

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0273 CAF**

**CHRISTOPHER RIVAS,  
Complainant**

v.

**GENERAL MOTORS LLC,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Christopher Rivas (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 Chevrolet Camaro RS. Complainant asserts the vehicle will die and come to a stop when it's being driven. General Motors LLC (Respondent) argued that Complainant's concerns have been addressed and the vehicle has been repaired. The hearings examiner concludes that the vehicle does not have a currently existing warrantable defect, and is not eligible for repurchase or replacement relief since he did not meet all of the statutory requirements for such relief under the Lemon Law.

**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. A hearing in this case was originally scheduled for August 30, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. The parties appeared for the hearing, at which time the hearings examiner was informed that Complainant required a Spanish interpreter. As result, the hearing was continued for October 12, 2016, in order to arrange for the services of an interpreter.

The hearing in this case convened and the record closed on October 12, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Mark Davis, attorney, in the hearing. Complainant was present at the hearing. Complainant's mother, Josefina Rivas, provided testimony. Also, present for Complainant was Bruce Gomez, paralegal. Respondent was represented by Samuel Snyder, attorney. J. T. Barry, District Manager for After-Sales, and Michael Pritulsky, Field Services Engineer, provided testimony for Respondent. Enrique Portugal provided Spanish interpretive services for Complainant and his mother.

## 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>

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

Complainant purchased a new 2015 Chevrolet Camaro RS from Mission Chevrolet (Mission) in El Paso, Texas on May 21, 2015.<sup>6</sup> The vehicle had mileage of 8 at the time of purchase.<sup>7</sup> Respondent's basic bumper to bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 5,909. At this time, Respondent's basic express warranty for the vehicle is still in effect.

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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).

<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. P-1-a, Motor Vehicle Retail Installment Sales Contract dated May 21, 2015.

<sup>7</sup> Complainant Ex. P-1-c, Odometer Disclosure Statement dated May 21, 2015.

### 1. Josefina Rivas' Testimony

Complainant's mother, Josefina Rivas, is the primary driver of the vehicle. Complainant is not capable of driving the vehicle due to his disability.

Ms. Rivas testified that in August of 2015, she was driving the vehicle and, when she exited from the freeway, the vehicle died. The vehicle lost all power during the incident. Ms. Rivas was able to restart the vehicle immediately. She had no prior warning that the vehicle was experiencing any difficulties. None of the vehicle's warning or trouble lights illuminated.

Ms. Rivas took the vehicle to Mission for repair on August 3, 2015. Mission's service technician did not find any diagnostic trouble codes (DTC) on the vehicle's computer and could not duplicate the problem.<sup>8</sup> No repairs were performed at the time. The mileage on the vehicle when Ms. Rivas took it to Mission was 2,900.<sup>9</sup> The vehicle was in Mission's possession for two (2) days. Ms. Rivas was given a loaner vehicle by the dealership while Complainant's vehicle was being repaired.

Ms. Rivas testified that a few days later the vehicle died again while she was driving it. On this occasion, Ms. Rivas was backing out of the driveway at her home when the vehicle died. Ms. Rivas was able to restart the vehicle immediately.

Ms. Rivas took the vehicle to Mission for repair on August 10, 2015. Mission's service technician ran a diagnostic check on the vehicle, but did not find any stored DTC's.<sup>10</sup> The technician did find Technical Service Bulletin (TSB) 15-06-04-003 which addressed a possible fix for stalling issues with 2013 to 2015 Camaros.<sup>11,12</sup> The TSB indicated that the technician should reprogram the vehicle's engine control module (ECM) to Respondent's latest calibration.<sup>13</sup> The vehicle's mileage when Ms. Rivas took it to Mission was 2,950.<sup>14</sup> The vehicle was in Mission's possession until August 12, 2015.<sup>15</sup> Ms. Rivas was provided with a loaner vehicle while Complainant's vehicle was being repaired.

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<sup>8</sup> Complainant Ex. P-2-a, Repair Order dated August 3, 2015.

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

<sup>10</sup> Complainant Ex. P-2-b, Repair Order dated August 10, 2015.

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

<sup>12</sup> File Exhibit 2, Technical Service Bulletin 15-06-04-003 dated August 2015.

