

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0009 CAF**

MOHAMMAD SHAHIN,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FCA US LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Mohammad Shahin (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2016 Dodge Challenger Hellcat. Complainant asserts that the vehicle is defective since the vehicle’s check engine light (CEL) has illuminated several times since he purchased the vehicle. FCA US LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, 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 February 15, 2017, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Mohammad Shahin, represented himself at the hearing. Also, testifying for Complainant were Tanya Rangel, wife, and Shahin Shahin, son. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Trey Dicarlo, Area Manager, testified for Respondent. Brent Donley, District Manager, was present for Respondent as an observer.

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 manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

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.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2016 Dodge Challenger Hellcat from Meador Dodge–Chrysler–Jeep–Ram (Meador) in Fort Worth, Texas on October 23, 2015, with mileage of 23 at the time of delivery.^{7,8} Respondent provided a bumper-to-bumper express warranty good for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles. On the date of hearing the vehicle's mileage was 29,737. Respondent's warranties were still in effect at the time of hearing.

1. Mohammad Shahin's Testimony

Complainant testified that he is dissatisfied with the vehicle because the CEL has illuminated several times since he purchased the vehicle. Complainant feels that the vehicle has lost value due to the number of repairs performed on it and wants the vehicle repurchased or replaced by Respondent.

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 1, Purchase Order dated October 23, 2015.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated October 23, 2015.

Sometime after purchasing the vehicle, Complainant observed that the CEL illuminated. He took the vehicle to Meador to determine the cause of the light illuminating on February 29, 2016. Meador's service technician found a diagnostic trouble code (DTC) indicating that the vehicle's bank 2 knock sensor circuit was not performing properly.⁹ The technician replaced the right side knock sensor in order to address the concern.¹⁰ The vehicle's mileage on this occasion was 8,937.¹¹ The vehicle was in Meador's possession for two (2) days during this repair. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

The vehicle drove fine after the repair. However, the CEL illuminated again in April of 2016. Complainant took the vehicle to Meador on April 7, 2016, in order to have the issue addressed. Meador's technician found an exhaust valve performance fault and determined that an actuator was broken.¹² The technician indicated on the repair order that a repair was declined.¹³ However, Complainant testified that he never declined a repair to the vehicle. Complainant stated that he was informed verbally that the technician had found a code and performed a repair to correct the code. The vehicle's mileage on this occasion was 11,243.¹⁴ Complainant was provided with a loaner vehicle while his vehicle was being repaired. Meador had possession of the vehicle for one day.

Complainant testified that the CEL illuminated again a few weeks later. Complainant took the vehicle to Meador for repair on April 27, 2016. Complainant was told that a code was discovered and the vehicle was repaired. The vehicle's mileage on this occasion was 13,099.¹⁵ The vehicle was in the dealer's possession for two (2) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that a few days later, the vehicle's CEL illuminated again. Complainant took the vehicle to Meador for repair on May 5, 2016. Meador's technician determined that the knock sensor code indicated that the fuel being used in the vehicle was low octane.¹⁶ No repair was performed. Complainant testified that he always used premium gas (93 octane) fuel for the vehicle. The vehicle's mileage on this occasion was 13,660.¹⁷ The vehicle was in Meador's possession for about 22 days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

⁹ Complainant Ex. 3, Repair Order dated February 29, 2016.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 4, Repair Order dated April 7, 2016.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order dated April 27, 2016.

¹⁶ Complainant Ex. 7, Repair Order dated May 5, 2016.

