

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0196 CAF**

**DUSTIN T. WALKER,**  
**Complainant**

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**BEFORE THE OFFICE**

v.

**OF**

**ASTON MARTIN LAGONDA OF NA,  
INC.,**  
**Respondent**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Dustin T. Walker (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.204 (Warranty Performance) for an alleged defect in his 2013 Aston Martin Vantage S. Complainant asserts that the vehicle's transmission slips out of gear when the vehicle is being driven which causes the vehicle to come to a stop in traffic. Aston Martin Lagonda of NA, Inc. (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 October 25, 2016, before Hearings Examiner Edward Sandoval. The hearing was conducted telephonically. Complainant represented himself. Respondent was represented by Jeremiah Wood, attorney with Baker and Hostetler LLP. Testifying for Respondent was Gary Hyman, Regional After-Sales Manager.

**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 Aston Martin Vantage S from Late European in Austin, Texas, on October 10, 2013, with mileage of 885 at the time of delivery.<sup>1,2</sup> Respondent provided a limited warranty for the vehicle for the first three (3) years of ownership. The limited warranty for the vehicle had expired prior to the date of hearing.

Complainant testified that in early 2015 he was driving the vehicle on a highway in Austin, Texas and trying to accelerate the vehicle when it lost power. The vehicle's transmission was in the process of shifting gears when the vehicle lost power. The vehicle's engine was still on, but the transmission would not shift into gear. In addition, a warning light illuminated on the vehicle's dashboard indicating that there was a fault and that no gear change was possible. The vehicle stalled in the middle of traffic. Complainant was required to lock and unlock the vehicle several times before he was able to get the transmission to shift into gear and to move the vehicle.

Sometime thereafter a similar incident occurred. Complainant was again driving the vehicle in Austin. He had just crossed over an overpass when the transmission again refused to shift into gear and the vehicle stalled. In addition, the vehicle's warning light illuminated indicating that no gear change was possible. Complainant was able to pull the vehicle over to the side of the road. Again, it took a few minutes to get the transmission to shift into gear.

Complainant had the vehicle towed to Late European for repair to the transmission on April 13, 2015. Late European's service technician could not determine the cause of the vehicle stalling.<sup>3</sup> However, the technician performed an ASM self-tune on the vehicle and relearned the drive cycle for customer satisfaction.<sup>4</sup> The vehicle's mileage on this occasion was 7,092.<sup>5</sup> The vehicle was in the dealer's possession until April 29, 2015.<sup>6</sup> Complainant did not ask for a loaner or rental vehicle for this period of time.

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<sup>1</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated October 10, 2013.

<sup>2</sup> Complainant Ex. 2, Odometer Disclosure Statement dated October 10, 2013.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Complainant testified that on August 29, 2015, the vehicle's transmission again refused to shift into gear and the vehicle stalled in traffic. The vehicle's "No Gear Shift Possible" warning light illuminated. Complainant had the vehicle towed back to Late European on September 2, 2015, for repair. Late European's service technician found a short in the vehicle's docking station.<sup>7</sup> The technician replaced the docking station, the clutch master cylinder, and the transmission control unit (TCU).<sup>8</sup> The new TCU, however, would not allow the transmission to change gear despite a software update.<sup>9</sup> As a result, the original TCU was refitted and updated and reinstalled in the vehicle.<sup>10</sup> The mileage on the vehicle on this date was 8,332.<sup>11</sup> The vehicle was in the dealer's possession until October 13, 2015, on this occasion.<sup>12</sup> Complainant did not request a loaner or rental vehicle for this period of time.

In February of 2016, the vehicle's transmission again refused to shift into gear and the vehicle stalled. In addition, the "No Gear Shift Possible" warning light illuminated again. The vehicle was towed to Late European again. Complainant was not sure if any repairs were made to the vehicle. Complainant was informed that a manufacturer representative, Gary Hyman, inspected the vehicle. Complainant stated that he was also informed that the vehicle's hydraulic actuation mechanism was replaced. The vehicle's mileage was approximately 9,500 at the time of repair. The vehicle was in Late European's possession for approximately a month on this occasion.

Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on March 2, 2016, while the vehicle was still being repaired by Late European.<sup>13</sup>

Complainant testified that on consecutive days in September 2016 the vehicle completely died while he was driving it. Complainant had the vehicle towed to Late European for repair on September 20, 2016. On the date of hearing, the vehicle was still in the dealer's possession being repaired. Complainant was not provided with a loaner or rental vehicle while his vehicle was being repaired.

During cross-examination, Complainant testified that the vehicle had a prior owner. He is the second owner of the vehicle. The vehicle's current mileage is approximately 9,800. Complainant stated that he was told that Mr. Hyman said in March of 2016, that the problem with the vehicle was a clutch disengagement issue.

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<sup>7</sup> Complainant Ex. 4, Repair Order dated September 2, 2015.

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.*

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

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

<sup>13</sup> Complainant Ex. 5, Complainants' Lemon Law complaint dated March 2, 2016. Although the complaint was signed by Complainant on February 25, 2016, it was not received by Texas Department of Motor Vehicles until March 2, 2016, which is the effective date of the complaint.

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

Gary Hyman, Regional After-Sales manager, testified for Respondent. He's been in his current position for approximately eight (8) years. He performs customer service and technical support duties for Respondent. Mr. Hyman has been in the automotive industry for 32 years. He's worked in the past as a master technician and an Automotive Service Excellence (ASE) Master Certified technician.

Mr. Hyman testified that he inspected the vehicle in March of 2016. He was informed that the customer was complaining that the vehicle was not shifting gears. Mr. Hyman was not able to duplicate the concern. He determined that there was not anything conclusively wrong with the vehicle. However, he decided to have the vehicle's clutch, ASM sport kit, and TCU replaced in an effort to resolve the concern. In addition, the vehicle's wiring was tested. Mr. Hyman stated that approximately \$15,000 in parts and labor were spent on repairing the vehicle.

### **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. Complainant's testimony establishes that the vehicle's transmission is not working correctly. The transmission has failed to shift correctly on several occasions which has caused the vehicle to stall in traffic. This is a safety concern which has not been repaired by Respondent.

The hearings examiner must hold that Complainant has met his 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.

Respondent's warranty applicable to Complainant's vehicle provides coverage for three (3) years. The vehicle's warranty has expired, since it's been more than three (3) years since the vehicle was put in service. However, Respondent is still responsible to make repairs to the vehicle for any issue raised before the expiration of the warranty. *See* Tex. Occ. Code § 2301.603(b)(1). Therefore, Respondent is still obligated to repair any defects with the vehicle's transmission.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the cause of the transmission issues and perform any necessary repairs to conform the vehicle to the limited warranty.

### III. FINDINGS OF FACT

1. Dustin T. Walker (Complainant) purchased a used 2013 Aston Martin Vantage S on October 10, 2013, from Late European in Austin, Texas with mileage of 885 at the time of delivery.
2. Respondent provided a three (3) year warranty for the vehicle.
3. The vehicle's mileage on the date of hearing was approximately 9,800.
4. At the time of the hearing, the warranty for the vehicle had expired.
5. Complainant's vehicle's transmission intermittently slips out of gear when the vehicle is being driven.
6. Prior to the filing of the Lemon Law complaint, Complainant's vehicle was serviced by Late European on the following dates because of Complainant's concerns regarding the vehicle's transmission:
  - a. April 13, 2015, at 7,092 miles; and
  - b. September 2, 2015, at 8,332 miles.
7. On April 13, 2015, Late European's service technician could not determine the cause of the transmission concern, but performed an ASM self-tune on the vehicle and relearned the drive cycle for customer satisfaction.
8. On September 2, 2015, Late European's technician replaced the vehicle's docking station, the clutch master cylinder, and the transmission control unit (TCU). The new TCU, however, would not allow the transmission to change gear despite a software update. As a result, the original TCU was refitted and updated and reinstalled in the vehicle.
9. On March 2, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On April 27, 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.

11. The hearing in this case convened and the record closed on October 25, 2016, before Hearings Examiner Edward Sandoval. The hearing was conducted telephonically. Complainant represented himself. Respondent was represented by Jeremiah Wood, attorney with Baker and Hostetler LLP. Testifying for Respondent was Gary Hyman, Regional After-Sales Manager.

#### 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 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 transmission issues and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

**SIGNED November 17, 2016**



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