

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0176445 CAF**

**JOHN D. VAUGHN,
Complainant**

v.

**HYUNDAI MOTOR AMERICA,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John D. Vaughn (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 distributed by Hyundai Motor America (Respondent). A preponderance of the evidence shows the subject vehicle has a warrantable defect that qualifies for warranty repair only.

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 on October 23, 2017, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 14, 2017. The Complainant, represented and testified for himself. Also, James B Murphy, the Complainant's neighbor, testified for the Complainant. Susan Lucas, a contractor, represented and testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Lemon Law Filing Deadline

To qualify for repurchase or replacement relief the complaint must have been 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.²

2. Warranty Repair Relief

If a vehicle does not qualify for repurchase or replacement relief, 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" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.³ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."⁴

3. Burden of Proof

The law places the burden of proof on the Complainant.⁵ 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.⁶ If any required fact appears more likely to be untrue or equally likely to be true or untrue, then the Complainant cannot prevail.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.⁷ The complaint should state "sufficient facts to enable the department and the party complained against to know

² TEX. OCC. CODE § 2301.606(d)(2).

³ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

⁴ TEX. OCC. CODE § 2301.603(a).

⁵ 43 TEX. ADMIN. CODE § 215.66(d).

⁶ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁷ "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

the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.”⁸ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.⁹ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.¹⁰

A. Complainant’s Evidence and Arguments

On November 19, 2014, the Complainant, purchased a new 2014 Hyundai Santa Fe from Red McCombs Superior Hyundai, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 58 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides bumper to bumper coverage for five years or 60,000 miles, whichever occurs first, and powertrain coverage for 10 years or 100,000 miles, whichever occurs first. On March 4, 2016, the Complainant, mailed a written notice of defect to the Respondent. On May 25, 2017, the Complainant filed a complaint with the Department alleging that the emissions system was defective; defective hoses, valves, and evaporative canister caused the engine valve cover to leak; the vehicle consumed excessive oil; and oil vapor left residue on the “screw” in the valve cover.

The Complainant elaborated that the engine did not have compression. Mr. Murphy added that they knew this from trying to get the vehicle to the hearing. The Complainant explained that the photos (Complainant’s Exhibit 3) were taken at the dealership (on March 31, 2016) three days after an oil change. The Complainant stated that the malfunction indicator light (MIL)/service engine light was on now and related to the problems with compression. He had the check engine light diagnosed as an emissions issue. He pulled out the dipstick but it had no oil and he could not see any oil on the ground or any leak. He put a quart of oil and ran the engine for five minutes and checked the dipstick again, which barely had any oil. He then took the vehicle to the nearest Hyundai dealer, World Car Hyundai. The Complainant stated that the vehicle continued to lose oil. He affirmed that he did not find oil under the vehicle but the oil went back into the system. In response to clarifying questions, he answered that the emissions appeared white. Red McCombs

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.”).

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

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

¹⁰ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

Superior Hyundai would not perform a repair for a recall (relating to oil flow restriction) because the dealer attributed the vehicle's oil residue to the Complainant. He testified that the vehicle never had any repairs for the emissions issue because the warning light went out by the time the vehicle went to Red McCombs. The Complainant explained that the vehicle only had one repair, the gasket replacement by World Car, which did not stop the oil loss. He noted that after having the oil changed at World Car, the vehicle was a quart low two days later.

The Complainant testified that he personally changed the oil up until he had to have the cabin filter replaced, which he could not do. But he did the oil and filter changes up until taking the vehicle to Express Lube on February 11, 2016. From that point, the Complainant purchased the oil and filter and had Express Lube change the oil and filter. In response to clarifying questions, the Complainant explained that he believed he changed the oil and oil filter about every five thousand miles.

B. Respondent's Evidence and Arguments

Ms. Lucas testified that the repair order prior to the sale to the complainant only involved preparation for sale and delivery (as opposed to any repairs). She stated that the first service visit, on December 2, 2014, (at 1,415 miles) was for a new key and remote. Ms. Lucas pointed out that oil changes were recommended every 7,500 miles. The next service visit to a dealer occurred on March 16, 2016, (at 20,711 miles) for an oil change. The dealer found the vehicle needing oil and the oil very sludged due to passage of time or lack of maintenance. The Complainant declined an engine oil flush. The dealer traced an oil leak to the front timing chain cover and resealed it. At the March 29, 2016, visit, the dealer found that the engine required replacement; however, the Respondent declined authorizing the repair due to lack of maintenance. The Complainant owned the vehicle for roughly three years and the vehicle history showed the last recorded mileage as 22,841. If the Complainant purchased oil or had service done, any receipts for this were not provided to the Respondent. If the vehicle did not have the necessary oil and filter changes, the Respondent would deny the warranty claim. Additionally, the records do not show any repair orders for the emissions control.

