

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0010011 CAF**

**CAROLYN REVILLA,
Complainant**

v.

**AMERICAN HONDA MOTOR CO.,
INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Carolyn Revilla (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2018 Honda CR-V. Complainant asserts that the vehicle's collision mitigation system is defective because it has twice activated without any apparent reason when she's been driving the vehicle. American Honda Motor Co., Inc. (Respondent) argued that the vehicle is operating as designed, does not have a defect, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for 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 1, 2019, in Bryan, Texas before Hearings Examiner Edward Sandoval. Carolyn Revilla, Complainant, appeared and represented herself at the hearing. Kathryn Kovar, co-worker, and Linda Davenport, co-worker, were present and testified for Complainant. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Deborah Yoder, District Parts and Service Manager, testified telephonically 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

¹ Tex. Occ. Code § 2301.604(a).

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 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 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.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. Complainant’s Evidence and Arguments

Complainant purchased a new 2018 Honda CR-V on March 24, 2018, from Round Rock Honda (Round Rock) in Round Rock, Texas.⁹ The vehicle’s mileage at the time of delivery was 16.¹⁰

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) (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.

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 1, Purchase Order dated March 24, 2018.

¹⁰ Complainant Ex. 2, Odometer Disclosure Statement dated March 24, 2018.

Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain. On the date of hearing the vehicle's mileage was 10,484. At the time of hearing the vehicle's warranties were still in effect.

1. Carolyn Revilla's Testimony

Complainant testified that on two separate occasions about a year apart while driving the vehicle the collision mitigation system activated for no apparent reason. On both occasions the vehicle braked to a stop in the middle of the road.

Complainant stated that a few days before May 29, 2018, she was driving the vehicle to go to lunch. Two of Complainant's co-workers were passengers in the vehicle at the time. While driving at approximately 30 to 35 mph, the collision mitigation system engaged. Complainant stated that the brake light indicator illuminated and she heard a beep before the vehicle came to a complete stop for no apparent reason. Complainant stated that there was nothing visible in the vehicle's path and that it was a sunny day. The incident disturbed Complainant. As a result, she made an appointment with Round Rock to take the vehicle in for inspection. Complainant took the vehicle to Round Rock on May 29, 2018, for repair. Round Rock's service technician inspected the vehicle and determined that the collision mitigation system was working as designed and that there was not a problem with it.¹¹ Complainant testified that she was informed by the service advisor that this was the first time that he had heard of such an issue and that the technician had reset the vehicle's computer. The vehicle's mileage on this occasion was 1,423.¹² Complainant stated that the vehicle was in Round Rock's possession for no more than two (2) to three (3) days. She was not provided with a loaner vehicle at the time.

Complainant testified that she was driving the vehicle on April 29, 2019, when the vehicle's collision mitigation system activated again for no apparent reason. The incident occurred on the same road as the first incident, although not in the same immediate area. The second incident occurred on a sunny day, at about 10 a.m., and there did not seem to be anything in the road. Complainant stated that the vehicle stopped so suddenly that the brake's screeched.

Complainant took the vehicle to Allen Honda (Allen) in College Station, Texas for repair for the issue with the collision mitigation system. Allen's service technician checked the vehicle's computers for diagnostic trouble codes (DTCs) and found none.¹³ The technician was unable to

¹¹ Complainant Ex. 3, Repair Order dated May 29, 2018.

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated May 1, 2019.

duplicate the issue and performed no repair to the vehicle for the issue.¹⁴ He felt that Complainant was experiencing the “limitations of the system” as described in the vehicle’s owner’s manual.¹⁵ Complainant stated that she was told by Allen’s service advisor that the incidents could have been caused by shadows in the roadway. The vehicle’s mileage at the time was 8,405.¹⁶ The vehicle was in Allen’s possession for two (2) days. Complainant received a loaner vehicle while her vehicle was being repaired.

Complainant mailed a letter to Respondent on May 9, 2019, informing them of her dissatisfaction with the vehicle.¹⁷ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 19, 2019.¹⁸

Complainant testified that a different issue had occurred when she driving the vehicle on March 2, 2019. Complainant stated that she was driving the vehicle on the date in question when the vehicle’s brake indicator light illuminated and then the entire dashboard went black. The vehicle was operating appropriately (including the brakes), except for the blacked out dashboard. Complainant did not take the vehicle to a dealer for repair for the issue and the issue never recurred.

