

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0182261 CAF**

ARNOLD PALMERI,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Arnold Palmeri (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2016 Ford F-150 XL pickup truck. Complainant asserts that he has experienced issues with the vehicle's instrument panel, radio, high pressure fuel pump, decreased fuel efficiency, check engine light (CEL) illuminating, engine, transmission, air conditioner, stop/start system, and the doors opening while driving. Ford Motor Company (Respondent) argued that Complainant failed to provide Respondent with a reasonable number of repair attempts on the vehicle and, as such, Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that Complainant is not eligible for repurchase or replacement relief since he did not provide Respondent with a reasonable number of attempts to repair the vehicle for such relief under the provisions of the Texas Lemon Law.

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 closed on April 26, 2018, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Arnold Palmeri, was represented by Cole Combs, attorney. Complainant was also present to testify. Mike Wade, Sales Manager for Anderson Ford, also testified for Complainant. Respondent, Ford Motor Company, was represented by Daniel Keevy, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent.

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 owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these 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.⁵

B. Complainant's Evidence and Arguments

1. Arnold Palmeri's Testimony

Complainant purchased a new 2016 Ford F-150 XL pickup truck from Anderson Ford (Anderson) in Cleveland, Texas on August 31, 2016.⁶ The vehicle had mileage of 12 at the time of purchase.⁷ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent has provided a five (5) year or 60,000 mile powertrain warranty for the vehicle. At the time of hearing, the vehicle's mileage was 12,641. Respondent's warranties for the vehicle were still in effect at the time of hearing.

Complainant testified that he has experienced several issues with the vehicle. He testified that he has had issues with the vehicle's instrument panel. The vehicle's high pressure fuel pump had to be replaced because the vehicles CEL illuminated and this has caused lower fuel efficiency and

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Complainant Ex. 1, Texas Motor Vehicle Retail Installment Sales Contract and Buyer's Order dated August 31, 2016.

⁷ *Id.*, p. 9.

loss of power. Complainant stated that the vehicle's transmission wouldn't shift properly, the air conditioner intermittently failed to work, the stop/start function doesn't work, and the vehicle's doors have the possibility of opening when the vehicle is being driven. The last issue is subject to a recall issued by Respondent.

Complainant testified that a few days after purchasing the vehicle, he noticed that the trailer attached warning light illuminated on the instrument panel cluster (IPC), although no trailer was attached to the vehicle at the time. He took the vehicle to Anderson for repair for the issue on September 1, 2016. Anderson's service technician verified the concern and reset the IPC settings in order to resolve the issue.⁸ The mileage on the vehicle when Complainant took it to Anderson was 183.⁹ The vehicle was in Anderson's possession for about 15 minutes. Complainant was not provided with a rental or loaner vehicle at the time.

Complainant stated that after the repair, the trailer attached warning light illuminated about three (3) more times when there was no trailer attached. Complainant took the vehicle to Anderson for repair for the issue on September 15, 2016. Anderson's service technician verified the concern and reset the IPC settings.¹⁰ The vehicle's mileage on this occasion was 704.¹¹ The vehicle was in Carter's possession for about 15 minutes. Complainant was not provided a rental vehicle for the time that his vehicle was being repaired.

Complainant testified that the vehicle's CEL illuminated in December of 2016. In addition, the vehicle suffered from a lack of power. Complainant took the vehicle to Anderson for repair on December 28, 2016. Anderson's service technician inspected the vehicle and verified the concern.¹² The technician replaced the vehicle's high pressure pump in order to resolve the issue.¹³ The vehicle's CEL has not come back on since this repair. The vehicle's mileage on this occasion was 5,035.¹⁴ The vehicle was in Anderson's possession for ten (10) days. Complainant was provided a loaner vehicle for the period of time that the vehicle was in the dealer's possession.

Complainant testified that on February 10, 2017, he took the vehicle to Anderson to complain about the vehicle's transmission and poor gas mileage. He had Anderson's service manager, Adam (last name unknown), ride in the vehicle to illustrate his concerns with the vehicle. However, Adam did not feel that anything was wrong with the vehicle. No repair order was

⁸ Complainant Ex. 5, Repair Order dated September 1, 2016.

