

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0007887 CAF**

**LEENA PALAV,
Complainant**

v.

**VOLKSWAGEN GROUP OF
AMERICA, INC.,
Respondent**

and

**VW CREDIT LEASING, LTD.
Intervenor**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Leena Palav (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2019 Volkswagen Jetta. Complainant asserts that the vehicle is defective because she hears a grinding noise from the vehicle's transmission when the vehicle is driven at approximately 25 mph. Volkswagen Group of America (Respondent) argued that the vehicle is repaired and that Complainant is not entitled to relief under the Lemon Law. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is entitled only to repair relief, as the defect does not substantially impair the use or market value of the vehicle and it does not create a serious safety hazard as defined in the Occupations Code.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on September 18, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Leena Palav, appeared and represented herself at the hearing. Respondent, Volkswagen Group of America, Inc., was represented by Susan Lucas, contract hearings representative. Intervenor, VW Credit Leasing, Ltd., did not participate in the hearing. The hearing record closed on September 18, 2019.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.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 owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor 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 occurs first, following the date of original delivery of the motor vehicle to the owner.⁵

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.⁶

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(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. 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.

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

“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.⁷

B. Complainant’s Evidence and Arguments

Complainant leased a new 2019 Volkswagen Jetta (the vehicle) from Archer Volkswagen (Archer) in Houston, Texas on March 26, 2019.⁸ At the time of the lease signing, the lease was assigned to Intervenor.⁹ The vehicle’s mileage was 285 at the time of delivery.¹⁰ At the time of lease, Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle (including the powertrain) for six (6) years or 72,000 miles, whichever occurs first.¹¹ The vehicle’s mileage on the date of hearing was 24,064.

Complainant testified that within a week after leasing the vehicle, she began to hear a grinding noise emitting from the vehicle’s transmission area when she drove the vehicle at approximately 25 mph. She stated that she had not heard the grinding noise when test driving the vehicle at the time that she was car shopping.

Complainant took the vehicle to Archer for repair for the grinding noise issue on April 3, 2019. Archer’s service technician isolated a clicking/rubbing noise from the vehicle’s passenger side headliner area and determined that the noise was due to the clips being noisy.¹² The technician lubricated and adjusted the clips to insure that they clipped properly to the vehicle’s sunroof frame.¹³ The technician also checked for the grinding noise from the transmission area and was able to recreate the noise.¹⁴ The technician indicated that Archer’s service manager test drove two (2) similar vehicles and that they all had the same sound.¹⁵ As a result, no repair was performed to the vehicle for the grinding noise issue.¹⁶ The vehicle’s mileage on this occasion

⁷ Tex. Occ. Code § 2301.601(4).

⁸ Complainant Ex. 2, Closed End Motor Vehicle Lease dated March 26, 2019.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Respondent Ex. 1, Respondent’s Evidence Packet, p. 3.

¹² Complainant Ex. 3, Repair Order dated April 3, 2019.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

was 379.¹⁷ The vehicle was in Archer's possession for three (3) days during this repair visit. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant stated that she was concerned about the noise being indicative of damage being done to the vehicle's transmission and concerned that no repair was done to the vehicle for the issue. On April 5, 2019, Complainant sent an email to Respondent in which she indicated her concern about the vehicle since she was hearing the grinding noise in the vehicle's transmission area when she drove the vehicle.¹⁸ Complainant indicated that she did not receive a response from Respondent's representatives after contacting them about the noise issue. Complainant was not contacted by Respondent for an opportunity to resolve or repair the issue.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 9, 2019.¹⁹

Complainant testified that she took the vehicle for repair for the grinding noise issue on one occasion. She stated that she did not have time to take the vehicle for further repairs for the issue. In addition, Complainant stated that she was told by Archer's service representative that Respondent could not repair the issue.

Complainant stated that she heard the grinding noise during the test drive taken at the time of hearing. She further stated that she is concerned that the grinding noise indicates that the vehicle's transmission is being damaged or degraded.

