

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0153 CAF**

DENNIS A. WHITE,
Complainant

v.

FCA US LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Dennis A. White (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.204 (Warranty Performance) for alleged defects in his 2015 Dodge Ram 2500 3/4 ton pickup truck. Complainant asserts that the vehicle is defective because the driver's side exterior of the truck bed is splitting. FCA US LLC (Respondent) argued that the vehicle is not defective, the damage to the vehicle was caused by Complainant's installation of an after-market tool box and headache rack, 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 hearing record closed on May 24, 2017, in Wichita Falls, Texas before Hearings Examiner Edward Sandoval. Complainant, Dennis A. White, represented himself in the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Trey DiCarlo, Service and Parts Area Manager, testified for Respondent.

II. DISCUSSION

A. Applicable Law

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

If the vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant under Occupations Code § 2301.204(a) which provides that

“[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” This section applies only if the Complainant originally raised his concern with the vehicle while the warranty was still in effect.

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2015 Dodge Ram 2500 3/4 ton pickup truck on May 30, 2015, from Blake Fulenwider Dodge (Fulenwider) in Eastland, Texas, with mileage of 183 at the time of delivery.¹ Respondent provided a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles, whichever comes first.² On the date of hearing the vehicle’s mileage was 54,120. At this time, Respondent’s warranty has expired.

After purchasing the vehicle, Complainant installed a tool box and headache rack to the truck bed. Complainant testified that he installed the items himself. Complainant noted that in early December of 2015, the outside temperature in his area changed drastically. He indicated that the temperature was between 75 and 80 degrees before he drove to Oklahoma where the temperature dropped to approximately 15 degrees overnight. Soon thereafter Complainant noticed that the exterior walls of the truck bed had cracked near the cab of the vehicle.

On or about December 9, 2015, Complainant took the vehicle to Patterson Auto Center Body Shop (Patterson) in Wichita Falls, Texas for repair to the truck bed. The vehicle’s mileage on this occasion was approximately 14,000. Complainant testified that Patterson’s representative informed him that truck beds don’t split on their own and that the installment of the tool box and headache rack did not cause the split. The representative also took several pictures of the vehicle and sent them to Respondent’s Digital Imaging department to obtain warranty approval for repair to the vehicle. Respondent’s representatives determined that the damage was not covered by warranty due to the installment of the after-market items, so no repair was performed.

Complainant then took the vehicle to Fulenwider on December 21, 2015, in an attempt to get it repaired under the vehicle warranty. Fulenwider’s service technicians wrote a cost estimate for repair to the vehicle and sent photos of the damage to Respondent’s Digital Imaging department again. Again, the damage was deemed not to be warrantable. The vehicle’s mileage at the time of the repair visit was 16,250.³

¹ Complainant Ex. 1, Motor Vehicle Buyer’s Order dated May 30, 2015.

² Complainant Ex. 7, 2015 Ram Truck 2500/3500 Diesel Warranty Information, p. 4.

³ Complainant Ex. 2, Repair Order dated December 21, 2015.

Since the damage was deemed not to be covered by warranty, Complainant elected to pursue the matter through arbitration with the National Center for Dispute Settlement (NCDS). Complainant decided to have a three-person board conduct the arbitration hearing. The hearing decision was based solely on documentation submitted by the parties. The parties were not provided with an opportunity for oral argument. The arbitrators' decision was issued on February 24, 2016; the ruling was that Complainant had failed to prove the existence of a manufacturing defect, so the repair request was denied.⁴

Complainant was dissatisfied with the decision. He filed a new claim to the NCDS within 30 days from the issuance of the original decision. The claim was accepted for additional arbitration by NCDS. This time, Complainant elected to have one (1) arbitrator and to have an in-person hearing. The hearing was conducted at Patterson on May 12, 2016. Complainant and David James, Patterson's estimator, provided testimony. The arbitrator issued his decision on May 12, 2016. The arbitrator ruled that Respondent was not obligated to repair the truck bed because the "verbal evidence . . . was not supported by documented proof."⁵ The arbitrator went on to say that Complainant "only provided subjective opinions" to support his allegation of a warrantable issue with the vehicle.⁶

After receiving the second arbitration decision, Complainant contacted Mike McDonald who works in Respondent's executive office. Complainant informed Mr. McDonald that Respondent's representatives had never looked at the vehicle in person in order to determine whether the repairs should be covered under warranty. Mr. McDonald informed Complainant that he would be contacted by a Respondent representative in order to have them inspect the vehicle.

Complainant testified that he met with Trey DiCarlo, Service and Parts Area Manager, and Cameron Goodwin, Patterson's service manager, in late May or early June of 2016. Mr. DiCarlo looked at the vehicle and apologized to Complainant about not having seen the vehicle before. After inspecting the vehicle, Mr. DiCarlo agreed to replace the vehicle's truck bed with no cost to Complainant. This was done in on or about June 15, 2016.

