

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0008048 CAF**

<b>ELYSE L. TAYLOR, Complainant</b>	§ § § § § § §	<b>BEFORE THE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
v.		
<b>GENERAL MOTORS LLC, Respondent</b>		

**DECISION AND ORDER**

Elyse L. Taylor (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2016 Chevrolet Cruze. Complainant asserts that the vehicle is defective because the vehicle has stalled while she was driving it and because it has failed to start in the past. General Motors LLC. (Respondent) argued that the vehicle does not have a defect or nonconformity and that Complainant is not entitled to relief under the law. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect and that Respondent is obligated to perform repairs to the vehicle for the complained of defect.

**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 telephonically on May 21, 2020, before Hearings Examiner Edward Sandoval. Complainant, Elyse L. Taylor, appeared and represented herself at the hearing. Also present and testifying for Complainant were Jose Muniz, friend, and John Mahler, friend. Respondent, General Motors LLC, was represented by Clifton Green, Business Resource Manager. In addition, Steven Kuhr, Field Service Engineer, was present and offered testimony for Respondent. The hearing record closed on May 22, 2020, when Complainant provided requested documents to the hearings examiner.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Occupations Code § 2301.603(a) 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.”

Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding “not later than six months after the earliest of:

- (1) The expiration date of the express warranty term; or
- (2) The dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.”

For Complainants who fail to meet the timelines described above repair relief is available under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

## **B. Complainant’s Evidence and Arguments**

### **1. Elyse L. Taylor’s Testimony**

Complainant purchased a new 2016 Chevrolet Cruze from AutoNation Chevrolet East (AutoNation) in Amarillo, Texas on April 29, 2016, with mileage of 3307 at the time of delivery.<sup>1</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent’s powertrain warranty provides coverage for the vehicle’s powertrain for five (5) years or 60,000 miles. On the date of hearing the vehicle’s mileage was 22,483. At this time, the bumper-to-bumper warranty has expired. However, the powertrain warranty is still in effect.

Complainant testified that she has experienced problems in the past with the vehicle failing to start and with the engine stalling while she’s driving. She first experienced a problem with the vehicle not starting in July of 2018. On this occasion, she was in a store parking lot attempting to drive home. She got in the vehicle and started it up. When she shifted the vehicle’s transmission into reverse, the vehicle died. Complainant stated that she attempted to restart the vehicle, but it wouldn’t start again. The vehicle’s doors had locked and Complainant was unable to exit the vehicle. Complainant stated that the vehicle did eventually restart after several tries, but she was afraid to get back in the vehicle and drive it as she was afraid that she would get trapped in the vehicle again.

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<sup>1</sup> Complainant Ex. 2, Retail Purchase Agreement dated April 29, 2016.

Complainant took the vehicle to AutoNation Chevrolet West in Amarillo, Texas on July 2, 2018, to repair the issue with the vehicle's engine dying. The dealer's service technician checked the vehicle's computers for diagnostic trouble codes (DTCs) and found none.<sup>2</sup> The technician was unable to duplicate the concern during the repair and no repairs were performed to the vehicle.<sup>3</sup> The vehicle's mileage on this occasion was 16,023.<sup>4</sup> The vehicle was in the dealer's possession for three (3) days during this repair visit. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that she did not have any other issues with the vehicle until March of 2019. On March 11, 2019, Complainant was driving the vehicle when the vehicle stalled and the engine died while she was driving through a green light. The vehicle started right up and she was able to continue on her drive. Complainant stated that she did not take the vehicle to a dealer for repair for the issue at the time. However, on or about March 13, 2019, she took the vehicle to AutoNation West to have it checked because she was going on an out of town trip. Complainant mentioned to the dealer's service advisor that the vehicle had stalled a few days previously. Complainant testified that the dealer's technician checked the vehicle and ran diagnostics on it, but found no codes and did not perform any repairs to the vehicle. Complainant stated that she did not receive an invoice for the repair visit.

