

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0188007 CAF**

<b>CRAIG RUSSELL,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>AMERICAN HONDA MOTOR CO., INC.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Craig Russell (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2017 Honda Civic SI. Complainant asserts that several warning lights have intermittently appeared on the vehicle’s dashboard. American Honda Motor Co., Inc. (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired 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 convened on December 4, 2018, in Temple, Texas before Hearings Examiner Edward Sandoval. Craig Russell, Complainant, represented himself at the hearing. His girlfriend, Kay Schott, also appeared to offer testimony. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Maurice Narbona, District Parts and Service Manager, testified for Respondent.

Mr. Narbona was notified of a family emergency during the course of the hearing and the hearing was continued to allow Mr. Narbona to respond to it. The hearing reconvened telephonically on April 17, 2019. Complainant represented himself at the continuance. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Maurice Narbona, District Parts and Service Manager, testified for Respondent. The hearing record was closed at the conclusion of the continued hearing on April 17, 2019.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to the five conditions, for vehicles purchased prior to September 1, 2017, 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.<sup>6</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a new 2017 Honda Civic SI from Cleo Bay Honda (Bay) located in Killeen, Texas on July 31, 2017, with mileage of 5 at the time of delivery.<sup>7</sup> Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles from the date of delivery.<sup>8</sup> Complainant also provided a powertrain warranty for the vehicle which provides coverage for the vehicle's powertrain for the first five (5) years or 60,000 miles of ownership.<sup>9</sup> The vehicle's mileage on the date of the original hearing was 26,441. The warranties for the vehicle were still in effect at the time of the original hearing.

Complainant testified that several warning messages display intermittently when he's driving the vehicle. The warning messages that have appeared are: electric parking brake problem, brake

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> 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.

<sup>7</sup> Complainant Ex. 2, Purchase Order dated July 31, 2017.

<sup>8</sup> Complainant Ex. 11, Excerpts from Honda Warranty Manual undated.

<sup>9</sup> *Id.*

hold system problem, and hill start assist problem. In addition, a traction control warning light has illuminated whenever the warning messages displayed.

Complainant stated that the vehicle's warning lights first displayed on October 30, 2017, when he was driving home from Walmart. He felt that he should not drive the vehicle with the warning lights displaying and took the vehicle to Bay for repair for the issue on October 31, 2017. The warning messages had turned off and were not displaying when Complainant took the vehicle for repair. Bay's service technician indicated that there were no stored diagnostic trouble codes (DTC's) on the vehicle's computers at the time.<sup>10</sup> The technician indicated that the vehicle was operating normally and no repairs were performed.<sup>11</sup> The vehicle's mileage on this occasion was 6,351.<sup>12</sup> The vehicle was in Bay's possession for the one (1) to two (2) days during this repair.<sup>13</sup> Complainant received a loaner vehicle while his vehicle was repaired.

Complainant testified that a few days later the vehicle's air condition started blowing hot air, the dashboard lights wouldn't turn on (although the speedometer worked), and the vehicle would not turn off without pushing the stop/start button for five (5) to ten (10) seconds.<sup>14</sup> Complainant took the vehicle to Bay on November 17, 2017, in order to have the issues addressed. Bay's technician discovered a DTC indicating no communication with the vehicle's gauge control module and replaced the module in order to resolve the issues.<sup>15</sup> The vehicle's mileage on this occasion was 7,188.<sup>16</sup> The vehicle was in the dealer's possession until November 21, 2017, on this occasion.<sup>17</sup> Complainant was provided with a rental vehicle while his vehicle was being repaired.

Complainant testified that the vehicle drove normally after he got it back from Bay in November of 2017. He's had no further problems with the vehicle's air conditioner. In December of 2017 or January of 2018, the warning messages displayed again. Complainant took the vehicle to Bay for repair for the issue on January 8, 2018. Complainant does not know what action the technician took. However, the messages were not displayed when he got the vehicle back. The vehicle's mileage on this occasion was 6,003.<sup>18</sup> The vehicle was in Russell's possession for several days. Complainant was provided a loaner vehicle during this repair visit.

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<sup>10</sup> Respondent Ex. 1, Repair Order dated October 30, 2017.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Complainant testified that the vehicle was in Bay's possession for 1 to 2 days during this repair. However, the repair order indicates that the vehicle was invoiced the same day that the vehicle was presented for repair, October 30, 2017, which would indicate that it was in Bay's possession for one day.

<sup>14</sup> Complainant Ex. 5, Repair Order dated November 17, 2017.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Complainant Ex. 6, Repair Order dated January 8, 2018.

Complainant stated that a couple of weeks after getting the vehicle back from Bay the warning lights displayed once again. Complainant took the vehicle back to Bay for repair for the issue on February 26, 2018. Bay's service technician replaced the vehicle's vehicle stability assist (VSA) module in order to resolve the issue.<sup>19</sup> The vehicle's mileage on this occasion was 12,559.<sup>20</sup> The vehicle was in Bay's possession for four (4) to five (5) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the warning lights displayed again in June of 2018. Complainant took the vehicle to Bay for repair for the issue on June 14, 2018. Bay's service technician replaced the vehicle's N shift sensor in order to resolve the issue.<sup>21</sup> The vehicle's mileage on this occasion was 17,556.<sup>22</sup> The vehicle was in Bay's possession until June 21, 2018. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On June 22, 2018, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.<sup>23</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on June 27, 2018.<sup>24</sup>

Complainant stated that he received a letter from Respondent in June of 2018, requesting that they be allowed to inspect the vehicle. He did allow the inspection by Respondent's representative. The inspection was performed on July 13, 2018, at the Bay dealership.<sup>25</sup> Complainant testified that no repairs were performed at the time.

