30, 2014, AutoNation's service technician determined that the vehicle's clutch needed to be replaced. In addition, the PCM and TCM were updated and reprogrammed. A new clutch assembly was ordered and the clutch was installed in the vehicle on February 4, 2015.
9. On June 15, 2015, AutoNation's service technician determined that the vehicle's clutch needed to be replaced. A new clutch assembly was ordered and the clutch was installed in the vehicle on October 31, 2015. Also, at this time the vehicle's PCM and TCM were updated again.
10. On November 10, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

11. On January 11, 2016, Respondent's field service engineer performed a final repair attempt on Complainant's vehicle and determined that the vehicle was operating as designed. No repairs were performed during the final repair attempt.
13. On January 19, 2016, 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.
14. The hearing in this case convened and the record closed on March 30, 2016 in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Greg Eyster, attorney for Hill, Gilstrap, P.C. Testifying at the hearing were Complainants, Lynval and Brianna Robbins; Bethany Parker, Brianna Robbins' roommate; Richard Robbins and Crystal Robbins, Brianna Robbins' parents. Respondent was represented 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(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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants proved by a preponderance of the evidence that the vehicle 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 the jerk or shudder and lunging 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 April 6, 2016.



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