

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0007033 CAF**

RUBEN SINGLETERRY, JR., Complainant	§	BEFORE THE OFFICE
	§	
v.	§	OF
	§	
FCA US LLC, Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

Ruben Singleterry, Jr. (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2016 Dodge Dart. Complainant asserts that the vehicle is defective because the check engine light (CEL) and air bag warning light have illuminated intermittently since purchasing the vehicle. In addition, the vehicle's battery discharged for no apparent reason. FCA US LLC (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, does not have an existing warrantable defect, and Complainant is not eligible for repurchase or replacement 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 October 23, 2019, in Weslaco, Texas, before Hearings Examiner Edward Sandoval. Complainant, Ruben Singleterry, Jr., represented himself at the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Terry Piechowski, Technical Advisor, appeared telephonically and 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 value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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 these conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2016 Dodge Dart from Burns Motors (Burns) in McAllen, Texas on October 21, 2016, with mileage of 9 at the time of delivery.^{7,8} Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first.⁹ Respondent also provided a powertrain warranty for the vehicle which provides coverage for five (5) years or 60,000 miles.¹⁰ The vehicle's mileage on the date of hearing was 32,822. At this time, the vehicle's bumper-to-bumper warranty has expired, since it's been over three (3) years since Complainant purchased the vehicle. However, the powertrain warranty is still in effect.

Complainant testified that the vehicle's CEL illuminated several times in early 2019. In addition, the vehicle's battery had to be replaced. He stated that the air bag warning light illuminated once soon after purchasing the vehicle. Complainant also indicated that the vehicle's traction control warning light illuminated in April of 2019 after the filing of the Lemon Law Complaint. Finally, two (2) batteries discharged for no apparent reason in December of 2018.

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Complainant Ex. 1, Motor Vehicle Installment Sales Contract dated October 21, 2016.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated October 21, 2016.

⁹ Respondent Ex. 2, Coverages Report dated October 21, 2019.

¹⁰ *Id.*

Complainant stated that in June of 2017 the vehicle's air bag warning light illuminated. He took the vehicle to Burns for repair for the issue on June 8, 2017. Burns' service technician verified the issue and reconnected the seat track position sensor in order to resolve the issue.¹¹ The vehicle's mileage at the time was 7,274.¹² The vehicle was in Burns' possession for one (1) day. Complainant was not provided with a loaner while his vehicle was being repaired. Since the repair, the air bag warning light had not come back on until October 20, 2019, three (3) days prior to the hearing.

Complainant testified that he did not have any further issues with the vehicle until November or December of 2018 when two (2) batteries were discharged within a few days. Complainant stated that sometime during late November or early December of 2018, he attempted to start the vehicle and it failed to start. Complainant determined that the battery had discharged and purchased a new battery for the vehicle. Approximately, two (2) days later the vehicle again failed to start due to a dead battery. Since the second battery was only a few days old, Complainant took the vehicle to Burns' to address the issue. The vehicle was inspected by Burns' service technician on December 3, 2018. The technician checked the vehicle's alternator and battery and determined that they were working correctly.¹³ Complainant left the vehicle overnight with Burns so that they could attempt to duplicate the concern.¹⁴ The vehicle started properly the next morning.¹⁵ No repair was performed to the vehicle, since the technician was unable to duplicate the concern.¹⁶ The vehicle's mileage on this occasion was 23,800.¹⁷ The vehicle was in Burns' possession overnight during this repair visit. Complainant was not provided with a loaner vehicle while his vehicle was being repaired. Complainant testified that he has not experienced any other issues with the vehicle's battery since this repair visit. He has not had to replace the vehicle's battery again.

In January of 2019, Complainant noticed that the vehicle's CEL illuminated. Complainant took the vehicle to Burns for repair for the issue on January 30, 2019. Burns' service technician discovered a diagnostic trouble code (DTC) stored on the vehicle's computers indicating that there was an issue with the vehicle's accelerator pedal position sensor.¹⁸ The technician replaced the vehicle's pedal position sensor assembly in order to resolve the issue.¹⁹ The vehicle's mileage

¹¹ Complainant Ex. 4, Repair Order dated June 8, 2017.

¹² *Id.*

¹³ Complainant Ex. 5, Repair Order dated December 3, 2018.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 6, Repair Order dated January 30, 2019.

¹⁹ *Id.*

on this occasion was 25,604.²⁰ The vehicle was in Burns' possession for one (1) day on this occasion. Complainant was not provided with a loaner vehicle while his vehicle was being repaired. When Complainant picked up the vehicle from Burns the CEL was off.

Complainant stated that a few days later the vehicle's CEL came back on. Complainant took the vehicle to Burns for repair for the issue on February 1, 2019. Burns' service technician discovered the same DTC stored on the vehicle's computers as on Complainant's previous repair visit.²¹ The technician replaced the vehicle's powertrain control module (PCM) in order to resolve the issue.²² The vehicle's mileage on this occasion was 25,701.²³ The vehicle was in Burns' possession for three (3) days during this repair. Complainant was not provided with a loaner vehicle while his vehicle was being repaired. The CEL was no longer illuminated when Complainant picked up the vehicle.

