

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0097 CAF**

**DANIEL R. BOWEN,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Daniel R. Bowen (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 Ford F-250 pickup truck. Complainant asserts that the left side of the vehicle's motor clatters and that the vehicle shakes when he's driving at 55 to 60 MPH. Ford Motor Company (Respondent) argued that Complainant's vehicle has been repaired and that Complainant failed to provide Respondent with a reasonable number of repair attempts on the vehicle and, as such, Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that Complainant is not eligible for repurchase or replacement relief since he did not meet all of the statutory requirements for such relief under the Lemon Law.

**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 April 20, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Daniel R. Bowen, was present and represented himself. Respondent, Ford Motor Company, was represented by Daniel Keevy, Consumer Affairs Legal Analyst. The record closed on April 20, 2016, after Respondent provided additional documents to the hearings examiner and Complainant.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

In addition to these 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.<sup>5</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a new 2015 Ford F-250 pickup truck from Ron Carter Ford (Carter) in Alvin, Texas on May 29, 2015.<sup>6</sup> The vehicle had mileage of 8 at the time of the purchase.<sup>7</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.<sup>8</sup> In addition, Respondent has provided a five (5) year or 100,000 mile powertrain warranty for the vehicle.<sup>9</sup> At the time of hearing, the vehicle's mileage was 21,308. Respondent's warranties for the vehicle are still in effect.

Complainant testified that intermittently the left side of the motor clatters and the vehicle shakes when he drives at 55 to 60 MPH. If he slows down, the issue usually works itself out. Sometimes the vehicle is hard to control at the speed at which he's driving.

Complainant testified that in August of 2015, when driving to work on the freeway, he first experienced the vehicle shaking and the clattering noise. The noise and shaking increased if he stepped on the accelerator. However, they let up when he was able to drive slower. The noise and clattering occurred a second time before Complainant took the vehicle to the dealer for repair.

Complainant took the vehicle to Carter for repair on August 31, 2015. Carter's service technician verified the concern and discovered that the vehicle's No. 6 fuel injector was not working

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<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>5</sup> 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.

<sup>6</sup> Complainant Ex. 1, Motor Vehicle Purchase Order dated May 29, 2015.

<sup>7</sup> *Id.*

<sup>8</sup> Complainant Ex. 6, 2015 Model Year Ford Warranty Guide, p. 8.

<sup>9</sup> *Id.*

properly.<sup>10</sup> The technician replaced the injector in an attempt to resolve the concern.<sup>11</sup> The mileage on the vehicle when Complainant took it to Carter was 6,887.<sup>12</sup> The vehicle was in Carter's possession for the day. Complainant was not provided with a rental or loaner vehicle at the time.

Complainant stated that the vehicle drove fine for a couple of weeks after the August 31, 2015 repairs. However, in September, while driving on the freeway between 65 and 70 MPH, Complainant experienced another situation where the vehicle started shaking and the motor began clattering. The vehicle shook so hard that Complainant had trouble controlling it and almost went into the adjacent traffic lane. Complainant took the vehicle to Carter for repair on September 15, 2015, as a result of the incident. Carter's service technician did not discover any trouble codes on the vehicle's computers and was unable to duplicate the concern.<sup>13</sup> The vehicle's mileage on this occasion was 7,907.<sup>14</sup> The vehicle was in Carter's possession until October 12, 2015.<sup>15</sup> Complainant was provided a rental vehicle for the time that his vehicle was being repaired.

Complainant testified that during the time that his vehicle was being repaired, he spoke to one of Carter's service representatives who informed him that the vehicle might need a left side valve job. However, this would have to be approved by Respondent. This was the last time that Complainant was told of a possible valve job for the vehicle. In addition, Complainant was informed that another vehicle similar to his was experiencing the same problems and was in Carter's service shop being repaired. Since the technician was unable to duplicate the concern, Complainant was told by the service advisor that if the problem recurred, he should return the vehicle to Carter for repair.

