

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0190390 CAF**

**AUSTIN J. CONYERS,
Complainant**

v.

**AMERICAN HONDA MOTOR CO.,
INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Austin J. Conyers (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2018 Honda Accord. Complainant asserts that the vehicle has systemic electrical system and software failures which intermittently cause several warning lights to illuminate. 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 and the record was closed on March 21, 2019, in Houston, Texas, before Hearings Examiner Edward Sandoval. James R. Robinson, attorney with the Robinson Law Firm, represented Complainant at the hearing. Complainant was present and offered testimony in the hearing. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Deborah Yoder, District Parts and Service Manager, 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 the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2018 Honda Accord from Russell & Smith Honda (Russell) located in Houston, Texas on February 1, 2018, with mileage of 3 at the time of delivery.⁷ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for the vehicle for three (3) years or 36,000 miles from the date of delivery.⁸ 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.⁹ The vehicle's mileage on the date of hearing was 17,078. The warranties for the vehicle are still in effect.

Complainant testified that the vehicle's check engine light (CEL) and "power may be reduced" warning message display intermittently when he's been driving the vehicle. The warning message instructs the driver to take the vehicle to the dealer to address the issue. In addition, there was an occasion when several warning messages appeared on the vehicle's dashboard and when several functions on the vehicle failed to operate.

Complainant stated that on March 8, 2018, he attempted to start the vehicle to leave work and go to lunch. The vehicle's CEL illuminated and a warning message that the vehicle's power may be reduced appeared on the vehicle's dashboard. Complainant took the vehicle to Spring Branch Honda (Spring) located in Houston, Texas for repair for the issue that same day. Spring's service

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).

⁷ Complainant Ex. 1, Agreement to Purchase dated February 1, 2018.

⁸ Complainant Ex. 2, Honda Warranty Manual, p. 9.

⁹ *Id.*, p. 10.

technician discovered a diagnostic trouble code (DTC) on the vehicle's computer which indicated that the evaporator canister vent had shut and the valve was stuck.¹⁰ The technician replaced the vehicle's fit sensor to resolve the problem.¹¹ The vehicle's mileage on this occasion was 2,057.¹² The vehicle was in Spring's possession for the afternoon during this repair. Complainant waited at the dealer's location while the vehicle was repaired.

Complainant stated that the vehicle drove normally after the repair. A few days later when Complainant started the vehicle, the CEL illuminated and the same warning message appeared on the dashboard. Complainant took the vehicle to Russell on March 14, 2018, in order to have the issue addressed. Complainant testified that the technician replaced the valves on the gas cap in order to resolve the issue. The vehicle's mileage on this occasion was 2,549.¹³ The vehicle was in the dealer's possession until March 16, 2018. Complainant was provided with a rental vehicle while his vehicle was being repaired.¹⁴

Complainant testified that he picked up the vehicle from Russell on March 16, 2018, and then had his father-in-law, Mr. Robinson, return the vehicle to Russell on March 22, 2018, because the CEL illuminated and the warning message that the vehicle's power could be reduced appeared on the dashboard. Russell's service technician ended up replacing the vehicle's gas intake system on this occasion. The vehicle was in Russell's possession until March 28, 2018. Complainant did not receive a loaner or rental vehicle during this repair attempt.

Complainant stated that the vehicle seemed to drive normally during the next several weeks. However, on June 1, 2018, the CEL illuminated and the warning message that the vehicle's power could be reduced appeared on the dashboard. Complainant was unable to take the vehicle to a dealer for repair until June 6, 2018. The CEL and warning message were on during the time between June 1, 2018, when they initially illuminated, and June 6, 2018, when Complainant took the vehicle to Russell for repair. Russell's service technician discovered a DTC stored on the vehicle's electronic control module (ECM) indicating that there was a "system purge flow malfunction."¹⁵ The technician cleared the code and performed an evaporation test on the vehicle and was unable to recreate any issue with the vehicle.¹⁶ The vehicle's mileage on this occasion

¹⁰ Complainant Ex. 4, Repair Order dated March 8, 2018.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 5, Repair Order dated March 14, 2018. It appears that this repair order was left open until March 31, 2018, and that a second repair was included on the order.

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order dated June 6, 2018.

¹⁶ *Id.*

was 6,003.¹⁷ The vehicle was in Russell's possession for one (1) day. Complainant was not provided a loaner or rental vehicle during this repair visit.

