

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0187677 CAF**

JOSEPH TERRELL,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FORD MOTOR COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Joseph Terrell (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2017 Ford F-250 pickup truck. Complainant asserts that the vehicle is defective because it has intermittent “transmission issues” and because the steering wheel is hard to turn. Ford Motor Company (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is entitled only to repair relief, as he did not provide Respondent with a final opportunity to repair the vehicle as required by the Occupations Code.

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 October 25, 2018, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Joseph Terrell, represented himself in the hearing. Kelly Terrell, Complainant’s wife, was also present and offered testimony. Respondent was represented telephonically by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also 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

¹ Tex. Occ. Code § 2301.604(a).

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: (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.⁶

Occupations Code § 2301.204(a) 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.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

1. Joseph Terrell’s Testimony

Complainant purchased a new 2017 Ford F-250 from Joe Myers Ford—Lincoln (Myers) in Houston, Texas on October 27, 2016, with mileage of 8 at the time of delivery.^{7,8} Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle and a five (5) year or 60,000 mile powertrain warranty.⁹ On the date of hearing the vehicle’s mileage was 27,987. Respondent’s warranties were still in effect at the time of hearing.

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, Purchase Agreement dated October 27, 2016.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated October 27, 2016.

⁹ Complainant Ex. 4, 2017 Model Year Ford Warranty Guide, p. 8.

Complainant testified that on December 10, 2017, when he was returning to his home, the vehicle began shifting weirdly. It then slammed to a stop with a screeching noise. The vehicle's transmission refused to shift. Complainant stated that he saw transmission fluid on the street underneath the vehicle. Complainant had the vehicle towed to Myers for repair. Myers' service technician verified the existence of a transmission leak at the cooler line.¹⁰ The technician replaced the vehicle's transmission cooler lines and seals in order to resolve the issue.¹¹ The vehicle's mileage when Complainant had it towed to the dealer on this occasion was 18,082.¹² The vehicle was in Myers' possession for three (3) days. Complainant was provided with a loaner vehicle (a Ford Fusion) while his vehicle was being repaired.

Complainant testified that the vehicle seemed to be repaired when he picked it up from Myers. Complainant stated that he soon noticed that the vehicle's transmission was shifting erratically. It seemed to slip or punch into gear harshly. Complainant took the vehicle to Myers for an oil change on May 7, 2018. While there, Complainant informed the service advisor of the issues he was experiencing with the vehicle's transmission. Myers' service technician verified that the vehicle's transmission suffered "premature wear" of several components due to the prior transmission leak.¹³ The technician performed an overhaul of the transmission and replaced the worn and failed components in the transmission.¹⁴ The mileage on the vehicle at the time of repair was 23,449.¹⁵ The vehicle was in Myers' possession until June 20, 2018.¹⁶ Complainant was provided with a loaner vehicle for 38 out of the 46 days that the vehicle was in Myers' possession.¹⁷ Complainant stated that the vehicles that he received as loaners during this repair visit (a Ford Explorer and a Ford Expedition) were not comparable vehicles to his vehicle since he could not use them to tow. Towing was prohibited by the rental agreements that he signed for the vehicles.

¹⁰ Complainant Ex. 5, Repair Order dated December 11, 2017.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated May 7, 2018.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Respondent Ex. 1, Manufacturer Response Form dated September 28, 2018, p. 4.

Complainant sent an email to Respondent on June 11, 2018, in which he indicated his dissatisfaction with the vehicle.¹⁸ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on June 15, 2018.¹⁹

After getting the vehicle back, Complainant testified that he felt that the vehicle's transmission was slipping. He took the vehicle to Myers for repair on June 26, 2018. Complainant informed Myers' service advisor that he felt that the vehicle's transmission felt like it was in tow haul mode and that when he let off the accelerator the transmission felt like it was downshifting.²⁰ Complainant also raised the issue that he felt that the vehicle's steering wheel was stiff and hard to turn.²¹ Myers' service technician inspected the vehicle's transmission, could not find any problem with it, and determined that it was operating properly.²² The technician also addressed the steering wheel concern and determined that the vehicle's stabilizer shock was loose and not bolted down correctly.²³ The technician addressed the concern by bolting down the stabilizer shock.²⁴ The mileage on the vehicle at the time of the repair was 23,869.²⁵ The vehicle was in Myers' possession for three (3) to four (4) days. Complainant was provided with a loaner vehicle (a Ford Fusion) during this repair visit.

Complainant testified that Respondent's representative contacted him and requested that Respondent be provided with a final attempt to inspect and repair the vehicle. Complainant stated that he felt that the final repair attempt was provided on June 26, 2018. He is not sure if Respondent had a representative present at Myers during this repair attempt. Complainant also stated that he was informed by John Dufour, Department case advisor, a final repair attempt did not have to take place after he filed the Lemon Law complaint. The final repair attempt could take place at any time during the repair process. This is why he did not allow Respondent an opportunity to inspect the vehicle or perform a final repair attempt on it.