¹⁷ *Id.*

The vehicle's CEL illuminated again a few days after Complainant had picked up the vehicle from Meador. Complainant took the vehicle back to Meador on June 1, 2016. Meador's technician determined that the DTC found on the vehicle's computer indicated that the problem was caused by the use of low octane fuel.¹⁸ One of Respondent's technicians also inspected the vehicle and came to the same conclusion.¹⁹ As a result, no repairs were performed on the vehicle. The vehicle's mileage on this occasion was 14,775.²⁰ The vehicle was in Meador's possession for repair for approximately five (5) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

About two (2) months later the CEL illuminated again. On August 1, 2016, Complainant took the vehicle to Meador for repair on August 1, 2016. The technician replaced and reprogrammed the vehicle's powertrain control module (PCM) because he determined that the original PCM had suffered an internal failure.²¹ The vehicle's mileage on this occasion was 17,526.²² The vehicle was in Meador's possession for 16 days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

While the vehicle was in Meador's possession it was also determined that the knock sensor pins were loose.²³ The technician replaced the knock sensor pins to address the issue.²⁴ The vehicle's mileage on this occasion was 17,812.²⁵ The vehicle was returned to Complainant on August 22, 2016. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

The CEL illuminated soon after Complainant had picked up the vehicle from Meador. Complainant took the vehicle for repair to Meador on September 3, 2016. At this time, Complainant was informed by Meador's service advisor that they could not repair the problem. The vehicle's mileage on this occasion was 19,201.²⁶

Complainant testified that he contacted Respondent's customer service line. The representative advised Complainant to take the vehicle to a different dealer for repair. So, Complainant took the vehicle to AutoNation Chrysler–Dodge–Jeep–Ram (AutoNation) in North Richland Hills, Texas on September 6, 2016. AutoNation's technician found a DTC on the vehicle's computer module

¹⁸ Complainant Ex. 8, Repair Order dated June 1, 2016.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 9, Repair Order dated August 1, 2016.

²² *Id.*

²³ Complainant Ex. 10, Repair Order dated August 8, 2016.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Complainant Ex. 11, Repair Order dated September 3, 2016.

and tested the vehicle's wiring and connectors.²⁷ The technician was unable to duplicate the problem after test driving the vehicle.²⁸ No repairs were performed at the time. The vehicle's mileage on this occasion was 19,356.²⁹ The vehicle was in AutoNation's possession for six (6) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On August 30, 2016, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.³⁰ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on September 14, 2016.³¹

Complainant took the vehicle to AutoNation on September 21, 2016, because the CEL illuminated again. AutoNation's technician started the vehicle hot and cold several times and test drove the vehicle, but could not duplicate the problem.³² The vehicle's mileage on this occasion was 19,548.³³ The vehicle was in AutoNation's possession for eight (8) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant picked up the vehicle from AutoNation on September 29, 2016. He returned the vehicle the same day because the CEL had illuminated. AutoNation's technician installed an overlay harness from the PCM to the knock sensor 2.³⁴ The technician removed and replaced the PCM connector and found that one of the pins in the connector was cracked.³⁵ The technician replaced the pin and wire and reset the PCM.³⁶ The vehicle's mileage on this occasion was 19,786.³⁷ The vehicle was in AutoNation's possession for 29 days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that since the repair that took place on September 29, 2016, the vehicle's CEL has not illuminated. He feels that the vehicle has been repaired.

²⁷ Complainant Ex. 12, Repair Order dated September 6, 2016.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Complainant Ex. 16, Letter to Customer Relations, Chrysler Group, LLC dated August 30, 2016.

³¹ Complainant Ex. 15, Lemon Law Complaint dated September 14, 2016. Complainant signed and dated the complaint on September 8, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until September 14, 2016, which is the effective date of the complaint.

³² Complainant Ex. 13, Repair Order dated September 21, 2016.

³³ *Id.*

³⁴ Complainant Ex. 14, Repair Order dated September 29, 2016.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

During cross examination, Complainant testified that he and his son are the primary drivers of the vehicle. He was the individual responsible for taking the vehicle to the dealers for repairs. Complainant denied ever having driven the vehicle at an excessively high rate of speed.

2. Tanya Rangel's Testimony

Tanya Rangel, Complainant's wife, testified that Complainant reached out to the Department in order to help him with the problems he was experiencing with the vehicle. Complainant felt that Meador was unable to repair the issue with the vehicle, although the vehicle was eventually repaired during September and October of 2016.