<sup>13</sup> *Id.*

<sup>14</sup> Complainant Ex. P-2-b, Repair Order dated August 10, 2015.

<sup>15</sup> *Id.*

Ms. Rivas testified that the vehicle died twice more before she took it back to Mission for repair in September of 2015. The first incident occurred when Ms. Rivas' boyfriend was driving the vehicle and they were leaving a Walmart store's parking lot. As the vehicle entered the street from the parking lot, it died. No cars were approaching and the boyfriend was able to restart the vehicle immediately. The second incident occurred when Ms. Rivas was driving the vehicle near her home. She was at a stop sign and making a right turn when the vehicle died. Ms. Rivas was able to restart the vehicle immediately.

Ms. Rivas took the vehicle to Mission for repair on September 14, 2015. Mission's service technician did not find any stored DTC's on the vehicle's computer.<sup>16</sup> The technician checked the ECM connectors, added dielectric grease to the connectors, and ensured that the connectors were secure.<sup>17</sup> The technician test drove the vehicle 67 miles and it did not die or stall.<sup>18</sup> A data sensor was installed in the computer in an attempt to determine what was causing the vehicle to die.<sup>19</sup> The vehicle's mileage on this occasion was 4,767.<sup>20</sup> The vehicle was in Mission's possession until September 25, 2015.<sup>21</sup> Ms. Rivas was provided a loaner vehicle for the period of time that Complainant's vehicle was in Mission's possession.

Ms. Rivas took the vehicle to Mission for repair for the dying/stalling issue on October 6, 2015. Mission's service technician test drove the vehicle and ran a diagnostic check on it and could not find any problems.<sup>22</sup> In addition, Ms. Rivas went on a 23 mile test drive with Mission's service manager and they could not duplicate the problem.<sup>23</sup> The vehicle's mileage on this occasion was 4,960.<sup>24</sup> The vehicle was in Mission's possession until October 15, 2015.<sup>25</sup> Ms. Rivas was provided with a loaner vehicle while Complainant's vehicle was in Mission's possession.

Complainant's attorney filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles (Department) with an effective date of May 16, 2016.<sup>26</sup> Complainant never mailed a letter to Respondent informing them of his concerns with the vehicle. However, Complainant's attorney filed suit against Respondent alleging that

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<sup>16</sup> Complainant Ex. P-3, Repair Order dated September 14, 2015.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. P-4, Repair Order dated October 6, 2015.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> File Ex. 1, Lemon Law complaint signed May 16, 2016. Although the complaint was signed by Complainant on May 10, 2016, it was not received by Texas Department of Motor Vehicles until May 16, 2016, which is the effective date of the complaint.

Complainant's vehicle is defective and served notice of the lawsuit on Respondent on April 4, 2016, prior to the filing of the Lemon Law complaint.<sup>27</sup>

Ms. Rivas testified that she has not driven the vehicle since the repair performed on October 6, 2015. She feels that the vehicle has not been repaired and that the reason for it dying has not been determined.

During cross-examination, Ms. Rivas testified that Mission's service technicians installed two (2) sensors in the vehicle in an attempt to determine what was causing the vehicle to die. She failed to return the second sensor to Mission because she was angry. Ms. Rivas stated that she felt that the vehicle was dangerous and she did not want to drive it any longer. She did not feel that she should have to drive the vehicle any longer and that Mission's technicians should be driving it. However, Ms. Rivas did not leave the vehicle at Mission, despite her refusal to drive it. Ms. Rivas also testified that she has not really driven the vehicle since the September 14, 2015, repair visit.

Ms. Rivas also stated that she did not send a letter to Respondent advising them of Complainant's dissatisfaction with the vehicle. She had spoken to Respondent's representatives via telephone and once she and Complainant retained an attorney, she did not feel that she had to correspond with Respondent.

Ms. Rivas also testified that she took the vehicle to Mission for maintenance on August 26, 2015, but did not mention an issue with the vehicle dying during the visit.<sup>28</sup>

## **2. Mark Davis' Testimony**

Mark Davis, attorney, testified that he filed suit against Respondent and Mission. The affidavit of service was returned on April 4, 2016.