⁹ *Id.*

¹⁰ Complainant Ex. 6, Repair Order dated September 15, 2016.

¹¹ *Id.*

¹² Complainant Ex. 7, Repair Order dated December 28, 2016.

¹³ *Id.*

¹⁴ *Id.*

prepared for this visit. As a result, of Adam's response to his complaint, Complainant decided to stop driving the vehicle. He parked it at his home and drove it very rarely.

Complainant stated that he had transmission issue with the vehicle in that it "dropped gears on its own."¹⁵ He stated that he complained about the transmission issue to Anderson's representatives in April of 2017, but that the representative did not think it was an issue and so made no attempt to repair the vehicle.

On June 5, 2017, Complainant's attorney mailed a notice to Respondent informing them of Complainant's concerns and dissatisfaction with the vehicle.¹⁶ Complainant did not receive any response to the notice from Respondent.

In December of 2017, Complainant allowed his son to drive the vehicle to Indiana where he lived. Complainant was going to drive to Indiana to get the vehicle and drive it back to Texas after Christmas. A few days after arriving in Indiana the vehicle refused to start. Complainant's son had the vehicle taken to Ray Skillman (Skillman) Ford in Greenwood, Indiana for repair on December 12, 2017. Skillman's service technician determined that there was evidence that the vehicle had been flooded which resulted in damage to the engine.¹⁷ Complaint was informed that since it appeared that the vehicle had suffered flood damage, the engine replacement would not be covered by the vehicle's warranties. The vehicle's engine was eventually replaced by the dealer. Complainant's insurance company paid for the engine replacement, minus the \$500 insurance deductible paid by Complainant. The vehicle's mileage on this occasion was 11,380.¹⁸ The vehicle was in the dealer's possession until early March of 2018 when Complainant drove to Indiana to pick it up.

Complainant testified that the vehicle was not flooded at any time. The vehicle was on his property in August of 2018, when Hurricane Harvey struck the Houston metropolitan area. There was flooding in the Cleveland area, but Complainant denied that the vehicle was flooded. In addition, Complainant stated that the vehicle was driven to Indiana and that this was evidenced by a toll road photo of the vehicle taken on December 2, 2017.¹⁹ The photo shows the vehicle being driven at 3:00 a.m. on December 2, 2017.²⁰ Complainant also denied that the vehicle had been immersed in water when his son had possession of the vehicle in early December of 2017 prior to the repair visit

¹⁵ Complainant Ex. 2, Lemon Law Complaint Form dated January 3, 2018, p. 2.

¹⁶ Complainant Ex. 3, Letter from Cole Combs to Ford Motor Company dated June 5, 2017.

¹⁷ Respondent Ex. 6, Email from Eric Cayton to Robert Kendall dated April 20, 2018.

¹⁸ Complainant Ex. 8, Repair Order dated December 12, 2018.

¹⁹ Complainant Ex. 4, Toll Road Photos dated on December 2, 2017.

²⁰ *Id.*

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) with an effective date of January 3, 2018.²¹

Complainant stated that the vehicle's air conditioner failed to work on April 26, 2018, two (2) days before the Lemon Law hearing. He did not take the vehicle to a dealer for repair for this issue. Also, he stated that the vehicle's stop/start function stopped working after he retrieved the vehicle from Indiana. He did not attempt to get this issue repaired prior to the hearing. Complainant stated that Respondent had issued a recall for a door cable to prevent the driver's door from opening while the vehicle is being driven. Complainant has not taken the vehicle to the dealer to have the recall repair performed.

Complainant testified that he makes deliveries to Anderson every other week. He stated that he mentioned the issues and his concerns with the vehicle to Anderson's representatives whenever he made deliveries, but no repairs were made to the vehicle on these occasions. He did not specify the dates he visited Anderson nor did he specify what problems he complained of on those occasions.

