

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0183 CAF**

**THERESA M. SANDERS,
Complainant**

v.

**AMERICAN HONDA MOTOR CO.,
INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Theresa M. Sanders (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2015 Honda Civic. Complainant asserts that the vehicle has a parasitic draw on its electrical system which causes the vehicle's battery to drain. American Honda Motor Co., Inc. (Respondent) argued that the problem with the vehicle is not due to a defect or a parasitic draw, but is due to the fact that Complainant does not drive the vehicle often enough to keep the battery charged. The hearings examiner concludes that a defect or nonconformity is not present in the vehicle 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 hearing record closed on May 19, 2016 in Mesquite, Texas before Hearings Examiner Edward Sandoval. George Sanders, Complainant's husband, represented Complainant at the hearing. Complainant, Theresa M. Sanders, also appeared and testified at the hearing. Respondent was represented by Steven Felix, Mediation Specialist. Testifying for Respondent was John Kerrigan, District Parts and Service Manager, and Yefri Lopez, Mediation Specialist.

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 owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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

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.⁵

B. Complainant's Evidence and Arguments

1. George Sanders' Testimony

Complainant purchased a new 2015 Honda Civic from Vandergriff Honda (Vandergriff) in Arlington, Texas, on February 28, 2015.⁶ The vehicle's mileage at the time of delivery was 12.⁷ Respondent provided a bumper-to-bumper limited warranty for the vehicle for the first three (3) years or 36,000 miles from the date of delivery, whichever comes first.⁸

George Sanders is Complainant's husband. He testified that he feels that the vehicle's electrical system has a defect because the vehicle's battery has had to be replaced three times since he and Complainant purchased it. They have had to jump start the vehicle several times since purchasing it.

Mr. Sanders stated that on the date that he and Complainant purchased the vehicle, the vehicle's battery had to be replaced because the vehicle wouldn't start.⁹ This occurred before Complainant drove the vehicle off of the dealer's parking lot. The vehicle's mileage at the time was 15.¹⁰

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated February 28, 2015.

⁷ Complainant Ex. 2, Odometer Disclosure Statement dated February 28, 2015.

⁸ Complainant Ex. 11, American Honda Motor Co., Inc.'s Warranty Manual, p. 9.

⁹ Complainant Ex. 3, Repair Order dated February 28, 2015.

¹⁰ *Id.*

Mr. Sanders testified that in October of 2015, he and Complainant had problems with the vehicle not starting. They had to jump start the vehicle twice before having it towed to Vandergriff for repair. On October 19, 2015, Vandergriff's service technician determined that the vehicle's battery had failed and needed to be replaced.¹¹ The battery was replaced and the vehicle was returned to Complainant.¹² The vehicle's mileage on this occasion was 1,262.¹³ The vehicle was in the dealer's possession for the afternoon.¹⁴

In December of 2015, the vehicle again failed to start. In addition, the vehicle's check engine light illuminated. Complainant had the vehicle towed to Vandergriff for repair on December 4, 2015. Vandergriff's service technician checked the vehicle for a parasitic draw on the battery.¹⁵ The technician determined that there was no draw and that the vehicle was within manufacturer specifications for the issue.¹⁶ However, the vehicle's battery still had to be replaced since it was completely drained.¹⁷ The technician also attempted to address the issue of the check engine light illuminating, but could not duplicate the issue.¹⁸ The vehicle's mileage when it was taken to the dealership on this occasion was 1,512.¹⁹ The vehicle was in the dealer's possession for three (3) days during this repair visit.²⁰ Complainant was provided with a loaner vehicle while her vehicle was being repaired.

On January 6, 2016, the vehicle failed to start. It had to be towed to Vandergriff for repair. The service technician jump started the vehicle and recharged the vehicle's battery.²¹ He also performed a parasitic draw test in an attempt to determine what was causing the battery to drain.²² The vehicle's power draw was within the manufacturer's specifications.²³ The technician noted that there was an insurance monitor plugged into the vehicle's data port and felt that it could be a contributing factor to the battery issues.²⁴ Mr. Sanders did not feel that the insurance monitor contributed to the problem, since it had not been installed in the vehicle until after the battery had been replaced three times. The vehicle's mileage on this occasion was 1,652.²⁵ Complainant was provided with a loaner vehicle while her vehicle was being repaired.

¹¹ Complainant Ex. 4, Repair Order dated October 19, 2015.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated December 4, 2015.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 6, Repair Order dated January 6, 2016.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

On January 14, 2016, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.²⁶ On February 17, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV).²⁷

Mr. Sanders stated that there have been no other problems with the vehicle's battery since January of 2016. He also testified that he was informed by Respondent's representatives that the problem with the electrical system is due to the fact that the vehicle is not driven enough to properly keep the battery charged. Mr. Sanders could not find anything in writing in any of Respondent's manuals outlining the necessary usage of the vehicle in order to keep the battery charged. He's never experienced this type of problem with any other vehicle that he's owned. Mr. Sanders also feels that his wife's safety is at risk when she's driving the vehicle.

During cross-examination, Mr. Sanders stated that he feels that the vehicle could stall or die while in traffic which could be a danger to his wife. In addition, there could be a danger to his wife if she was unable to start the vehicle during the middle of summer due to the heat, her age, and health issues. Mr. Sanders also testified that the vehicle has never stalled or died while being driven. However, he feels that there could be a possibility that the vehicle could die since the problem has not been properly diagnosed.

2. Theresa Sanders' Testimony

Theresa Sanders, Complainant, is the primary driver of the vehicle. She testified that her driving habits have not changed recently. She has never had any problems with any other vehicles, including other Hondas, failing to start. She feels that there is a problem with the vehicle's electrical system. Ms. Sanders also testified that she was told by the dealer's representative that she needed to drive the vehicle for about 30 minutes every two to three days in order to maintain the charge on the vehicle's battery. She normally only drives the vehicle to the grocery store or to doctor's appointments. The grocery store that Ms. Sanders frequents is about 12 to 13 minutes from her home.

