

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0159175 CAF**

**CHIOMA OKORO,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Chioma Okoro (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 her vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for warranty repair but cannot qualify for repurchase or replacement relief because the complaint was filed after the statutory deadline.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 July 6, 2017, in Austin, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented herself. Catherina Okoro, the Complainant's daughter, testified for the Complainant. Maria Diaz, Consumer Legal Analyst, represented and testified for the Respondent.

¹ 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.”² 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.³ 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. Significantly, the Lemon Law prohibits repurchase or replacement unless the 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.⁴

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.”⁵ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”⁶

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.606(d)(2).

⁵ TEX. OCC. CODE § 2301.204.

⁶ TEX. OCC. CODE § 2301.603(a).

3. Burden of Proof

The law places the burden of proof on the Complainant.⁷ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that each required fact is more likely than not true.⁸ If any required fact appears equally likely or unlikely, then 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.⁹ 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.”¹⁰ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.¹¹ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.¹²

A. Complainant’s Evidence and Arguments

On December 15, 2014, the Complainant, purchased a new 2014 Ford Focus from Riata Ford, a franchised dealer of the Respondent, in Manor, Texas. The vehicle had seven miles on the odometer at the time of delivery. The vehicle’s limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 60,000 miles, whichever occurs first. On December 5, 2016, the Complainant filed a Lemon Law complaint with the Department alleging transmission problems. The Respondent only

⁷ 43 TEX. ADMIN. CODE § 215.66(d).

⁸ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁹ “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 factual 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.”).

¹⁰ 43 TEX. ADMIN. CODE § 215.202(a)(2).

¹¹ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

¹² *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

received the Complainant's notice of defect as a part of the Lemon Law complaint. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
06/06/2015	12,960	Studders on acceleration from stops
10/15/2015	27,864	Shudders on takeoff
06/15/2016	40,435	Shudders upon acceleration
08/05/2016	47,275	Transmission continues to shudder

The Complainant testified that she purchased the vehicle on December 15, 2014. The buyer's order showed two miles on the odometer at purchase however, the Complainant stated the vehicle had seven miles upon delivery. The Complainant described the transmission issue as a shuddering and quaking. She stated that she never had this happen before with Ford vehicles and she has had more than one Ford vehicle. She was surprised that after taking the vehicle in for repair, the vehicle would continue to exhibit the issue more. She explained that at a stop light (when accelerating), the vehicle will quake. The vehicle would be slow to accelerate but then picks up like any other car. She described the vehicle as sounding like a Mustang. She stated that she had a Ford commercial truck, a Crown Victoria, and an F-350. She was bothered that the transmission issue was not disclosed, which was a problem since 2012. The Complainant first noticed the issue within a couple of weeks after purchase. She last noticed the issue on the way to the hearing. She answered that the repairs did not really improve the issue and issue actually worsened. She noted that she has had more than three types of Ford vehicles and never had a problem with them. The Complainant could not remember when she sent a notice of defect to the Respondent. Ms. Diaz noted that the Respondent first received notice as part of the complaint. Ms. Catherina Okoro (Ms. Okoro) described the issue as acceleration hesitation, shuddering, and shaking. When pressing on the gas, the vehicle will jolt and jolt two more times before going. Ms. Okoro said the hesitation was scary with a car from behind about to hit the subject vehicle with the subject vehicle stopping and going. The Complainant concluded that the vehicle was a burden to her as a single mom going to school and having to take children to school and she needed to have a dependable vehicle. The Complainant contended that she first took the vehicle to the dealer before 12,000 miles but the dealer did not write it up. She stated that she complained to the sales manager, Mr. Nguyen.

On cross-examination, the Complainant acknowledged that the vehicle came with an owner's manual and quick start guide. She answered she read as much of it as she could. However,

she did not know the transmission characteristics in the documentation. When asked why she did not allow a manufacturer's repair attempt she stated that she did not know the manufacturer but knew Riata Ford (the dealer) for a long time. Ms. Diaz recited several dates she contacted the Complainant but the Complainant responded that she did not want a final repair attempt. The Complainant replied that he had already dealt with the dealer and the Lemon Law as a last resort.

