

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0378 CAF**

<b>ROBERTO ROSAS,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>JAGUAR LAND ROVER NORTH AMERICA LLC,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Roberto Rosas (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2015 Jaguar XF. Complainant asserts that the vehicle shudders intermittently when he steps on the brakes. Jaguar Land Rover North America LLC (Respondent) argued that the vehicle does not have any defects 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 was closed on January 31, 2017, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant, Roberto Rosas, was present to testify in the hearing. He was represented by Glenn Van Shellenbeck, friend. Also present to testify for Complainant was Rosana Orr, wife. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins & Irons LLP. Mr. Chambless did not offer any testimony. Sergio Cano provided Spanish interpretative services for Complainant.

**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

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

value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

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.<sup>6</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a new 2015 Jaguar XF from Jaguar Land Rover Houston North in Houston, Texas on August 18, 2015, with mileage of 23 at the time of delivery.<sup>7</sup> Respondent provided a bumper-to-bumper warranty for the vehicle with coverage for four (4) years or 50,000 miles, whichever comes first.<sup>8</sup> On the date of hearing the vehicle's mileage was 5,548.

Complainant feels that the vehicle shudders or jumps intermittently when coming to a full stop. He first experienced the issue when driving the vehicle to his home in San Antonio after purchasing it in Houston. He initially thought that the issue would go away after driving the vehicle for a while. When Complainant's son indicated that he felt the vehicle shuddering when he stepped on the brakes Complainant decided to take the vehicle to a dealer for repair.

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

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</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>7</sup> Complainant Ex. 1, Evidence Packet – Motor Vehicle Purchase Order dated August 8, 2015, p. 1.

<sup>8</sup> Complainant Ex. 1, Evidence Packet – XF, XJ, XK, F-Type Passport to Service, p. 4.

On November 6, 2015, Complainant took the vehicle to Barrett Jaguar (Barrett) in San Antonio, Texas to address the issue. Barrett's service technician inspected and test drove the vehicle and could not duplicate the concern.<sup>9</sup> The vehicle's mileage at the time of the repair visit was 443.<sup>10</sup> The vehicle was in the dealer's possession for four (4) days. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Complainant continued to drive the vehicle and continued to experience a shudder when he came to a complete stop. As a result, Complainant took the vehicle to Barrett to address the issue on December 15, 2015. Barrett's service technician verified the concern and performed a software update to the vehicle's transmission control module (TCM).<sup>11</sup> The vehicle's mileage on this repair visit was 676.<sup>12</sup> The vehicle was in the dealer's possession for two (2) days.<sup>13</sup> Complainant was provided with a loaner vehicle while his vehicle was being repaired.<sup>14</sup>

Complainant was disappointed that the vehicle didn't seem to be repaired On December 26, 2015. Complainant took the vehicle to Barrett to address the shuddering concern. Barrett's service technician verified the concern and determined that the shuddering was being caused by a rough or delayed downshift when coming to a complete stop in the vehicle.<sup>15</sup> The technician removed and replaced the vehicle's transmission and reprogrammed the vehicle's TCM.<sup>16</sup> The vehicle's mileage on this repair visit was 826.<sup>17</sup> The vehicle was in the dealer's possession for 17 days during this repair visit. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he was not informed that the vehicle's transmission was replaced. He stated that Barrett's service advisor would give him vague explanations as to what work was performed on each repair visit. On the way home from picking up his vehicle on January 12, 2015, Complainant felt that the vehicle was driving the same as before he took it for repair. He felt that the dealer did not have a solution for the issue. He continued to drive the vehicle for several months while deciding what to do about his concern.

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<sup>9</sup> Complainant Ex. 1, Evidence Packet – Repair Order dated November 6, 2015, pp. 11-12.

<sup>10</sup> *Id.*

<sup>11</sup> Complainant Ex. 1, Evidence Packet – Repair Order dated December 15, 2015, p. 13.

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

<sup>15</sup> Complainant Ex. 1, Evidence Packet – Repair Order dated December 26, 2015, pp. 15-16.

<sup>16</sup> *Id.*

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

On August 13, 2016, Complainant took the vehicle to Barrett for repair. Barrett's service technician test drove the vehicle and also a comparable vehicle.<sup>18</sup> The technician determined that the vehicle was driving as designed, since the vehicle's engine had four (4) cylinders and not six (6) cylinders.<sup>19</sup> The vehicle's mileage was 3,194 at the time of the visit.<sup>20</sup> The vehicle was in the dealer's possession for five (5) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On August 11, 2016, Complainant mailed a letter to Respondent notifying them of his dissatisfaction with the vehicle.<sup>21</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on August 16, 2016.<sup>22</sup>

Complainant testified that he has been very disappointed in the vehicle. He feels that his health has been affected due to the stress of dealing with the vehicle. Complainant stated that the vehicle's brakes have always worked and stopped the vehicle. However, he still feels that the vehicle is unsafe. Complainant stated that he tries not to drive the vehicle on the highway.

