

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0005167 CAF**

GLOBAL TRAVEL SERVICES, LLC	§	
and TORRELL K. JOHNSON,	§	
Complainants	§	
	§	
v.	§	BEFORE THE OFFICE
	§	
BMW OF NORTH AMERICA, LLC,	§	
Respondent	§	OF
	§	
and	§	
	§	ADMINISTRATIVE HEARINGS
BMW FINANCIAL SERVICES, NA,	§	
LLC	§	
Intervenor	§	

DECISION AND ORDER ON REHEARING

Global Travel Services, LLC and Torrell K. Johnson (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2018 BMW 3 Series vehicle. Complainants assert that the vehicle has a defect or nonconformity which causes the vehicle’s transmission to intermittently shift from drive into neutral while the vehicle is being driven. BMW of North America, LLC (Respondent) and BMW Financial Services, NA (Intervenor) argued that the vehicle is operating as designed, does not have a defect, and that no relief is warranted. The hearing examiner concludes that the vehicle does have an existing warrantable defect and Complainants are eligible for repurchase 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 originally convened on June 5, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Global Travel Services, LLC and Torrell K. Johnson, Complainants, failed to appear at the hearing to provide testimony. BMW of North America, LLC, Respondent, was represented by Brittany Soto, After-Sales Area Manager. Also appearing for Respondent were Bob Breznak, Technical Support Engineer, and Chris Jones, Service Director for BMW of Houston North. BMW Financial Services, NA, LLC, (Intervenor) did not participate in the hearing. Since Complainants did not participate in the hearing, pursuant to a Motion to Dismiss from Respondent an order dismissing the Lemon Law complaint was issued on June 14, 2019.

Complainants filed a Motion for Rehearing on June 17, 2019, indicating that they failed to appear at the June 5, 2019 hearing because of circumstances beyond their control, *i.e.*, Mr. Johnson was involved in an automobile accident on his way to the hearing. On July 25, 2019, Order No. 4: Granting Motion for Reinstatement and Rehearing was issued by the hearings examiner and a hearing on the merits was scheduled for September 4, 2019.

On July 25, 2019, Respondent's representative filed a Motion for Continuance of the hearing as the hearing was scheduled for a date when she was unavailable. On August 13, 2019, the hearings examiner issued Order No: 5: Granting Motion for Continuance, Rescheduling Hearing, and Ordering Vehicle Inspection. The hearing was rescheduled for November 13, 2019.

The hearing convened on November 13, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Terrell K. Johnson, co-Complainant, appeared and represented Complainants in the hearing. Respondent was represented by Brittany Soto, After-Sales Area Manager. Also appearing for Respondent were Christopher Jones, Service Director for BMW Houston North, and James Aguilar, Technical Support Engineer. Intervenor did not participate in the hearing. The hearing was continued to January 10, 2020, to allow the parties to present additional, necessary documents.

The hearing reconvened telephonically on January 10, 2020, before Hearings Examiner Edward Sandoval. Terrell K. Johnson, co-Complainant, appeared and represented Complainants at the hearing. Brittany Soto, After-Sales Area Manager, and Gino Palacios, paralegal, appeared and represented Respondent. Sabrina Morrell, paralegal, represented Intervenor in the hearing. The hearing record was closed on January 10, 2020.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have provided written notice of

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

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 these conditions, a rebuttable presumption can be established 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

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁸

B. Complainants’ Evidence and Arguments

Complainants leased a new 2018 BMW 3 Series vehicle on June 4, 2018, from BMW of Houston North (BMW North) in Houston, Texas.⁹ The vehicle’s mileage at the time of delivery was 34.¹⁰ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first. On the date of the November 13, 2019 hearing the vehicle’s mileage was 16,319. At the time of the hearing the vehicle’s warranty was still in effect.

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 Tex. Occ. Code § 2301.605(a)(2)(A) and (B). Texas Occupations Code § 2301.605(a)(3) provides a third method 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, this section 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.

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 1, Lease Order dated June 4, 2018.

¹⁰ Complainant Ex. 2, Odometer Disclosure Statement dated June 4, 2018.

Mr. Johnson testified that he is the primary driver of the vehicle and that on occasion when he's driving the vehicle, the transmission will shift from drive into neutral without notice and for no reason. This first occurred in September of 2018, when he was driving from Lufkin, Texas to Houston. While driving on the highway, the vehicle's transmission shifted into neutral. He attempted to shift the transmission back to drive, but was unable to do so. Mr. Johnson stated that he had to pull the vehicle over to the side of the road and turn off the vehicle and restart it in order to get the transmission to shift back into drive. This happened twice while Mr. Johnson was on his drive back to Houston.