Complainant stated that the vehicle's CEL illuminated the very next day after he picked up the vehicle. He took the vehicle back to Burns on February 5, 2019, in order to have the issue addressed. Burns' service technician discovered the same DTC stored on the vehicle's computers as on the prior two (2) repair visits.²⁴ The technician replaced the vehicle's throttle body, brake switch, and AC transducer and overlaid six (6) wires from the PCM in order to correct the issue.²⁵ The vehicle's mileage on this occasion was 25,849.²⁶ The vehicle was in AutoNation's possession for ten (10) days during this repair.²⁷ Complainant was provided with a loaner vehicle while the repairs were being performed. The CEL was not turned on when Complainant picked up the vehicle.

The day after picking up the vehicle, Complainant noticed that the CEL had illuminated once again. Complainant took the vehicle to Burns for repair for the issue on February 14, 2019. Burns' service technician discovered a DTC stored on the vehicle's computers.²⁸ The DTC found by the technician was different from the codes found on the earlier repair visits.²⁹ The code found by the technician on this occasion indicated that there was an issue with the vehicle's brake pedal

²⁰ *Id.*

²¹ Complainant Ex. 7, Repair Order dated February 1, 2019.

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 8, Repair Order dated February 5, 2019.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant testified that the vehicle was in Burns' possession for ten (10) days from February 5 to February 15 of 2019. However, the next repair order submitted by Complainant as an exhibit has an RO date of February 14, 2019, which would indicate that the vehicle was probably returned to Complainant on or about February 13, 2019.

²⁸ Complainant Ex. 9, Repair Order dated February 14, 2019.

²⁹ *Id.*

³⁰ *Id.*

switch signal.³⁰ Burns' service technician found that some of the vehicle's wires had shorted together, so he replaced two (2) of the vehicle's electrical circuits and rerouted some wiring which connected the circuits in order to resolve the issue of the vehicle's CEL light illuminating.³¹ The vehicle's mileage on this occasion was 26,048.³² The vehicle was in Burns' possession for seven (7) days. Complainant received a loaner vehicle while his vehicle was being repaired. Complainant testified that the vehicle's CEL has not illuminated again since this last repair.

On February 27, 2019, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.³³ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 19, 2019.³⁴

Complainant testified that the vehicle's traction control warning light illuminated after filing the Lemon Law complaint. Complainant took the vehicle to Burns for repair for the issue on April 29, 2019. Burns' service technician found a DTC stored on the vehicle's computers which indicated that there was an internal failure in the vehicle's dash harness.³⁵ Burns' technician replaced the vehicle's dash wiring harness in order to resolve the issue.³⁶ The vehicle's mileage on this occasion was 28,287.³⁷ The vehicle was in Burns' possession for one (1) day on this occasion. Complainant was not provided a loaner vehicle on this repair visit.

Complainant testified that neither the CEL nor the traction control warning light have illuminated since the repairs performed in April of 2019. Complainant also stated that he had experienced an issue with the vehicle intermittently jerking when he drove it. However, he has not experienced an issue with the vehicle jerking since prior to the April 2019 repairs were performed.

Complainant also testified that the air bag warning light was illuminating at the time of the hearing. During the test drive taken at the time of hearing, the air bag warning light did not illuminate.

Complainant stated that he does not trust the vehicle any longer. He feels that the vehicle should be replaced. Complainant stated that he does not allow his wife or daughter to drive the vehicle because he is afraid that the warning lights will come back on. He stated that he has lost faith in

³¹ *Id.*

³² *Id.*

³³ Complainant Ex. 11, Letter to FCA US LLC Customer Care dated February 27, 2019.

³⁴ Complainant Ex. 1, Lemon Law Complaint dated March 19, 2019.

³⁵ Complainant Ex. 10, Repair Order dated April 29, 2019.

³⁶ *Id.*

³⁷ *Id.*

the vehicle. Complainant also testified that several months have passed since there has been an issue with the CEL and traction control warning light illuminating. In addition, he has not experienced any issues with the vehicle's battery since December of 2018.

C. Respondent's Evidence and Arguments

Torry Piechowski, Technical Advisor, testified for Respondent. Mr. Piechowski has worked in the automotive industry for 10 years. Prior to being hired by Respondent three (3) years ago, Mr. Piechowski worked seven (7) years for independent automotive repair facilities and Ford Motor Company prior to being hired by Respondent. Mr. Piechowski has worked for two (2) years in his present position. Mr. Piechowski is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Piechowski stated that he inspected the vehicle on May 3, 2019, at Burns' location. Mr. Piechowski stated that he was informed that the concern with the vehicle was that the traction control warning light was illuminated. He inspected the vehicle, checked the computers for DTCs, and test drove the vehicle. Mr. Piechowski stated that he was not able to duplicate the concern, but did find some stored DTC's and service messages indicating that there could be a problem with the vehicle's dash and jumper harness between the console and dash harness. Mr. Piechowski had the dealer's service technician replace the dash harness in order to resolve the issue. He did not observe any warning lights illuminated at the time of the inspection.