Complainant did not have any other issues with the vehicle until December of 2016. Complainant testified that sometime during the month, the outside temperature was approximately 85 degrees during the day, then dropped to 15 degrees the next night. Complainant saw damage to the driver's side exterior wall of the bed similar to the damage on the prior truck bed. Complainant took the vehicle to Patterson where they took pictures of the damage. No further action was taken by Respondent or Complainant in regard to the damage.

⁴ Complainant Ex. 3, First Arbitration Packet, pp. 9-10.

⁵ Complainant Ex. 4, Second Arbitration Packet, p. 9.

⁶ *Id.*

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 25, 2017.⁷ Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.⁸

Complainant testified that he installed the same tool box and headache rack to the new truck bed when it was replaced in June of 2016. He did the installation himself. He has installed the same items in two (2) previous Dodge trucks and in a Ford truck without any problems or damage being caused. He was not contacted by Respondent for a final repair attempt.

Complainant feels that the damage to the truck was caused by the extreme changes in temperature over a short period of time. He does not feel that the damage was caused by the installation of the headache rack and tool box on the vehicle.

During cross-examination, Complainant testified that he was not aware that the owner's manual for the vehicle indicated that he needed to use Respondent authorized Mopar Box Reinforcement Brackets when installing a tool box and/or headache rack.⁹

C. Respondent's Evidence and Arguments

1. Trey DiCarlo's Testimony

Trey DiCarlo, Service and Parts Area Manager, testified for Respondent. He has worked for Respondent for eleven (11) years and has been in his current position for the past ten (10) years. Mr. DiCarlo does not have any technical training nor does he have a technical background.

Mr. DiCarlo testified that he was contacted in May of 2016 by Mr. McDonald, Executive Referrals Case Manager, regarding Complainant's vehicle. Mr. McDonald asked Mr. DiCarlo if he could look at Complainant's vehicle in order to address the concern regarding the damage to it. Mr. DiCarlo stated that Respondent's representatives had never seen or inspected the vehicle prior to May of 2016. He stated that all trim and cosmetic warranty concerns for Respondent's vehicles are addressed by Respondent's Digital Imaging department which pre-authorizes warranty work before repairs are actually performed. This is done by taking and submitting photos of the vehicle damage to the Digital Imaging department. A vehicle will only be visually inspected if the damage can't be verified through photos.

⁷ Complainant Ex. 5, Lemon Law Complaint dated January 25, 2017. Complainant signed and dated the complaint on January 19, 2017. However, the complaint was not received by the Texas Department of Motor Vehicles until January 25, 2017, which is the effective date of the complaint.

⁸ Complainant Ex. 6, Undated Letter to Dodge-Chrysler.

Mr. DiCarlo testified that he inspected the vehicle in late May or early June of 2016 at Patterson, along with Complainant and Mr. Goodwin. Mr. DiCarlo felt that the damage looked as if it were caused by excessive force on the outside of the vehicle. Mr. DiCarlo stated that he felt sorry for Complainant. As a result, for consumer loyalty and due to extenuating circumstances, he decided to perform a goodwill repair on the vehicle and authorized replacing the truck bed. Mr. DiCarlo indicated that this was not normally done, but he approved it for customer satisfaction. He also indicated that this was a one-time repair.

When Complainant took the vehicle to Patterson again in December of 2016 due to the exterior side wall of the truck bed splitting, Patterson's new service manager submitted photos of damage to Complainant's vehicle to the Digital Imaging department. However, he didn't submit a request for repair under warranty.

Mr. DiCarlo feels that there is too much force for the truck bed to handle due to the installation of the tool box and headache rack and that this has caused the damage to the vehicle. He indicated that the Mopar brackets recommended by Respondent for the installation of these items would alleviate the pressure and thereby prevent damage to the vehicle. Mr. DiCarlo has seen the same type of damage on two (2) other vehicles and those vehicles were not repaired under warranty. Mr. DiCarlo also testified that the headache rack and tool box should have been installed by an authorized body shop to ensure proper installation.

2. Jan Kershaw's Testimony

Jan Kershaw, Early Resolution Case Manager, also testified for Respondent. Ms. Kershaw stated that Respondent did not request a final repair attempt on Complainant's vehicle. In addition, she stated that the damage to Complainant's vehicle was due to the installation of the after-market tool box in the bed of the pickup truck.

D. Analysis

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since Complainant filed the Lemon Law complaint on January 24, 2017, more than six months after the date on which the vehicle's mileage surpassed 24,000.¹⁰

⁹ Respondent Ex. 1, Owner's Manual, p. 249.

