

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0089 CAF**

**RAUL VILLARREAL,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Raul Villarreal, Sr. (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence does not show that the subject vehicle has a currently existing warrantable defect. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 January 26, 2017, in San Antonio, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Raul Villarreal, Jr. testified for the Complainant. Daniel Keivy, Consumer Affairs Legal Analyst, represented the Respondent.

---

<sup>1</sup> TEX. GOV'T CODE § 2001.051.

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”<sup>2</sup> In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.<sup>3</sup> In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

##### a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.<sup>4</sup>

##### b. Substantial Impairment of Use or Value

###### i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”<sup>5</sup>

---

<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

<sup>5</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

**ii. Impairment of Value**

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”<sup>6</sup>

**c. Reasonable Number of Repair Attempts**

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.<sup>7</sup>

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.<sup>8</sup>

---

<sup>6</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) the vehicle is out of service for repair for a cumulative 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; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.<sup>9</sup>

However, a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.<sup>10</sup> Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.<sup>11</sup>

**d. Other Requirements**

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;<sup>12</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>13</sup> and (3) the

---

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

<sup>11</sup> *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

<sup>12</sup> TEX. OCC. CODE § 2301.606(c)(1). The Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines “mail” as “to send by mail; place in a post office or mailbox for transmission” or “to transmit by email.” *Mail. Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer’s behalf. See *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.<sup>14</sup>

## 2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle."<sup>15</sup> The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."<sup>16</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>17</sup> The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that every required fact is more likely than not true.<sup>18</sup> If a required fact appears equally likely as unlikely, the Complainant has not met the burden of proof.

## 4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.<sup>19</sup> The complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."<sup>20</sup> However, the parties may expressly or impliedly consent

---

<sup>14</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>15</sup> TEX. OCC. CODE § 2301.204.

<sup>16</sup> TEX. OCC. CODE § 2301.603(a).

<sup>17</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>18</sup> *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>19</sup> "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

<sup>20</sup> 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.<sup>21</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>22</sup>

### A. Complainant's Evidence and Arguments

On November 15, 2012, the Complainant, purchased a 2013 Ford Focus from McCombs Ford West, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 3 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage of the vehicle for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles, whichever comes first. On November 13, 2016, the Complainant mailed a written notice of defect to the Respondent. On November 18, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that when accelerating from a stop, the vehicle's transmission hesitated, shuddered, stalled, cut off, jerked, made rattling noise, vibrated. The transmission also shuddered when decelerating. The Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
06/26/13	5,598	Hesitates and sputters when accelerating from a stop
04/23/15	18,733	Shudders, stalls and wants to cut off when accelerating from a stop.
10/01/15	21,303	Shudders, stalls, cuts off and makes a rattle noise when accelerating from a stop
01/18/16	23,189	Jerks/shudders when taking off; noise from transmission
02/06/16	23,649	Transmission shudders when taking off, makes noise and jerks
08/04/16	27,552	Stalls, cuts off, and vibrates when accelerating from a stop
10/21/16	29,351	Transmission shudders when decelerating and accelerating

The Complainant testified that the engine would rev when trying to speed up and the vehicle would vibrate. This would always occur when the vehicle starts to move, like at a stop sign when the vehicle starts to move forward. The vehicle also made a loud popping noise when shifting into reverse on an incline. Raul Villarreal, Jr. (Mr. Villarreal) explained that when shifting gears, sometimes the vehicle vibrates and shifts hard. The Complainant stated that none of the repairs made the issue better. The hearings examiner noted that the complaint mentioned stalling and asked if the vehicle completely stopped. The Complainant clarified that the vehicle did not completely stop, but in one instance would not shift into reverse, so he had to push it out of the

<sup>21</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>22</sup> See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

driveway and then drive away. The hearings examiner also asked if the engine ever stopped causing the vehicle to stop and the Complainant answered no. He last noticed any transmission issues about three or four months before the hearing. Mr. Villarreal testified that he last noticed issues in October of 2016, leading to the last time they took the vehicle in for service, but they decided to stop using the vehicle because of safety concerns. The Complainant explained that in the last instance of any transmission issue, reverse would not engage and the transmission sounded like loose metal sheets. The Complainant added that they received a safety recall letter regarding the door opening on their own but never got a response (a remedy was not yet available).<sup>23</sup>