Complainant requested that he be reimbursed for accessories he added to the vehicle. On October 31, 2016, Complainant added tinting to the vehicle's windows which cost \$432.95.²⁶ On May 31,

¹⁸ Complainant Ex. 8, Email to Judy Wolfe dated June 11, 2018.

¹⁹ Complainant Ex. 3, Lemon Law Complaint dated June 15, 2018. Although the Lemon Law Complaint Form indicates a date signed of June 26, 2018, the complaint was received by the Texas Department of Motor Vehicles on June 15, 2018, which is considered to be the actual date that the complaint was filed.

²⁰ Complainant Ex. 7, Repair Order dated June 26, 2018.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Complainant Ex. 10, Invoice and Receipt from Executive Motor Sports dated October 31, 2016.

2017, Complainant purchased an additional fuel tank for the vehicle which cost \$811.39.²⁷ On October 25, 2017, Complainant paid \$300.00 to have the additional fuel tank attached to the vehicle.²⁸ On August 28, 2018, Complainant purchased four (4) new tires for the vehicle which cost \$1,313.05, with installation, balance, and adjustment.²⁹

Complainant testified that he still experiences shifting issues intermittently when driving the vehicle. He primarily notices the vehicle jerking when driving in stop and go traffic. Complainant feels that the vehicle's market value has been affected by the repairs performed to it. He feels that the vehicle may be discounted in a resale.

During cross-examination, Complainant stated that he tows a 16 foot flatbed trailer and a 22 foot boat (on a trailer) with his vehicle on most weekends. He drives the vehicle with a trailer attached through both flat and hilly terrain. Complainant also stated that he felt that Respondent's final repair attempt took place in June of 2018. He stated that the first repair for the vehicle's transmission took place in December of 2017 when the vehicle had accumulated 18,082 miles. There were no repairs for the vehicle's transmission prior to December 11, 2017.

2. Kelly Terrell's Testimony

Kelly Terrell, Complainant's wife, testified in the hearing. She stated that she does not drive the vehicle very often, only once or twice per week. She stated that she does not feel comfortable taking trips in the vehicle due to the transmission issues that they've experienced with the vehicle.

Ms. Terrell stated that the vehicle's steering wheel felt tight after the repair performed on June 26, 2018. In addition, the vehicle's transmission feels like it's pulling like it can't keep up with the speed that they're driving. She doesn't feel safe driving in the vehicle with her children.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, testified for Respondent. He stated that Respondent's stance regarding the Lemon Law complaint is that Complainant is not entitled to repurchase or replacement of the vehicle because Complainant has not met the standard of the presumption that Respondent was provided with a reasonable number of repair attempts on the vehicle. Mr. Kendall pointed out that Complainant's vehicle was not presented for repair for the

²⁷ Complainant Ex. 11, Invoice from Xtreme Diesel Performance (XDP) dated May 31, 2017.

²⁸ Complainant Ex. 12, Repair Order from Tommie Vaughn Ford dated October 25, 2017.

²⁹ Complainant Ex. 13, Receipt from Discount Tire dated August 28, 2018.

complained of issues during the first year or 12,000 miles of ownership. The first repair attempt was performed after the vehicle had been driven over 18,000 miles.

Mr. Gregory also indicated that Respondent was not allowed an opportunity for a final inspection or repair of the vehicle. Mr. Gregory stated that a final repair attempt was scheduled for July 26, 2018 at Myers. Complainant contacted Respondent's representative prior to July 26 and asked that the location of the repair attempt be changed to AutoNation Ford in Katy, Texas. Again, prior to the final inspection and repair, Complainant contacted Mr. Gregory and cancelled the appointment. Mr. Gregory testified that both Complainant and Mr. Dufour felt that Complainant did not have to comply with Respondent's request for a final inspection and repair attempt. Mr. Gregory stated that during a conversation with Mr. Dufour that it was the opinion of Mr. Dufour that Complainant had met the obligation of a written notice and final repair attempt on the vehicle. Mr. Gregory testified that Respondent's representative has never performed any repair or inspection of the vehicle.

During cross-examination, Mr. Gregory testified that the loaner vehicles provided to Complainant during the repair attempts were as follows: for the repair performed on December 11, 2017, Complainant received a Ford Explorer; for the repair performed on May 7, 2018, Complainant received a Ford Explorer, then a Ford Expedition on June 7, 2018; and for the repair performed on June 26, 2018, Complainant received a Ford Fusion. Mr. Gregory also stated that loaner vehicles cannot be used for towing. He said that SUV's are technically trucks and may be comparable to Complainant's vehicle.

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has been in the automotive industry for 19 years. He is an Automotive Service Excellence (ASE) Master Certified Technician. Mr. Bashir has worked for Respondent since 2007. He's been employed in his present position since 2009.

Mr. Bashir testified that the vehicle is equipped with an adaptive transmission which adjusts to the driver's driving habits. This is an ongoing process for the transmission. He indicated that the transmission keeps a history of the last 1,000 miles driven in the vehicle and this affects how the vehicle's transmission operates.