Complainant testified that when she was leaving work at the local mall on March 14, 2019, the vehicle failed to start. She contacted a friend, Jose Muniz, to help her out. Mr. Muniz arrived at Complainant's location with another friend, John Mahler, to help her get the vehicle started. However, they were not able to restart the vehicle. As a result, Complainant called a tow truck to pick up the vehicle and take it to the dealer for repair. The tow truck driver was able to restart the vehicle once he arrived at Complainant's location, but still took the vehicle to AutoNation West for repair.<sup>5</sup>

On March 19, 2019, AutoNation West's technician indicated that the vehicle's check engine light (CEL) was illuminated and that on a test drive the vehicle's engine stalled twice and wouldn't restart after the second incident.<sup>6</sup> The technician replaced the vehicle's thermostat in order to address the issue of the CEL being illuminated.<sup>7</sup> In addition, the technician replaced the vehicle's engine control module (ECM) in order to address the issue of the vehicle's engine stalling and

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<sup>2</sup> Complainant Ex. 3, Repair Order dated July 2, 2018.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Complainant testified that this incident occurred on March 14, 2019. However, the repair order which should have been initiated the following day, indicates that the repairs were performed on March 19, 2019, implying that the incident actually occurred on March 18, 2019.

<sup>6</sup> Complainant Ex. 4, Repair Order dated March 19, 2019.

<sup>7</sup> *Id.*

dying.<sup>8</sup> The vehicle's mileage on this occasion was 18,536.<sup>9</sup> When Complainant initially attempted to pick up the vehicle from the dealer, it did not start. Complainant informed the dealer's representative that they should keep the vehicle until it was working properly. Complainant testified that the vehicle's O2 sensor was replaced in order to resolve the issue of the vehicle not starting. Complainant stated that the vehicle was in the dealer's possession for approximately ten days. She received a loaner vehicle while her vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 15, 2019.<sup>10</sup>

On November 20, 2019, Complainant took the vehicle to Respondent's authorized dealer, Brown Automotive Group (Brown) in Amarillo, Texas, for repair because the vehicle's battery warning light was illuminating and because the vehicle's engine was stalling. Brown's service technician checked the vehicle's battery and alternator, but could not find any problems with the vehicle.<sup>11</sup> No repairs were performed at the time.<sup>12</sup> The vehicle's mileage when Complainant took the vehicle to the dealer was 20,939.<sup>13</sup> The vehicle was in the dealer's possession for seven (7) days on this occasion.<sup>14</sup>

Complainant testified that she mailed a letter to Respondent advising them that she was dissatisfied with the vehicle. She does not recall the date that she mailed the letter. In addition, she stated that Respondent's representative, John Garza, left a message for her asking for an opportunity to inspect the vehicle prior to the hearing date. Complainant stated that when she contacted Mr. Garza to schedule the inspection, he indicated that Respondent was not going to inspect the vehicle.

Complainant testified that she experienced another incident in April of 2020 where the vehicle's engine died and she was locked in the vehicle. She did not take the vehicle for repair after this incident. This was the last time that the vehicle's engine died prior to the hearing on the merits. Complainant stated that she feels that the vehicle is dangerous and unsafe to drive.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Complainant Ex. 1, Lemon Law Complaint dated April 15, 2019.

<sup>11</sup> Complainant Ex. 5, Repair Order dated November 20, 2019.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

## **2. Jose Muniz' Testimony**

Jose Muniz, Complainant's friend, testified in the hearing. He stated that he recalled an incident where Complainant was trapped in the vehicle after it wouldn't start and the doors wouldn't unlock. Mr. Muniz was not present on that occasion.

Mr. Muniz testified that prior to taking a planned trip to Dumas, Texas with Complainant, they took the vehicle to Respondent's authorized dealer to have it checked out. The dealer representative inspected the vehicle and told them that it was working fine. However, the following day, the vehicle wouldn't start. Complainant's vehicle was at the local mall and Complainant tried to start it, but it would not start. Mr. Muniz was with John Mahler, another friend, and both of them attempted to start the vehicle, but it wouldn't start. They called a tow truck company to pick up the vehicle to tow it to the dealer for repairs. When the tow truck driver attempted to start the vehicle, it started immediately.

