

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0276 CAF**

FLETCHER BENTON,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
AMERICAN HONDA MOTOR CO.,	§	
INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Fletcher Benton (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2016 Honda Accord. Complainant asserts that the view through the vehicle’s rear window is distorted and that this is a safety issue. American Honda Motors Co., Inc. (Respondent) argued that there is no defect with the vehicle, that the issue complained of has to do with the design of the window, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect. Therefore, 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 closed on September 7, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Fletcher Benton, represented himself. Respondent was represented by Steven Selix, Mediation Specialist. Kyle Krawczyk, District Parts and Service Manager, and Timothy Wright, Streater-Smith Honda’s Service Manager, were also present to testify on Respondent’s behalf.

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

Complainant purchased a 2016 Honda Accord from Streater-Smith Honda (Streater-Smith) in Conroe, Texas on March 26, 2016.⁶ The vehicle had mileage of 15 at the time of purchase.⁷ Respondent's new vehicle limited warranty provides coverage for three (3) years or 36,000 miles, whichever comes first.⁸ On the date of hearing the vehicle's mileage was 6,406. At this time, Respondent's new vehicle limited warranty for the vehicle is still in effect.

Complainant testified that the vehicle's rear window is defective because the view through the rear view mirror is distorted and does not provide a clear, unobstructed view behind him when he is driving the vehicle. The distortion is worse at night or when it's raining.

Complainant first noticed the issue soon after purchasing the vehicle. He was driving the vehicle on March 28, 2016, and noticed that the view through the rear window was distorted. He took the vehicle to Streater-Smith to raise his concerns regarding the issue. The service advisor did verify that the view was distorted, but indicated that the dealer could not look at the vehicle that day. So, Complainant was asked to bring the vehicle back to Streater-Smith on April 2, 2016.

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 Buyer's Order dated March 26, 2016.

⁷ Complainant Ex. 2, Odometer Disclosure Statement dated March 26, 2016.

⁸ Complainant Ex. 6, Honda Warranty Manual.

On April 2, 2016, Complainant took the vehicle to Streater-Smith as requested. Streater-Smith's representative informed Complainant that comparable vehicles had the same type of window and that no repair to the vehicle was going to be performed.⁹ The vehicle's mileage on this occasion was 356.¹⁰

On April 5, 2016, Complainant mailed a letter to Respondent advising them of his concerns with the vehicle.¹¹ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) with an effective date of May 20, 2016, regarding the vehicle.¹²

Complainant testified that he spoke to one of Respondent's representatives regarding the issue of the rear window distortion. However, he was informed that the vehicle could not be repaired. In addition, he met with some of Respondent's representatives in June of 2016 at Streater-Smith and they acknowledged to him that there was a distortion of the view through the rear window, but that this was a characteristic feature of all Accords.

C. Respondent's Evidence and Arguments

1. Steven Selix' Testimony

Steven Selix, Mediation Specialist, testified for Respondent. He stated that the vehicle does not have a defect. The issue complained of by Complainant is a normal operating characteristic of the vehicle. All Accords have the same type of rear window. Mr. Selix also stated that Respondent's warranty will not cover repairs for issues that are not the result of a defect.

Mr. Selix also testified that Respondent did not avail themselves of a final repair attempt on the vehicle because they felt that the issue was not warrantable because there was no defect.

2. Kyle Krawczyk's Testimony

Kyle Krawczyk, District Parts and Service Manager, has worked for Respondent for 19 years. In addition, he was a fixed operations director for 16 years. He has worked extensively with parts and service for Respondent.

⁹ Complainant Ex. 3, Repair Order dated April 2, 2016.

¹⁰ *Id.*

¹¹ Complainant Ex. 4, Letter to American Honda Motor Co., Inc. dated April 5, 2016.

¹² Complainant Ex. 5, Lemon Law complaint dated May 20, 2016. Although the complaint was signed by Complainant on May 15, 2016, it was not received by Texas Department of Motor Vehicles until May 20, 2016, which is the effective date of the complaint.

Mr. Krawczyk testified that he met with Complainant and Timothy Wright, Streater-Smith's Service Manager, on June 10, 2016, at Streater-Smith to discuss the matter of the rear window distortion. They looked at the rear windows of four (4) other 2016 Accords on the dealer's lot and all of them exhibited the same characteristics when looking through the rear window. In addition, the part number for the rear window for all of the vehicles was the same.

3. Timothy Wright's Testimony

Timothy Wright, Streater-Smith's Service Manager, has worked as an automotive technician since 1991. He's worked for Respondent's dealerships for the past 13 years. He became a service manager in 2014. Mr. Wright has eight (8) Automotive Service Excellence (ASE) certifications. In addition, he is a Honda Master Certified technician.

Mr. Wright testified that Complainant took his vehicle to Streater-Smith on April 2, 2016, to complain that the view through the rear window was distorted. He stated that there was no need for a repair to Complainant's vehicle because the other Accords on the dealer's lot had the same type of rear window.

In addition, Mr. Wright met with Complainant and Mr. Krawczyk on June 10, 2016. Mr. Wright stated that all of the Accords that they compared Complainant's vehicle to had the same type of rear window. Mr. Wright also testified that he sat in Complainant's vehicle and looked out the rear window, but did not feel that the visibility was compromised in any way. He did not feel that the view through the rear window was distorted. He stated that the rear window is operating as designed.

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 the vehicle in question has a defect or condition which creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In

the present case, the evidence indicates that the vehicle does not have such a defect or non-conformity. The evidence reveals that the issue complained of by Complainant, the distortion viewed through the rear windshield, is a design issue which is not a defect and, therefore, not a reason for recovery under the Lemon Law. As such, the hearings examiner finds that repurchase or replacement relief for Complainant is not warranted since there is no defect with the vehicle's rear window.

Respondent's new vehicle limited warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 6,406. Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

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

III. FINDINGS OF FACT

1. Fletcher Benton (Complainant) purchased a 2016 Honda Accord on March 26, 2016, from Streater-Smith (Streater-Smith) Honda in Conroe, Texas with mileage of 15 at the time of purchase.
2. The manufacturer of the vehicle, American Honda Motor Co., Inc. (Respondent), issued a new vehicle limited warranty for the vehicle for three (3) years or 36,000 miles.
3. The vehicle's mileage on the date of hearing was 6,406.
4. At the time of hearing the warranty for the vehicle was still in effect.
5. Complainant feels that the vehicle's rear window is defective because of the distorted view through the window.
6. On March 28, 2016, Complainant took the vehicle to Streater-Smith Honda to complain about the distorted view through the vehicle's rear window. Complainant was scheduled an appointment with the dealer for April 2, 2016, because the dealer's technicians could not look at the vehicle at the time.
7. On April 2, 2016, Complainant took the vehicle to Streater-Smith for repair for the rear window issue. At this time, Complainant was advised that all of the 2016 Accords on the dealer lot had the same type of rear window and that there was no repair for the issue.

8. On May 20, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
9. On June 10, 2016, Complainant met with Kyle Krawczyk, Respondent's District Parts and Service Manager, and Timothy Wright, Streater-Smith's Service Manager, regarding the vehicle. At this time, Complainant was informed that the issue was not a defect but a characteristic of the vehicle.
10. 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.
11. The hearing in this case convened and the record closed on August 8, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Fletcher Benton, represented himself. Respondent was represented by Steven Selix, Mediation Specialist. Kyle Krawczyk, District Parts and Service Manager, and Timothy Wright, Streater-Smith Honda's Service Manager, were also present to testify on Respondent's behalf.

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 did not 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. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
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 September 15, 2016.



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