²⁶ Complainant Ex. 8, Letter to American Honda Motor Company, Inc. undated. Complainant mailed the letter through the United States Postal Service and the tracking printout indicates that the letter was mailed on January 14, 2016, p. 2.

²⁷ Complainant Ex. 7, Lemon Law Complaint dated February 17, 2016. Complainant signed the complaint with a date of March 20, 2016. However, the date on the form is obviously incorrect, since the complaint was actually received by Texas Department of Motor Vehicles on February 17, 2016, which is the effective date of the complaint.

C. Respondent's Evidence and Arguments

Steven Felix, Mediation Specialist, testified for Respondent. He testified that the technicians for Vandergriff performed parasitic draw tests on the vehicle's electronic system on two occasions: December 4, 2015 and January 6, 2016. On both occasions the vehicle's system was within the manufacturer's specifications. On the second occasion, the technician discovered the insurance monitor plugged into the vehicle's data port. Mr. Felix felt that the monitor could possibly be causing the vehicle's battery to drain.

Mr. Felix testified that he feels that Complainant does not drive the vehicle sufficiently to keep the battery charged. He pointed out that as of January of 2016, the vehicle's mileage was 1,652. This indicates that Complainant is driving the vehicle about 150 miles per month since the date of purchase. This is considered to be "short trip" driving and doesn't allow the battery to fully charge. The average annual mileage for a vehicle is 12,000 to 15,000.²⁸ Proper battery maintenance requires a vehicle to be driven for frequent extended periods to ensure proper charging by the alternator.²⁹ Mr. Felix also stated that as vehicle technology has changed, there are more options on vehicles which can cause more of a drain on a battery when the vehicle is parked.

Mr. Felix also stated that Respondent elected not to perform a final repair attempt on the vehicle as they did not feel that anything was wrong with it.

Yefri Lopez, Mediation Specialist, also testified. He reiterated much of what Mr. Felix said. Mr. Lopez also indicated that Respondent's vehicle manuals do not provide information on customer's suggested driving habits.

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.

²⁸ Respondent Ex. 1, American Honda Motor Co., Inc. position statement, p. 3.

²⁹ *Id.*

The evidence presented in the hearing establishes that the vehicle does not have a parasitic draw which causes the vehicle's battery to fail. Instead, the problem with the vehicle's batteries was caused by Complainant not driving the vehicle often enough to keep the battery charged. The evidence showed that Complainant drives the vehicle an average of 150 miles per month which is far below the monthly average of a typical driver. The evidence also established that battery maintenance relies on vehicle operation over frequent extended periods of time. As such, the hearings examiner must hold that the issue with the vehicle's battery was not caused by a defect in the vehicle. Given the evidence provided in the hearing and the fact that Complainant bears the burden of proof to establish the existence of a defect in the vehicle, the hearings examiner must hold that repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of the hearing on this matter, the vehicle's mileage was 2,674. The vehicle's basic express warranty is still in effect. Respondent is under an obligation to repair the vehicle whenever there is any problem covered by the vehicle's warranty.

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

III. FINDINGS OF FACT

1. Theresa M. Sanders (Complainant) purchased a new 2015 Honda Civic from Vandergriff Honda (Vandergriff) in Arlington, Texas, on February 28, 2015, with mileage of 12 at the time of delivery.
2. The manufacturer of the vehicle, American Honda Motor Co., Inc. (Respondent) issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 2,674.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. Complainant has had an intermittent issue with the vehicle's battery having to be replaced three times during her ownership of the vehicle.

6. Respondent's authorized dealer has repaired the vehicle due to its battery issues, on the following dates:
 - a. February 28, 2015, at 15 miles;
 - b. October 19, 2015, at 1,262 miles;
 - c. December 4, 2015, at 1,512 miles; and
 - d. January 6, 2016, at 1,652 miles.
7. On February 28, 2015, before the vehicle was delivered to Complainant on the date of purchase, Vandergriff's service technician replaced the vehicle's battery because the vehicle wouldn't start.
8. On October 19, 2015, Vandergriff's service technician replaced the vehicle's battery because it had failed and would not retain a charge.
9. On December 4, 2015, Vandergriff's service technician performed a parasitic draw test on the vehicle and determined that the vehicle was within specifications for its electrical system. However, since the battery had failed, it was replaced.
10. On January 6, 2016, Vandergriff's service technician performed a parasitic draw test on the vehicle and determined that the vehicle was within specifications for its electrical system. The vehicle's battery was recharged and the vehicle returned to Complainant.
11. On February 17, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. Respondent elected not to perform a final repair attempt on the vehicle.
13. On March 28, 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.

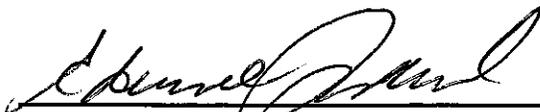
14. The hearing in this case convened and the hearing record closed on May 19, 2016 in Mesquite, Texas before Hearings Examiner Edward Sandoval. George Sanders, Complainant's husband, represented Complainant at the hearing. Complainant, Theresa M. Sanders, also appeared and testified at the hearing. Respondent was represented by Steven Felix, Mediation Specialist. Testifying for Respondent was John Kerrigan, District Parts and Service Manager, and Yefri Lopez, Mediation Specialist.

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's vehicle does not have an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle does not have an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranty. Tex. Occ. Code §§ 2301.204, 2301.603.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement/repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED June 20, 2016



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