C. Inspection

Upon inspection at the hearing, the vehicle had 30,559 miles on the odometer. During the test drive in the parking lot, the engine sputtered and the vehicle would not accelerate past parking lot speeds during the test drive at the hearing.

D. Analysis

As explained below, the vehicle has a warrantable defect that qualifies for repair relief only.

1. Lemon Law Filing Deadline

As an initial matter, the subject vehicle does not qualify for repurchase or replacement relief because the complaint was not timely filed in this case. The Lemon Law requires the complaint to have been 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 this case, the complaint listed September 2016 as the date when the vehicle reached 24,000 miles. The mileage reported on the complaint appears consistent with the last reported mileage in the vehicle's history, 22,841 miles on July 5, 2016. Accordingly, the complaint must have been filed no later than March 2017. However, the complaint was actually filed May 18, 2017, two months past the deadline.

2. Warrantable Defect

This case hinges on whether the vehicle's nonconformity arises from a warrantable manufacturing defect or the complainant's failure to properly maintain the vehicle. In part, the vehicle's warranty covers:

Repair or replacement of any component originally manufactured or installed by Hyundai Motor Company, Hyundai Motor Group, Hyundai Motor Manufacturing Alabama (HMMA), Kia Motors Manufacturing Georgia (KMMG) or Hyundai Motor America (HMA) that is found to be defective in material or workmanship under normal use and maintenance, except any item specifically referred to in the section "What is Not Covered".

Additionally, the warranty specifically excludes; "Damage or failure resulting from: - Negligence of proper maintenance as required in the Owner's Manual."

In the present case, the parties do not dispute the existence of sludge in the engine, which appears to have caused the emissions systems problems and other issues described by the Complainant. The Respondent declined to authorize repair because of the apparent lack of proper maintenance as evidenced by the absence of documentation showing oil and oil filter changes according to the manufacturer's intervals. On the other hand, the Complainant attributed the nonconformity to a manufacturing defect, specifically, the restriction of oil flow addressed by a recall. Looking at the documented service history alone would support the Respondent's position, given that the first recorded oil and filter change occurred at 19,376 miles (at Express Lube). However, the Complainant testified that he personally changed the oil and filter himself, roughly every 5,000 miles, before taking the vehicle to a service facility for oil and filter changes. Moreover, the record does not appear to contain any evidence controverting that the Complainant performed such maintenance. Although precise documentation of each oil change by the Complainant may be preferable, the Complainant's testimony is nevertheless adequate proof that the Complainant properly maintained the vehicle, given that the law only requires proof by a preponderance. In sum, the record reflects that, more likely than not, the vehicle has an existing warrantable defect subject to repair relief.

III. Findings of Fact

1. On November 19, 2014, the Complainant, purchased a new 2014 Hyundai Santa Fe from Red McCombs Superior Hyundai, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 58 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for five years or 60,000 miles, whichever occurs first, and powertrain coverage for 10 years or 100,000 miles, whichever occurs first.
3. On March 4, 2016, the Complainant, mailed a written notice of defect to the Respondent.
4. On May 25, 2017, the Complainant filed a complaint with the Department alleging that the emissions system was defective; defective hoses, valves, and evaporative canister caused the engine valve cover to leak; the vehicle consumed excessive oil; and oil vapor left residue on a screw in the valve cover.

5. On July 31, 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 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.
6. The hearing in this case convened on October 23, 2017, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 14, 2017. The Complainant, represented and testified for himself. Also, James B Murphy, the Complainant's neighbor, testified for the Complainant. Susan Lucas, a contractor, represented and testified for the Respondent.
7. The vehicle's odometer displayed 30,559 miles at the time of the hearing.
8. The vehicle's warranty was in effect at the time of the hearing.
9. The engine sputtered and the vehicle would not accelerate past parking lot speeds during the test drive at the hearing.
10. The subject vehicle has a recall for a manufacturing defect that may restrict engine oil flow to the main bearings, leading to engine failure.
11. The vehicle's engine contained substantial amounts of oil sludge.
12. The Complainant changed the oil and oil filter at roughly 5,000 mile intervals prior to having the vehicle serviced at an independent repair facility.

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. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. 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.

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 engine 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 § 2001.144.¹¹ Within 20 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the 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 January 17, 2018



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

¹¹: (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.