Mr. Davis also testified as to attorney fees. He is charging Complainant \$250 per hour for his services. Mr. Davis stated that he has worked for (10) hours for Complainant participating in meetings, drafting and preparing pleadings and correspondence, and representing him in the administrative hearings conducted by the Department. Mr. Davis indicated that Complainant has accumulated \$2500 in legal fees for Mr. Davis' representation.

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<sup>27</sup> Complainant Ex. P-7, Notice of Service, Affidavit of Service, USPS Form 3811, and Plaintiff's Original Petition and Discovery Requests to Mission Chevrolet and General Motor [sic] Company, p. 3.

<sup>28</sup> Respondent Ex. D-2, Repair Order dated August 26, 2015.

### C. Respondent's Evidence and Arguments

Michael Pritulsky, Field Service Engineer (FSE), testified for Respondent. Mr. Pritulsky has worked for 32 years in the automotive industry. He worked for 24 years as an automotive technical consultant for Respondent. Mr. Pritulsky has been working as an FSE for the past year and a half. As an FSE, Mr. Pritulsky provides support at the dealership level for Respondent. He investigates problem technical issues with Respondent's vehicles which cannot be resolved by dealers' technicians.

Mr. Pritulsky testified that he was dispatched to Mission in November of 2016 by Respondent's Brand Quality department. He arrived at Mission on November 11, 2015. He was informed by Mission's representative that Complainant's vehicle was having an intermittent stalling issue and that they had installed a virtual data recorder (VDR) in the vehicle in an attempt to troubleshoot the stalling issue. Mr. Pritulsky had prepared a Neo VI, a more advanced VDR, to install in Complainant's vehicle in an attempt to get the ECM calibrations from the vehicle's computers in an effort to determine why the vehicle was dying or stalling. This tool is not available to the dealer and can only be prepared by an FSE. Mr. Pritulsky installed the Neo VI in Complainant's vehicle and he and a dealer technician test drove the vehicle about 40 miles in an attempt to recreate the problem. During the test drive, Mr. Pritulsky made several right and left turns in the vehicle, since he was informed that the problem seemed to occur mostly when the vehicle was turning. Mr. Pritulsky checked the vehicle after the test drive and did not find any saved DTC's indicating a problem with the vehicle.

Mr. Pritulsky asked that Ms. Rivas go to Mission in order to be shown how to activate the Neo VI when a problem occurred. However, Ms. Rivas did not appear at Mission prior to Mr. Pritulsky leaving the dealer.

Mr. Pritulsky also testified that the dealer's records indicate that Mission's technicians drove the vehicle approximately 428 miles during the four (4) repair attempts on the vehicle and that the vehicle did not stall or die during any of the test drives.

On June 3, 2016, Mr. Pritulsky was dispatched to Mission again in order to perform a final repair attempt on the vehicle. Mr. Pritulsky was at Mission on June 8, 2016. Mission's representatives attempted to contact Ms. Rivas so she could take the vehicle in for the final repair attempt. However, Ms. Rivas never showed up. So, no final repair attempt was performed.

Mr. Pritulsky stated that the ECM was updated on September 14, 2015. However, he could not verify if the problem was resolved. However, he feels that the problem could have been repaired since Ms. Rivas drove the vehicle over 400 miles after the September repair. Mr. Pritulsky also stated that there could be hundreds, if not thousands, of reasons why a vehicle may die or stall.

During cross-examination, Mr. Pritulsky testified that he feels that Mission's service records are accurate. He also indicated that it is a safety concern if a vehicle stalls or dies while it's being driven.

#### **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.

The first issue to be addressed is whether there is actually a defect with the vehicle. The evidence indicates that the vehicle stalled or died on four (4) separate occasions while it was being driven. However, the evidence also indicates that the last such incident occurred sometime prior to September 14, 2016. Respondent's witness testified that the vehicle may be repaired since there have been no other incidents in over a year. The vehicle's mileage on September 14, 2015 was 4,767 and the mileage on the date of hearing was 5,909. It's impossible to determine if the problem still exists, since Ms. Rivas has refused to drive the vehicle in almost a year. Occupations Code § 2301.605 requires that the "nonconformity continues to exist" after repeated attempts to repair the vehicle in order for a Complainant to be provided repurchase or replacement relief. In addition, Complainant has the burden of proof to establish that the nonconformity continues to exist. The hearings examiner must hold that Complainant has not met this burden, since the problem has not recurred in over a year since the last incident.

