

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0005965 CAF**

KENNETH HUFFMAN, Complainant	§ § § § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
AMERICAN HONDA MOTOR CO, INC., Respondent		

DECISION AND ORDER

Kenneth Huffman (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2019 Honda Accord Hybrid. Complainant asserts that the vehicle has a defect or nonconformity that causes the engine to stop responding and to die. American Honda Motor Co., Inc. (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 telephonically on April 30, 2020, before Hearings Examiner Edward Sandoval. Complainant, Kenneth Huffman, represented himself in the hearing. Abigail Mathews, attorney with FrancisMathews PLLC, represented Respondent, American Honda Motor Co., Inc., in the hearing. Testifying for Respondent were Debora Yoder, District Parts and Service Manager, and Doug Toler, Field Technical Specialist. The hearing record closed on April 30, 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 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

¹ Tex. Occ. Code § 2301.604(a).

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).

B. Complainant's Evidence and Arguments

Complainant purchased a new 2019 Honda Accord Hybrid from John Eagle Honda (Eagle) in Houston, Texas on November 14, 2019, with mileage of 37 at the time of delivery.^{9,10} Respondent issued a new vehicle limited warranty which provides coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first.¹¹ In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for five (5) years of 60,000 miles.¹² The vehicle's mileage on the date of hearing was 15,135. At the time of hearing the vehicle's warranties were still in effect.

Complainant testified that he is the primary driver of the vehicle. He stated that he first experienced a problem with the vehicle on November 24, 2019, a Sunday. On that date, Complainant was driving the vehicle on an errand. Complainant noticed that the vehicle's engine wouldn't respond and actually died while he was driving. He was able to pull the vehicle to the side of the road. Complainant stated that two warning messages were displayed on the vehicle display screen. The messages were "Power System Problem – Do Not Drive" and "12 Volt Battery Charging System Problem – Do Not Drive." Complainant did not attempt to drive the vehicle further and had it towed to Honda Cars of Katy located in Katy, Texas for repair. The following day, November 25, 2020, the dealer's service technician replaced the vehicle's 12 volt battery in order to address the concern.¹³ The vehicle's mileage at the time was 912.¹⁴ The vehicle was in the dealer's possession until November 26, 2020. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant stated that when he picked up the vehicle, the warning messages were no longer present. The vehicle drove fine for a while. However, on December 5, 2019, the vehicle's engine died again and the same warning messages appeared on the vehicle's display screen. Complainant stated that he had the vehicle towed to Eagle for repair on that same date. Eagle's service technician contacted Respondent's technical assistance line (tech line) in order to get help with the repair.¹⁵ The technician replaced the vehicle's fuel pump and relay in accordance with instructions from Respondent's tech line in order to resolve the issue.¹⁶ The vehicle's mileage on this occasion was 1,847.¹⁷ The vehicle was in Eagle's possession for eight (8) days during this repair. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

⁹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated November 14, 2019.

¹⁰ Complainant Ex. 14, Odometer Disclosure Statement dated November 14, 2019.

¹¹ Complainant Ex. 13, Honda Warranty Manual, p. 9.

¹² *Id.*, p. 10.

¹³ Complainant Ex. 4, Repair Order dated November 25, 2019.

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order dated December 5, 2019.

¹⁶ *Id.*

¹⁷ *Id.*

Complainant stated that the vehicle drove fine for a while after he picked up the vehicle. No warning messages were displayed. However, a few days later, on December 15, 2019, the vehicle died again and the same warning messages displayed. Complainant had the vehicle towed to Eagle on December 16, 2019, for repair. Eagle's service technician found a loose wiring (soft set) connection at the vehicle's front kick panel.¹⁸ The technician secured the connection and test drove the vehicle in order to resolve the issue.¹⁹ The vehicle's mileage on this occasion was 2,146.²⁰ The vehicle was in Eagle's possession until December 20, 2019. Complainant was provided with a loaner vehicle while the repairs were being performed.