Complainant also stated that he wanted to receive reimbursement of reasonable expenses for his trip to Indiana to pick up the vehicle after the engine replacement, for the insurance deductible, and for items purchased for the vehicle. His expenses for the trip to Indiana totaled \$854.18: lodging was \$175.75, food was \$143.02, and fuel was \$532.41.^{22, 23, 24} Complainant's insurance deductible was \$500.00 for the engine replacement for the vehicle. Complainant also purchased nerf bars (\$299.95) and a vent visor (\$55.00) for the vehicle for which he wants reimbursement, these totaled \$384.23, including tax.²⁵

2. Mike Wade's Testimony

Mike Wade, Sales Manager for Anderson Ford, was subpoenaed to testify for Complainant. Mr. Wade has worked for Anderson for 17 years. He does not have a technical background.

Mr. Wade testified regarding the vehicle's warranty. He stated that the bumper-to-bumper warranty for the vehicle was good for three (3) years or 36,000 miles. In addition, the powertrain

²¹ Complainant Ex. 2, Lemon Law Complaint Form dated January 3, 2018. Although the complaint was signed by Complainant on May 8, 2017, it was not received by the Texas Department of Motor Vehicles until January 3, 2018, which is the effective date of the complaint.

²² Complainant Ex. 10, Hotel Receipts.

²³ Complainant Ex. 11, Food Receipts.

²⁴ Complainant Ex. 12, Fuel Receipts.

²⁵ Complainant Ex. 13, Receipt from Texas Truck Accessories dated September 2, 2016.

warranty is good for five (5) years or 60,000 miles. Mr. Wade also testified that the Cleveland area received heavy rains due to Hurricane Harvey and that there were resulting floods in the area in August of 2017. He did not know whether Complainant's property was flooded.

C. Respondent's Evidence and Arguments

Sayed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has been in the automotive industry since 2003. He has worked with Respondent since 2007 and has been in his present position since 2009. Mr. Bashir is an Automotive Service Excellence (ASE) Master Certified Technician. He is currently working towards master technician certification for Ford vehicles.

Mr. Bashir testified that has not personally inspected the vehicle. All of the information he has obtained about the vehicle comes from repair orders and photographs submitted by dealer technicians.

Mr. Bashir testified that Complainant submitted the vehicle for repairs at Skillman in December of 2017, because it was not starting. Mr. Bashir stated that photos of the vehicle taken prior to repairs being performed on this occasion seem to indicate that the vehicle's engine was damaged due to water ingestion. Any damage to the vehicle due to driving through standing water or being flooded would not be covered under Respondent's warranty. The photos show rust in the transmission and engine, moisture under the floor mat, and debris (leaves and twigs) accumulation in the radiator. Mr. Bashir feels that this is evidence that the vehicle was flooded at some time prior to December of 2017.^{26, 27, 28, 29, 30} He also stated that the vehicle's electrical system could be affected if the vehicle was immersed in water.

Mr. Bashir testified that the vehicle has never been presented to a dealer or to Respondent for repair for any air conditioning issues, speedometer issues, transmission issues, or auto stop/start issues.

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

²⁶ Respondent Ex. 1, Photo of Vehicle Transmission Housing.

²⁷ Respondent Ex. 2, Photo of Vehicle Engine Block.

²⁸ Respondent Ex. 3, Photo of Vehicle Engine Mounts.

²⁹ Respondent Ex. 4, Photo of Floor Carpet Pads.

³⁰ Respondent Ex. 5, Photo of Debris in Radiator Grill.

or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

1. Instrument Panel Issues

Complainant's testimony indicated that there was a problem with the vehicle's instrument panel cluster. The evidence also indicates that there were two (2) repairs on the vehicle for this issue: September 1, 2016 and September 15, 2016. Complainant specified that the issue was that the warning light illuminated indicating that a trailer was attached to the vehicle. However, no trailer was attached to the vehicle. Complainant argued that he was visiting Respondent's authorized dealer every other week to make deliveries and that he mentioned the issues with the vehicle on these visits. However, Complainant did not specify the dates that he visited the dealer, who he may have spoken to, or what issues he may have raised on any of those visits. As such, the hearing examiner cannot consider these to be legitimate repair opportunities for Respondent.

From the evidence presented, it is apparent that Complainant has not met the requirements for replacement or repurchase relief under the Occupations Code, since only two legitimate (2) repair attempts were made on the vehicle for this issue. However, since Complainant indicates that the issue is still occurring, Respondent must make an attempt to repair the vehicle under the bumper-to-bumper warranty. Therefore, Respondent will be ordered to perform any repairs necessary to conform the vehicle to its warranty.