Mr. Piechowski also summarized the prior repairs that had been performed to the vehicle. He stated that on June 8, 2017, Burns' service technician reconnected a position sensor in order to resolve the issue of the air bag warning light illuminating. On December 3, 2018, the vehicle's charging system was determined to be operating as designed despite having two batteries discharge within a short period of time. On January 30, 2019, Burns' service technician replaced the vehicle's pedal position sensor assembly in order to resolve the issue of the CEL illuminating. On February 1, 2019, Burns' service technician replaced the vehicle's PCM in order to resolve the issue of the CEL illuminating. On February 5, 2019, Burns' service technician replaced the vehicle's throttle body and overlaid some wires to address the issue of the CEL illuminating. On February 14, 2019, Burns' service technician repaired two (2) electrical circuits and rerouted some wires to resolve the issue of the CEL illuminating.

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 purchased the vehicle on October 21, 2016, and presented the vehicle Respondent's authorized dealer for repair on the following dates: June 8, 2017; December 3, 2018; January 30, 2019; February 1, 2019; February 5, 2019; February 14, 2019; and April 29, 2019. The vehicle was repaired in April of 2019 and Complainant indicated that he has not experienced any issues with the vehicle since prior to the April repair.

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.³⁸ In the present 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.

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, Complainant had owned the vehicle slightly over three (3) years. As such, the bumper-to-bumper warranty has expired. However, the powertrain warranty is still in effect as the vehicle has been driven 32,822 miles. Respondent is still under an obligation to repair the vehicle's powertrain whenever there is a problem covered by the warranty.

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

III. FINDINGS OF FACT

³⁸ Tex. Occ. Code § 2301.605.

1. Ruben Singleterry, Jr. (Complainant) purchased a new 2016 Dodge Dart on October 21, 2016, from Burns Motors (Burns) in McAllen, Texas, with mileage of 9 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty providing coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty providing coverage for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 32,822.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was expired as Complainant has owned the vehicle for over three (3) years. The powertrain warranty is still in effect.
5. Complainant has experienced various issues with the vehicle since purchasing it, these are: the vehicle's air bag warning light illuminating, the battery discharging for no apparent reason, the check engine light (CEL) illuminating, and the traction control warning light illuminating.
6. Complainant took the vehicle to Respondent's authorized dealer, Burns, for repair for the concerns regarding the air bag warning light illuminating, the CEL illuminating, and the battery failing on the following dates:
 - a. June 8, 2017, at 7,274 miles;
 - b. December 3, 2018, at 23,800 miles;
 - c. January 30, 2019, at 25,604 miles;
 - d. February 1, 2019, at 25,701 miles;
 - e. February 5, 2019, at 25,849 miles; and
 - f. February 14, 2019, at 26,048 miles.
7. On June 8, 2017, Burns' service technician verified that the vehicle's air bag warning light was illuminated. He reconnected the seat track position sensor in order to resolve the issue.
8. On December 3, 2018, Burns' service technician was unable to duplicate a problem with the vehicle's charging system after Complainant indicated that the vehicle's battery and a subsequently installed battery (two in total) had discharged for no apparent reason.

9. On January 30, 2019, Burns' service technician inspected the vehicle due to the CEL being illuminated.
10. On January 30, 2019, the technician discovered a diagnostic trouble code (DTC) stored on the vehicle's computers indicating that there was a problem with the vehicle's pedal position sensor. The technician replaced the sensor to resolve the issue.
11. On February 1, 2019, Burns' service technician replaced the vehicle's powertrain control module (PCM) because the CEL was illuminated and the DTC found on the vehicle's computers indicated that there was a problem with the pedal position sensor.
12. On February 5, 2019, Burns' service technician replaced the vehicle's throttle body, brake switch, and AC transducer as well as overlaid six (6) wires from the PCM in order to resolve the issue with the vehicle's CEL illuminating.
13. On February 14, 2019, Burns' service technician found that some of the vehicle's wires had shorted together, so he replaced two (2) of the vehicle's electrical circuits and separated rerouted some wiring which connected the circuits in order to resolve the issue of the vehicle's CEL light illuminating.
14. On February 27, 2019, Complainant wrote a letter to Respondent advising them that he is dissatisfied with the vehicle.
15. On March 19, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On April 29, 2019, Complainant took the vehicle to Burns for repair because the traction control warning light had illuminated. The vehicle's mileage at the time was 28,287.
17. During the repair visit described in Findings of Fact #16, Burns' service technician determined that there was an intermittent internal failure in the vehicle's dash harness which was causing the light to illuminate. The dash harness was replaced in order to resolve the issue.
18. The vehicle did not have any warning lights illuminated at the time of hearing.
19. On June 17, 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.

20. The hearing in this case convened and the record was closed on October 23, 2019, in Weslaco, Texas, before Hearings Examiner Edward Sandoval. Complainant, Ruben Singleterry, Jr., represented himself at the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Terry Piechowski, Technical Advisor, appeared telephonically and 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 November 27, 2019.

A handwritten signature in black ink, appearing to read "Edward Sandoval", is written over a horizontal line.

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