Complainant stated that the vehicle drove normally for several weeks. On July 22, 2018, Complainant was driving from Austin to Houston, when several warning lights illuminated on the vehicle's dashboard. The vehicle's CEL illuminated, along with the message that the vehicle's power could be reduced. In addition, warning messages that there was an automatic lighting control system problem, an auto high-beam problem, a road departure mitigation system problem, and a lane keeping assist system problem appeared on the vehicle's dashboard. Complainant stopped in Bastrop to get something to eat and when he returned to the vehicle, several functions on the vehicle failed to operate, these were: the key fob failed to unlock the vehicle's doors or open the trunk, the back-up camera didn't work, the automatic door locks wouldn't work, the windows wouldn't work, the button to open the trunk didn't work, the cruise control didn't work and the turn signal indicators didn't work (although the turn signals were operational). Complainant stated that during the entire drive the vehicle back to his home in Houston the warning messages were displayed. He did not take the vehicle for repair for any of the issues. Instead, he parked the vehicle in a parking garage and didn't drive it for a few months.

On July 23, 2018, Complainant's attorney wrote a letter to Respondent advising them of Complainant's dissatisfaction with the vehicle.¹⁸ Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 23, 2018.¹⁹

Complainant did not move the vehicle until September of 2018, when it was picked up for an inspection and final repair attempt pursuant to Respondent's request. The vehicle wouldn't start and had to be towed to Spring's location. Since the September inspection by Respondent's representative, Complainant has been driving the vehicle. He testified that none of the warning lights have illuminated and all of the functions seem to be operating correctly.

Complainant stated that he does not feel safe in the vehicle. He does not feel that it's been repaired even though no incidents have occurred in the past several months. He feels that the vehicle's market value has decreased because of the number of repairs performed to the vehicle. Complainant feels that there will be additional problems with the vehicle in the future. He stated that he can't afford to keep taking time off of work in order to take the vehicle to a dealer for repair.

¹⁷ *Id.*

¹⁸ Complainant Ex. 7, Letter to American Honda Motor Co., Inc. dated July 23, 2018.

¹⁹ Complainant Ex. 3, Lemon Law Complaint received August 23, 2018. Complainant signed the complaint on August 17, 2018, but it was not received by Texas Department of Motor Vehicles until August 23, 2018, which is the effective date of the complaint.

During cross-examination, Complainant stated that the last problem with the vehicle occurred on July 22, 2018. Since then, he's not seen any warning messages or have any of the functions not operate. Complainant stated that Respondent's representative performed a final repair attempt on the vehicle in September of 2018. (The final repair attempt was performed on September 27, 2018, at Spring.)²⁰ Complainant stated that he was told that some of the warning messages may have been activated because the toll tag on the vehicle was affixed too near some of the radar sensors on the vehicle. During Respondent's inspection of the vehicle, the dealer's technician moved the toll tag to the left side of the windshield in order to resolve the issue. No other repair was performed at the time.

Complainant also stated that he has not had the vehicle appraised to determine its present value.

C. Respondent's Evidence and Arguments

Deborah Yoder, District Parts and Service Manager, testified for Respondent. She has 21 years' experience in the automotive industry. Ms. Yoder has been in her current position for three (3) years. She does not have a technical background. Her job duties include dealing with customer complaints, providing training to dealer representatives, and marketing Respondent's products.

Ms. Yoder testified that she inspected the vehicle on September 27, 2018, at Spring's location. Ms. Yoder stated that the vehicle was towed to the Spring location, since the battery was dead. The dealer's technicians replaced the vehicle's battery. They also found multiple stored DTC's indicating that the vehicle had lost communications with various computers.²¹ Ms. Yoder stated that the codes were cleared and she took the vehicle for a test drive. No warning lights illuminated during the test drive. Ms. Yoder had experienced a similar situation in the past regarding her personal vehicle's warning lights illuminating. She resolved the issue by moving her toll tag from the middle of her vehicle's windshield to the side. Ms. Yoder noticed Complainant's vehicle had a toll tag in the middle of the windshield as hers had been. She had the dealer's technicians move the tag to the left of the windshield in an attempt to resolve the issue. Ms. Yoder stated that the vehicle's sensing systems use radar to track the vehicle's location on the road. The sensors for the radar are located in the rear view mirror and the bumper. She feels that the toll tag could have been interfering with the sensor in the rear view mirror and that this could have caused some of the vehicle's warning lights to illuminate on July 22. Ms. Yoder stated that she does not know why some of the vehicle's functions didn't work on September 27. Ms. Yoder stated that Spring's technicians drove the vehicle 256 miles during the September 27 repair. At no time did any of the warning lights illuminate nor did any of the vehicle's functions

²⁰ Respondent Ex. 1, Repair Order dated September 27, 2018.

