

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0371 CAF**

ANDREW D. WILSON,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FORD MOTOR COMPANY,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Andrew D. Wilson (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.204 (Warranty Performance) for an alleged defect in his 2013 Ford Focus SE. Complainant asserts that the vehicle has transmission and clutch issues. Ford Motor Company (Respondent) asserts that the vehicle has been repaired and that no relief is warranted. The hearings examiner concludes that the vehicle 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 closed on March 8, 2017, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Complainant, Andrew D. Wilson, was represented by his wife, Rebecca Wilson, at the hearing. Mr. Wilson and his daughter, Hannah Wilson, also testified in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.606(d) provides that a “[a] proceeding under this subchapter [Subchapter M – Warranties: Rights of Vehicle Owners (Lemon Law)] must be commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.” A Complainant must file his Lemon Law complaint within the above time frame in order to have the vehicle repurchased or replaced.

If the vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant 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.” This section applies only if the Complainant raised his concern while the vehicle’s warranty was still in effect.

B. Complainant’s Evidence and Arguments

1. Rebecca Wilson’s Testimony

Complainant purchased a new 2013 Ford Focus SE from Town East Ford (Town East) in Mesquite, Texas, on August 3, 2013, with mileage of 25 at the time of delivery.^{1,2} Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for the first three (3) years of ownership or the first 36,000 miles, whichever comes first.³ In addition, Respondent provided a five (5) year or 60,000 mile powertrain warranty.⁴ On the date of hearing the vehicle’s mileage was 32,960. The bumper-to-bumper warranty for the vehicle has expired, since the vehicle is over three (3) years old.

Ms. Wilson testified that she and Complainant purchased the vehicle for their daughter to drive. Ms. Wilson stated that the vehicle has transmission and clutch issues which cause the transmission to slip and the vehicle to hesitate. On occasion, the vehicle emits a grinding/clapping noise. She feels that the vehicle also lacks acceleration.

Ms. Wilson testified that neither she nor Complainant were aware of a problem with the vehicle until sometime in September of 2014. Ms. Wilson was a passenger in the vehicle while her daughter was driving and noticed that the vehicle seemed to hesitate as they were driving through an intersection. Ms. Wilson stated that they were concerned with the vehicle, so they took it to Town East for repair on September 12, 2014. Complainant informed the dealer’s service advisor that the vehicle hesitated and was making a grinding noise when the driver made a turn.⁵ The service technician reprogrammed the vehicle’s powertrain control module (PCM) and transmission control module.⁶ In addition, he removed and replaced the vehicle’s dry clutch and both input seals in order to address the two (2) concerns.⁷ The vehicle’s mileage was 7,767 at the

¹ Complainant Ex. 1, Purchase Agreement dated August 3, 2013.

² Complainant Ex. 2, Odometer Disclosure Statement dated August 3, 2013.

³ Complainant Ex. 11, 2013 Model Year Ford Warranty Guide, p. 8.

⁴ *Id.*

⁵ Complainant Ex. 3, Repair Order dated September 12, 2014.

⁶ *Id.*

⁷ *Id.*

time.⁸ The vehicle was in Town East's possession for 12 days. Complainant was provided with a loaner vehicle during this period of time.

The vehicle drove better after the repair. Ms. Wilson testified that almost a year later (September 25, 2015) she took the vehicle back to Town East. She doesn't recall why she took it in for repair. The dealer's service technician reprogrammed the PCM and TCM again.⁹ The mileage on the vehicle when Ms. Wilson took it to the dealer on this occasion was 15,495.¹⁰ The vehicle was returned to her the same day. She was not provided with a loaner vehicle while the vehicle was being repaired.

The vehicle was driven intermittently for a while. Complainant then started driving it. He noticed that the vehicle was shuddering, hesitating, and making a clattering noise when he drove it. Complainant took the vehicle to Town East on March 21, 2016. The technician verified the concerns.¹¹ He replaced the vehicle's dry clutch in order to address them.¹² The mileage on the vehicle when Complainant delivered it to the dealer on this occasion was 24,380.¹³ The vehicle was returned to Complainant three (3) days later. Complainant was provided with a loaner vehicle while his vehicle was in the dealer's possession.

Ms. Wilson testified that the vehicle was driving better after the repair. Ms. Wilson's daughter returned home from school and began driving the vehicle again. She noticed that the vehicle was shuddering and jerking when she was driving it. As a result, they took the vehicle to Town East on August 1, 2016, to have the issue addressed. The dealer's service technician reprogrammed the vehicle's PCM and TCM.¹⁴ In addition, the technician determined that the diagnostic readings for the clutch were out of specification; so, he ordered a new clutch for the vehicle.¹⁵ The vehicle's mileage on this occasion was 29,057.¹⁶ The vehicle was in Town East's possession for four (4) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Since a new clutch was ordered by the technician, the vehicle was returned to Complainant. He was informed that someone from the dealership would contact him when the new clutch was delivered. Complainant was contacted by a dealer representative when the part arrived. Complainant took the vehicle back to Town East on August 15, 2016, in order to have the new

⁸ *Id.*

⁹ Complainant Ex. 4, Repair Order dated September 25, 2015.