Complainant stated that she is apprehensive when driving the vehicle. She doesn’t feel completely comfortable when she’s driving it and has lost confidence in the vehicle.

During cross-examination, Complainant provided more information about the two incidents when the collision mitigation system activated unexpectedly. In the first incident which took place prior to May 29, 2018, Complainant stated that she was driving on State Highway 21, near the location where she worked. This is a five lane highway with a dedicated turning lane. Complainant stated she was driving on the right side of the road, in the lane nearest to the shoulder. On the side of the road there are mailboxes with reflectors and trees. Some of the trees have branches hanging over the roadway. There were two passengers in the vehicle at the time: Kathryn Kovar and Linda Davenport, Complainant’s co-workers. They were on their way to a restaurant for lunch at the time. Complainant stated that, as she was driving, the vehicle came to a stop. She couldn’t figure out why the vehicle stopped. She did not see anything in the road that would have activated the collision mitigation system.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 6, Letter to American Honda dated May 9, 2019.

¹⁸ Complainant Ex. 5, Lemon Law Complaint dated May 19, 2019.

Complainant stated that the same thing happened on April 29, 2019. On this occasion, Complainant was in the vehicle alone. On both occasions, Complainant was driving east and in the right lane of the road. Both days were also sunny.

Complainant stated that she was aware of the limitations of the collision mitigation system. She is aware that the system can be turned off whenever she wants to not use it.

2. Kathryn Kovar's Testimony

Kathryn Kovar, Complainant's co-worker, testified for Complainant. She stated that she was a passenger in Complainant's vehicle the first time that the collision mitigation system activated unexpectedly prior to May 29, 2018.

Ms. Kovar testified that she, Complainant, and Ms. Davenport were on their way to a restaurant to have lunch. Complainant was driving in the right lane. Ms. Kovar was in the front passenger's seat and Ms. Davenport was in the back seat when the collision mitigation system activated and the vehicle braked to a halt. Ms. Kovar stated that when the vehicle stopped, she and the others in the vehicle looked around to see what might have activated the system. They did not see anything in the road that might have caused the system to activate. They did not get out of the vehicle to look around, though. Ms. Kovar stated that after the incident they continued on their way to lunch.

3. Linda Davenport's Testimony

Linda Davenport, Complainant's co-worker, also testified for Complainant. She was also a passenger in the vehicle when the first incident occurred. Ms. Davenport stated that she was in the back seat on the drive to the restaurant. Ms. Davenport stated that when the vehicle came to a sudden stop, she screamed because she was surprised. She did not see anything in the road that might have caused the system to activate. Ms. Davenport stated that this was the last time that she was in the vehicle.

C. Respondent's Evidence and Arguments

Deborah Yoder, District Parts and Service Manager, testified for Respondent. Ms. Yoder has been in the automotive industry for 24 years. She has worked for Respondent and in her current position for the last four (4) years. Prior to being hired by Respondent, Ms. Yoder worked for ten (10) years with Ford Motor Company as a zone and district manager. In addition she worked for three (3) years for Volkswagen and Audi as a fixed operations manager. Ms. Yoder does not have a technical background. However, she is trained on Respondent's products and components.

Ms. Yoder stated that she test drove the vehicle on June 5, 2019. Ms. Yoder and Allen's service director took the vehicle to the location where Complainant indicated that the vehicle's collision mitigation system had activated unexpectedly and drove the vehicle along the same route that Complainant had driven. Ms. Yoder stated that on the date of the test drive the sky was overcast and it was rainy. They drove the vehicle along the road, through a parking lot, and through some housing subdivisions in an effort to recreate the issue. However, they were unable to duplicate the problem. Ms. Yoder stated that after the test drive, she had Allen's service technician check the vehicle for DTCs and the technician was unable to find any. The vehicle's mileage on this occasion was 8,855.¹⁹ The vehicle was in Allen's possession until June 5, 2019, on this occasion.²⁰ Complainant was provided with a loaner vehicle while her vehicle was being inspected.²¹

Ms. Yoder testified that the collision mitigation system is designed to help drivers avoid collisions with other vehicles. It is an early alert system, but does have limitations that may cause it not to activate or to cause it to activate in a non-emergency situation. Reflections from mailboxes, street signs, or other vehicles can cause the system to activate, as can items near the side of the road or even a curvy road.²² When the system activates, a warning light illuminates on the vehicle's instrument panel and an audible warning beep occurs. If it appears to the system that a collision is likely, then the vehicle's brakes will be applied. Depending on the circumstances, the brakes could be applied forcefully.