In addition, the evidence presented at the hearing indicates that Complainant did not provide Respondent with a final opportunity to cure a defect with the vehicle. Occupations Code § 2301.606(c) provides that "an order issued under this subchapter [Subchapter M, Lemon Law] may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the

alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.” After Respondent was notified of the filing of the Lemon Law complaint by the Department in May of 2015, Respondent attempted to arrange a final repair attempt of the vehicle. Respondent’s FSE went to Mission on June 8, 2016, in an attempt to perform the final repair attempt and Ms. Rivas did not take the vehicle to the dealer.

From the evidence presented, it is apparent that Complainant has not met the requirements for replacement or repurchase relief under the Occupations Code, since there is no evidence that the problem continues to exist and because Complainant failed to allow Respondent a final opportunity to repair the vehicle.

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. On the date of hearing, the vehicle’s mileage was 5,909 and it remains under this warranty. Respondent is still under an obligation to repair any issues with the vehicle that are covered under the warranty.

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

### III. FINDINGS OF FACT

1. Christopher Rivas (Complainant) purchased a new 2015 Chevrolet Camaro RS on May 21, 2015, from Mission Chevrolet (Mission) in El Paso, Texas with mileage of 8 at the time of purchase.
2. The vehicle’s mileage on the date of hearing was 5,909.
3. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle was still in effect.
5. The primary driver of the vehicle is Josefina Rivas, Complainant’s mother.
6. The vehicle died on at least four (4) occasions when Ms. Rivas was driving it.

7. Complainant's vehicle was serviced by Respondent's authorized dealer, Mission, on the following dates because of Complainant's concern with the vehicle dying and stalling:
  - a. August 3, 2015, at 2,900 miles;
  - b. August 10, 2015, at 2,950 miles;
  - c. September 14, 2015, at 4,767 miles; and
  - d. October 6, 2015, at 4,960 miles.
8. On August 3, 2015, Mission's service technician did not find any diagnostic trouble codes (DTC's) stored on the vehicle's computers and could not duplicate the problem during a test drive, so he did not perform any repairs to the vehicle.
9. On August 10, 2015, Mission's service technician reprogrammed the vehicle's engine control module (ECM) pursuant to instructions from Respondent's Technical Service Bulletin (TSB) 15-06-04-003.
10. On September 14, 2015, Mission's service technician did not find any DTC's on the vehicle's computers and could not recreate the issue. The technician did add dielectric grease to the vehicle's ECM connectors and made sure that they were secure. In addition, a sensor was installed in the vehicle in an attempt to capture data from the vehicle's computer if the vehicle stalled again.
11. On October 6, 2015, Mission's service technician could not duplicate the issue and did not perform any repairs. The sensor was left on the vehicle.
12. On May 16, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Respondent attempted to perform a final repair attempt on the vehicle in June of 2016. However, Ms. Rivas did not take the vehicle to the dealer for the repair attempt.
14. On July 12, 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. A hearing in this case was originally scheduled for August 30, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. The parties appeared for the hearing, at which time the hearings examiner was informed that Complainant required a Spanish interpreter. As result, the hearing was continued for October 12, 2016, in order to arrange for the services of an interpreter. The hearing in this case convened and the record closed on October 12, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Mark Davis, attorney, in the hearing. Complainant was present at the hearing. Complainant's mother, Josefina Rivas, provided testimony. Also, present for Complainant was Bruce Gomez, paralegal. Respondent was represented by Samuel Snyder, attorney. J. T. Barry, District Manager for After-Sales, and Michael Pritulsky, Field Services Engineer, provided testimony for Respondent. Enrique Portugal provided Spanish interpretive services for Complainant and his mother.

#### 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 failed to prove by a preponderance of the evidence that the vehicle has a verifiable 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. Complainant did not provide Respondent with a final opportunity to cure any defect. Tex. Occ. Code § 2301.606(c)(2).

8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
9. 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-.613 is hereby **DISMISSED**.

**SIGNED December 8, 2016**



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