Mr. Johnson stated that he took the vehicle to BMW North for repair for the issue on September 5, 2018. BMW North's service technician inspected the vehicle and the vehicle's battery.¹¹ The technician could not find any stored fault codes and found no problem with the vehicle.¹² The vehicle's mileage on this occasion was 5,945.¹³ Mr. Johnson stated that the vehicle was in the dealer's possession for a couple of hours. Mr. Johnson was not provided a loaner vehicle while his vehicle was being repaired.

Mr. Johnson testified that he accepted the return of the car after the repair visit. He was driving it on October 3, 2018, when another incident happened where the vehicle's transmission shifted into neutral for no reason. Mr. Johnson was driving the vehicle to Sugarland, Texas on Highway 6 at the time of the incident. Mr. Johnson stated that he had to pull the vehicle over to the side of the ride and restart it in order to get the vehicle's transmission to shift back to drive.

Mr. Johnson stated that he took the vehicle to BMW North for repair for the transmission issue on November 1, 2018. The service technician recharged the vehicle's battery and determined that the vehicle's computers had a software error.¹⁴ The computers were reprogrammed and the tire pressure warning system was reset during the repair.¹⁵ The vehicle's mileage at the time was 8,137.¹⁶ Mr. Johnson stated that the vehicle was in the dealer's possession for two (2) days. He stated that he received a loaner vehicle while his vehicle was being repaired. Mr. Johnson stated that he was not informed as to what the problem was with the vehicle.

After receiving the vehicle back in early November, Mr. Johnson was driving it when the problem recurred. The vehicle's transmission again shifted into neutral and he had to pull the

¹¹ Respondent Ex. 3, Repair Order dated September 5, 2018.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 4, Repair Order dated November 1, 2018.

¹⁵ *Id.*

¹⁶ *Id.*

vehicle over to the side of the road in order to turn the vehicle off and restart it to be able to continue on his trip.

Mr. Johnson took the vehicle to BMW North for repair for the issue on November 28, 2018. BMW North's service technician was unable to verify the problem and was unable to discover any stored fault codes on the vehicle's computers.¹⁷ The vehicle's mileage at the time was 9,799.¹⁸ The vehicle was in BMW North's possession for two (2) to three (3) days. Mr. Johnson was provided with a loaner vehicle while his vehicle was being repaired.

Complainants mailed a letter to Respondent on January 2, 2019, in which they indicated their dissatisfaction with the vehicle.¹⁹ Complainants then filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 22, 2019.²⁰

Mr. Johnson said that the issue with the vehicle's transmission shifting from drive to neutral for no reason and without warning continues to occur periodically. The last time the incident occurred prior to the November 13, 2019 hearing was in approximately September of 2019. Complainants have not had any other repairs performed for the issue since November of 2018. Mr. Johnson stated that Respondent has not contacted him for a final inspection or repair to the vehicle.

Mr. Johnson also stated that on the morning of June 5, 2019, he was driving the vehicle to the Department's Houston Regional Service Center to participate in the originally scheduled Lemon Law hearing when he was involved in a hit and run incident in which the subject vehicle was damaged. The vehicle suffered damage to the front end and passenger side. Repairs to the vehicle were performed at a non-BMW facility. It took several months for the damage to be repaired.

Mr. Johnson testified that he doesn't feel safe driving the vehicle. He does not know why the vehicle's transmission will shift into neutral. He stated that he does not touch the vehicle's gear shift when he's driving.

During the January 10, 2020 continuance, Mr. Johnson testified that he attended the inspection of the vehicle conducted by Even Whitis, Department Case Advisor, on December 19, 2019. Mr. Johnson stated that he took a test drive with Mr. Whitis during the inspection. Mr. Whitis was unable to recreate the concern regarding the vehicle's transmission during the inspection.

¹⁷ Complainant Ex. 5, Repair Order dated November 28, 2018.

¹⁸ *Id.*

¹⁹ Complainant Ex. 6, Letter to BMW of North America, LLC dated January 2, 2019.

²⁰ Complainant Ex. 7, Lemon Law Complaint dated January 22, 2019.

C. Respondent's Evidence and Arguments

1. Christopher Jones' Testimony

Christopher Jones, BMW Houston North's service director, testified for Respondent in the hearing. Mr. Jones has worked for 25 years in the automotive industry. He has worked for the past 20 years for BMW with the last six (6) years at BMW Houston North. Mr. Jones has a certification as a dealer service manager.

Mr. Jones testified that he had never seen the vehicle prior to the November 13, 2019 hearing. Mr. Jones stated that the procedure for BMW North is that if a vehicle is delivered to the service shop for repeat repairs for the same problem within six months, the vehicle is fast tracked for repair. If a problem with a vehicle can't be recreated, he has a team leader look at the vehicle to see if he can recreate the problem. If the problem still persists, then a shop foreman will look at the vehicle.

