

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0014952 CAF**

ALI and DANIELLE AL-TAYAR, Complainants	§ § § § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
AMERICAN HONDA MOTOR COMPANY, INC., Respondent		

DECISION AND ORDER

Ali and Danielle Al-Tayar (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2019 Acura RDX. Complainants assert that the vehicle is defective because there is a “popping” noise that occurs in the back driver’s side of the vehicle when they make a left turn out of their driveway onto the street and because they hear a high pitched sound from the front of the vehicle. American Honda Motor Company, Inc. (Respondent) argued that the vehicle is repaired, does not have any defects or nonconformities, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainants are 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 telephonically on July 1, 2020, before Hearings Examiner Edward Sandoval. Ali Al-Tayar (co-Complainant) represented Complainants at the hearing. Respondent was represented by Abigail Mathews, Attorney with Francis Mathews PLLC. Deborah Yoder, District Parts and Service Manager, appeared and testified for Respondent. The hearing record closed on July 1, 2020.

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 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. Complainants’ Evidence and Arguments

Complainants purchased a new 2019 Acura RDX from John Eagle Acura (Eagle) in Houston, Texas on November 21, 2018, with mileage of 11 at the time of delivery.^{9,10} Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4)

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. 2, Motor Vehicle Retail Installment Sales Contract dated November 21, 2018.

¹⁰ Complainant Ex. 13, Texas Certificate of Title dated November 21, 2018.

years or 50,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 13,116. At the time of hearing the vehicle's warranty was still in effect.

Ali Al-Tayar, co-Complainant, testified for Complainants. He stated that he took a test drive of the vehicle at the time of purchase and did not notice any noise issues during the test drive. It was not until he took the vehicle home did Mr. Al-Tayar begin to hear a popping noise from the rear driver's side of the vehicle. The noise occurs almost every day that Mr. Al-Tayar drives the vehicle out of his driveway and takes a left turn onto the street. There is a 1 ½ to 2 inch drop off from the driveway onto the street. Mr. Al-Tayar also stated that sometimes the noise will occur when he takes a right turn from the street into his home's driveway. The noise usually doesn't occur elsewhere, although Mr. Al-Tayar did state that sometimes he will hear the noise when driving over a storm drain.

On June 11, 2019, Mr. Al-Tayar took the vehicle to Eagle for repair for the popping noise from the back of the vehicle and also for a high pitched noise coming from the front of the vehicle. Eagle's service technician could not duplicate the popping noise from the rear of the vehicle and performed no repairs for the issue.¹¹ The technician updated the vehicle's programmed fuel injection module in order to address the high pitched noise from the front of the vehicle.¹² The vehicle's mileage on this occasion was 6,435.¹³ The vehicle was in Eagle's possession for one (1) day. Complainants were provided with a loaner vehicle while their vehicle was in the dealer's possession.

Mr. Al-Tayar testified that he continued to hear the noises (both the popping and high pitched noises) when he drove the vehicle. He returned the vehicle to Eagle for repair on June 14, 2019. Eagle's service technician was unable to duplicate the popping noise from the back of the vehicle and performed no repair for the issue.¹⁴ The technician did special order an air conditioning expansion valve in order to address the issue with the high pitched noise from the front of the vehicle.¹⁵ The vehicle was in Eagle's possession for one (1) day. Complainants were provided with a loaner vehicle while their vehicle was being repaired. The mileage on the vehicle at the time was 6,531.¹⁶

¹¹ Complainant Ex. 4, Repair Order dated June 11, 2019.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 6, Repair Order dated June 14, 2019.

¹⁵ *Id.*

¹⁶ *Id.*

On July 3, 2019, Mr. Al-Tayar took the vehicle to Eagle for repair for the two (2) noise issues. The technician was still unable to recreate the popping noise from the back of the vehicle.¹⁷ However, the technician did install foam tape and foam at the driver's side C pillar in an attempt to alleviate the concern.¹⁸ The technician also replaced the vehicle's air conditioning expansion valve in order to repair the high pitched noise coming from the front of the vehicle.¹⁹ The vehicle's mileage at the time C was 6,956.²⁰ The vehicle was in Eagle's possession for one (1) day and Complainants were provided with a loaner vehicle during this repair visit. Mr. Al-Tayar testified that the loaner provide to him at the time was a 2019 Acura RDX and that the loaner vehicle also made a similar popping noise when he made a left turn out of his driveway onto the street.

Mr. Al-Tayar testified that the repairs on July 3, 2019, resolved the issue with the high pitched noise coming from the front of the vehicle and that he has not heard it since, but he continued to hear the popping noise from the rear. Mr. Al-Tayar testified that he took the vehicle for further repair for the popping noise on July 23, 2019 to July 25, 2019. He stated that he was not given an invoice for the repair visit. During this repair, Eagle's service technician adjusted the vehicle's hatchback in an attempt to resolve the noise issue.