During cross examination, Complainant testified that he is the primary driver of the vehicle and drives to and from work. When he test drove a vehicle at the dealership prior to purchasing the vehicle in question Complainant drove a vehicle with a six (6) cylinder engine. He decided to purchase a vehicle with a four (4) cylinder engine in order to pay less for the vehicle and for better fuel consumption.

Complainant took the vehicle to Barrett for inspection by Respondent on October 5, 2016. However, he did not inform Respondent of the appointment date prior to taking the vehicle to Barrett as requested by Respondent's representative via email on September 14, 2016.<sup>23</sup> Barrett's technician test drove the vehicle with Complainant on October 5, 2016. He informed Complainant that the shuddering was a downshift in the transmission to first gear and was normal for the vehicle.<sup>24</sup> The technician told Complainant that this was a vehicle design issue because the vehicle had a four (4) cylinder engine.

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<sup>18</sup> Complainant Ex. 1, Evidence Packet – Repair Order dated August 13, 2016, pp. 17-18.

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

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

<sup>21</sup> Complainant Ex. 1, Evidence Packet – Letter to Jaguar Land Rover North America, LLC dated August 11, 2016, p. 41.

<sup>22</sup> Complainant Ex. 2, Lemon Law Complaint dated August 16, 2016. Complainant signed and dated the complaint on August 12, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until August 16, 2016, which is the effective date of the complaint.

<sup>23</sup> Complainant Ex. 1, Evidence Packet – Email correspondence dated September 14, 2016, p. 30.

<sup>24</sup> Complainant Ex. 1, Evidence Packet – Repair Order dated October 5, 2016, pp. 21-22.

Complainant has not had the vehicle appraised to determine whether it has suffered a reduction in value. He also has not attempted to trade in the vehicle to determine its current value.

Complainant testified that during the test drive taken at the time of hearing he felt the vehicle shudder several times. He felt it was noticeable. However, there was no movement in the vehicle after coming to a complete stop.

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

John Chambless, attorney, represented Respondent in the hearing. He did not offer any testimony.

### **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.

The evidence presented at the hearing established that the vehicle's transmission and braking system are working as designed and that there is no defect in the vehicle. The evidence reveals that the vehicle's engine has four (4) cylinders which will not permit the vehicle's transmission to shift as smoothly as a vehicle with a six (6) cylinder engine. This shows that the concern is a design issue and not a defect. The hearing examiner must hold that Complainant has not established the existence of a defect in the vehicle. As such, Complainant is not entitled to repurchase or replacement relief.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 5,548 and it remains under this warranty. As such, 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. Roberto Rosas (Complainant) purchased a new 2015 Jaguar XF on August 18, 2015, from Jaguar Land Rover Houston North in Houston, Texas, with mileage of 23 at the time of delivery.
2. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (Respondent) issued a bumper-to-bumper warranty for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 5,548.
4. At the time of hearing the vehicle was still under warranty.
5. After purchasing the vehicle in Houston and while driving to his home in San Antonio, Complainant began experiencing a shudder or jump in the vehicle when he applied the brakes.
6. Complainant took the vehicle to Respondent's authorized dealer, Barrett Jaguar (Barrett) in San Antonio, Texas, in order to address his concern with the vehicle's brake system on the following dates:
  - a. November 6, 2015, at 443 miles;
  - b. December 15, 2015, at 676 miles;
  - c. December 26, 2015, at 826 miles; and
  - d. August 13, 2016, at 3,194 miles.
7. On November 6, 2015, Barrett's service technician inspected the vehicle, but was unable to duplicate the concern. No repair was performed to address Complainant's concern.
8. On December 15, 2015, Barrett's technician verified Complainant's concern and performed a software update to the vehicle's transmission control module (TCM) in order to improve the transmission's shift quality.
9. On December 26, 2016, Barrett's technician verified the concern and replaced the vehicle's transmission to address the issue.

10. On August 13, 2016, Barrett's technician test drove the vehicle and compared the drive to a drive in a similar vehicle and determined that Complainant's vehicle did not exhibit any abnormal behavior. No repair was performed for the issue.
11. On August 16, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On October 5, 2016, Complainant took the vehicle to Barrett for further repair. However, he did not notify Respondent of the repair appointment until he was already at Barrett's location.
13. On October 5, 2016, Barrett's technician inspected the vehicle and took a test drive with Complainant to determine the nature of the concern and determined that the vehicle was operating normally, since Complainant's vehicle contained a four (4) cylinder engine.
14. On November 2, 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. The hearing in this case convened and the record was closed on January 31, 2017, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant, Roberto Rosas, was present to testify in the hearing. He was represented by Glenn Van Shellenbeck, friend. Also present to testify for Complainant was Rosana Orr, wife. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins & Irons LLP. Mr. Chambless did not offer any testimony. Sergio Cano provided Spanish interpretation services for Complainant.

#### 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 February 27, 2017**

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

WID #899128