

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0148 CAF**

VERONICA RAMIREZ,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	OF
	§	
FCA US LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Veronica Ramirez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2015 Jeep Grand Cherokee. Complainant asserts that the vehicle is defective because it has failed to start several times and because the vehicle died once while she was driving. FCA US 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 has been repaired, does not have an existing warrantable defect, and Complainant is not eligible for repurchase or replacement 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 June 29, 2016, in Pharr, Texas, before Hearings Examiner Edward Sandoval. Complainant, Veronica Ramirez, appeared and represented herself at the hearing. Her mother, Felipa Benavidez, was present as an observer. Respondent was represented by Jan Kershaw, Early Resolution Case Manager.

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 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

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

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

Complainant purchased a new 2015 Jeep Grand Cherokee from Don Johnson Motors (Johnson) in Brownsville, Texas on August 12, 2015, with mileage of 55 at the time of delivery.^{7,8} Respondent provided a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 100,000 miles. On the date of hearing the vehicle's mileage was 12,094. At the time of hearing, the vehicle's warranties were still in effect.

Complainant testified that she feels that the vehicle is defective because she had several incidents where the vehicle failed to start. In addition, on one occasion the vehicle died while she was driving it.

Complainant stated that on November 27, 2015, the vehicle failed to start. She had the vehicle towed to Johnson for repair. Johnson's service technician could not verify the concern and so performed no repairs to the vehicle.⁹ The vehicle's mileage on this occasion was 3,729.¹⁰ The vehicle was in Johnson's possession for the day. Complainant was provided with a rental vehicle while her vehicle was being repaired.

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. 2, Motor Vehicle Retail Installment Sales Contract dated August 12, 2015.

⁸ Complainant Ex. 3, Odometer Disclosure Statement dated August 12, 2015.

⁹ Complainant Ex. 4, Repair Order dated November 27, 2015.

¹⁰ *Id.*

On December 11, 2015, the vehicle again failed to start or crank in the morning. Complainant had the vehicle towed to Johnson that same day in order to address the issue. Johnson's service technician could not duplicate the problem and was unable to perform any repairs on the vehicle.¹¹ The vehicle's mileage on this occasion was 4,327.¹² The vehicle was in Johnson's possession for five (5) days. Complainant was provided with a rental vehicle while her vehicle was being repaired.

Complainant testified that the vehicle failed to start or crank on December 18, 2015. Complainant had the vehicle towed to Johnson that same day. Johnson's technician determined that the vehicle's fuel pump had shorted out and replaced it.¹³ The vehicle's mileage at the time was 4,464.¹⁴ The vehicle was in the dealer's possession for six (6) days on this occasion. Complainant was provided with a rental vehicle while her vehicle was being repaired.

Complainant received the vehicle from Johnson on December 24, 2015. That same day, the vehicle failed to start when Complainant attempted to leave work. As a result, she had to leave the vehicle at her work location until it could be towed to Johnson. The vehicle was towed to Johnson for repair later that day. Johnson's service technician determined that the vehicle's new fuel pump wasn't working because of an internal fault.¹⁵ The technician replaced the new fuel pump.¹⁶ The vehicle's mileage on this occasion was 4,538.¹⁷ The vehicle was in the dealer's possession for seven (7) days. The vehicle was returned to Complainant on December 31, 2015. She was provided with a rental vehicle while her vehicle was being repaired.

On January 2, 2016, the vehicle died while Complainant was driving in it. In addition, the vehicle failed to start sometime after that date. Complainant had the vehicle towed to Johnson for repair on January 4, 2016. Johnson's technician determined that the fuel pump was not working again.¹⁸ The technician contacted Respondent's technical advisor who indicated that the problems with the fuel pumps could be caused by contaminated fuel.¹⁹ Since it appeared that the vehicle's fuel was contaminated, the technician removed the fuel from the vehicle, cleaned the gas tank and fuel lines, and replaced the vehicle's fuel pump.²⁰ In addition, the technician found an intermittent power loss to the fuel pump circuit and installed an overlay circuit and fuse to correct this issue.²¹ The vehicle's mileage on this occasion was 4,649.²² The vehicle was in

¹¹ Complainant Ex. 5, Repair Order dated December 11, 2015.

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated December 18, 2015.

¹⁴ *Id.*

¹⁵ Complainant Ex. 7, Repair Order dated December 24, 2015.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 8, Repair Order dated January 4, 2016.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Johnson's possession for repair for eleven (11) days on this occasion.²³ Complainant was provided with a rental vehicle while her vehicle was being repaired.