Mr. Jones stated that if the vehicle had an electrical malfunction, then a diagnostic trouble code (DTC) will be stored in the vehicle's computers. The problem complained of by Complainants would trigger such DTC's and would create a domino effect with several codes being stored. Mr. Jones testified that during the three (3) repairs performed at BMW North for the issue raised by Complainants, no DTC's were ever discovered on the vehicle's computers.

Mr. Jones stated that for the September 5, 2018 repair, the service technician charged the vehicle's battery and interrogated the vehicle's fault memory. There were no applicable bulletins found and the problem was not reproduced, so no repair was performed.

On November 1, 2018, the service technician recharged the vehicle's battery and performed a vehicle test. The computers were updated and then the process had to begin again because the tire pressure warning system didn't want to update originally.

On November 28, 2018, the technician performed a transmission adapt adjusting the transmission shift points. The technician also verified that the vehicle's fluid levels were at the manufacturer's specifications.

Mr. Jones further testified that Complainants were provided a loaner vehicle only on the last repair visit.

2. Brittany Soto's Testimony

Brittany Soto, After-Sales Area Manager, testified for Respondent at the hearing. She stated that she was informed by Respondent's upper management not to contact Complainants regarding their concerns with the vehicle after they filed the Lemon Law complaint. As a result, she did not request that Respondent's technicians perform a final inspection or repair of the vehicle.

Mrs. Soto also stated that Respondent provided a four (4) year of 50,000 mile new vehicle limited warranty for the vehicle when it was purchased.

During the inspection of the vehicle that took place during the November 13, 2019 hearing, Ms. Soto looked at the repairs performed to the vehicle's front end and indicated that there were several concerns with the repairs and that the repair work was done poorly. During the continuance, Ms. Soto pointed out that the repair shop that performed the repairs to the vehicle installed used parts on the vehicle and that the vehicle's value may be affected by the repairs.

D. Analysis

Under the Lemon Law, Complainants bear 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, Complainants 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, Complainants are 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, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainants' vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainants assert that the vehicle has a defect or nonconformity which causes the vehicle's transmission to intermittently shift from drive into neutral while the vehicle is being driven. Mr. Johnson credibly testified that the vehicle's transmission has shifted from drive to neutral for no reason on several occasions, requiring him to pull the vehicle over to the side of the road and restart it in order to resume his drive. The problem has occurred despite Complainants' efforts to have the issue repaired.

The evidence further demonstrates that the defect in Complainants' vehicle creates a serious safety hazard. A vehicle that unexpectedly shifts into neutral while driving on the highway creates obvious safety issues. The intermittent nature of the condition also increases the safety risk. The sudden loss of power and resulting deceleration of Complainants' vehicle is likely to surprise and confuse other drivers and can increase the risk of traffic accidents. Complainants have met their burden of proof to establish a warrantable and existing defect or condition that creates a serious safety hazard.

Complainants also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainants presented the vehicle for repair to Respondent's authorized dealer on three (3) separate occasions for repair for the complained of issue prior to the filing of the Lemon Law complaint: September 5, 2018; November 1, 2018; and November 28, 2018. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." During each service visit, Mr. Johnson informed dealer technicians of the fact that the vehicle's transmission shifted from drive to neutral for no reason while he was driving. Based on the evidence as a whole, the hearings examiner concludes that Respondent or its dealers have been provided a reasonable number of attempts to conform Complainants' vehicle to the applicable express warranty.

In addition, the evidence presented at the hearing indicates that Complainants provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainants informed Respondent via letter dated January 2, 2019, of their concern with the vehicle's transmission shifting into neutral for no reason while the vehicle was being driven and providing Respondent with an opportunity to cure. Respondent did not contact Complainants to request an opportunity to repair the vehicle.

Although Respondent has been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainants have met their burden of proof to establish that the vehicle has a warrantable and existing defect or condition which creates a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupation Code. Therefore, the hearings examiner will order Respondent to repurchase the vehicle as requested by Complainants.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainants' request for repurchase relief is hereby granted.