Mr. Bashir stated that Respondent considers SUV's to be trucks and thus comparable vehicles to Complainant's vehicle. He stated that the body style may be different, but they are still trucks.

Mr. Bashir also stated that towing a trailer or a boat can affect a vehicle's transmission shifting pattern. The shift points can change and the intensity of the shifts can be affected. The shift points can also be affected by driving in hilly terrain and stop and go traffic.

E. 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. Transmission Issue

The evidence indicates that the vehicle's transmission is still not operating properly. The vehicle's transmission is intermittently causing the vehicle to jerk and pull back when he is driving. This is more noticeable in stop and go traffic. This is evidence of a defect or nonconformity in the vehicle which has not been repaired. However, the evidence also indicates that Respondent was never provided with an opportunity to cure, as all of the repairs were performed by dealer technicians. Occupations Code § 2301.606(c)(2) provides that the hearings examiner cannot require a manufacturer to make a refund or replace a vehicle unless the manufacturer has been given written notice of the defect and been provided with an opportunity to cure the defect or nonconformity. Complainant did provide written notice, but not the opportunity to cure. Therefore, the hearings examiner must deny Complainant's request for repurchase or replacement of the vehicle. The hearings examiner will order Respondent to repair the vehicle so that it conforms to Respondent's warranty.

2. Steering Wheel Issue

Complainant also raised the issue that the vehicle's steering wheel has been harder to turn after the repair performed on June 26, 2018, at which time the service technician bolted down the vehicle's stabilizer shock. Only one (1) repair was ever performed for this issue. In addition, as indicated above, Respondent was not provided with an opportunity to cure. Since the evidence indicates that the steering wheel is still difficult to turn, the hearings examiner will order that this issue be repaired also.

On the date of hearing, the vehicle's mileage was 27,987 and it remains under both the bumper-to-bumper and powertrain warranties. Respondent is still under an obligation to repair any issues that arise that are covered by the vehicle's warranties.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the vehicle's transmission and steering wheel to ensure that the vehicle conforms to Respondent's warranty.

III. FINDINGS OF FACT

1. Joseph Terrell (Complainant) purchased a new 2017 Ford F-250 on October 27, 2016, from Joe Myers Ford—Lincoln (Myers) in Houston, Texas with mileage of 8 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 27,987.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles and a powertrain warranty which provides coverage for five (5) years or 60,000 miles.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Complainant feels that the vehicle is defective because he has experienced intermittent transmission issues with the vehicle and because the vehicle's steering wheel is hard to turn at times.
6. Complainant took the vehicle to Respondent's authorized dealer, Myers, for repair for the vehicle's transmission issues on the following dates:
 - a. December 11, 2017, at 18,082 miles;
 - b. May 7, 2018, at 23,449 miles; and
 - c. June 26, 2018, at 23,869 miles.
7. On December 11, 2017, Myers' service technician verified the vehicle had a major transmission leak and replaced the vehicle's cooler lines and seals in order to address the concern.

8. On May 7, 2018, Myers' service technician overhauled the vehicle's transmission in order to replace worn and failed components which had been damaged by the prior transmission fluid leak.
9. On June 26, 2018, Myers' service technician inspected the vehicle and determined that the transmission was operating properly after Complainant raised a concern regarding the vehicle's transmission feeling like it was in "tow mode" and feeling like it was down shifting when he took his foot off of the accelerator.
10. Also, on June 26, 2018, Complainant indicated that the vehicle's steering was stiff and the vehicle was hard to turn; Myers' service technician bolted down the stabilizer shock after he determined that it was loose and causing difficulty in steering the vehicle.
11. Complainant accrued incidental expenses for the vehicle as follows:

a.	Window Tinting on October 31, 2016	\$432.95
b.	Purchased Additional Gas Tank on May 31, 2017	811.39
c.	Installed Additional Gas Tank on October 17, 2017	300.00
d.	Purchased New Tires on August 28, 2018	<u>1313.05</u>
	Total	\$2857.39
12. On June 15, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Complainant did not provide Respondent an opportunity to repair the vehicle.
14. On August 3, 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.
15. The hearing in this case convened and the hearing record closed on October 25, 2018, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Joseph Terrell, represented himself in the hearing. Kelly Terrell, Complainant's wife, was also present and offered testimony. Respondent was represented telephonically by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (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 proved by a preponderance of the evidence that the vehicle has an existing warrantable defect. Tex. Occ. Code § 2301.604(a).
7. Complainant did not provide Respondent with an opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
8. 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.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
10. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.
11. Complainant is not entitled to reimbursement of incidental expenses as outlined in Findings of Fact #11. 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 Complainants' petition for repurchase 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 (*i.e.*, ensure that the transmission is operating properly and that the steering wheel is not unduly hard to turn). Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁰ Within 40 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 November 20, 2018



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

³⁰ (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.