Complainant testified that the vehicle drove fine after he picked it up from the dealer. No warning messages were showing on the display screen at the time. Complainant stated, however, that the day after he picked up the vehicle from Eagle, the vehicle wouldn't start and the transmission wouldn't go into gear. Complainant stated that different warning messages appeared on the display screen. Complainant had the vehicle towed to Eagle on December 20, 2019, in order to have it repaired. Eagle's service technician found some stored diagnostic trouble codes (DTCs) on the vehicle's computers.²¹ The technician contacted Respondent's tech line for help in resolving the issue and was informed that he should clear the codes and reset the computers.²² The vehicle's mileage on this occasion was 2,277.²³ The vehicle was in the dealer's possession until December 26, 2019 during this repair. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on December 17, 2019.²⁴ On December 20, 2020, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.²⁵

Complainant testified that the vehicle was inspected by Respondent's representative in February of 2020.

Complainant testified that the warning messages have not displayed since the final repair on December 20, 2019. The vehicle has not died and he has not been left stranded since before the final repair. Complainant stated that the vehicle has been good as new since December of 2019.

¹⁸ Complainant Ex. 8, Repair Order dated December 16, 2019.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 10, Repair Order dated December 20, 2019.

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 2, Lemon Law Complaint dated October 11, 2019.

²⁵ Complainant Ex. 12, Letter to American Honda Motor Co., Inc. dated December 20, 2019.

Complainant stated that he does not feel that the vehicle is completely repaired. He feels that it will break down again and leave him stranded.

C. Respondent's Evidence and Arguments

1. Deborah Yoder's Testimony

Deborah Yoder, District Parts and Service Manager, testified for Respondent. Ms. Yoder has worked in the automotive industry for 22 years. Ms. Yoder worked for ten (10) years with Ford Motor Company as a district manager. She then moved to Volkswagen/Audi for three (3) years and was employed as a fixed operations manager. Ms. Yoder has worked for Respondent for the last four and a half years (4½) years in her present position. She does not have an engineering or technical background, but has undergone technical training from her various employers.

Ms. Yoder has several responsibilities as a district parts and service manager. She works as a liaison between Respondent and its licensed dealers. She provides marketing and advertising services for the dealers. In addition, Ms. Yoder provides support to the dealers to help resolve customer issues.

Ms. Yoder testified that Respondent received Complainant's December 20, 2018 letter in which he indicated that he was dissatisfied with the vehicle. Ms. Yoder stated that Respondent's mediation department contacted Complainant to schedule an inspection of the vehicle by Respondent's field technical specialist, Doug Toler. Ms. Yoder stated that Mr. Toler was required to perform the inspection because Ms. Yoder is not familiar with hybrid vehicles and Mr. Toler is. The inspection was performed on February 7, 2020, at the Eagle dealership. The inspection took one (1) day to perform and Complainant was provided a loaner vehicle while the inspection took place. Ms. Yoder testified that Mr. Toler was not able to find any issues with the vehicle when he performed the inspection.

Ms. Yoder stated that she does not believe that the vehicle has a defect or nonconformity that has not been repaired. She believes that the vehicle has been repaired and that the issue with the engine dying will not recur.

2. Doug Toler's Testimony

Doug Toler, Field Technical Specialist, testified for Respondent. Mr. Toler has worked in the automotive industry since 1998. He has worked as a technician and shop supervisor for various Honda dealers until 2017 when he was hired by Respondent as a field technical specialist. Mr. Toler is an Automotive Service Excellence (ASE) and a Honda Certified Master Technician.

