

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0197 CAF**

LOUISA A. SALAZAR,
Complainant

v.

FCA US LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Louisa A. Salazar (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2015 Chrysler 200. Complainant asserts that the vehicle is defective because the vehicle's check engine light (CEL) illuminated several times in late 2015 and early 2016. 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 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 July 29, 2016, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Complainant, Louisa A. Salazar, represented herself at the hearing. In addition, her daughter, Nita Salazar, was also present to testify. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Stuart Ritchey, Technical Advisor, testified for Respondent.

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

1. Louisa Salazar's Testimony

Complainant, Louisa Salazar, purchased a new 2015 Chrysler 200 from North Star Dodge Chrysler Jeep in San Antonio, Texas on October 17, 2014, with mileage of 174 at the time of delivery.^{7,8} On the date of hearing the vehicle's mileage was 24,162.

Complainant testified that the vehicle jerks forward during acceleration and the engine makes a loud noise. In addition, the vehicle's check engine light (CEL) illuminated several times during late 2015.

Complainant's daughter, Nita Salazar, is the primary driver of the vehicle. In late 2015, Complainant took the vehicle to Respondent's authorized dealer for a recall to be performed on the vehicle. A few days after the recall was performed, the vehicle's CEL illuminated. Complainant took the vehicle to Brown Dodge Chrysler Jeep (Brown), Respondent's authorized dealer, in Devine, Texas for repair on December 9, 2015. Brown's service technician verified that

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. 3, Motor Vehicle Retail Installment Sales Contract dated October 17, 2014.

⁸ Complainant Ex. 4, Odometer Disclosure Statement dated October 17, 2014.

the CEL was on.⁹ The technician replaced the vehicle's transaxle wire harness due to a recall and felt that this was going to address the issue of the CEL illuminating.¹⁰ The vehicle's mileage on this occasion was 15,020.¹¹ The vehicle was in Brown's possession for eight (8) days during this repair. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Several days later the vehicle's CEL turned on again. Complainant took the vehicle to Brown on December 28, 2015, in order to have the issue addressed. Brown's technician checked the vehicle's computers and indicated that "implausible data" was being received and did not perform any repairs to the vehicle.¹² The vehicle's mileage on this occasion was 15,760.¹³ The vehicle was in Brown's possession for about eight (8) days. Complainant was provided with a loaner while her vehicle was being repaired.

The CEL turned on yet again after a few days. Complainant took the vehicle to Brown for repair on January 11, 2016. The technician again indicated that the vehicle's computers were providing "implausible data."¹⁴ However, this time the technician replaced the vehicle's transmission in order to address the issue.¹⁵ The vehicle was in the dealer's possession for seven (7) days on this occasion.¹⁶ Complainant was provided with a loaner vehicle while her vehicle was being repaired. Complainant testified that the vehicle's CEL has not illuminated since the repair was performed.

Complainant testified that the vehicle started to jerk forward during acceleration and the engine began making a loud noise after the transmission was replaced. Complainant did not take the vehicle to a dealer for repair for these issues.

On February 22, 2016, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.¹⁷ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 1, 2016.¹⁸

⁹ Complainant Ex. 5, Repair Order dated December 9, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 6, Repair Order dated December 28, 2015.

¹³ *Id.*

¹⁴ Complainant Ex. 7, Repair Order dated January 11, 2016.

¹⁵ *Id.*

¹⁶ Complainant testified that the vehicle was in the dealer's possession for almost two weeks during this repair attempt. However, the repair order indicates that the vehicle was released on January 18, 2016, seven days after being taken to Brown.

¹⁷ Complainant Ex. 2, Letter to Chrysler Customer Care dated February 22, 2016.

¹⁸ Complainant Ex. 1, Lemon Law Complaint dated March 1, 2016. Complainant signed and dated the complaint on February 22, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until March 1, 2016, which is the effective date of the complaint.

Complainant testified that she spoke to Jan Kershaw, Respondent's Early Resolution Case Manager, and scheduled a final repair attempt for the vehicle to be performed on June 17, 2016. The final repair attempt was performed at Ingram Park Chrysler Jeep Dodge in San Antonio, Texas. At the time of the final repair attempt, Complainant indicated that the issues with the vehicle had to do with a harsh transmission shift and rough idle.¹⁹ Respondent's technical advisor performed updates on the vehicle's HVAC module, electric park module (EPB), powertrain control module (PCM), and transmission control module (TCM).²⁰ The vehicle's mileage was 22,796 at the time of the final repair attempt.²¹ The vehicle was in the dealer's possession for five (5) days. Complainant was provided with a loaner while her vehicle was being repaired.

Complainant stated that the vehicle still jerks when shifting the transmission into drive or reverse. She also hears a loud noise which makes it sound like the vehicle has a diesel engine. Complainant stated that she does not feel safe in the vehicle.

During cross-examination, Complainant testified that the first repair to the vehicle was in late 2015. She didn't have any issues with the vehicle until the recall was performed in late 2015. The vehicle's CEL has not illuminated since the repair performed in January of 2016. The vehicle has not stalled or died while she or her daughter were driving it.

