

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 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 leased a new 2018 Volkswagen Passat SEL from DeMontrond Automotive Group (DeMontrond) in Houston, Texas on February 23, 2018, with mileage of 220 at the time of delivery.^{7,8} DeMontrond assigned the lease to VW Credit Leasing, LTD.⁹ Respondent provided a New Vehicle Limited Warranty for the vehicle which provides coverage for six (6) years or

¹ Tex. Occ. Code § 2301.604(a).

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. 3, Closed End Motor Vehicle Lease dated February 23, 2018.

⁸ Complainant Ex. 4, Odometer Disclosure Statement dated February 23, 2018.

⁹ Complainant Ex. 3, Closed End Motor Vehicle Lease dated February 23, 2018.

72,000 miles, whichever comes first. The vehicle's warranty was still in effect on the date of hearing, as the vehicle's mileage was 13,257.

1. Terry J. Deyoe's Testimony

After he returned to Texas, Complainant testified that the vehicle's rear and passenger side doors, trunk, and fuel door would not open and the windshield washer would not operate when the outside temperature was below 50 degrees. He first experienced the problems when he and his wife were on a trip to Montana. The first incident occurred in Colorado after the car had been parked overnight at a hotel. Initially, Complainant could not open the vehicle's trunk to store their luggage nor could he open the vehicle's doors, except for the driver's door. Complainant stated that the doors would not open regardless of whether he used the key fob or attempted to unlock the doors manually. In addition, he could not open the fuel door. Complainant stated that he and his wife returned to Texas around May 28, 2018, after being out of state for almost two (2) weeks.

Complainant contacted DeMontrond's service manager about the issues with the vehicle. The service advisor informed Complainant that no repairs could be performed to the vehicle if the problem could not be recreated. As a result, Complainant did not take the vehicle to the dealer for repair.

Complainant stated that there was no problem with the vehicle during the summer of 2018. However, in November of 2018, after the first severe cold snap in Complainant's locale, the issues with the doors, trunk, fuel door, and windshield washer recurred. Complainant took the vehicle to Volkswagen of The Woodlands (located in The Woodlands, Texas) for repair for the issues on November 15, 2018. The dealer's service technician verified the issues complained of by Complainant.¹⁰ The technician determined that the problem was being caused by a faulty J519 module.¹¹ The technician replaced the module and reprogrammed the vehicle's keys to the module in order to correct the issues.¹² The vehicle's mileage on this occasion was 9,287.¹³ The vehicle was in the dealer's possession for five (5) days during this repair. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the very same issues occurred the day after he picked up the vehicle from the dealer. He testified that he returned the vehicle to DeMontrond for repair on November

¹⁰ Complainant Ex. 7, Repair Order dated November 15, 2018.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

26, 2018.¹⁴ DeMontrond's service technician found that one of the vehicle's fuses was not making good contact with some circuits causing the issues with the door locks, trunk, fuel door, and windshield washer.¹⁵ In order to resolve the issues, the technician spliced a new fuse box into the main body harness at the bulk head.¹⁶ The vehicle's mileage on this occasion was 9,339.¹⁷ Complainant stated that the vehicle was in DeMontrond's possession for six (6) weeks. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that the problems have not recurred since the December 2018 repair to the vehicle. He is not sure whether the local outside temperature has dropped below 50 degrees since the repair was performed. Complainant stated that his wife is the primary driver of the vehicle and that she only drives it once or twice a week. The vehicle has never stalled or died while either Complainant or his wife was driving it.

On February 1, 2019, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.¹⁸ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 20, 2019.¹⁹

Complainant stated that he feels uncomfortable driving the vehicle. He feels that the vehicle is not safe. Complainant testified that he was informed by a DeMontrond representative that the issues with the vehicle were caused by cold contraction in the fuse box. Complainant stated that this doesn't make sense and that it seems that Respondent has a problem with the materials used in constructing the fuse box.

Complainant has had several conversations with Respondent's representatives about having Respondent repurchase or replace the vehicle. On February 19, 2019, Complainant received a letter from Respondent indicating that they would not make an offer to repurchase or replace the vehicle.²⁰

¹⁴ Complainant Ex. 5, Repair Order dated December 13, 2018. Complainant testified that he took the vehicle to DeMontrond for repair on November 26, 2018. However, the repair order indicates that the repair was begun on December 13, 2018.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 2, Letter to Volkswagen [*sic*] Group of America, Inc. dated February 1, 2019.

¹⁹ Complainant Ex. 1, Lemon Law Complaint dated February 20, 2019. Complainant signed and dated the complaint on February 8, 2012, which is a typo, since the vehicle was not purchased until February 23, 2018. In addition, the complaint was not received by the Texas Department of Motor Vehicles until February 20, 2019, which is the effective date of the complaint.

²⁰ Complainant Ex. 9, Correspondence between Complainant and Respondent, p. 8.

Complainant also stated that the vehicle's resale value has been affected by the issues. He had the vehicle appraised by CarMax on June 26, 2019. The vehicle was appraised at \$18,500.²¹ Complainant stated that the purchase price of the vehicle was \$29,702. The vehicle's mileage at the time of the appraisal was 12,945.

2. Chesna B. Deyoe's Testimony

Chesna B. Deyoe, Complainant's wife and co-lessee, testified in the hearing. She stated that she is the primary driver of the vehicle. Ms. Deyoe stated that she no longer wants to drive the vehicle. She stated that the vehicle has several issues, including: the infotainment system not working properly, the navigation system not working, the backup camera intermittently not working, and the windshield washers activating on their own.²² Ms. Deyoe said that the vehicle drives fine and all of the other features seem to work correctly.

