

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0202 CAF**

**ELIZABETH TUUK,**  
Complainant

v.

**FORD MOTOR COMPANY,**  
Respondent

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**BEFORE THE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Elizabeth Tuuk (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Ford Focus. Complainant asserts that the vehicle intermittently “shudders” and doesn’t accelerate normally. Ford Motor Company (Respondent) agreed to repurchase Complainant’s vehicle. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for repurchase 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 on July 15, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant represented herself at the hearing. Also present and testifying for Complainant was her friend, Rachel Spears. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs.

**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 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>

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

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

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

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

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**

### **1. Elizabeth Tuuk's Testimony**

Complainant purchased a 2014 Ford Focus from Ryan Ford (Ryan), in Sealy, Texas on February 15, 2014, with mileage of 10 at the time of delivery.<sup>6</sup> 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 for coverage for the powertrain for five (5) years or 60,000 miles.<sup>7</sup> On the date of hearing the vehicle's mileage was 29,231. Respondent's warranties for the vehicle were still in effect on the date of hearing.

Complainant testified that the vehicle intermittently shudders and fails to accelerate properly. She stated that the problem has existed since soon after she purchased the vehicle. Complainant took the vehicle to Mac Haik Ford (Haik) in Houston, Texas for repair for the issues on the following dates: September 16, 2104, at 4,614 miles; September 26, 2014, at 4,802 miles; October 2, 2014, at 4,923 miles; October 13, 2014, at 5,224 miles; and February 13, 2016, at 21,443 miles. Complainant testified that the vehicle has not been repaired and it continues to shudder periodically and fails to accelerate.

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<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, Buyers Order/Invoice dated February 15, 2014.

<sup>7</sup> Complainant Ex. 11, 2014 Model Year Ford Warranty Guide, p. 8.

On March 3, 2016, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>8</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 8, 2016.<sup>9</sup>

Respondent's field service engineer performed a final repair attempt on the vehicle on April 4, 2016, at Haik. The engineer determined that the vehicle's clutch assembly needed replacement. However, the assembly had to be special ordered. The assembly was installed in the vehicle on April 12, 2016. Complainant testified that she continued to feel a shudder in the vehicle after the repairs were performed. She stated that the problem still is present in the vehicle.

## **2. Rachel Spear's Testimony**

Rachel Spears, Complainant's friend, testified at the hearing. She testified that she has observed that the vehicle does shudder periodically and shows a lack of acceleration. In May of 2016, Ms. Spears was riding in the vehicle with Complainant and observed that Complainant was pressing on the vehicle's accelerator, but the vehicle was not moving any faster. In addition, Ms. Spears was riding to the hearing location in the vehicle with Complainant and felt the vehicle shuddering and vibrating whenever they accelerated from a stop.

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

Maria Diaz, Legal Analyst for Consumer Affairs, testified for Respondent. She stated that Respondent would repurchase the vehicle from Complainant

## **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.

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<sup>8</sup> Complainant Ex. 8, Letter to Ford Motor Company dated March 3, 2016.

<sup>9</sup> Complainant Ex. 7, Lemon Law Complaint dated March 8, 2016.

Respondent indicated in the hearing that they would repurchase the vehicle from Complainant. Complainant agreed to the offer.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

### III. FINDINGS OF FACT

1. Elizabeth Tuuk (Complainant) purchased a new 2014 Ford Focus on February 15, 2014, from Ryan Ford, in Sealy, Texas, with mileage of 10 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, whichever occurs first, and a separate powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 29,231.
4. At the time of hearing the vehicle's warranties were still in effect.
5. After purchasing the vehicle, Complainant noticed that the vehicle would intermittently shudder and fail to accelerate when she was driving it.
6. Complainant took her vehicle to Respondent's authorized dealer, Mac Haik Ford, in order to address her concerns with the vehicle shuddering and failing to accelerate, on the following dates:
  - a. September 16, 2014, at 4,614 miles;
  - b. September 26, 2014, at 4,802 miles;
  - c. October 2, 2014, at 4,923 miles;
  - d. October 13, 2014, at 5,224 miles; and
  - e. February 13, 2016, at 21,443 miles.
7. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.

8. Complainant provided written notice of the defect to Respondent on March 3, 2016, and Respondent was given the opportunity to inspect the vehicle on April 4, 2016.
9. On March 8, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On June 10, 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. 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 July 15, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant represented herself at the hearing. Also present and testifying for Complainant was her friend, Rachel Spears. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs.
12. At the time of hearing, Respondent agreed to repurchase the vehicle from 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's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
8. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
10. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2014 Ford Focus. Tex. Occ. Code § 2301.604(a)(1).

**IT IS THEREFORE ORDERED that:**

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in this final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$14,118.49**. The total refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$16,394.18
Delivery mileage	10
Mileage at first report of defective condition	4,616
Mileage on hearing date	29,231
Useful life determination	120,000

Purchase price, including tax, title, license and registration		\$16,394.18			
Mileage at first report of defective condition		4,616			
Less mileage at delivery		<u>-10</u>			
Unimpaired miles		4,606			
Mileage on hearing date		29,231			
Less mileage at first report of defective condition		<u>-4,616</u>			
Impaired miles		24,615			
Reasonable Allowance for Use Calculations:					
Unimpaired miles		<u>4,606</u>			
	120,000		X	\$16,394.18	= \$629.26
Impaired miles		<u>24,615</u>			
	120,000		X	\$16,394.18	X .5 = <u>\$1,681.43</u>
Total reasonable allowance for use deduction:					\$2,310.69
Purchase price, including tax, title, license and registration				\$16,394.18	
Less reasonable allowance for use deduction				-\$2,310.69	
Plus filing fee refund				<u>\$35.00</u>	
<b>TOTAL REPURCHASE AMOUNT</b>				\$14,118.49	

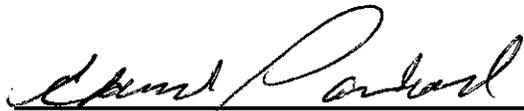
3. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;<sup>10</sup>
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

### 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 **GRANTED**. It is further **ORDERED** that Respondent, Ford Motor Company, shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

**SIGNED July 25, 2016**

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

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<sup>10</sup> Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.