Mr. Al-Tayar continued to hear the popping noise from the rear of the vehicle. On July 29, 2019, Mr. Al-Tayar took the vehicle to Eagle to have his concerns regarding the popping noise issue addressed. Eagle's technician was unable to duplicate the noise and performed no repair for the issue.²¹ The vehicle was in the dealer's possession until August 6, 2019, for other repairs not related to the noise issue. Complainants were provided with a loaner vehicle while their vehicle was being repaired. The mileage on the vehicle when Mr. Al-Tayar took it to Eagle on this occasion was 7,379.²²

Mr. Al-Tayar testified that he called Respondent's customer relations center on or about August 6, 2019, to complain about the vehicle. Respondent's representative advised Mr. Al-Tayar to call Eagle's service manager to get him involved in the issue. Mr. Al-Tayar then took the vehicle to Eagle for repair for the issue on August 8, 2019. Deborah Yoder, District Parts and Service Manager, Eagle's shop foreman, and a service technician all took a test drive in the vehicle.²³ They were unable to recreate the problem during the test drive and did not perform any repair to the vehicle. The vehicle's mileage at the time was 7,503.²⁴ The vehicle was in Eagle's possession

¹⁷ Complainant Ex. 7, Repair Order dated July 3, 2019.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 8, Repair Order dated July 29, 2019.

²² *Id.*

²³ Complainant Ex. 10, Repair Order dated August 8, 2019.

²⁴ *Id.*

for two (2) days. Complainants received a loaner vehicle while their vehicle was in Eagle's possession.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles on August 22, 2019.²⁵ In addition, Complainants mailed a letter to Respondent outlining their unhappiness with the vehicle on August 28, 2019.²⁶

Mr. Al-Tayar took the vehicle to Eagle for repair for the popping noise issue again on September 25, 2019. Eagle's service technician was unable to duplicate the noise and did not perform any repairs for it.²⁷ The vehicle's mileage on this occasion was 8,407.²⁸ The vehicle was in Eagle's possession for one (1) day. Complainants received a loaner vehicle while their vehicle was being repaired.

Mr. Al-Tayar testified that at this point, since he had filed a Lemon Law complaint, he stopped taking the vehicle to the dealer for repair for the popping noise issue. However, Mr. Al-Tayar was later contacted by Respondent's representative and asked to take the vehicle to Eagle for an inspection. Mr. Al-Tayar took the vehicle to Eagle for the inspection on January 10, 2020. Ms. Yoder again inspected the vehicle and took a test drive in it with Eagle's shop foreman and service manager.²⁹ They drove 15 miles in the vehicle through neighborhoods and strip plazas and could not duplicate the noise.³⁰ No repairs for the issue were performed at the time.³¹ The vehicle's mileage on this occasion was 10,388.³² The vehicle was in the dealer's possession for 24 hours. Complainants received a loaner vehicle while their vehicle was being repaired.

Mr. Al-Tayar testified that he continues to hear the popping noise from the rear of the vehicle almost daily. He does like the vehicle and feels that it drives fine. Mr. Al-Tayar feels that the popping noise constitutes a serious safety hazard as it could relate to a spot weld which could cause issues with the vehicle as time passes.

During cross examination, Mr. Al-Tayar testified that he has driven loaner vehicles similar to his own and that he's heard a similar popping noise in all of them when taking a left turn out of his home's driveway into the street. Mr. Al-Tayar stated that he does not hear the popping noise when driving on a flat surface.

²⁵ Complainant Ex. 1, Lemon Law Complaint dated August 22, 2019.

²⁶ Complainant Ex. 9, Letter to American Honda Motor Co., Inc. dated August 28, 2019.

²⁷ Complainant Ex. 11, Repair Order dated September 25, 2019.

²⁸ *Id.*

²⁹ Complainant Ex. 12, Repair Order dated January 10, 2020.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

C. Respondent's Evidence and Arguments

Deborah Yoder, District Parts and Service Manager, has worked in the automotive industry for 23 years. Although she does not have an engineering or technical background, she has taken technical training classes offered by her employers. Ms. Yoder worked for Ford for ten (10) years as a district parts and service manager. She then worked for two and a half (2 ½) years, prior to being hired by Respondent in her present position four and a half (4 ½) years ago.

Ms. Yoder's current job duties include interfacing with Respondent, dealers, and customers. She has to deal with customer satisfaction issues, vehicle concerns, and repeat repairs for customers' vehicles.

Ms. Yoder testified that she has not dealt personally with Complainants, although she has seen the subject vehicle at least twice. Ms. Yoder stated that she test drive the vehicle on August 8, 2019, when it was at Eagle for repairs. She stated that she was unable to recreate the popping noise from the back of the vehicle with which Complainants were concerned during her test drive. Ms. Yoder stated that she also saw the vehicle on January 10, 2020, during Respondent's requested inspection. Ms. Yoder test drove the vehicle about 15 miles along various surfaces along with Eagle's shop foreman and service manager and could not duplicate the popping noise heard by Complainants. Ms. Yoder also stated that she performed a visual inspection of the vehicle and did not see anything about the vehicle that seemed abnormal.

Ms. Yoder does not feel that the vehicle has a defect or nonconformity. She stated that she does not feel that the popping noise heard by Complainants substantially affects the fair market value of the vehicle or affects its use. She feels that the noise heard is a characteristic of the vehicle and that the vehicle is operating as designed.

