

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0181237 CAF**

GEORGE MICHAEL RUSSE,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
HYUNDAI MOTOR AMERICA,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

George Michael Russe (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2017 Hyundai Santa Fe. Complainant asserts that the vehicle is defective because the vehicle's brakes are not working properly, the vehicle's traction control warning light illuminates, and the cruise control intermittently becomes disabled. Hyundai Motors America (Respondent) argued that the vehicle is repaired, it does not have any defects or nonconformities and 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 initially convened on March 22, 2018, in Carrollton, Texas, before Hearings Examiner Edward Sandoval. Complainant, George Michael Russe, represented himself at the hearing. Respondent was represented by Susan Lucas, a contracted representative.

A continuance in the hearing was conducted telephonically on April 6, 2018. Present at the continuance was Complainant representing himself. Also present was Ms. Lucas representing Respondent. The hearing record was closed on April 6, 2018.

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

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 the attempts were made before the earlier of: (a) the date the express warranty expires; or (b) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2017 Hyundai Santa Fe from Huffines Hyundai in Plano, Texas (Huffines) on June 5, 2017, with mileage of 11 at the time of delivery.^{7,8} Respondent's bumper-to-bumper warranty for the vehicle provides coverage for five (5) years or 60,000 miles, whichever comes first.⁹ On the date of hearing the vehicle's mileage was 2,980. At the time of hearing, Respondent's warranty for the vehicle was still in effect.

Complainant testified that he decided to subscribe to Respondent's Blue Link system when he purchased the vehicle. (The first year of the subscription is free.) Blue Link provides a monthly "health" report of the enrolled vehicle to the subscriber which is supposed to indicate whether service is needed for some of the vehicle's major systems, including the transmission, engine, air bags, anti-lock brake system (ABS), and electronic power steering.

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).

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 and Purchase Agreement dated June 5, 2017.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated June 5, 2017.

⁹ Complainant Ex. 8, Hyundai Motor America's Position Statement dated March 19, 2018.

Complainant received his first Blue Link report via email on July 9, 2018. The report indicated that action was required for the vehicle's ABS. Complainant took the vehicle to Huffines for repair on July 19, 2017. Besides the ABS issue, Complainant also experienced a problem with the vehicle's downhill traction control warning light illuminating and the cruise control becoming disabled. Huffines' service technician verified that a fault code had been activated in the vehicle's computer system but was unable to duplicate any problems with the vehicle's cruise control or with the ABS.¹⁰ No repairs were performed to the vehicle.¹¹ The vehicle's mileage on this occasion was 1,266.¹² The vehicle was in Huffines' possession for six (6) days during this repair. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Complainant received the next Blue Link report on August 6, 2017, which indicated that action was required for the vehicle's ABS. He took the vehicle to Huffines on August 16, 2017, in order to have the ABS concern addressed. Huffines' technician discovered a gear fault trouble code on the vehicle's computer on this occasion.¹³ The technician performed an update to the vehicle's electronic stability control (ESC) system in order to resolve the trouble code.¹⁴ The vehicle's mileage on this occasion as indicated on the repair order was 14,202.¹⁵ The vehicle was in Huffines' possession for seven (7) days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant testified that he received the next Blue Link report on September 8, 2017. The report again indicated that action was required for the vehicle's ABS. Complainant took the vehicle to Huffines for repair on September 7, 2017. Huffines' technician discovered two (2) trouble codes on the vehicle's computer.¹⁶ The technician replaced the vehicle's trans range sensor in order to address the issues indicated by the trouble codes.¹⁷ During this repair visit the issues with the vehicle's traction control warning light and the cruise control becoming disabled were repaired. The vehicle's mileage on this occasion was 1,731.¹⁸ The vehicle was in the dealer's possession for one (1) week on this occasion. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant received the next Blue Link report on October 8, 2017, which again indicated that action was required for the vehicle's ABS. Complainant took the vehicle to Huffines for repair

¹⁰ Complainant Ex. 5, Repair Order dated July 19, 2017.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated August 16, 2017.

¹⁴ *Id.*

¹⁵ *Id.* The mileage on the repair order was entered incorrectly as the vehicle's mileage on March 22, 2018, the date of hearing (approximately seven [7] months later) was recorded by the hearings examiner as 2,980.

¹⁶ Complainant Ex. 7, Repair Order dated September 7, 2017.