Ms. Deyoe stated that she's concerned that there may be issues with the vehicle that she's not aware of. In addition, she's not sure that the issues that were raised and repaired by the dealer have really been fixed. Ms. Deyoe feels that there may be electrical issues with the vehicle that have not been corrected.

3. McKenzie Hukill's Testimony

McKenzie Hukill, Service Advisor for DeMontrond Auto Country, testified under subpoena for Complainant. Ms. Hukill stated that she was the service advisor for Complainant both times he took the vehicle for repair for the rear and passenger side doors, trunk, and fuel door not opening and the windshield washer not operating issues. Ms. Hukill verified the concerns raised by Complainant. She also advised Complainant that he should contact Respondent to inquire as to the possibility of a trade assist or some kind of resolution for the issues that were occurring with the vehicle.

Ms. Hukill also clarified that the J519 module which was replaced during the repair on November 15, 2018, is a multifunction control module for electronic control systems. She also verified that the vehicle's fuse box was replaced during the December 2018 repair visit.

²¹ Complainant Ex. 10, CarMax Appraisal Offer dated June 26, 2019.

²² None of the issues raised by Ms. Deyoe were included on the Lemon Law complaint and, as such, were not addressed by the hearings examiner.

C. Respondent's Evidence and Arguments

Susan Lucas, contract representative, appeared at the hearing for Respondent. Ms. Lucas did not offer testimony as she had no involvement in any of the events leading to hearing. Ms. Lucas did present Respondent's position statement for consideration as evidence. Respondent's position is that the vehicle has been repaired and is operating normally.²³ Respondent feels that there has been no substantial impairment of use, value, or safety of the vehicle.²⁴

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.

Complainant leased the vehicle on February 23, 2018, and presented the vehicle to Respondent's authorized dealers for repair for the issues of the vehicle's rear and passenger side doors, trunk, and fuel door not opening and the windshield washer not operating in cold weather on the following dates: November 15, 2018 and December 13, 2018. Complainant testified that the problems have not recurred since he picked up the vehicle from DeMontrond after the last repair visit.

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.²⁵ In the present

²³ Respondent Ex. 1, Volkswagen of America, Inc. Position Statement, p. 12.

²⁴ *Id.*

²⁵ Tex. Occ. Code § 2301.605.

case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted. Since the evidence establishes that the vehicle has been repaired, the hearings examiner will not address the issue of Complainant's allegation that the vehicle's value has been impaired by the issues that he's experienced with it.

Respondent's New Vehicle Limited Warranty applicable to Complainant's vehicle provides coverage for six (6) years or 72,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 13,257 and the warranty is still in effect. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

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

III. FINDINGS OF FACT

1. Terry J. Deyoe (Complainant) leased a new 2018 Volkswagen Passat SEL on February 23, 2018, from DeMontrond Auto Group, Inc. (DeMontrond) in Houston, Texas.
2. DeMontrond assigned the lease of the vehicle to VW Credit Leasing, Ltd. (Intervenor).
3. The vehicle's mileage at the time of delivery to Complainant was 220.
4. The manufacturer or distributor of the vehicle, Volkswagen Group of America, Inc. (Respondent), issued a New Vehicle Limited Warranty which provides coverage for the vehicle for six (6) years or 72,000 miles, whichever occurs first.
5. The vehicle's mileage on the date of hearing was 13,257.
6. At the time of hearing the vehicle was still under warranty.
7. The Lemon Law complaint was that the vehicle's rear and passenger side doors, trunk, and fuel door intermittently would not open, either manually or when using the key fob, and the windshield washer would not operate when the outside temperature was below 50 degrees.

8. Complainant took the vehicle to Respondent's authorized dealers for repair for the issues described in Findings of Fact #7 on the following dates:
 - a. November 15, 2018, at 9,287 miles; and
 - b. December 13, 2018, at 9,339 miles.
9. On November 15, 2018, Complainant took the vehicle to Volkswagen of the Woodlands, located in The Woodlands, Texas for repair.
10. During the repair visit on November 15, 2018, the technician for Volkswagen of the Woodlands verified the issue with the vehicle's doors, trunk, and fuel door not opening and replaced the vehicle's J519 module in order to resolve the issue.
11. On December 13, 2018, Complainant took the vehicle to DeMontrond for repair for the concerns.
12. During the repair visit on December 13, 2018, DeMontrond's technician installed a new fuse box into the vehicle's main body wiring harness in order to address Complainant's concerns with the vehicle.
13. Complainant has not experienced an issue with the vehicle's doors, trunk, and fuel door not opening and the windshield washer not working since receiving the vehicle back from DeMontrond on January 4, 2019.
14. On February 1, 2019, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle due to the problem with the vehicle's doors, trunk, and fuel door not opening and the windshield washer not working.
15. On February 20, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On April 1, 2019, 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.

17. The hearing in this case convened and the record was closed on July 31, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Terry J. Deyoe, represented himself at the hearing. Complainant's wife, Chesna Deyoe, also testified in the hearing. McKenzie Hukill, Service Advisor for DeMontrond Auto Group, was subpoenaed by Complainant and testified in the hearing. Respondent, Volkswagen Group of America, Inc., was represented by Susan Lucas, Contract Representative. Intervenor, VW Credit Leasing, Ltd., did not participate in the hearing.

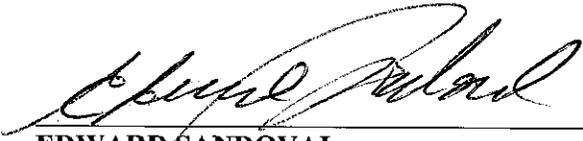
IV. CONCLUSIONS OF LAW

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 August 28, 2019.



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