Mr. Muniz testified that these incidents all occurred prior to October of 2019, when he moved out of Amarillo. He has never noticed whether any of the vehicle's warning lights ever illuminated.

## **3. John Mahler's Testimony**

John Mahler, Complainant's friend, testified in the hearing. Mr. Mahler stated that he was involved in the incident which occurred in March of 2019. Mr. Mahler testified that he accompanied Mr. Muniz to help Complainant whose vehicle had failed to start. Mr. Mahler stated that both he and Mr. Muniz attempted to start the vehicle, but it would not start. He believed that the vehicle's battery was working fine and that there was some other issue with the vehicle. Mr. Mahler stated that after attempting to help Complainant for several minutes, he left because he had to attend to some matters.

## **C. Respondent's Evidence and Arguments**

### **1. Clifton Green's Testimony**

Clifton Green, Business Resource Manager, testified for Respondent. Mr. Green testified that Respondent has not had an opportunity to repair the vehicle. All of the prior repairs were performed by Respondent's authorized dealers. Mr. Green stated that he requested Complainant to allow Respondent's field service engineers an opportunity to inspect the vehicle, but that she had refused. Mr. Green testified that he was not aware that Mr. Garza had refused to inspect the

vehicle prior to the hearing. In addition, Mr. Green stated that Complainant never notified Respondent that she was dissatisfied with the vehicle.

## **2. Steven Kuhr's Testimony**

Steven Kuhr, Field Service Engineer, testified for Respondent. He has worked in the automotive industry since 1994. Mr. Kuhr worked as a service technician for four (4) different General Motors dealers from 1994 until December of 2011. In January of 2012, Respondent hired Mr. Kuhr as a field service engineer, where he has since been working. Mr. Kuhr has both Automotive Service Excellence (ASE) and GM World Class Technician certifications.

Mr. Kuhr testified that he has not seen the vehicle. He stated that the incident where Complainant was locked in the vehicle and unable to get out was not a life threatening situation. As a safety measure, if a vehicle loses power, the vehicle's doors can be opened manually by pulling the door handle twice. The first pull will unlock the door and the second pull will open it. Mr. Kuhr said that this procedure is common to all vehicles, regardless of make. Mr. Kuhr testified that the information on how to manually unlock and open the vehicle's doors is included in the vehicle owner's manual which is provided to the purchaser of the vehicle at the time that they take possession of it.

Mr. Kuhr also pointed out that Complainant testified that she had purchased a battery for the vehicle from Sam's Club. Mr. Kuhr testified that an after-market battery purchased from someone other than Respondent may not function correctly in the vehicle. If the battery is underpowered, this could potentially cause the vehicle to not start or to prevent the door locks from operating.

Mr. Kuhr stated that he believes that the vehicle is safe to drive.

## **D. Analysis**

In order to be eligible for repurchase or replacement relief under the Lemon Law, Complainant must have filed her complaint within six (6) months after the vehicle has been driven 24,000 miles or within 24 months of ownership, whichever comes first. In the present case, the evidence revealed that Complainant purchased the vehicle on April 29, 2016. As such, Complainant would have had to file her complaint no later than October 29, 2018, in order to have the option of repurchase or replacement of the vehicle as possible relief for her complaint. Complainant did not file the Lemon Law complaint until April 15, 2019. Since she did not file the complaint within the required time frame, the hearings examiner must hold that the only remedy available to Complainant is repair of the vehicle.

Complainant purchased the vehicle on April 29, 2016, and presented the vehicle to Respondent's authorized dealers for repair on the following dates due to the vehicle's engine stalling and the vehicle failing to start: July 2, 2018; March 19, 2019; and November 20, 2019. During the final repair visit on November 20, 2019, the dealer's service technician was unable to recreate the problem and did not perform any repairs to the vehicle. However, Complainant experienced an incident in April of 2020 where the vehicle's engine died and she was locked in the vehicle for a few minutes.