¹⁰ *Id.*

¹¹ Complainant Ex. 5, Repair Order dated March 21, 2016.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 6, Repair Order dated August 1, 2016.

¹⁵ *Id.*

¹⁶ *Id.*

clutch installed. However, the technician determined that the vehicle was operating within the manufacturer specifications when he inspected it.¹⁷ As a result, the new clutch was not installed and the vehicle was returned to Complainant without any repairs being performed. The vehicle's mileage when it was turned over to the dealer for repairs was 29,372.¹⁸ The vehicle was in Town East's possession for five (5) days during this visit. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant mailed a letter to Respondent notifying them of his dissatisfaction with the vehicle on August 10, 2016.¹⁹ Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles (Department) on August 16, 2016.²⁰

Ms. Wilson testified that she received an email from Maria Diaz, Respondent's legal analyst, requesting that Respondent be allowed a final repair attempt on the vehicle. The final repair attempt was performed at Red McCombs Ford in San Antonio, Texas on September 30, 2016. No repairs were performed as the technician determined that the vehicle was operating within manufacturer's specifications.

In December of 2016, Ms. Wilson noticed that the vehicle was shaking and shuddering again. She and Complainant took the vehicle to Town East for repair on December 19, 2016. The technician replaced the vehicle's clutch assembly to resolve the issue.²¹ The vehicle's mileage on this occasion was 31,920.²² The vehicle was in the dealer's possession for five (5) days. Complainant received a loaner vehicle while his vehicle was being repaired.

Ms. Wilson testified that the vehicle seems to be driving fine since it has only been driven about 1000 miles since the last clutch replacement. She stated that the vehicle still hesitates intermittently at between 25 to 40 mph. She's not happy with the vehicle as she anticipated that her daughter would be able to drive the vehicle for at least ten (10) years before it needed to be replaced.

2. Andrew D. Wilson's Testimony

Andrew D. Wilson, Complainant, testified that he began driving the vehicle in the beginning of 2016. Prior to that the vehicle had been driven primarily by his daughter, Hannah. Mr. Wilson stated that when he first started driving the vehicle, he did not notice it shuddering. However,

¹⁷ Complainant Ex. 7, Repair Order dated August 15, 2016.

¹⁸ *Id.*

¹⁹ Complainant Ex. 9, Letter To Whom It May Concern dated August 10, 2016.

²⁰ Complainant Ex. 8, Lemon Law Complaint Form dated August 16, 2016.

²¹ Complainant Ex. 10, Repair Order dated December 19, 2016.

after a while the vehicle began to shudder when he drove it. He said that at acceleration from a stop, the engine's RPM's seemed to spike at times and the vehicle hesitates for a second or two before it accelerates. He stated that the vehicle still hesitates and shudders periodically, even after the last repair performed in December of 2016.

Mr. Wilson stated that he does like the vehicle and that his daughter has taken good care of it.

3. Hannah Wilson's Testimony

Hannah Wilson, Complainant's daughter, testified that the vehicle will not accelerate properly. She steps on the gas pedal and the vehicle will not accelerate. Ms. Wilson stated that the vehicle used to intermittently make a crunching noise from under the hood at acceleration. This was during the first year after purchasing the vehicle. The vehicle is not making the noise any longer. She last heard the noise at least six (6) months prior to the hearing date.

Ms. Wilson said that the vehicle will sometimes hesitate about two (2) to three (3) seconds before accelerating. The vehicle is still acting the same as before the final repair and is still hesitating. She stated that she sometimes feel scared when trying to accelerate on to a freeway.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst, testified for Respondent. She stated that Respondent received Complainant's notification letter on August 15, 2016. Ms. Diaz contacted Complainant on August 18, 2016, to schedule a final repair attempt on the vehicle. At the time, Complainant was not sure if he wanted a final repair attempt to be performed, since he had just had the vehicle repaired for the issue in question. However, about a week later, Complainant contacted Ms. Diaz to schedule the final repair attempt.

The final repair attempt was conducted on September 30, 2016, at Red McCombs Ford in San Antonio, Texas. Kurt Kindler, Field Service Engineer, performed an inspection and test drive of the vehicle. He did not feel a transmission shudder during his test drive and determined that the vehicle was operating as designed.²³

Ms. Diaz testified that Complainant's vehicle has a DP6 transmission which is an automatic transmission that is designed and operates like a manual transmission.²⁴ The gear shifts can seem too harsh or too soft for someone not used to driving a vehicle with this type of transmission.²⁵

²² *Id.*

²³ Respondent Ex. 1, FSE Vehicle Inspection Report dated September 30, 2016.