²¹ *Id.*

fail to operate. The vehicle's mileage at the time of the inspection was 8,619.²² Complainant was provided with a loaner vehicle until October 4, 2018, while his vehicle was in Spring's possession.

Ms. Yoder stated that she feels that the vehicle's emissions system has been repaired. She feels that this was the reason for the vehicle's CEL illuminating prior to July of 2018. She stated that if there was a systemic issue with the vehicle, then another incident would have occurred between September of 2018 when the final inspection took place and the date of hearing. Ms. Yoder also stated that she feels that the vehicle's market value has not been affected by the repairs performed to the vehicle.

During cross-examination, Ms. Yoder stated that a dead battery in a vehicle would not clear any DTC's stored in the vehicle's computers. She also stated that there was no repair to the vehicle's emissions system during the September 27th inspection of the vehicle.

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.²³ In the present case, the evidence indicates that the issue with the vehicle's CEL warning light displaying has been repaired. In addition, it appears that the other issues (the various warning lights that

²² *Id.*

²³ Tex. Occ. Code § 2301.605.

illuminated and functions that failed to work on July 22, 2018) raised by Complainant were resolved prior to the hearing, as they have not recurred in the five (5) plus months since the last repair to the vehicle. The evidence indicates that the vehicle does not have an existing defect. 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 hearing, the vehicle's mileage was 17,078 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. Austin J. Conyers (Complainant) purchased a new 2018 Honda Accord on February 1, 2018, from Russell and Smith Honda (Russell) in Houston, Texas, with mileage of 3 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 hearing was 17,078.
4. At the time of hearing the vehicle's warranties were still in effect.
5. On March 8, 2018, Complainant observed the vehicle's check engine light (CEL) and "power may be reduced" warning message display when he started the vehicle.
6. The warning message instructed Complainant to take the vehicle to a dealer to resolve the issue.
7. Complainant took the vehicle for repair to Respondent's authorized dealers as instructed by the warning message on the following dates:
 - a. March 8, 2018, at 2,057 miles;
 - b. March 14, 2018, at 2,549 miles;

- c. March 22, 2018, at unknown miles; and
 - d. June 6, 2018, at 6,003 miles.
8. On March 8, 2018, Spring Branch Honda's (Spring) service technician replaced the vehicle's fit sensor in order to resolve the issue of the CEL illuminating and the warning message displaying.
 9. On March 14, 2018, Russell's service technician replaced the valves on the gas cap in order to resolve the issue.
 10. On March 22, 2018, Russell's service technician replaced the vehicle's gas intake system in order to address Complainant's concerns with the vehicle.
 11. On June 6, 2018, Russell's service technician cleared a system purge flow malfunction code stored on the vehicle's electronic control module (ECM) and performed an evaporation test on the vehicle, but was unable to recreate any issue with the vehicle.
 12. On July 22, 2018, Complainant was driving from Austin to Houston, when the CEL and several warning lights illuminated on the vehicle's dashboard, these messages indicated that: the vehicle's power could be reduced, an automatic lighting control system problem, an auto high-beam problem, a road departure mitigation system problem, and a lane keeping assist system problem.
 13. Also on July 22, 2018, several functions failed to operate on the vehicle, these were: the key fob failed to unlock the vehicle's doors or open the trunk, the back-up camera didn't work, the automatic door locks wouldn't work, the windows wouldn't work, the button to open the trunk didn't work, the cruise control didn't work and the turn signal indicators didn't work (although the turn signals were operational).
 14. On August 23, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 15. On July 23, 2018, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.
 16. Respondent performed a final inspection and repair attempt on the vehicle on September 27, 2018, at Spring Branch Honda.
 17. On the repair attempt described in Findings of Fact #16, Respondent's representative was unable to replicate any of the issues raised by Complainant. However, the technicians did

- move the vehicle toll tag from the middle of the vehicle's windshield to the left side as they felt it could be affecting the vehicle's radar sensors.
18. Complainant has not observed any warning messages turn on or the CEL illuminate on the vehicle since July 22, 2018.
 19. None of the vehicle's functions have failed to operate since July 22, 2018.
 20. On November 16, 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.
 21. The hearing in this case convened and the record was closed on March 21, 2019, in Houston, Texas, before Hearings Examiner Edward Sandoval. James R. Robinson, attorney with the Robinson Law Firm, represented Complainant at the hearing. Complainant was present and offered testimony in the hearing. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Deborah Yoder, District Parts and Service Manager, 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 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 18, 2019.



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