On January 4, 2016, Complainant sent written notification to Respondent advising them of her problems with the vehicle.²⁴ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 12, 2016.²⁵

Complainant testified that the vehicle died only once while she was driving it and that was on January 2, 2016. In addition, since the last repair that occurred in January of 2016, Complainant has not had any other problems with the vehicle failing to start. Complainant stated that as of the date of hearing, the vehicle was repaired. She also testified that she was not told by Johnson's representatives that the problems with the vehicle may have been due to contaminated fuel.

Complainant stated that she does not feel safe driving the vehicle. She doesn't feel that the vehicle is reliable. She has no guarantee that the vehicle's fuel pump won't go out again.

C. Respondent's Evidence and Arguments

Jan Kershaw, Early Resolution Case Manager, testified that she first became involved in this case when she was forwarded Complainant's complaint in February of 2016. Ms. Kershaw looked into the vehicle's repair history and spoke to Respondent's District Manager about the vehicle. Ms. Kershaw also received a letter from a dealer representative about the vehicle and the fact that it was thought that the vehicle's issues were caused by fuel contamination.

Ms. Kershaw decided not to ask for a final repair attempt for the vehicle, since she was informed that it had been repaired. Ms. Kershaw stated that the vehicle's fuel pump has not gone out since the last repair performed on the vehicle in January of 2016.

Ms. Kershaw testified that the vehicle has a three (3) year or 36,000 mile bumper-to-bumper warranty and a five (5) year or 100,000 mile powertrain warranty. Ms. Kershaw also testified that Respondent's warranty does not cover damage caused by fuel contamination, but the repairs were covered for Complainant on January 4, 2016.

²³ *Id.*

²⁴ Complainant Ex 10, Notification to FCA US LLC Customer Center dated January 4, 2016.

²⁵ Complainant Ex. 9, Lemon Law Complaint dated January 12, 2016. Complainant signed and dated the complaint on January 7, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until January 12, 2016, which is the effective date of the complaint.

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.

Complainant purchased the vehicle on August 12, 2015, and presented the vehicle to Respondent's authorized dealer for repair due to the vehicle failing to start and for dying while she was driving it on the following dates: November 27, 2015; December 11, 2015; December 18, 2015; December 24, 2015; and January 4, 2016. The vehicle was repaired during the final repair attempt which took place on January 4, 2016, and Complainant indicated that she has not experienced any other problems with the vehicle since that date.

Occupations Code § 2301.603 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." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.²⁶ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

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, the powertrain warranty provides coverage for five (5) years or 100,000 miles. On the date of hearing, the vehicle's mileage was 12,094 and the warranties are still in effect.

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

²⁶ Tex. Occ. Code § 2301.605.

III. FINDINGS OF FACT

1. Veronica Ramirez (Complainant) purchased a new 2015 Jeep Grand Cherokee on August 12, 2015, from Don Johnson Motors (Johnson) in Brownsville, Texas, with mileage of 55 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 12,094.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant experienced problems with the vehicle failing to start and dying while she was driving.
6. Complainant took the vehicle to Johnson for repair on the following dates:
 - a. November 27, 2015, at 3,729 miles;
 - b. December 11, 2015, at 4,327 miles;
 - c. December 18, 2015, at 4,464 miles;
 - d. December 24, 2015, at 4,538 miles; and
 - e. January 4, 2016, at 4,649 miles.
7. On November 27, 2015, Johnson's service technician could not duplicate the no start concern and performed no repairs to the vehicle.
8. On December 11, 2015, Johnson's service technician could not duplicate the problem and performed no repairs to the vehicle.
9. On December 18, 2015, Johnson's service technician determined that the vehicle's fuel pump had shorted out and replaced it.
10. On December 24, 2015, Johnson's service technician replaced the fuel pump again because it was not working properly. The technician felt that the fuel pump had failed due to an internal fault.
11. On January 4, 2016, Johnson's service technician determined that vehicle's problems were due to fuel contamination and removed all the fuel from the vehicle, cleaned the gas tank and lines, and replaced the fuel pump again. In addition, he installed an overlay circuit and fuse to address an issue with an intermittent power loss on the fuel pump.

12. The vehicle has been repaired and Complainant has not had any other problems with it since January of 2016.
13. On January 12, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On April 15, 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.
15. The hearing in this case convened and the record was closed on June 29, 2016, in Pharr, Texas, before Hearings Examiner Edward Sandoval. Complainant, Veronica Ramirez, appeared and represented herself at the hearing. Her mother, Felipa Benavidez, was present as an observer. Respondent was represented by Jan Kershaw, Early Resolution Case Manager.

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 Complainant's petition for replacement relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED July 12, 2016



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