Ms. Rangel stated that she's aware that a vehicle immediately starts depreciating when it is driven off of a dealer's lot. She feels that the vehicle has suffered further depreciation due to the number of repairs which have been performed on the vehicle. However, Complainant has not made an attempt to sell the vehicle and has not had an appraisal performed on it.

3. Shahin Shahin's Testimony

Shahin Shahin, Complainant's son, testified that he drives the vehicle about 50 percent of the time. He has experienced the CEL illuminating when he's driven the vehicle. Mr. Shahin stated that the CEL would stay on until it was reset by the dealer's technicians. The dealer always provided a rental vehicle to Complainant whenever he took it in for repair.

Mr. Shahin also stated that he has always put premium fuel in the vehicle. He was informed by the dealer's service personnel to purchase gas from Quick Trip stores and to never put regular fuel in the vehicle. Mr. Shahin stated that he was also informed to periodically put cleaner in the gasoline.

Mr. Shahin stated that the vehicle's tires had to be replaced after driving the vehicle for approximately ten (10) months. He replaced all four (4) tires because two (2) had nails in them and a third was worn out.

During cross-examination, Mr. Shahin testified that he drives the vehicle to school and work. He denied driving the vehicle at a high rate of speed. He stated that he only drives the vehicle about five (5) miles above the speed limit. Mr. Shahin denies ever racing the vehicle.

C. Respondent's Evidence and Arguments

Trey Dicarlo, Area Manager, testified for Respondent. He has worked for Respondent for eleven (11) years. He's been in his current position for the past four (4) years. Mr. Dicarlo is assigned to the Fort Worth metropolitan area.

Mr. Dicarlo testified that he first became involved in repairs to the vehicle in July of 2016. Complainant took the vehicle to Meador on July 22, 2016, because of issues with the vehicle's tires. Meador's service manager, Ray Christian, observed that the tires were suffering from abnormal wear. Normally the tires would be covered under Respondent's basic express bumper-to-bumper warranty. At the time of the repair the vehicle's mileage was 17,090.³⁸ However, due to the abnormal wear, Mr. Christian was unsure as to whether the tires should be covered by the warranty. As a result, Mr. Christian took several pictures of the vehicle and its tires and forwarded them to Mr. Dicarlo who made the decision that the tires were not covered by Respondent's warranty.³⁹ Mr. Dicarlo felt that the abnormal wear on the tires was due to someone driving the vehicle at an excessive speed and "burning out" on the tires. Mr. Dicarlo testified that Respondent's warranty does not cover the costs of repairing damage or conditions caused by racing or for defects that are discovered as the result of "participating in a racing event."⁴⁰

Mr. Dicarlo also stated that the problem in the vehicle's PCM that was causing the CEL to illuminate was discovered to only occur when the vehicle was driven at high speeds or high torque. The vehicle's computers store the highest speed driven in the vehicle. The computer indicated that the vehicle had been driven at a top speed of 193 mph.⁴¹ In addition, the problem causing the CEL to illuminate occurred when the vehicle was driven at 92 mph.⁴² Mr. Dicarlo testified that the vehicle was finally repaired in October of 2016 when the PCM connector and wiring were replaced and reinforced. Complainant has not returned the vehicle for any other repair due to the CEL illuminating.

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

³⁸ Respondent Ex. 2, Repair Order dated July 22, 2016.

³⁹ Respondent Ex. 1, Photos of Complainant's vehicle, undated.

⁴⁰ Complainant Ex. 17, Dodge 2016 Warranty Information – Gas, All Vehicles Manual, p. 15.

⁴¹ Respondent Ex. 1, Photos of Complainant's vehicle, undated, p. 2.

⁴² Respondent Ex. 3, Field Engineer Analysis Report dated October 19, 2016, p. 2.

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.