¹⁰ Complainant Ex. 5, Lemon Law Complaint Form dated January 25, 2017. Complainant indicated on the form that the vehicle's mileage exceeded 24,000 sometime in March of 2016, approximately ten (10) months prior to Complainant filing the Lemon Law complaint.

In order to determine whether Complainant has a remedy under this section of the Occupations Code, there has to be evidence of a warrantable defect or condition in the vehicle that has not been repaired by Respondent.

Complainant has the burden of proof to establish the existence of a defect in the vehicle. The parties presented conflicting reasons as to what may have caused the damage to the vehicle. However, the evidence is clear that Complainant did personally install after-market items to the vehicle's truck bed. Respondent's warranty specifically provides that it does not cover after-market items that are not certified for use on the vehicle.¹¹ The warranty also goes on to state that the warranty does not "cover the costs of any repairs . . . that might be caused . . . by the installation of non-Chrysler parts, components, equipment" ¹² Since the damage to the vehicle appears to have been caused by the installation of the headache rack and tool box, repairs would not be covered under Respondent's warranty. Even if one argued that Complainant's scenario was true and that the damage was caused because of extremes in the outside temperature in a short period of time, it would still appear that the damage was caused by the after-market accessories, since the damage would not have occurred but for their installation on the vehicle. It does not seem reasonable that a truck bed's side wall would crack due to extreme temperatures without an additional force acting upon it. The hearings examiner thus must hold that Complainant has failed to meet the burden of proof to establish the existence of a defect in his vehicle. As such, Respondent is under no obligation to repair the damage under their warranty.

Respondent's bumper-to-bumper warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 54,120 and the warranty has expired.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Dennis A. White (Complainant) purchased a new 2015 Dodge Ram 2500 3/4 ton pickup truck on May 30, 2015, from Blake Fulenwider Dodge (Fulenwider) in Eastland, Texas, with mileage of 183 at the time of delivery.

¹¹ Complainant Ex. 7, 2015 Ram Truck 2500/3500 Diesel Warranty Information, p. 6.

¹² *Id.*

2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 54,120.
4. At the time of hearing the vehicle's warranty was expired.
5. In December of 2015, Complainant observed the side exterior of the truck bed was splitting.
6. Complainant took the vehicle to Respondent's authorized dealers on the following dates in order to address his concerns with the exterior of the truck bed splitting:
 - a. December 9, 2015, at approximately 14,000 miles;
 - b. December 21, 2015, at 16,250 miles; and
 - c. December of 2016, at unknown miles.
7. On December 9, 2015, Complainant took the vehicle to Patterson Auto Center Body Shop (Patterson) in Wichita Falls, Texas and had photos taken and submitted to Respondent's Digital Imaging department. The damage was not considered to be covered under warranty at the time and no repairs were performed.
8. On December 21, 2015, Complainant took the vehicle to Fulenwider and had photos taken and submitted to Respondent's Digital Imaging department. The damage was not considered to be covered under warranty at the time and no repairs were performed.
9. Complainant filed an arbitration request regarding the repair issue with the National Center for Dispute Settlement (NCDS).
10. A hearing conducted by submitted documents was conducted by NCDS and a decision was issued on February 24, 2015, ruling that Complainant failed to prove the existence of a defect in the vehicle.
11. Complainant filed a new claim for arbitration with the NCDS a few weeks later.
12. A second hearing was conducted in person at Patterson on May 12, 2016, and a decision was issued on May 16, 2016, denying Complainant's request to have Respondent repair the vehicle under warranty.
13. Trey DiCarlo, Respondent's Service and Parts Area Manager, met with Complainant in

late May or early June of 2016 and personally inspected the vehicle.

14. Mr. DiCarlo approved a goodwill repair allowing the truck bed to be replaced at no cost to Complainant. This repair was done on or about June 15, 2016.
15. In December of 2016, Complainant took the vehicle to Patterson because the driver's side exterior of the truck bed was splitting. Patterson's service advisor took photos of the damage, but it was not submitted to the Digital Imaging department for approval for repair.
16. On both truck beds Complainant personally installed a headache rack and a tool box which were not authorized Chrysler parts.
17. On January 24, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
18. On February 23, 2017, 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.
19. The hearing in this case convened and the hearing record closed on May 24, 2017, in Wichita Falls, Texas before Hearings Examiner Edward Sandoval. Complainant, Dennis A. White, represented himself in the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Trey DiCarlo, Service and Parts Area Manager, testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204;

- 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
 5. Complainant bears the burden of proof in this matter.
 6. Complainant failed to prove by a preponderance of the evidence that 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 § 2301.204.
 7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
 8. Complainant's vehicle does not qualify for repair relief. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repurchase relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED June 22, 2017



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