III. FINDINGS OF FACT

1. Global Travel Services, LLC and Terrell K. Johnson (Complainants) leased a new 2018 BMW 3 Series vehicle on June 4, 2018, from BMW of Houston North (BMW North) in Houston, Texas with mileage of 34 at the time of delivery.
2. The manufacturer or distributor of the vehicle, BMW of North America, LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of the November 13, 2019 hearing was 16,319.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainants feel that the vehicle is defective because the vehicle's transmission will intermittently shift from drive into neutral on its own while the vehicle is being driven.
6. Complainants took the vehicle for repair to Respondent's authorized dealer, BMW North, in order to address their concerns with the vehicle's transmission on the following dates:
 - a. September 5, 2018, at 5,945 miles;
 - b. November 1, 2018, at 8,137 miles; and
 - c. November 28, 2018, at 9,799 miles.
7. On September 5, 2018, BMW North's service technician was unable to recreate the issue with the vehicle's transmission and did not find any stored fault codes on the vehicle's computers. As a result, no repairs were performed.
8. On November 1, 2018, BMW North's service technician found a software error on the vehicle's computers and reprogrammed the vehicle's computers.
9. On November 28, 2018, BMW North's service technician was unable to recreate the problem and did not perform any repairs to the vehicle.
10. On January 2, 2019, Complainants mailed a letter to Respondent advising them of their dissatisfaction with the vehicle.
11. On January 22, 2019, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

12. Respondent did not request for an opportunity to inspect the vehicle or perform any repairs to the vehicle after receiving Complainants' Lemon Law complaint.
13. The last time that the vehicle's transmission shifted from drive to neutral on its own, prior to the November 13, 2019 hearing, was in September of 2019.
14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$36,070.00
Total paid at inception of lease	\$16,905.00
Monthly payment amount	\$459.16
Number of payments made at time of PFD issuance	1
Delivery mileage	34
Mileage at first report of defective condition	5,945
Mileage on hearing date	16,319
Useful life determination	120,000

Purchase price, including tax, title, license and registration									
									\$36,070.00
Mileage at first report of defective condition									5,945
Less mileage at delivery									<u>-34</u>
Unimpaired miles									5,911
Mileage on hearing date									16,319
Less mileage at first report of defective condition									<u>-5,945</u>
Impaired miles									10,374
Reasonable Allowance for Use Calculations									
Unimpaired miles									
									<u>5,911</u>
		120,000	X			\$36,070.00		=	\$1,776.75
Impaired miles									
									<u>10,374</u>
		120,000	X			\$36,070.00	X .5	=	<u>\$1,559.13</u>
Total reasonable allowance for use deduction									\$3,335.87
Lessee's calculation:									
Total paid at inception of lease									\$16,905.00
Total amount for monthly payments									\$459.16
Less allowance for use									<u>-\$3,335.87</u>
Refund filing fee									<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT TO LESSEE:									\$14,063.29
Lessor's Calculation:									
Purchase price, including tax, title, license and registration									\$36,070.00
5% allowance by Rule 215.208(B)(ii)									\$1,803.50
									=
Less total paid by Lessee									<u>\$17,364.16</u>
TOTAL REPURCHASE AMOUNT TO LESSOR:									\$20,509.34

15. On September 23, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants, Respondent and Intervenor, 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.

16. The hearing convened on November 13, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Terrell K. Johnson, co-Complainant, appeared and represented Complainants in the hearing. Respondent was represented by Brittany Soto, After-Sales Area Manager. Also appearing for Respondent were Christopher Jones, Service Director for BMW Houston North, and James Aguilar, Technical Support Engineer. Intervenor did not participate in the hearing. The hearing was continued to January 10, 2020, to allow the parties to present additional, necessary documents. The hearing reconvened telephonically on January 10, 2020 before Hearings Examiner Edward Sandoval. Terrell K. Johnson, co-Complainant, appeared and represented Complainants at the hearing. Brittany Soto, After-Sales Area Manager, and Gino Palacios, paralegal, appeared and represented Respondent. Sabrina Morrell, paralegal, represented Intervenor in the hearing. The hearing record was closed on January 10, 2020.

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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants' vehicle has an existing defect or condition (the vehicle's transmission shifting from drive to neutral while the vehicle is being driven) that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainants' vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

8. Based on the above Findings of Fact and Conclusions of Law, Complainants are entitled to relief and repurchase of the 2018 BMW 3 Series vehicle under Texas Occupations Code § 2301.604(a).

IT IS THEREFORE ORDERED that:

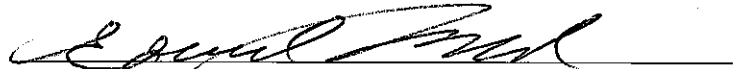
1. Respondent shall accept the return of the vehicle from Complainants. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainants. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondent shall repurchase the subject vehicle in the amount of ~~\$34,572.63~~: ~~\$14,063.29~~ payable to Complainants and the balance, ~~\$20,509.34~~, payable to Lessor BMW Financial Services, NA, LLC. The refund shall be paid to Complainants and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainants. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainants are responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section.

5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

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 **GRANTED**. It is further **ORDERED** that Respondent, BMW of North America, LLC, shall repair the warrantable defect (the transmission shifting from drive to neutral on its own) in the reacquired vehicle identified in this Decision.

SIGNED March 10, 2020.



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