

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0012398 CAF**

**CHARLOTTE DUBOIS,
Complainant**

v.

**HYUNDAI MOTOR AMERICA,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Charlotte Dubois (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her new 2019 Hyundai Ioniq. Complainant asserts that the vehicle is defective because the vehicle’s power memory driver’s seat does not return to settings that she has established for it. Hyundai Motor America (Respondent) argued that the vehicle does not have a current defect or nonconformity and that Complainant is not entitled to relief under the Lemon Law. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is entitled only to repair relief, as the defect does not substantially impair the use or market value of the vehicle nor does it create a serious safety hazard as defined in the Occupations Code.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened telephonically on December 3, 2020, before Hearings Examiner Edward Sandoval. Complainant, Charlotte Dubois, appeared and represented herself at the hearing. Also present and testifying for Complainant was her husband, Jean-Claude Dubois. Respondent, Hyundai Motor America, was represented by Paige Williams, Customer Service Specialist. The hearing record closed on December 3, 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

1. Charlotte Dubois' Testimony

Complainant purchased a new 2018 Hyundai Ioniq (the vehicle) from Jerry's Hyundai (Jerry's) in Weatherford, Texas on October 13, 2018.⁹ The vehicle's mileage was 15 at the time of delivery.¹⁰ At the time of purchase, Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for five (5) years or 60,000 miles, whichever occurs first.¹¹ Respondent also provided a powertrain warranty for the vehicle which provides coverage for the powertrain for ten (10) years or 100,000 miles.¹² The vehicle's mileage on the date of hearing was 8,650.

Complainant testified that she is the primary driver of the vehicle. She stated that since the date of purchase of the vehicle, she has continuously experienced problems with the vehicle's power memory driver's seat. Complainant stated that she establishes settings for the power memory seat, but it never returns to those settings when she attempts to drive the vehicle. Every time she gets in the vehicle to drive it, she has to reset the seat so that she can reach the steering wheel and controls comfortably. Complainant stated that the power memory seat is designed so that the seat will move back when the vehicle is stopped and the driver's side door is opened. When the driver reenters the vehicle, the seat is supposed to move back to the pre-established settings for that particular driver. Complainant stated that when she enters the vehicle, the seat is positioned where it was when she exited the vehicle and when she sits down to start the vehicle, the seat will move forward about one inch. However, it does not move back to the settings Complainant has established in order to be able to drive the vehicle comfortably.

Complainant stated that she took the vehicle to Jerry's on November 5, 2018, to address the issue with the power memory seat not working properly. Jerry's service technicians inspected the vehicle and were unable to recreate the concern.¹³ The technicians determined that the vehicle's seat was operating as designed.¹⁴ The vehicle's mileage was 284 at the time of the service visit.¹⁵ Complainant testified that the vehicle was in Jerry's possession for one (1) week during this repair and that she was provided with a loaner vehicle while her vehicle was being repaired.

On November 22, 2019, Complainant took the vehicle to Bob Stallings Hyundai (Stallings) located in Dallas, Texas for repair for the power memory seat issue. Stallings' service technician

⁹ Complainant Ex. 1, Retail Purchase Agreement dated October 13, 2018.

¹⁰ *Id.*

¹¹ Complainant Ex. 4, Hyundai Warranty Information from the Internet dated November 27, 2020.

¹² *Id.*

¹³ Complainant Ex. 2, Repair Order dated November 5, 2018.

¹⁴ *Id.*

¹⁵ *Id.*

tested the power memory driver's seat and was unable to recreate the concern.¹⁶ The technician determined that the seat was operating as designed.¹⁷ The vehicle's mileage at the time was 4,415.¹⁸ The vehicle was in the dealer's possession for two (2) to three (3) days on this occasion. Complainant was not provided with a loaner vehicle during this service visit.

Complainant testified that she took the vehicle at least two (2) other times for repair for the issue, but she could not remember the specific dates of those visits and she did not obtain service invoices. On each occasion, the vehicle was in the dealer's possession for two (2) to three (3) days. She did not receive loaner vehicles on those occasions.

Complainant mailed a letter to Respondent on May 2, 2020, in which she indicated to Respondent that she was dissatisfied with the vehicle.¹⁹ Complainant did not receive a response from Respondent to the letter. In addition, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on June 15, 2020.²⁰

Complainant took the vehicle to Jerry's for repair for the power memory seat issue on October 28, 2020. Jerry's service technician tested the power memory driver's seat during the repair visit.²¹ The technician determined that the seat was operating as designed and did not perform any repairs to the vehicle.²² The vehicle's mileage on this occasion was 8,355.²³

Complainant testified that she was never contacted by Respondent for a final inspection or repair attempt on the vehicle.

Complainant stated that the vehicle is driveable. However, she feels that the issue makes the vehicle unsafe, since she has to adjust the seat every time she drives the vehicle.