D. Analysis

Under the Lemon Law, Complainants bear 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, Complainants 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, Complainants are 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, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainants' vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainants initially had two concerns regarding the vehicle and these both involved noises that he was hearing when driving the vehicle. The first concern was with a high pitched noise that seemed to come from the front of the vehicle. This concern was addressed by Respondent's authorized dealer and resolved prior to the filing of the Lemon Law complaint. Complainants have not heard the high pitched noise since the July 3, 2019 repair at which time Eagle's technician replaced the vehicle's the vehicle's air conditioning expansion valve and the high pitched noise is no longer an issue.

Complainants' second concern involved a "popping" noise that comes from the rear of the vehicle that usually occurs when they are taking a left turn out of their home's driveway onto a street. Sometimes the noise also occurs when taking a right turn into the driveway from the street. Complainants indicated that the noise does not occur on smooth roads or on the highway. However, they may hear it when they drive over a bump or storm drain. The noise was still occurring at the time of hearing. It is understandable that the noise can be annoying. However, the popping noise does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainants' ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the rattling noise does not *substantially* impair the use or market value of the vehicle. If Complainants were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the popping noise would affect the purchase price, since it seems to occur only in certain circumstances or in a certain location that most other people would not be in.

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 Complainants is not warranted.

On the date of hearing, the vehicle's mileage was 13,116 and it remains under warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Ali and Danielle Al-Tayar (Complainants) purchased a new 2019 Acura RDX on November 21, 2018, from John Eagle Acura (Eagle) in Houston, Texas, with mileage of 11 at the time of delivery.

2. The vehicle's mileage on the date of hearing was 13,116.
3. The manufacturer or distributor of the vehicle, American Honda Motor Co. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first.
4. Complainants hear a "popping" noise from the back driver's side of the vehicle when he makes a left turn out of his driveway onto the street. Sometimes, Complainants will hear the noise when turning right into the driveway.
5. Complainants also heard a high pitched noise coming from the front of the vehicle that concerned them.
6. Prior to filing a Lemon Law complaint, Complainants took the vehicle to Respondent's authorized dealer, Eagle, in order to address their concerns regarding the popping noise coming from the rear of the vehicle and the high pitched noise from the front of the vehicle on the following dates:
 - a. June 11, 2019, at 6,435 miles;
 - b. June 14, 2014, at 6,531 miles;
 - c. July 3, 2019, at 6,956 miles;
 - d. July 23, 2019, at unknown miles;
 - e. July 29, 2019, at 7,379 miles; and
 - f. August 8, 2019, at 7,503 miles.
7. On June 11, 2019, Eagle's service technician could not duplicate the popping noise from the rear of the vehicle and performed no repair for the issue. The technician updated the vehicle's programmed fuel injection module in order to address the high pitched noise from the front of the vehicle.
8. On June 14, 2019, Eagle's service technician could not duplicate the popping noise from the rear of the vehicle and performed no repair for the issue. The technician verified the high pitched noise from the front of the vehicle and ordered an air conditioning expansion valve to address the concern.
9. On July 3, 2019, Eagle's service technician could not verify the popping noise from the rear of the vehicle. However, the technician installed foam tape and foam to the driver's side C pillar in an attempt to resolve the issue.

10. Also, on July 3, 2019, Eagle's service technician replaced the vehicle's air conditioning expansion valve to address the issue of the high pitched noise coming from the front of the vehicle.
11. Complainants' loaner vehicle, a 2019 Acura RDX which was similar to Complainants, also made a popping noise when Complainants made a left turn out of their driveway onto the street.
12. On July 23, 2019, Eagle's service technician adjusted the vehicle's hatchback in order to address the concern regarding a popping noise coming from the rear of the vehicle.
13. On July 29, 2019, Eagle's service technician could not duplicate the popping noise from the rear of the vehicle and performed no repair for the issue.
14. On August 8, 2019, Eagle's service technician could not duplicate the popping noise from the rear of the vehicle and performed no repair for the issue.
15. On August 22, 2019, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On August 28, 2019, Complainants mailed a letter to Respondent advising them that they were dissatisfied with the vehicle.
17. On September 25, 2019, Eagle's service technician could not duplicate the popping noise from the rear of the vehicle and performed no repair for the issue.
18. On January 10, 2020, Deborah Yoder, District Parts and Service Manager, test drove the vehicle along with Eagle's shop foreman and service manager and could not duplicate the popping noise from the rear of the vehicle and performed no repair for the issue.
19. The vehicle no longer has a high pitched noise coming from the front of the vehicle, although Complainants still hear a popping noise from the rear of the vehicle on occasion.
20. On December 2, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.

21. The hearing in this case convened telephonically on July 1, 2020, before Hearings Examiner Edward Sandoval. Ali Al-Tayar (co-Complainant) represented Complainants at the hearing. Respondent was represented by Abigail Mathews, Attorney with Francis Mathews PLLC. Deborah Yoder, District Parts and Service Manager, appeared and testified for Respondent. The hearing record closed on July 1, 2020.

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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants 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. Complainants' 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 Complainants' petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED July 9, 2020.



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