Complainant continued to drive the vehicle, but was concerned with the problems he had been experiencing. The problems recurred in November of 2015. As a result, Complainant took the vehicle to Carter for repair on November 3, 2015. Carter's service technician inspected the vehicle, but was unable to duplicate the problem.<sup>16</sup> The technician contacted Respondent's hotline to obtain guidance on a repair, but was told that the concern needed to be verified.<sup>17</sup> Since the concern was not verified no repair was performed. The vehicle's mileage on this occasion was 10,813.<sup>18</sup> The vehicle was in Carter's possession for the day. Complainant was provided a rental vehicle for the period of time that the vehicle was in the dealer's possession.

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<sup>10</sup> Complainant Ex. 2, Repair Order dated August 31, 2015.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Complainant Ex. 3, Repair Order dated September 15, 2015.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Complainant Ex. 4, Repair Order dated November 3, 2015.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

As a result of the problems with the vehicle, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) with an effective date of November 12, 2015.<sup>19</sup> Complainant did not mail a notice to Respondent informing them of his concerns with the vehicle. Complainant testified that he was informed that he needed to notify Respondent of his concerns. However, he feels that since Carter's representative contacted Respondent, this was sufficient.

Complainant testified that he was contacted in November of 2015 by Maria Diaz, Respondent's Consumer Affairs Legal Analyst. She informed Complainant that Respondent's mechanic needed to inspect the vehicle. During the inspection, Respondent's mechanic was unable to duplicate the concern and could not discover any trouble codes.

Complainant states that he was told by one of Respondent's representatives that the problems with the vehicle are a result of regeneration for a diesel engine. The vehicle still intermittently shakes and the engine clatters when driving at a high rate of speed. Complainant testified that he was told by the representative that Respondent would have a computer fix for the problem sometime late in 2016 or early 2017.

Complainant states that he was told by Carter's representative that he should just continue driving the vehicle. However, he feels that the vehicle is unsafe. The problem has recurred approximately five (5) times since the last repair attempt in November of 2015. Complainant's children do not want to ride in the vehicle, because they don't feel safe. The last time an incident occurred was approximately two weeks prior to April 20, 2016 (the date of hearing). Overall, incidents of the vehicle shaking have occurred approximately 18 times since Complainant purchased the vehicle.

Complainant testified that the vehicle drives well except for when the shaking and noise problems occur. He doesn't feel that he can count on the vehicle to be safe for his children. He feels that he can't haul anything in the vehicle. Complainant stated that he filed the Lemon Law complaint because the Carter's owner advised him to do so.

During cross-examination, Complainant testified that he is still driving the vehicle because it's what he drives to and from work. In addition, he was advised by a Carter representative to continue driving it.

### **C. Respondent's Evidence and Arguments**

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<sup>19</sup> Complainant Ex. 5, Lemon Law complaint dated November 12, 2015. Although the complaint was signed by Complainant on November 4, 2015, it was not received by Texas Department of Motor Vehicles until November 12, 2015, which is the effective date of the complaint.

Daniel Keevy, Consumer Affairs Legal Analyst, testified for Respondent. He testified that Maria Diaz, Consumer Affairs Legal Analyst, was originally assigned Complainant's case, but she was unavailable to participate in the hearing due to illness. Mr. Keevy was assigned the responsibility to participate in the hearing. He first became involved in the case on April 19, 2016, when the case was assigned to him.

Mr. Keevy stated that Respondent first received notice of Complainant's dissatisfaction with the vehicle on December 3, 2015, when they received notice of the filing of the Lemon Law complaint. The complaint was assigned to Ms. Diaz who spoke to Complainant about the vehicle on December 7, 2015. Mr. Keevy stated that Ms. Diaz informed Complainant that a correction for the vibration concern could be available in late 2016. The vibration could be related to the exhaust regeneration process for the vehicle's diesel engine.

Mr. Keevy testified that the vehicle's engine has an exhaust regeneration process that needs to be performed periodically. This helps control the vehicle's exhaust emissions. If the vehicle is allowed to idle a lot or driven short distances, the regeneration process may not occur which could cause the vehicle to run rough or the engine to create a knocking noise. If the regeneration process cannot be performed, a warning message is supposed to illuminate advising the driver to allow the regeneration to occur. The driver is then required to drive the vehicle at highway speeds for approximately 20 minutes. Mr. Keevy stated that Respondent is aware of this problem and is working on a powertrain control module (PCM) programming update for the vehicles' whose diesel engines are affected by this issue. After checking with Respondent's technical support team, Mr. Keevy testified that the update is currently available for the vehicle's PCM.