B. Respondent's Evidence and Arguments

Ms. Diaz testified that the transmissions on the Ford truck and other vehicles the Complainant mentioned differed from the Ford Focus. Ms. Diaz stated that information was provided to everyone in the owner's manual and quick reference guide and nothing was hidden from consumers. The AWS system, which tracks the VIN for repairs, shows no warranty repair prior to the 12,000 mile repair visit. The vehicle reached 24,000 miles before October 15, 2015, so the filing deadline would be prior to April 15, 2016. However, the deadline passed approximately nine months prior to filing of the complaint. The vehicle did not qualify for repurchase or replacement because it did not have four or more repairs, with the first two within 12 months or 12,000 miles (whichever is earlier) and two more repairs in the next 12 months or 12,000 miles. And the alleged condition did not constitute a safety defect. The vehicle was first brought in for transmission concerns on June 6, 2015, and serviced at the dealer at 12,960 miles, with the transmission control module reprogrammed and the clutch replaced. The vehicle was not presented at another Ford dealer for transmission concerns until October 15, 2016, at 27,864 miles. Additionally, the Complainant did not provide notice of the alleged defect apart from the complaint. The Respondent contacted the Complainant about a final repair. However, the Complainant was unwilling to have a final repair attempt. Ms. Diaz explained that the subject vehicle has a transmission similar to two three-gear manual transmissions that may exhibit slight vibrations and firm gearshifts in aggressive acceleration. The Respondent contended that the vehicle did not have a defect that substantially impairs the vehicle and the vehicle has not been out of service for repair more than 30 days; the Respondent (as opposed to the dealer) did not have an opportunity to remedy the concerns; and the time for filing a Lemon Law complaint expired. The Respondent concluded that the vehicle does not qualify for repurchase or replacement.

C. Inspection and Test Drive

The hearing examiner test drove the subject vehicle for approximately six miles on residential streets controlled by stop signs and traffic lights and on a freeway. The vehicle shuddered, jerked and hesitated significantly during most, if not all, instances of accelerating from a stop or low speeds.

D. Analysis

As explained below, the vehicle qualifies for repair relief but does not qualify for repurchase or replacement.

1. Filing Deadline

The Lemon Law prohibits repurchase or replacement of the vehicle because the complaint was filed more than six months after the vehicle reached 24,000 miles. For repurchase or replacement relief, the Lemon Law requires a complaint to be 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. In the present case, the relevant deadline is six months from the date the vehicle passed 24,000 miles after delivery. The record reflects that the vehicle had seven miles at delivery. Accordingly, the complaint must have been filed within six months after the vehicle reached 24,007 miles on the odometer. Repair Order Number 295796, at 27,864 miles shows a promised date of October 15, 2015. In other words, the vehicle had exceeded 24,000 miles at some point before October 15, 2015. Six months after October 15, 2015, falls on April 15, 2016. Therefore, the filing deadline expired sometime before April 15, 2016. However, the present complaint was filed on December 5, 2016, a total of seven months and 20 days after April 15, 2016, clearly exceeding the deadline. Consequently, the law prohibits repurchase or replacement.

2. Warrantable Defect

To qualify for warranty repair relief, the evidence only needs to show the existence of a warrantable defect.¹³ Although a Ford Focus equipped with a PowerShift transmission may

¹³ "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

normally exhibit some shudder and jerking, the magnitude and frequency of the subject car's shudder and jerking appear to be nonconformities. The vehicle exhibited strong shuddering/jerking even during light acceleration. Moreover, the shuddering/jerking occurred at almost all, if not all, instances of acceleration from a stop or low speed. The hesitation and consequent inability to anticipate acceleration appeared substantial enough to complicate changing lanes in traffic or turning into traffic after a stop.

III. Findings of Fact

1. On December 15, 2014, the Complainant, purchased a new 2014 Ford Focus from Riata Ford, a franchised dealer of the Respondent, in Manor, Texas. The vehicle had seven miles on the odometer at the time of delivery.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 60,000 miles, whichever occurs first.
3. On December 5, 2016, the Complainant filed a Lemon Law complaint with the Department alleging transmission problems.
4. The Respondent only received the Complainant's notice of defect as a part of the Lemon Law complaint.
5. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
06/06/2015	12,960	Studders on acceleration from stops
10/15/2015	27,864	Shudders on takeoff
06/15/2016	40,435	Shudders upon acceleration
08/05/2016	47,275	Transmission continues to shudder

6. On April 24, 2017, 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

normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship." Complainants' Ex. 1, 2014 Model Year Ford Warranty Guide.

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 factual matters asserted.

7. The hearing in this case convened, and the record closed, on July 6, 2017, in Austin, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented herself. Catherina Okoro, the Complainant's daughter, testified for the Complainant. Maria Diaz, Consumer Legal Analyst, represented and testified for the Respondent.
8. The vehicle's odometer displayed 76,075 miles at the time of the hearing.
9. The warranty's bumper to bumper coverage expired at 36,000 miles and the powertrain coverage expired at 60,000 miles. The vehicle had 40,435 miles on or about June 15, 2016, and 65,380 miles on or about February 13, 2017.
10. The hearings examiner test drove the subject vehicle for approximately six miles on residential streets controlled by stop signs and traffic lights and on a freeway. The vehicle shuddered, jerked and hesitated significantly during most, if not all, instances of accelerating from a stop or low speeds.

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. 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's vehicle does not qualify for replacement or repurchase. The Complainant did not timely file the complaint for repurchase or replacement relief. The proceeding must have been 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. TEX. OCC. CODE § 2301.606(d).
7. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
8. The Complainant's vehicle qualifies for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.
10. 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 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the vehicle's transmission to the applicable warranty. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.¹⁴ Within 20 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the

¹⁴: (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.

Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED August 29, 2017



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