¹⁷ *Id.*

¹⁸ *Id.*

on October 13, 2017. Huffines' service technician was not able to discover any trouble codes on the vehicle's computer.¹⁹ No repairs for the ABS were performed at the time.²⁰ The vehicle's mileage on this occasion was 2,285.²¹ The vehicle was in Huffines' possession until October 21, 2017. Complainant was provided with a rental vehicle while his vehicle was being repaired.

On October 25, 2017, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.²² Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on November 15, 2017.²³

Complainant testified that he received the next Blue Link report on November 7, 2017. The report indicated that action was required for the ABS. Complainant did not take the vehicle for repair in November, since he had mailed the Lemon Law complaint to the Department prior to receiving the November report.

Complainant was contacted by Respondent's representative who requested an opportunity to repair the vehicle again. Complainant had the vehicle towed to Van Hyundai (Van) in Carrollton, Texas for repair on December 6, 2017. Complainant did not feel comfortable driving the vehicle because of the Blue Link's warnings regarding the ABS. Complainant was reimbursed for the towing expense by the dealership. Van's technician cleared the vehicle's Blue Link history during this repair visit.²⁴ No other repairs were performed on the vehicle's brakes or ABS. The vehicle's mileage on this occasion was 2,330.²⁵ The vehicle was in Van's possession for one (1) day. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On December 6, 2017, the same day that Van's technician performed a repair on the vehicle and cleared out the Blue Link history, Complainant received the Blue Link report for the month of December. The report indicated that action was required for the ABS.

Complainant was concerned in January of 2018 when he did not receive the Blue Link report by January 7. On January 11, 2018, Complainant called the Blue Link contact number and spoke to a representative regarding his concerns with the vehicle's ABS. Blue Link's representative informed Complainant not to drive the vehicle and to take it to a dealer for repair if the system

¹⁹ Complainant Ex. 8, Repair Order dated October 13, 2017.

²⁰ *Id.*

²¹ *Id.*

²² Complainant Ex. 9, Letter to Hyundai dated October 25, 2017.

²³ Complainant Ex. 3, Lemon Law Complaint dated November 15, 2017. Complainant signed and dated the complaint on November 4, 2017. However, the complaint was not received by the Texas Department of Motor Vehicles until November 15, 2017, which is the effective date of the complaint.

²⁴ Complainant Ex. 11, Repair Order dated December 6, 2017.

²⁵ *Id.*

was indicating a problem with the ABS. Complainant did not take the vehicle for further repair because he felt that nothing would be done to repair the vehicle.

Complainant contacted a Blue Link representative on January 21, 2018, and inquired about the report since he still had not received it for the month of January. He was informed by the representative that the report issuance date had changed and she did not know why. She also informed Complainant not to drive the vehicle if the report indicated an issue with the ABS.

Complainant received the next Blue Link report on January 25, 2018. The report indicated that all of the vehicle's major systems were operating normally. The reports for February and March of 2018 also indicated that the vehicle's systems were operating normally. The last three (3) reports have not indicated that there are any alerts for the vehicle.

Complainant testified that between October of 2017 and March of 2018, he has not driven the vehicle very often. He feels that the vehicle is unsafe. The only reason Complainant started driving the vehicle in March was because his insurance agent assured him that the vehicle was covered by insurance, since the latest Blue Link reports have indicated no problem with the ABS. Complainant stated that the vehicle's brakes have never failed while he was driving the vehicle. He's never been stranded in any location due to the vehicle failing to start or perform properly.

Complainant verified that he was informed on December 6, 2017, by Van's service technician that the reason why Blue Link was showing that action was required on the ABS was due to the error message not being removed from the Blue Link system by prior technicians.²⁶

Complainant testified that he wanted to receive reimbursement for incurred expenses. He submitted receipts indicating that he spent \$8.90 on mailing and \$218.52 on rental vehicles.²⁷ Complainant also requested that he be reimbursed \$5,500 for the down payment on the vehicle, \$35 for the Lemon Law complaint filing fee, and \$3,597.76 for monthly payments on the vehicle.²⁸

C. Respondent's Evidence and Arguments

Susan Lucas, contract representative, represented Respondent in the hearing. She did not offer testimony, but submitted Respondent's position statement for inclusion in the hearing record.

²⁶ Respondent Ex. 1, Hyundai Motor America Position Statement dated March 19, 2018.