Complainant purchased the vehicle on October 23, 2015, and presented the vehicle to Respondent's authorized dealers for repair due to the vehicle's CEL illuminating on the following dates: February 29, 2016; April 7, 2016; April 27, 2016; May 5, 2016; June 1, 2016; August 1, 2016; August 8, 2016; September 3, 2016; September 6, 2016; September 21, 2016; and September 29, 2016. The vehicle was repaired during the September 29, 2016, repair visit and Complainant indicated that he has not had any issues with the CEL illuminating since before that date.

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's converter's or distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. Just because Complainant feels that the vehicle has suffered a loss in value does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.⁴³ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

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. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 29,737 and it remains under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

⁴³ Tex. Occ. Code § 2301.605.

III. FINDINGS OF FACT

1. Mohammad Shahin (Complainant) purchased a new 2016 Dodge Challenger Hellcat on October 23, 2015, from Meador Dodge–Chrysler–Jeep–Ram (Meador) in Fort Worth, Texas, with mileage of 23 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty 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 29,737.
4. At the time of hearing the vehicle's warranties were still in effect.
5. The vehicle's check engine light (CEL) illuminated several times during the first year that Complainant owned the vehicle.
6. Complainant took the vehicle for repair to Respondent's authorized dealers for the CEL issue on the following dates:
 - a. February 29, 2016, at 8,937 miles;
 - b. April 7, 2016, at 11,243 miles;
 - c. April 27, 2016, at 13,099 miles;
 - d. May 5, 2016, 13,660 miles;
 - e. June 1, 2016, at 14,775 miles;
 - f. August 1, 2016, at 17,526 miles;
 - g. August 8, 2016, at 17,812 miles;
 - h. September 3, 2016, at 19,201 miles;
 - i. September 6, 2016, at 19,356 miles;
 - j. September 21, 2016, at 19,548 miles; and
 - k. September 29, 2016, at 19,786 miles.
7. On February 29, 2016, Meador's service technician replaced the vehicle's right side knock sensor in order to address the issue of the CEL illuminating.
8. On April 7, 2016, Meador's technician determined that an actuator was broken. Complainant was informed verbally that the technician had found a code and had repaired it.

9. On April 27, 2016, Meador's technician advised Complainant that a trouble code was discovered and the vehicle had been repaired.
10. On May 5, 2016, Meador's technician determined that the CEL was illuminating because Complainant was using low octane fuel.
11. On June 1, 2016, Meador's technician determined that the CEL illuminating was fuel related as no problem was found with the vehicle which would cause the light to illuminate.
12. Complainant always used premium fuel in the vehicle as required by Respondent's technicians' advice.
13. On August 1, 2016, Meador's technician replaced and programmed the vehicle's powertrain control module (PCM) because of an internal failure within the PCM.
14. On August 8, 2016, Meador's technician replaced the vehicle's knock sensor pins in order to address the issue of the check engine light (CEL) illuminating.
15. On September 3, 2016, Meador's technician did not perform any work on the vehicle as the decision was made to take the vehicle to a different dealer for repair.
16. On September 6, 2016, Complainant took the vehicle to AutoNation Chrysler-Dodge-Jeep-Ram (AutoNation) in North Richland Hills where the service technician test drove the vehicle, tested the wiring and connectors and was unable to duplicate the problem of the CEL illuminating.
17. On September 21, 2016, AutoNation's technician road tested the vehicle but could not duplicate the problem.
18. On September 29, 2016, Respondent's Quality Field Engineer, Richard Carlson, determined that a pin inside the vehicle's PCM connector was cracked which was causing the CEL to illuminate. The problem would only manifest at high speed and high torque. The connector and wiring were replaced and the connector was reinforced in order to address the issue.
19. The vehicle has been repaired and the CEL is no longer illuminating.
20. On September 14, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

21. On November 23, 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.
22. The hearing in this case convened and the record was closed on February 15, 2017, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Mohammad Shahin, represented himself at the hearing. Also, testifying for Complainant were Tanya Rangel, wife, and Shahin, son. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Trey Dicarlo, Area Manager, testified for Respondent. Brent Donley, District Manager, was present for Respondent as an observer.

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 23, 2017



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