2. Nita Salazar's Testimony

Nita Salazar, Complainant's daughter, is the primary driver of the vehicle. She testified that the vehicle's CEL first illuminated in December of 2015. She took the vehicle to Brown for repair because she was worried about the vehicle. Ms. Salazar was provided with a loaner vehicle while Complainant's vehicle was being repaired. After the repair was performed, Brown's service advisor informed Ms. Salazar that the vehicle was working correctly. However, the CEL soon turned back on. Ms. Salazar testified that she took the vehicle to Brown for repairs on three other occasions for repair for the issue. In January of 2016, the vehicle's transmission was replaced. Since then, the vehicle's CEL has not turned back on.

Ms. Salazar stated that the vehicle began jerking after the transmission was replaced. She feels that the vehicle jumps when she shifts the transmission into park. In late January of 2016, she took the vehicle to the dealer for repair, but the problem could not be duplicated. The dealer's representative informed Ms. Salazar that they would tweak the vehicle's software. The repair

¹⁹ Complainant Ex. 8, Repair Order dated June 17, 2016.

²⁰ *Id.*

²¹ *Id.*

took about 15 minutes. Ms. Salazar was not provided with an invoice or repair order on this occasion. The vehicle was okay for about a day before Ms. Salazar began to feel the vehicle's steering wheel shaking while she drove it and the hard shift and noise began to reoccur.

C. Respondent's Evidence and Arguments

Stuart Ritchey, Technical Advisor, has worked for Respondent for approximately 30 years. He's been employed as a technical advisor since 1994. He is an Automotive Service Excellence (ASE) master technician. Mr. Ritchey has a four year degree in automotive technology and a two year degree in business.

Mr. Ritchey testified that he performed a final repair attempt on Complainant's vehicle on June 20, 2016, at Ingram Park Chrysler Jeep Dodge. Mr. Ritchey stated that he was told that there were two issues with the vehicle: a rough idle and a hard shift. He was not told that there was a problem with the vehicle's CEL illuminating. Mr. Ritchey testified that he first hooked up a scan tool to the vehicle to check for any trouble codes which he did not find. He then took the vehicle for a test drive. Mr. Ritchey noticed a vibration in the steering wheel when he started the vehicle and when putting the transmission in park. Mr. Ritchey decided that the vehicle's computers needed to be updated, so he performed a "flash" for the HVAC monitor, EPB, PCM, and TCM. Mr. Ritchey then compared the vehicle's behavior with a comparable vehicle and determined that there was no difference in the noise level or transmission shifting between the vehicles.

Mr. Ritchey testified that he feels that the vehicle is safe to drive and that there is nothing wrong with it. He feels that the transmission shifts as designed and that there are no unusual or abnormal noises coming from the vehicle's engine.

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's Lemon Law complaint indicated her only complaint with the vehicle was that the CEL was turning on. Complainant indicated at the time of hearing that she was now concerned with the vehicle jerking forward during acceleration and a loud engine noise. However, those issues were not included on the Lemon Law complaint filed and signed by Complainant. Those issues cannot be addressed by the hearings examiner. The only issue that can be addressed by the hearings examiner is the concern regarding the CEL illuminating.

Complainant purchased the vehicle on October 17, 2014, and presented the vehicle to Respondent's authorized dealer for repair for the CEL issue on the following dates: December 9, 2015; December 28, 2015; and January 11, 2016. The vehicle's transmission was replaced in January of 2016 and Complainant indicated that the vehicle's CEL has not turned on since that repair.

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. 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.²² In the present case, the evidence reveals that the vehicle has been 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.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Louisa A. Salazar (Complainant) purchased a new 2015 Chrysler 200 on October 17, 2014, from North Star Dodge Chrysler Jeep in San Antonio, Texas, with mileage of 174 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 24,162.
3. Complainant's vehicle's check engine light (CEL) began turning on in December of 2015.

²² Tex. Occ. Code § 2301.605.

4. Complainant took the vehicle for repair to Respondent's authorized dealer, Brown Dodge Chrysler Ram (Brown), for repair because the CEL illuminated on the following dates:
 - a. December 9, 2015, at 15,020 miles;
 - b. December 28, 2015, at 15,760 miles; and
 - c. January 11, 2016, at 16,071 miles.
5. On December 9, 2015, Brown's service technician replaced the vehicle's transaxle wire harness to address the issue of the CEL illuminating.
6. On December 28, 2015, Brown's technician indicated that the data recovered from the vehicle's computers showed "implausible" data and no repairs were performed.
7. On January 11, 2016, Brown's service technician replaced the vehicle's transmission in order to address the issue of the CEL illuminating.
8. The vehicle's CEL light has not illuminated since the repair performed on January 11, 2016.
9. The vehicle has been repaired and the vehicle is no longer making any unusual noises and the engine has not had any other problems.
10. On March 1, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On June 17, 2016, Respondent's technical advisor conducted a final repair attempt on the vehicle and updated the vehicle's HAVC module, electric park module (EPB), powertrain control module (PCM), and transmission control module (TCM).
12. On June 14, 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.
13. The hearing in this case convened and the record was closed on July 29, 2016, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Complainant, Louisa A. Salazar, represented herself at the hearing. In addition, her daughter, Nita Salazar, was

also present to testify. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Stuart Ritchey, Technical Advisor, testified for Respondent.

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 repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED August 18, 2016



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