C. Respondent's Evidence and Arguments

Susan Lucas, contract representative, represented Respondent in the hearing. Ms. Lucas submitted Respondent's written response to the Lemon Law complaint as evidence in the hearing. Ms. Lucas did not present any testimony for Respondent. Respondent's written response to the complaint included the following statement:

To our knowledge, the vehicle is repaired and operating normally. The repair history does not show an unreasonable number of repair attempts, or a substantial impairment of us, value or safety of the vehicle.²⁰

¹⁷ *Id.*

¹⁸ Complainant Ex. 4, Email to Volkswagen Customer Care dated April 5, 2019.

¹⁹ Complainant Ex. 1, Lemon Law complaint dated April 9, 2019.

²⁰ Respondent Ex. 1, Respondent's Evidence Packet, p. 8.

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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

The evidence provided by Complainant at the hearing established that a grinding noise can be heard from the vehicle's transmission area when driving the vehicle at approximately 25 to 30 mph. The noise was heard during the vehicle test drive taken at the time of hearing. No evidence was presented by the parties to establish what was creating the noise or if the noise was an indication that damage was being done to the vehicle or its transmission. Respondent did not provide any firsthand testimony regarding whether the concern is a normal operating characteristic of the vehicle.

The hearings examiner must hold that the grinding noise issue does not create a serious safety hazard with the vehicle as defined in Section 2301.601(4) of the Occupations Code. The issue does not *substantially* impede Complainant's ability to control or operate the motor vehicle nor does it create a risk of fire or explosion. In addition, the issue does not *substantially* impair the use or market value of the vehicle. The issue is annoying and probably can be disconcerting, but does not create sufficient grounds to order repurchase or replacement of the vehicle. Instead, the hearings examiner will order Respondent to repair the issue.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the defect in the vehicle that is creating the grinding noise when driving the vehicle. Such repairs must be completed within the time frame indicated below.

III. FINDINGS OF FACT

1. Leena Palav (Complainant) leased a new 2019 Volkswagen Jetta on March 26, 2019, from Archer Volkswagen (Archer) in Houston, Texas, with mileage of 285 at the time of delivery.

2. Archer assigned the vehicle lease to VW Credit Leasing (Intervenor) at the time that the lease agreement was signed.
3. The manufacturer or distributor of the vehicle, Volkswagen Group of America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage (including the powertrain) for six (6) years or 72,000 miles, whichever occurs first.
4. The vehicle's mileage on the date of hearing was 5,951.
5. Within a week after leasing the vehicle, Complainant noticed a grinding noise emitting from the vehicle's transmission when driving the vehicle at approximately 40 mph.
6. Complainant took the vehicle to Respondent's authorized dealer (Archer) in order to address her concern with the grinding noise on April 3, 2019, at 379 miles.
7. During the repair visit described in Findings of Fact #6, Archer's service technician lubricated and adjusted the headliner clips to resolve an issue regarding a clicking/rubbing noise from the headliner area.
8. Also during the April 3, 2019 repair, Archer's technician determined that the grinding noise from the vehicle's transmission area was present in other vehicles and did not perform any repairs to Complainant's vehicle for the issue.
9. On April 5, 2019, Complainant sent an email to Respondent regarding the transmission noise issue and her dissatisfaction with the vehicle.
10. On April 9, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. Respondent did not contact Complainant to request an opportunity to cure the issue.
12. The grinding noise from the vehicle's transmission area continues to occur on a daily basis.
13. On May 22, 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.

14. The hearing in this case convened on September 18, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Leena Palav, appeared and represented herself at the hearing. Respondent, Volkswagen Group of America, Inc., was represented by Susan Lucas, contract hearings representative. Intervenor, VW Credit Leasing, Ltd., did not participate in the hearing. The hearing record closed on September 18, 2019.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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 proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity. However, that defect does not present a serious safety hazard or substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent was not provided with a reasonable number of attempts to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

8. Respondent did not request a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
11. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase or replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle's transmission (regarding the grinding noise) to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²¹ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED November 18, 2019



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

²¹ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.