Complainant also testified that the vehicle's speedometer failed to work about four (4) or five (5) times during the trip from Indiana to Texas in March of 2018. However, Complainant never presented the vehicle to Respondent's authorized dealer for repair for this specific issue. Respondent will be ordered to repair this issue also.

2. CEL Light and High Pressure Fuel Pump Issues

Complainant testified that the vehicle's CEL illuminated on one occasion and that he took the vehicle for repair at which time the high pressure fuel pump was replaced. The CEL has not turned back on since the repair. In addition, there has been no complaint about the vehicle's fuel pump since the repair. Since the issues have been repaired, they do not provide grounds to award repurchase or replacement relief to Complainant.

3. Transmission Issues

Complainant testified that the vehicle's transmission drops gears on occasion and that he took the vehicle to Anderson for repair for the issue on two (2) occasions: February 10, 2017 and in April of 2017. No repair order was generated either time. In addition, Complainant was informed that there was no issue with the vehicle's transmission and that it was performing correctly. Since there were only two (2) repair attempts for this issue, the Hearings Examiner must hold that Complainant did not provide Respondent with a reasonable number of attempts to repair the issue. As such, replacement or repurchase relief cannot be granted to Complainant for this issue.

4. Decreased Fuel Efficiency Issue

Complainant feels that the vehicle began suffering from lower fuel efficiency after the high pressure fuel pump was replaced in December of 2016. He did raise the issue with Respondent's authorized dealer on one (1) occasion: February 10, 2017. He did not raise the issue with a dealer after that occasion. Since there was only one (1) repair attempt for this issue, the Hearings Examiner must hold that Complainant did not provide Respondent with a reasonable number of attempts to repair the issue. As such, replacement or repurchase relief cannot be granted to Complainant for this issue.

5. Air Conditioning, Stop/Start System, Radio, and Door Issues

These issues are grouped together because it does not appear from the evidence or testimony presented at hearing that Complainant ever specifically attempted to have these issues repaired by Respondent or its authorized dealers. Complainant specified that the vehicle's air conditioner didn't work for the first time on April 24, 2018, two (2) days before the Lemon Law hearing. No repairs have been performed to the vehicle for the air conditioning issue.

The testimony provided by Complainant also specified that the vehicle's stop/start system stopped working after he retrieved the vehicle from Indiana in March of 2018. Complainant has not taken the vehicle to Respondent's authorized dealer for repair for this issue.

Complainant indicated in the Lemon Law Complaint Form that the vehicle's radio cuts off periodically. He did not provide any testimony regarding this issue at the time of hearing. In addition, he did not indicate that he ever raised the issue with Anderson's representatives to have the issue repaired and it was not on any of the repair orders submitted as evidence in the hearing. It does not appear that any repairs were ever performed for this issue.

Complainant testified that Respondent has issued a recall for the subject vehicle due to the doors

opening while the vehicle is being driven. He has not submitted the vehicle to Respondent's authorized dealer for repair for this issue. Since this is a recall, this issue is not covered by the Texas Lemon Law.

None of the issues described in this section provide adequate reason to award Complainant repurchase or replacement relief since Respondent was either not notified of the issue or has not been provided adequate opportunity for repair for the issues. However, Respondent is responsible for performing repairs for the issues under the vehicle warranty. In regards to the door recall issue, Complainant is responsible for presenting the vehicle to Respondent's authorized dealer in order to have the issue repaired.

6. Engine Issue

A majority of the testimony taken at hearing had to do with the vehicle engine replacement performed in early 2018 at Skillman. The argument was that Respondent refused to cover the repair under the vehicle's warranty. The Lemon Law does not contain any provision for reimbursement for completed repairs. It only applies to continuing issues which create a serious safety hazard or substantially impair the use or market value of a vehicle and which a manufacturer has been unable to repair after a reasonable number of repair attempts. Since the engine has been completely repaired, this issue does not provide grounds to award Complainant repurchase or replacement relief.