²⁴ Respondent Ex. 2, Manufacturer Response Form undated, p. 2.

²⁵ *Id.*

Respondent's warranty for the vehicle's powertrain provides coverage for five (5) years or 60,000 miles. In addition, Respondent has provided a warranty for the vehicle's TCM for ten (10) years or 150,000 miles.

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. The evidence provided by the parties and observations made during the vehicle test drive indicates that the vehicle is currently driving as designed. However, there does seem to be an intermittent problem with the vehicle's clutch as evidenced by the fact that the clutch has been replaced three (3) times since Complainant purchased the vehicle. The last clutch replacement took place approximately two (2) and a half months prior to the hearing date and seems to have resolved the shuddering issue. In addition, the hearings examiner did not feel any untoward hesitation or shuddering during the test drive taken at the time of hearing. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired. Therefore, Complainant will not be granted repair relief at this time.

Respondent's warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. In addition, Respondent has provided a powertrain warranty for the vehicle good for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 32,960 and Complainant has owned the vehicle for over three (3) and a half years. Respondent's bumper-to-bumper warranty has expired since the vehicle has been in service for over three (3) years. However, Respondent's powertrain warranty is still in effect and Respondent is obligated to perform any repairs to the vehicle covered by the powertrain warranty. In addition, Respondent has warranted the vehicle's TCM for ten (10) years or 150,000 miles.

Respondent will also continue to be obligated to perform repairs for the complained of issue for as long as Complainant owns the vehicle. Tex. Occ. Code § 2301.603(b)(1).

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Andrew D. Wilson (Complainant) purchased a new 2013 Ford Focus SE on August 3, 2013, from Town East Ford in Mesquite, Texas, with mileage of 25 at the time of delivery.

2. Respondent, Ford Motor Company, provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle.
3. The vehicle's mileage on the date of hearing was 32,960; however, the vehicle has been owned by Complainant for over three (3) and a half years. Respondent has warranted the vehicle's powertrain for five (5) years or 60,000 miles and the transmission control module (TCM) for ten (10) years or 150,000 miles.
4. At the time of hearing Respondent's bumper-to-bumper warranty was expired. However, the powertrain and TCM warranties are still in effect.
5. Complainant feels that the vehicle has transmission or clutch issues which cause the vehicle to shudder, hesitate, and fail to accelerate properly when it's being driven.
6. Complainant's vehicle was serviced by Town East Ford in Mesquite, Texas, one of Respondent's authorized dealers, on the following dates because of Complainant's concerns regarding the vehicle shuddering and hesitating:
 - a. September 12, 2014, at 7,767 miles;
 - b. September 25, 2015, at 15,495 miles;
 - c. March 21, 2016, at 24,380 miles;
 - d. August 1, 2016, at 29,057 miles; and
 - e. August 15, 2016, at 29,372 miles.
7. On September 12, 2014, the dealer's technician reprogrammed the vehicle's powertrain control module (PCM) and transmission control module (TCM). In addition, he replaced the vehicle's dry clutch and both input seals in order to address Complainant's concerns.
8. On September 25, 2015, the technician reprogrammed the vehicle's PCM and TCM and performed a clutch relearn on the vehicle.
9. On March 21, 2016, the technician replaced the vehicle's dry clutch to address Complainant's concern with the vehicle shuddering and hesitating.
10. On August 1, 2016, the technician reprogrammed the vehicle's PCM and TCM. He also determined that the vehicle needed a new clutch, so he special ordered the part.
11. Complainant returned the vehicle to Town East on August 15, 2016, in order to have the clutch replaced, but the technician determined that the vehicle was operating within specifications, so no repair was done.

12. On August 16, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Respondent's field service engineer, Kurt Kindler, performed a final repair attempt on the vehicle on September 30, 2016.
14. Mr. Kindler determined that the vehicle was operating within manufacturer's specification at the time of the final repair attempt.
15. On December 19, 2016, Town East's service technician replaced the vehicle's clutch assembly in order to address the vehicle's shuddering and hesitation.
16. On September 30, 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.
17. The hearing in this case convened and the record closed on March 8, 2017, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Complainant, Andrew D. Wilson, was represented by his wife, Rebecca Wilson, at the hearing. Mr. Wilson and his daughter, Hannah Wilson, also testified in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst.

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 failed to prove 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 relief pursuant to Texas Occupations Code §§ 2301.204 is hereby **DISMISSED**.

SIGNED March 29, 2017.



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