Ms. Yoder doesn't believe that Complainant's vehicle's collision mitigation system is defective. She stated that if the system was defective, then there would be stored DTC's on the vehicle's computers. In addition, the problem would be occurring more often.

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

¹⁹ Complainant Ex. 8, Repair Order dated June 4, 2019.

²⁰ *Id.*

²¹ *Id.*

²² Respondent Ex. 3, Honda CR-V 2018 Owner's Manual, pp. 532-541. The manual specifies that there are certain conditions where the system may activate when there is no vehicle ahead of the subject vehicle. These conditions include when passing, at an intersection, on a curve, through a low bridge at high speed, and speed bumps, road work sites, train tracks, roadside objects, etc. (See p. 537.)

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.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

A manufacturing defect is an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which exists before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.²³ In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics or design defects.

From the testimony presented at the hearing, it appears that the issue complained of is a design issue with the vehicle's collision mitigation system. The problems that Complainant has experienced with the system could be a result of the limitations of the system, some of which are outlined in the Owner's Manual provided by Respondent to Complainant. The fact that the vehicle's computers did not have any stored DTCs and that the problem has occurred only twice (with a year intervening between the two incidents) gives weight to the argument that this is a design issue with the system. As such, the hearings examiner must find that there is no defect with the vehicle itself. Therefore, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 10,484 and it remains covered under Respondent's warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

²³ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

III. FINDINGS OF FACT

1. Carolyn Revilla (Complainant) purchased a new 2018 Honda CR-V on March 24, 2018, from Round Rock Nissan (Round Rock) in Round Rock, Texas with mileage of 16 at the time of delivery.
2. The manufacturer or distributor of the vehicle, American Honda Motor, Co., Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first. In addition, Respondent provided a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 10,484.
4. At the time of hearing the vehicle's warranties were still in effect.
5. When driving the vehicle, the collision mitigation system has activated twice for no apparent reason since Complainant purchased the vehicle.
6. Complainant took the vehicle for repair to Respondent's authorized dealers in order to address her concerns regarding the vehicle's collision mitigation system activating unexpectedly on the following dates:
 - a. May 29, 2018, at 1,423 miles; and
 - b. May 1, 2019, at 8,405 miles.
7. On May 29, 2018, Round Rock's service technician determined that the vehicle's collision mitigation system was operating as designed and performed no repairs to it or to the vehicle.
8. On May 1, 2019, Complainant took the vehicle to Allen Honda (Allen) in College Station, Texas due to her concerns with the vehicle's collision mitigation system activating unexpectedly.
9. On May 1, 2019, Allen's service technician was unable to find any stored diagnostic trouble codes for the issue complained of on the vehicle's computers and was unable to duplicate the issue. He determined that the incidents experienced by Complainant were due to the limitations of the collision mitigation system.

10. On May 9, 2019, Complainant mailed a letter to Respondent advising them of her dissatisfaction with the vehicle.
11. On May 19, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On June 4, 2019, the vehicle was inspected by Allen's service director and Respondent's District Parts and Service Manager, Deborah Yoder, at the Allen dealership.
13. During the inspection described in Findings of Fact #12, Allen's service director was unable to recreate the concern and was unable to find any stored trouble codes on the vehicle's computers.
14. Allen's service director and Ms. Yoder conducted a test drive of the vehicle on the road where Complainant indicated that the collision mitigation system had activated. Neither Ms. Yoder nor the service director experienced any problems with the system during the test drive.
15. 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.
16. The hearing in this case convened and the record was closed on October 1, 2019, in Bryan, Texas before Hearings Examiner Edward Sandoval. Carolyn Revilla, Complainant, appeared and represented herself at the hearing. Kathryn Kovar, co-worker, and Linda Davenport, co-worker, were present and testified for Complainant. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. Deborah Yoder, District Parts and Service Manager, testified telephonically 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

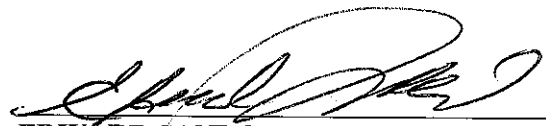
the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED October 28, 2019.



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