7. Reimbursement for Reasonable Incidental Expenses Issue

Complainant has indicated that he wanted to receive reimbursement for reasonable incidental expenses for repairs performed to the vehicle. Such expenses are allowed under Section 2301.604 of the Occupations Code. However, such expenses are only awarded if Respondent is ordered to repurchase or replace the vehicle. Since the Hearings Examiner has determined that such relief is not warranted, the request for reimbursement will be denied.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 12,641 and the warranties were still in effect. As such, Respondent is under an obligation to repair the vehicle under the terms of the warranties whenever there is an issue with the vehicle.

Complainant's request for repurchase or replacement relief is denied. Complainant is not entitled to reimbursement of reasonable incidental expenses. Complainant is entitled to repair relief as specified below.

III. FINDINGS OF FACT

1. Arnold Palmeri (Complainant) purchased a 2016 F-150 XL pickup truck on August 31, 2016, from Anderson Ford (Anderson) in Cleveland, Texas with mileage of 12 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles and a powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 12,641.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Complainant first experienced a problem with the vehicle's instrument panel cluster soon after purchasing the vehicle.
6. Complainant has experienced issues with the vehicle's instrument panel, radio, high pressure fuel pump, decreased fuel efficiency, check engine light (CEL) illuminating, engine, transmission, air conditioner, stop/start system, and driver's side door.
7. Complainant's vehicle was serviced by Respondent's authorized dealers on the following dates because of Complainant's concerns with the vehicle:
 - a. September 1, 2016, at 183 miles;
 - b. September 15, 2016, at 704 miles;
 - c. December 28, 2016, at 5,035 miles; and
 - d. December 12, 2017, at 12,936 miles.
8. On September 1, 2016, Anderson's service technician tested and reset the vehicle's instrument panel cluster for an issue where the cluster was showing that a trailer was attached to the vehicle when this was not the case.
9. On September 15, 2016, Anderson's service technician reset the vehicle's instrument panel cluster settings to address the issue where the cluster was showing that a trailer was attached to the vehicle when this was not the case.

10. On December 28, 2016, Anderson's service technician replaced the vehicle's high pressure pump in order to resolve the issues of the vehicle's CEL illuminating and a loss of power in the vehicle.
11. In December of 2017, Complainant's son drove the vehicle to Indiana. While in Indiana the vehicle refused to start.
12. On December 12, 2017, Complainant's son took the vehicle for repair to Ray Skillman Ford (Skillman) in Greenwood, Indiana.
13. Skillman's technician replaced the vehicle's engine assembly in order to address the issue of the vehicle failing to start.
14. The repairs performed on December 12, 2017, were not covered under warranty as Skillman's technician determined that the engine was damaged due to the engine being affected by water immersion.
15. Complainant's insurance company paid for the repairs described under Findings of Fact #13, except for the \$500 deductible for which Complainant was responsible.
16. Complainant drove to Indiana in March of 2018, in order to retrieve the vehicle.
17. Complainant incurred expenses on his trip to Indiana as follows:

a. Lodging	\$178.75
b. Food	\$143.02
c. Fuel	<u>\$532.41</u>
Total	\$854.18
18. Complainant incurred additional expenses for the vehicle as follows:

a. Insurance deductible	\$500.00
b. Nerf bars	\$229.95
c. Vent visor	\$ 55.00
d. Taxes for Items b and c	<u>\$ 29.28</u>
Total	\$884.23
19. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 3, 2018.

20. Complainant mailed a notice of his dissatisfaction with the vehicle to Respondent on June 5, 2017.
21. On February 27, 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.
22. The hearing in this case convened and the record closed on April 26, 2018, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Arnold Palmeri, was represented by Cole Combs, attorney. Complainant was also present to testify. Mike Wade, Sales Manager for Anderson Ford, also testified for Complainant. Respondent, Ford Motor Company, was represented by Daniel Keevy, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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 did not prove by a preponderance of the evidence that the vehicle has a verifiable 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. Complainant did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. Tex. Occ. Code § 2301.605(a).
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
10. Complainant is not entitled to reimbursement of reasonable incidental expenses. 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 or replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³¹ Within 20 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider 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 May 31, 2018



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

³¹ (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.