Mr. Toler testified that he inspected the vehicle on February 7, 2020 at Eagle. Mr. Toler stated that he performed a visual inspection of the vehicle and then checked whether any warning messages or alerts were illuminated on the vehicle's dashboard. There were none. Mr. Toler testified that he then test drove the vehicle in an attempt to repeat the concern. No problems occurred during the test drive. Mr. Toler also ran a diagnostic check on the vehicle to see if there were any active DTCs or if any were stored on the vehicle's computers. Mr. Toler stated that he did not find any DTCs on the vehicle's computers. Mr. Toler testified that at the time he did not feel that there was anything wrong with the vehicle.

Mr. Toler testified that feels that the issue with the vehicle has been fully resolved. He does not feel that the issue will recur. Mr. Toler does not feel that the vehicle currently has any defects in workmanship or materials.

E. 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 November 14, 2019, and presented the vehicle to Respondent's authorized dealer for repair due to the vehicle's engine dying on the following dates: November 25, 2019; December 5, 2019; December 16, 2019; and December 20, 2019. The evidence indicates that the vehicle was repaired after the DTCs were cleared from the vehicle's computers on December 20, 2019. Complainant has not experienced any issue with the vehicle's engine dying since the repair on that date.

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.²⁶ 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 coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle’s mileage was 15,135 and it remains covered under the vehicle 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.

III. FINDINGS OF FACT

1. Kenneth Huffman (Complainant) purchased a new 2019 Honda Accord Hybrid on November 14, 2019, from John Eagle Honda (Eagle) in Houston, Texas, with mileage of 37 at the time of delivery.
2. The manufacturer or distributor of the vehicle, American Honda Motor Co., Inc. (Respondent), issued a new vehicle warranty for the vehicle providing coverage for three (3) years or 36,000 miles and a powertrain warranty providing coverage for five years (5) or 60,000 miles.
3. The vehicle’s mileage on the date of hearing was 15,135.
4. At the time of hearing the vehicle’s warranties were still in effect.
5. In November and December of 2019 Complainant experienced four (4) incidents where the vehicle died while he was driving it.

²⁶ Tex. Occ. Code § 2301.605.

6. Complainant took the vehicle to Respondent's authorized dealers, Honda Cars of Katy located in Katy, Texas and Eagle, for repair for the issue described in Findings of Fact #5 on the following dates:
 - a. November 25, 2019, at 912 miles;
 - b. December 5, 2019, at 1,847 miles
 - c. December 16, 2019, at 2,148 miles; and
 - d. December 20, 2019, at 2,277 miles.
7. On November 25, 2019, Honda Cars of Katy's service technician replaced the vehicle's 12 volt battery in order to resolve the issue of the vehicle's engine dying.
8. On December 5, 2019, Eagle's service technician replaced the vehicle's fuel pump and relay in order to address Complainant's concerns.
9. On December 16, 2019, Eagle's service technician reconnected a wiring soft set connection in order to resolve the issue.
10. On December 20, 2019, Eagle's service technician cleared and reset the vehicle's diagnostic trouble codes (DTCs) from the vehicle's computers in order to resolve the issue.
11. On December 17, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On December 20, 2019, Complainant mailed a certified letter to Respondent advising them that he was dissatisfied with the vehicle.
13. On January 6, 2020, 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. Respondent's field technical specialist, Doug Toler, performed an inspection of the vehicle at the Eagle dealership on February 7, 2020.
15. During the inspection described in Findings of Fact #14, Mr. Toler was unable to recreate the problem with the vehicle and determined that it was operating as designed.

16. Complainant has not experienced a problem with the vehicle failing to respond and engine dying since before the last repair performed on the vehicle on December 20, 2019.
17. The hearing in this case convened telephonically on April 30, 2020, before Hearings Examiner Edward Sandoval. Complainant, Kenneth Huffman, represented himself in the hearing. Abigail Mathews, attorney with FrancisMathews PLLC, represented Respondent, American Honda Motor Co., Inc., in the hearing. Testifying for Respondent were Debora Yoder, District Parts and Service Manager, and Doug Toler, Field Technical Specialist. The hearing record closed on April 20, 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. 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 May 6, 2020



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