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

Mr. Keevy asserted that the Complainant's claim should be denied because it was untimely filed, the manufacturer did not have a final opportunity to repair, and the vehicle did not have reasonable repair attempts. Under the Lemon Law, a proceeding must be commenced no later than six months after the earlier of 24 months or 24,000 miles after purchase. The vehicle was purchased on November 15, 2012. 24 months after would be November 15, 2014, so latest filing date would be May 15, 2015. Also, the Lemon Law requires that the manufacturer (as opposed to the dealer) be given an opportunity to repair. But the Respondent was not afforded an opportunity for a final repair. The Respondent received the Complaint on December 2, 2016. Ms. Maria Diaz contacted the Complainant on December 5, 2016, and offered to set up a repair but the Complainant declined. The subject vehicle has a six speed transmission, not a traditional automatic transmission. The vehicle's transmission does not have a torque converter but has two clutches to shift the vehicle. This design reduces the weight and allows the vehicle to run more economically. While shifted with clutches, the driver does not actually shift, but the shifts occur automatically. The clutches are wear items that wear over time as the gears are shifted. The Respondent commits to cover this wear item under the five year, 60,000 mile powertrain warranty. The clutch connects the engine to the transmission. With the vehicle at rest, the engine spins at 1,200 to 1,800 rpm, and the clutch and transmission spin at zero rpm. As the vehicle takes off, the clutch takes time to match the speed of the engine, causing the vehicle to pull forward and causing the shudder sensation. The Respondent stresses that some shudder is a normal part of vehicle operation. However, shudder is

---

<sup>23</sup> Complainant's Ex. 14, Safety Recall Notice 16S30 / NHTSA Recall 16V-643; Complainant's Ex. 15, Field Service Actions 11/13/2016.

excessive if over 250 rpm. The rate of shudder determines the need for repair. Software in the TCM (transmission control module) assists with the shifting. While the TCM does not physically shift the vehicle, the software can compensate for the shudder. Consequently, resetting the learned adaptive shifting is important. After updating the TCM/resetting the software, the vehicle is tested. If the shudder exceeds 250 rpm, the clutch is removed and inspected. If less than 250 rpm, the transmission is considered operating normally. The Respondent concluded that shudder is not a nonconformity. Looking at the repair history, the vehicle only had three repairs within the three year bumper to bumper warranty. All other repairs occurred outside of the warranty period and should not be considered.

### **C. Inspection**

The vehicle's odometer displayed 29,778 miles upon inspection before the test drive at the hearing. The test drive occurred over three miles on local streets controlled by stop signs. The vehicle exhibited several instances of a heavy metallic vibrating noise. When on an incline, the vehicle's transmission would shift with a jolt when moving the shift lever from park to reverse.

### **D. Analysis**

#### **1. Filing Deadline for Repurchase/Replacement Relief**

As an initial matter, a Lemon Law complaint must be filed no later than six months after the earlier of the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the vehicle to the owner. In this case, the Complainant purchased and took delivery of the vehicle on November 15, 2012. 24 months after delivery falls on November 15, 2014. Six months after November 15, 2014, falls on May 15, 2015. Accordingly, to qualify for repurchase or replacement relief, the Complainant must have filed his complaint no later than May 15, 2015. In this case, the Complainant filed the complaint on November 18, 2016, over a year past the deadline. As a result, the vehicle cannot qualify for repurchase or replacement.

#### **2. Warrantable Defect**

The Complainant did not identify any existing conditions subject to Lemon Law relief. The Lemon Law does not apply to all problems a consumer may have with a vehicle, such as issues arising from the design of the vehicle or representations about the vehicle. Rather, the Lemon Law only deals with warrantable defects. To qualify for replacement or repurchase or for warranty



repair, the law requires the vehicle to have a defect covered by an applicable warranty.<sup>24</sup> In this case, the vehicle's warranty provides that:

Under your New Vehicle Limited Warranty if:

- your Ford vehicle is properly operated and maintained, and
  - was taken to a Ford dealership for a warranted repair during the warranty period,
- then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.<sup>25</sup>

The courts have explained that “[a] manufacturing defect is one created by a manufacturer’s failure to conform to its own specifications, i.e., the product would not have been defective if it had conformed to the manufacturer’s design specifications.”<sup>26</sup> In other words, a manufacturing defect is an aberration occurring only in those vehicles not produced according to the manufacturer’s specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. As a result, a defective vehicle differs from a properly manufactured vehicle. Issues that do not arise from manufacturing, such as the design of the vehicle (which occurs before manufacturing) or improper dealer representations in selling the vehicle (which occur after manufacturing), are not warrantable defects. In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.”<sup>27</sup> Design characteristics result from the vehicle’s design and not from any error in the manufacturing process, so that the same-model vehicles made according to the manufacturer’s specifications should ordinarily have the same characteristics, which would require redesigning the vehicle to change the characteristics.

**a. Hesitation, Shudder, Jerking, Rattling Noise, Vibration, Etc.**

In the present case, the Complaint identified transmission shudder, hesitation, noise and other like issues, none of which constitute a manufacturing defect. The shudder, as well as other

---

<sup>24</sup> TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>25</sup> Complainant’s Ex. 16, 2013 Model Year Ford Warranty Guide (emphasis added).