Complainant testified that the warning messages have not displayed since June of 2018.

### **C. Respondent's Evidence and Arguments**

Maurice Narbona, District Parts and Service Manager, testified for Respondent. He's worked in the automotive industry since 1994. Mr. Narbona has been in his present position for the past 15 years. He does not have a technical background. Mr. Narbona's duties include providing training to dealers' service personnel, performing warranty audits, and meeting with customers to resolve issues.

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<sup>19</sup> Complainant Ex. 7, Repair Order dated February 26, 2018.

<sup>20</sup> *Id.*

<sup>21</sup> Complainant Ex. 8, Repair Order dated June 14, 2018.

<sup>22</sup> *Id.*

<sup>23</sup> Complainant Ex. 9, Letter to American Honda Motor Co., Inc. dated June 22, 2018.

<sup>24</sup> Complainant Ex. 3, Lemon Law Complaint dated June 27, 2018.

<sup>25</sup> Complainant Ex. 10, Letter from American Honda Motor Co., Inc. dated June 29, 2018.

Mr. Narbona inspected the vehicle on July 13, 2018, during the final inspection performed at the Cleo Bay dealership. The vehicle was left by Complainant at the dealership early that morning. Mr. Narbona observed that no warning messages were displayed at the time of the inspection. He had the dealer's technicians check for stored DTC's on the vehicle's computers during the inspection. The technicians did not find any DTC's stored at the time. Mr. Narbona also had the vehicle test driven to see if any messages displayed and none did. Mr. Narbona feels that the vehicle was operating as designed at the time of the inspection.

Mr. Narbona testified that there were several parts replaced on the vehicle prior to the July 2018 inspection in an attempt to resolve the issue of the warning lights illuminating:

- On November 17, 2017, Bay's technicians replaced the vehicle's gauge control module.
- On January 8, 2018, the technicians replaced the vehicle's reverse switch.
- On February 26, 2018, the technicians replaced the vehicle's vehicle stability assist (VSA) modulator.
- On June 14, 2018, the technicians replaced the vehicle's N shift sensor.

#### **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.

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.<sup>26</sup> In the present case, the evidence indicates that the warning messages have not displayed on the vehicle’s dashboard since June of 2018. It appears that the issue has been repaired. Therefore, repurchase or replacement relief for Complainant is not warranted.

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, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of the initial hearing, the vehicle’s mileage was 26,441 and it remains covered under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

Complainant’s request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Craig Russell (Complainant) purchased a new 2017 Honda Civic SI on July 31, 2017, from Cleo Bay Honda (Bay) in Killeen, Texas, with mileage of 5 at the time of delivery.
2. The manufacturer of the vehicle, American Honda Motor Company, Inc. (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first, and a separate powertrain warranty for the vehicle which provides coverage for five (5) years or 60,000 miles.
3. The vehicle’s mileage on the date of the original hearing was 26,441.
4. At the time of the original hearing the vehicle’s warranties were still in effect.
5. Complainant has observed several warning messages display on the vehicle’s dashboard at various times.
6. The warning messages that have displayed are:
  - a. Electric Parking Brake problem;
  - b. Brake Hold System problem;
  - c. Hill Start Assist problem; and
  - d. A traction control warning light.

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<sup>26</sup> Tex. Occ. Code § 2301.605.

7. Complainant took the vehicle for repair to Respondent's authorized dealer, Bay, on the following dates:
  - a. October 30, 2017, at 6,351 miles;
  - b. November 17, 2017, at 7,188 miles
  - c. January 8, 2018, at 9,709 miles;
  - d. February 26, 2018, at 12,559 miles; and
  - e. June 14, 2018, at 17,556 miles.
8. On October 30, 2017, Bay's service technician was unable to find any diagnostic trouble codes (DTC's) stored on the vehicle's computers and the warning lights were not displaying at the time of the repair visit. The service technician did not perform any repairs to the vehicle at the time.
9. On November 17, 2017, Bay's service technician replaced the vehicle's gauge control module in order to address the issues of the vehicle's air conditioner not blowing cold air and the dashboard lights not turning on.
10. On January 8, 2018, Bay's service technician replaced the vehicle's reverse switch in order to address the issue of the warning messages appearing on the vehicle's dashboard.
11. On February 26, 2018, Bay's service technician replaced the vehicle's vehicle stability assist (VSA) modulator in order to address the issue of the warning messages appearing on the vehicle's dashboard.
12. On June 14, 2018, Bay's service technician replaced the vehicle's N shift sensor in order to address the issue of the warning messages appearing on the vehicle's dashboard.
13. On June 27, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On June 22, 2018, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.
15. Respondent performed a final inspection and repair attempt on the vehicle on July 13, 2018, at Bay's dealership location.

16. On the repair attempt described in Findings of Fact #15, Respondent's representative was unable to replicate any of the issues raised by Complainant and were unable to recover any stored diagnostic trouble codes. No repair was performed at the time.
17. Complainant has not observed any warning messages appear on the vehicle's dashboard since June 14, 2018.
18. On August 31, 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.
19. The hearing in this case convened on December 4, 2018, in Temple, Texas before Hearings Examiner Edward Sandoval. Craig Russell, Complainant, represented himself at the hearing. His girlfriend, Kay Schott, also appeared to offer testimony. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Maurice Narbona, District Parts and Service Manager, testified for Respondent. Mr. Narbona was notified of a family emergency during the course of the hearing and the hearing was continued to allow Mr. Narbona to respond to it. The hearing reconvened telephonically on April 17, 2019. Complainant represented himself at the continuance. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Maurice Narbona, District Parts and Service Manager, testified for Respondent. The hearing record was closed at the conclusion of the continued hearing on April 17, 2019.

#### 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.

#### 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 29, 2019.**



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