²⁷ Complainant Ex. 12, Summary of Incurred Expenses, undated.

²⁸ *Id.*

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.

1. Traction Control Warning Light Illuminating/Cruise Control Becoming Disabled

Complainant raised the issues of the traction control warning light illuminating and the cruise control disabling itself intermittently on the Lemon Law complaint form. Complainant testified that two (2) repairs were performed on these issues (July 19, 2017 and September 7, 2017). The issues have not recurred since the September 7, 2017. He feels that these issues have been resolved.

2. ABS Not Working Properly

Complainant purchased the vehicle on June 5, 2017, and presented the vehicle to Respondent's authorized dealer for repair due to his concerns regarding the ABS on the following dates: July 19, 2017; August 16, 2017; September 7, 2017; and October 13, 2017. On December 6, 2017, Complainant was informed that the ABS was working properly and that the Blue Link error message was inaccurate because the ABS trouble code had not been removed from the system during any of the previous repairs.

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.²⁹ 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.

Since repurchase or replacement relief is not available, Complainant is not entitled to reimbursement of any of the requested incurred expenses.

Respondent’s express warranty applicable to Complainant’s vehicle provides bumper-to-bumper coverage for five (5) years or 60,000 miles whichever comes first. On the date of hearing, the vehicle’s mileage was 2,980 and it remains covered by Respondent’s warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant’s request for repurchase or replacement relief is denied. Complainant is not entitled to reimbursement of incurred expenses.

III. FINDINGS OF FACT

1. George Michael Russe (Complainant) purchased a new 2017 Hyundai Santa Fe on June 5, 2017, from Huffines Hyundai (Huffines) in Plano, Texas, with mileage of 11 at the time of delivery.
2. The distributor of the vehicle, Hyundai Motors America (Respondent), issued a bumper-to-bumper warranty which provides coverage for the vehicle for five (5) years or 60,000 miles, whichever occurs first.
3. The vehicle’s mileage on the date of hearing was 2,980.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant subscribed to Respondent’s Blue Link system which provides him with a monthly “health” report for the vehicle.
6. Beginning in July of 2017, the Blue Link report indicated that “action” was required for the vehicle’s anti-lock brake system (ABS).

²⁹ Tex. Occ. Code § 2301.605.

7. Complainant took the vehicle to Huffines for repair to the ABS on the following dates:
- July 19, 2017, at 1,266 miles;
 - August 16, 2017, mileage unknown;
 - September 7, 2017, at 1,731 miles; and
 - October 13, 2017, at 2,285 miles.
8. On July 19, 2017, Huffines' service technician determined that the vehicle's ABS was working properly.
9. On August 16, 2017, Huffines' service technician discovered a gear fault code on the vehicle's computer and performed an update to the vehicle's electronic stability control (ESC) system to correct the concern.
10. On September 7, 2017, Huffines' service technician found trouble codes on the vehicle's computers and replaced the vehicle's trans range sensor in order to address the codes.
11. The issues regarding the traction control warning light illuminating and the vehicle's cruise control disabling itself were repaired during the September 7, 2017 repair.
12. On October 13, 2017, Huffines' service technician determined that the vehicle's ABS was working properly.
13. Complainant accrued incidental expenses for the vehicle as follows:
- | | | |
|----|------------------|-------------|
| a. | Vehicle rental | \$218.52 |
| b. | Mailing expenses | <u>8.90</u> |
| | Total | \$227.42 |
14. On November 15, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. On December 6, 2017, Complainant took the vehicle to Van Hyundai (Van) in Carrollton, Texas to address his concerns regarding the ABS.
16. Van's service technician determined that the ABS was working properly and that the Blue Link system was indicating a problem because a previous technician had not cleared the trouble codes from the system.

17. On January 10, 2018, 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.
18. The hearing in this case initially convened on March 22, 2018, in Carrollton, Texas, before Hearings Examiner Edward Sandoval. Complainant, George Michael Russe, represented himself at the hearing. Respondent was represented by Susan Lucas, a contracted representative. A continuance in the hearing was conducted telephonically on April 6, 2018. Present at the continuance was Complainant representing himself. Also present was Ms. Lucas representing Respondent. The hearing record was closed on April 6, 2018.

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.
9. Complainant is not entitled to reimbursement of incidental expenses. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

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 April 17, 2018



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