Mr. Keevy also stated that Respondent's field service engineer, Brian Jay, performed a final repair attempt on the vehicle January 19, 2016, at Carter's location. Mr. Jay drove the vehicle for almost three (3) hours during the final repair attempt.<sup>20</sup> However, he was not able to recreate the problem complained of by Complainant.<sup>21</sup> Mr. Jay concluded that the vehicle was driving normally.<sup>22</sup>

Mr. Keevy testified that Respondent has 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. In addition, Respondent has provided a five (5) year or 100,000 mile warranty for the vehicle's powerstroke diesel engine. Mr. Keevy also stated that Complainant did not provide written notice to Respondent regarding his dissatisfaction with the vehicle. The only communication received by Respondent was from the Texas Department of Motor Vehicles.

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<sup>20</sup> Respondent's Ex. 1, FSE Vehicle Inspection Report dated January 19, 2016.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

**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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on May 29, 2015, and presented the vehicle to Respondent's authorized dealer due to his concerns with the vehicle shaking and motor clattering, on the following dates: August 31, 2015; September 15, 2015; and November 3, 2015. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." The evidence presented at the hearing establishes that Complainant has not met the requirements of this test since Complainant has presented the vehicle for repair only three times since the date of purchase and before the filing of the Lemon Law complaint. As such, Complainant has not met the presumption that Respondent has been provided with a reasonable number of attempts to repair the vehicle.

In addition, the evidence presented at the hearing indicates that Complainant did not provide written notice to Respondent that he was dissatisfied with the vehicle. Occupations Code § 2301.606(c) provides that "an order issued under this subchapter [Subchapter M, Lemon Law] may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity." Complainant never mailed written notice of his dissatisfaction with the vehicle to Respondent.

From the evidence presented, it is apparent that Complainant has not met the requirements for replacement or repurchase relief under the Occupations Code, since only three repair attempts were made on the vehicle prior to filing the complaint and because he did not provide written notice of the defect to Respondent.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle for five (5) years or 60,000 miles. On the date of hearing, the vehicle's warranties were still in effect. As such, Respondent is under an obligation to repair the vehicle under the terms of the express warranty whenever there is an issue with the vehicle.

Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Daniel R. Bowen (Complainant) purchased a 2015 F-250 pickup truck on May 29, 2015, from Ron Carter Ford (Carter) in Alvin, Texas with mileage of 8 at the time of delivery.
2. 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 and a powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 21,308.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Complainant first experienced a problem with the vehicle in August of 2015 when driving at highway speed the vehicle started shaking and the motor began clattering.
6. Complainant's vehicle was serviced by Respondent's authorized dealer on the following dates because of Complainant's concerns with the vehicle:
  - a. August 31, 2015, at 6,887 miles;
  - b. September 15, 2015, at 7,907 miles; and
  - c. November 3, 2015, at 10,813 miles.
7. On August 3, 2015, Carter's service technician determined that there was a problem with the vehicle's number 6 fuel injector and so he replaced it.
8. On September 15, 2015, Carter's service technician was unable to duplicate Complainant's concern and performed no repairs on the vehicle.
9. On November 3, 2015, Carter's service technician was unable to duplicate Complainant's concern and performed no repairs on the vehicle.

10. On November 12, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. Complainant never mailed a notice of his dissatisfaction with the vehicle to Respondent.
12. On January 19, 2016, Respondent performed a final repair attempt on the vehicle at Carter's location. Respondent's field service engineer determined that the vehicle was operating as designed.
13. On February 1, 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 on April 20, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Daniel R. Bowen, was present and represented himself. Respondent, Ford Motor Company, was represented by Daniel Keevy, Consumer Affairs Legal Analyst. The record closed on April 20, 2016, after Respondent provided additional documents to the hearings examiner and Complainant.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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 did not prove by a preponderance of the evidence that the vehicle has a verifiable 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. Complainant did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. Tex. Occ. Code § 2301.605(a).
8. Complainant did not mail written notice of the defect to Respondent. Tex. Occ. Code § 2301.606(c)(1).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. 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-.613 is hereby **DISMISSED**.

**SIGNED April 28, 2016**

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