

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0092 CAF**

RITA B. JACKSON,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FCA US LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Rita B. Jackson (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her new 2016 Fiat 500X. Complainant asserts that the vehicle is defective because its engine is running badly and seems out of sync. 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 May 11, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Rita B. Jackson, represented herself at the hearing. Complainant's husband, Leroy Jackson, was present as an observer. Respondent was represented by Jan Kershaw, Early Resolution Case Manager.

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 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

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

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 Fiat 500X from Northside Imports (Northside) in Spring, Texas on June 25, 2016, with mileage of 75 at the time of delivery.^{7,8} Respondent provided the vehicle with a basic warranty good for four (4) years or 50,000 miles, whichever comes first.⁹ In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for four (4) years or 50,000 miles.¹⁰ On the date of hearing the vehicle's mileage was 16,345. At this time, Respondent's warranty coverage for the vehicle remains in effect.

Complainant testified that in September of 2016 the vehicle began running badly and felt out of sync. In addition, the vehicle's check engine light (CEL) illuminated. Complainant took the vehicle to Northside for repair on September 13, 2016. Northside's service technician determined that the vehicle's powertrain control module (PCM) had suffered an internal failure.¹¹ The technician replaced the PCM, test drove the vehicle and determined that it was working fine.¹² The vehicle's mileage on this occasion was 4,366.¹³ The vehicle was in Northside's possession for five (5) to six (6) days during this repair. Complainant was not provided with a loaner vehicle while her vehicle was being repaired. Complainant was informed by the service advisor, Donnie Hicks, that the vehicle's computer had been replaced and that the problem should not occur again.

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, Motor Vehicle Retail Installment Sales Contract dated June 25, 2016.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated June 25, 2016.

⁹ Complainant Ex. 5, Monroney Sticker for Fiat 500X – 2016 Model Year.

¹⁰ *Id.*

¹¹ Complainant Ex. 3, Repair Order dated September 13, 2016.

¹² *Id.*

¹³ *Id.*

Complainant drove the vehicle for about a month with no problem. On October 18, 2016, Complainant was driving the vehicle when the CEL illuminated. In addition, the vehicle had no acceleration and began to jerk. Complainant took the vehicle to Northside that same day in order to have the problem addressed. Northside's technician determined that the vehicle's #1 fuel injector had failed causing a short in the PCM.¹⁴ The fuel injector and the PCM were replaced by the technician.¹⁵ Somehow during the process of the repair the vehicle's PCM again was determined to not be working properly and was replaced again before the vehicle was returned to Complainant. The vehicle's mileage on this occasion was 6,172.¹⁶ The vehicle was in the dealer's possession until December of 2016 when Complainant picked it up after the Thanksgiving holiday weekend. Complainant was provided with a loaner vehicle while her vehicle was being repaired. Complainant testified that she has not had any other problems with the vehicle since picking it up in December.

On November 18, 2016, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.¹⁷ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on November 22, 2016.¹⁸

Complainant stated that she likes and enjoys the vehicle and would like assurance that the problems that she experienced would not recur. She's afraid that the vehicle may experience a similar problem and leave her stranded. Complainant feels that Respondent should replace the vehicle.

C. Respondent's Evidence and Arguments

Jan Kershaw, Early Resolution Case Manager, testified for Respondent. She stated that she first became involved in this matter when she was forwarded Complainant's Lemon Law complaint in early December of 2016. Ms. Kershaw was aware that a repair had been performed on Complainant's vehicle and that Complainant had not picked up the vehicle until early December, so Ms. Kershaw waited until January 4, 2017 to contact Complainant about her dissatisfaction with the vehicle in order to give Complainant an opportunity to determine if the vehicle had been repaired.

On January 4, 2017, Ms. Kershaw emailed Complainant to see if Complainant still wanted to pursue the complaint and to schedule a final repair attempt on the vehicle. Complainant did not agree to allow Respondent to perform a final repair attempt on the vehicle after Ms. Kershaw had

¹⁴ Complainant Ex. 4, Repair Order dated October 18, 2016.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 6, Letter to Fiat US LLC Customer Care dated November 18, 2016.

¹⁸ Complainant Ex. 7, Lemon Law Complaint dated November 22, 2016. Complainant signed and dated the complaint on November 8, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until November 22, 2016, which is the effective date of the complaint.

asked for such an opportunity on three separate occasions (January 4, 2017; February 3, 2017; and February 8, 2017). As a result, Respondent was not able to perform a final repair attempt on the vehicle. Ms. Kershaw also stated that she feels that the vehicle has been repaired, since the problem with the vehicle feeling out of sync and running badly has not recurred since the last repair in October of 2016.

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.

Complainant purchased the vehicle on June 25, 2016, and presented the vehicle to Respondent's authorized dealer for repair due to the vehicle's CEL illuminating and the vehicle running badly and feeling out of sync on the following dates: September 13, 2016 and October 18, 2016. The vehicle was repaired in October of 2016 and Complainant indicated that she has not had any issues with the vehicle since she picked up the vehicle in December of 2016.

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. A loss of confidence in the vehicle when a defect has been cured 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.¹⁹ 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 basic coverage for four (4) years or 50,000 miles whichever comes first. In addition, the powertrain warranty provides

¹⁹ Tex. Occ. Code § 2301.605.

coverage for four (4) years or 50,000 miles. On the date of hearing, the vehicle's mileage was 16,345 and it remains under the warranties. As such, the 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.

III. FINDINGS OF FACT

1. Rita B. Jackson (Complainant) purchased a new 2016 Fiat 500X on June 25, 2016, from Northside Imports (Northside) in Spring, Texas, with mileage of 75 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a basic warranty for four (4) years or 50,000 miles, whichever occurs first and a separate powertrain warranty for four (4) years or 50,000 miles.
3. The vehicle's mileage on the date of hearing was 16,345.
4. At the time of hearing the vehicle was still under warranty.
5. In September of 2016 the vehicle began to run badly and Complainant felt that the engine was out of sync. In addition, the vehicle's check engine light (CEL) illuminated.
6. Complainant took the vehicle for repair to Northside due to her concerns with it on the following dates:
 - a. September 13, 2016, at 4,366 miles; and
 - b. October 18, 2016, at 6,172 miles.
7. On September 13, 2016, Northside's service technician determined that the vehicle's powertrain control module (PCM) had suffered an internal failure and replaced it in order to resolve the concern with the vehicle running badly and feeling out of sync.
8. On October 18, 2016, Northside's technician replaced the vehicle's #1 fuel injector and the PCM twice in order to resolve the issues with the vehicle.
9. The vehicle has been repaired and is no longer running badly and feeling out of sync.

10. On November 22, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On March 9, 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.
12. The hearing in this case convened and the record was closed on May 11, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Rita B. Jackson, represented herself at the hearing. Complainant's husband, Leroy Jackson, was present as an observer. Respondent was represented by Jan Kershaw, Early Resolution Case Manager.

IV. CONCLUSIONS OF LAW

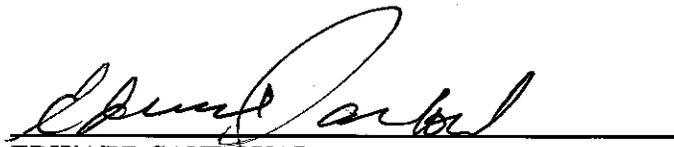
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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 May 19, 2017



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