<sup>26</sup> *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

<sup>27</sup> *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

characteristics, described in testimony and experienced during the test drive are design characteristic that may normally occur with the vehicle's dual clutch transmission. The record indicates the vehicle may normally exhibit shuddering and hesitation. Further, clutch slippage/shudder under 250 rpms falls within manufacturer specifications for normal operation. The evidence shows that the transmission exhibits such characteristics due to its unique design (which uses dual clutches rather than a torque converter), which differs from conventional automatic transmissions and therefore will behave differently than conventional automatic transmissions. Although the vehicle's characteristics may be undesirable and disturbing, the record shows that these characteristics arise from the intended design of the vehicle's transmission (such as the use of clutches) and not from a manufacturing defect. Accordingly, the vehicle does not qualify for repurchase/replacement or warranty repair relief.

**b. Failure to Shift in Reverse**

The Complainant did not include the failure to shift in reverse as part of the complaint. However, as explained in the discussion of applicable law, this issue may be considered because the Respondent did not object to its consideration at the hearing. The failure to shift into reverse does appear to have been a warrantable defect. However, the record indicates that this issue did not occur again after repair, that is, the failure to shift into reverse no longer exists. However, the law requires the nonconformity to continue to exist. Accordingly, the failure to shift in reverse does not implicate any relief.

**c. Hard Shift into Reverse**

At the inspection and test drive, the Complainant demonstrated that the vehicle would shift with a jolt when shifting from park to reverse while on an incline (with the parking brake off). However this appears to have been caused by the load placed on the parking pin from holding the vehicle on the incline and not from any manufacturing defect.

**d. Latch Recall**

The Complainant did not include the latch recall as part of the complaint. However, as explained in the discussion of applicable law, this issue may be considered because the Respondent did not object to its consideration at the hearing. A review of the safety recall notice reflects that

the issue affects 2013 Ford Focuses generally, i.e., the design is defective.<sup>28</sup> Although the latch recall involves an actual defect, this defect is a design defect for which no remedy currently exists, and which requires a redesign to correct the problem. As explained above, in this case, the Lemon Law, and any warranty repair, only apply to manufacturing defects and not design defects.

### III. Findings of Fact

1. On November 15, 2012, the Complainant, purchased a 2013 Ford Focus from McCombs Ford West, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 3 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage of the vehicle for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles, whichever comes first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
06/26/13	5,598	Hesitates and sputters when accelerating from a stop
04/23/15	18,733	Shudders, stalls and wants to cut off when accelerating from a stop.
10/01/15	21,303	Shudders, stalls, cuts off and makes a rattle noise when accelerating from a stop
01/18/16	23,189	Jerks/shudders when taking off; noise from transmission
02/06/16	23,649	Transmission shudders when taking off, makes noise and jerks
08/04/16	27,552	Stalls, cuts off, and vibrates when accelerating from a stop
10/21/16	29,351	Transmission shudders when decelerating and accelerating

4. On November 13, 2016, the Complainant mailed a written notice of defect to the Respondent.
5. On November 18, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that when accelerating from a stop, the vehicle's transmission hesitated, shuddered, stalled, cut off, jerked, made rattling noise, vibrated. The transmission also shuddered when decelerating.

---

<sup>28</sup> Complainant's Ex. 14, Safety Recall Notice 16S30 / NHTSA Recall 16V-643; Complainant's Ex. 15, Field Service Actions 11/13/2016.

6. On December 9, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the 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.
7. The hearing in this case convened and the record closed on January 26, 2017, in San Antonio, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Raul Villarreal, Jr. testified for the Complainant. Daniel Keevy, Consumer Affairs Legal Analyst, represented the Respondent.
8. The vehicle's odometer displayed 29,778 miles at the time of the hearing.
9. The vehicle's powertrain warranty coverage was in effect at the time of the hearing. However, the vehicle's bumper to bumper warranty coverage expired on November 15, 2015.
10. During the inspection and test drive at the hearing, the vehicle exhibited several instances of a heavy metallic vibrating noise. When on an incline, the vehicle's transmission would shift with a jolt when moving the shift lever from park to reverse.
11. The vehicle has a transmission that incorporates dual clutches instead of a torque converter as in a conventional transmission.
12. The use of clutches in the transmission may ordinarily cause shuddering, noise, vibration, and the like.
13. The failure to shift into reverse did not recur after repair.
14. The load placed on the parking pin from holding the vehicle on an incline caused the hard shift into reverse while on an incline and not any manufacturing defect.
15. The safety recall for a defective latch related to a design flaw affecting 2013 Ford Focuses generally.

#### IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
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. The Complainant filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant did not timely file the complaint for repurchase or replacement relief. TEX. OCC. CODE § 2301.606(d).
8. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604 and § 2301.606(d).
9. The Complainants' vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603.
11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. TEX. OCC. CODE §§ 2301.603.

**V. Order**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 and § 2301.204 is **DISMISSED**.

**SIGNED March 27, 2017**



---

**ANDREW KANG  
HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**