In the present case, the first hand testimony indicates that Complainant is still experiencing issues with the vehicle's engine stalling or dying and the vehicle failing to start. As such, the hearings examiner must hold that the vehicle has not been repaired, that a defect or nonconformity exists within the vehicle, and that repair relief for Complainant is warranted.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 22,483 and the bumper-to-bumper warranty has expired. However, the powertrain warranty is still in effect

Complainant's request for repair relief is granted.

### III. FINDINGS OF FACT

1. Elyse L. Taylor (Complainant) purchased a new 2016 Chevrolet Cruze on April 29, 2016, from AutoNation Chevrolet East (AutoNation) in Amarillo, Texas, with mileage of 3,307 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first, and a separate powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 22,483.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle had expired. The powertrain warranty was still in effect

5. Respondent has had experiences where the vehicle has failed to start or has stalled while she was driving it.
6. Prior to filing the Warranty Performance complaint, Complainant took the vehicle to Respondent's authorized dealer, AutoNation Chevrolet West in Amarillo, Texas, for repair for the no start and stalling issues on the following dates:
  - a. July 2, 2018, at 16,023 miles;
  - b. March 13, 2019, at unknown miles; and
  - c. March 19, 2019, at 18,536 miles.
7. On July 2, 2018, Complainant informed AutoNation West's service representative that the vehicle had died when she started it and that she had been locked in the vehicle and unable to get out.
8. During the repair visit described in Findings of Fact #7, AutoNation West's service technician scanned the vehicle's computers for diagnostic trouble codes and found none. He was not able to recreate the problem, so no repairs were performed.
9. The vehicle's engine stalled and died while she was driving it on March 11, 2019.
10. On March 13, 2019, Complainant took the vehicle to AutoNation West to have it checked out, since she was going on an out of town trip. The technician did not find any problems with the vehicle at the time.
11. On March 18, 2019, Complainant attempted to start the vehicle and it failed to start. The vehicle was towed to AutoNation West for repair.
12. On March 19, 2019, AutoNation West's service technician addressed two issues with the vehicle: the check engine light (CEL) illuminating and the vehicle stalling and not restarting.
13. During the repair visit described in Findings of Fact #12, AutoNation West's service technician replaced the vehicle's thermostat in order to address the issue of the CEL illuminating and replaced the engine control module (ECM) in order to address the issue of the vehicle stalling and not starting.
14. When Complainant attempted to pick up the vehicle from AutoNation West, it did not start. Complainant left the vehicle at the dealership for further repair.



15. The vehicle's O2 sensor was replaced in order to resolve the no start issue with the vehicle.
16. On April 15, 2019, Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
17. On November 20, 2019, Complainant took the vehicle to Respondent's authorized dealer, Brown Automotive Group in Amarillo, Texas, because the vehicle was stalling and the vehicle's battery warning light was intermittently illuminating.
18. During the repair visit described in Findings of Fact #17, Brown's service technician checked the vehicle's battery and alternator and did not find any abnormal power draws. The technician was not able to recreate any problem with the vehicle.
19. In April of 2020, Complainant experienced another issue where the vehicle died and she was locked inside it.
20. The only remedy available to Complainant is repair of the vehicle, since she filed her Lemon Law complaint on April 15, 2019, more than six (6) months after 24 months from the date of purchase (April 29, 2016).
21. 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.
22. The hearing in this case convened telephonically on May 21, 2020, before Hearings Examiner Edward Sandoval. Complainant, Elyse L. Taylor, appeared and represented herself at the hearing. Also present and testifying for Complainant were Jose Muniz, friend, and John Mahler, friend. Respondent, General Motors LLC, was represented by Clifton Green, Business Resource Manager. In addition, Steven Kuhr, Field Service Engineer, was present and offered testimony for Respondent. The hearing record closed on May 22, 2020, when Complainant provided requested documents to the hearings examiner.

#### 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 proved by a preponderance of the evidence that the vehicle has a verifiable defect or condition that is covered by Respondent's warranty and which has not been repaired. Tex. Occ. Code § 2301.204.
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.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to repair the issue of the vehicle's engine stalling and dying and to have the vehicle conform 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.<sup>15</sup> Within 40

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<sup>15</sup> (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.

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 June 3, 2020.**



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