2. Jean-Claude Dubois' Testimony

Jean-Claude Dubois, Complainant's husband, testified in the hearing. He stated that he drives the vehicle about three (3) times a month. He has not experienced a problem with the driver's seat power memory settings that he has established for when he drives the vehicle. Mr. Dubois stated that he believes that the problem with the seat is due to the fact that Complainant is a shorter person (around five feet tall). Mr. Dubois stated that the technicians who have tested the power

¹⁶ Complainant Ex. 3, Repair Order dated November 22, 2019.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 5, Letter to Hyundai Customer Care dated May 2, 2020.

²⁰ Complainant Ex. 6, Lemon Law complaint dated June 15, 2020.

²¹ Complainant Ex. 8, Repair Order dated October 28, 2020.

²² *Id.*

²³ *Id.*

memory seat were all of average or above average height and that's why the seat works as designed for them.

C. Respondent's Evidence and Arguments

Paige Williams, Customer Service Specialist, appeared and represented Respondent in the hearing. Ms. Williams testified that she has never seen the vehicle. In addition, Ms. Williams stated that she does not have a technical background.

Ms. Williams testified that the power memory seat system does not have any height restrictions and the fact that Complainant is short should not affect the operation of the power memory seat. If the settings are established correctly, there should not be an issue with the operation of the seat.

Ms. Williams also testified that she does not feel that the issue raised by Complainant creates a serious safety hazard. The issue does not affect the vehicle's driveability. Complainant can adjust the seat manually as needed prior to driving the vehicle.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant asserts that the vehicle's power memory seats will not retain the settings that she has established for it, causing her to adjust the seat each time she drives the vehicle. Complainant submitted the vehicle to a servicing dealer for repair for the issue with the seat twice before filing the Lemon Law complaint (November 5, 2018 and November 22, 2019). Complainant also testified that she had taken the vehicle to Respondent's authorized dealer for repair for the issue two (2) other times, but she could not recall the dates of those repair visits. In addition, Complainant submitted the vehicle once for repair (October 28, 2020) for the power memory seat issue after filing the complaint. The evidence taken at hearing (including a video submitted by Complainant) indicates that the power memory seat system does not work properly and that it will not return to settings that Complainant has established. However, the issue does not

substantially impair the use or market value of the vehicle and does not create a serious safety hazard as defined in the Occupations Code. As such, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle; however, the hearings examiner will order Respondent to repair the concern with the power memory driver's side seat.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the defective power memory driver's seat in the vehicle. Such repairs must be completed within the time frame indicated below.

III. FINDINGS OF FACT

1. Charlotte Dubois (Complainant) purchased a new 2019 Hyundai Ioniq on October 13, 2018, from Jerry's Hyundai (Jerry's) in Weatherford, Texas, with mileage of 15 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Hyundai Motor America (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for five (5) years or 60,000 miles, whichever occurs first, and a powertrain warranty providing coverage for the vehicle's powertrain for ten (10) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 8,650.
4. Complainant has experienced issues with the vehicle's power memory driver's seat not returning to settings that she has established.
5. Prior to filing the Lemon Law complaint, Complainant took the vehicle to Respondent's authorized dealers, Jerry's and Bob Stallings Hyundai (Stallings) in Dallas, Texas, in order to address her concerns with the vehicle's power seat on the following dates:
 - a. November 5, 2018, at 284 miles; and
 - b. November 22, 2019, at 4,415 miles.
6. On November 5, 2018, Jerry's service technician inspected the vehicle and the power memory seat and determined that it was operating as designed.
7. On November 22, 2019, Stallings' service technician tested the vehicle's power memory seat and determined that it was working as designed.

8. On May 2, 2020, Complainant sent a letter to Respondent advising them that she was dissatisfied with the vehicle.
9. On June 15, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On October 28, 2020, Complainant took the vehicle to Jerry's due to her concerns regarding the vehicle's power memory driver's seat not retaining the settings that she established. The vehicle's mileage at the time was 8,355.
11. During the repair visit described in Findings of Fact #10, Jerry's service technician tested the power memory seat and its settings. The technician was unable to duplicate a concern with the seat and no repairs were performed.
12. The vehicle's power memory driver's seat does not retain the settings for Complainant.
13. On September 18, 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. The hearing in this case convened telephonically on December 3, 2020, before Hearings Examiner Edward Sandoval. Complainant, Charlotte Dubois, appeared and represented herself at the hearing. Also present and testifying for Complainant was her husband, Jean-Claude Dubois. Respondent, Hyundai Motor America, was represented by Paige Williams, Customer Service Specialist. The hearing record closed on December 3, 2020.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity, *i.e.*, the vehicle's power memory driver's seat won't retain Complainant's settings. However, that defect does not present a serious safety hazard nor substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent was not provided with a reasonable number of attempts to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Respondent had a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
11. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase or replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle's power memory driver's seat 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 § 2001.144.²⁴ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle.

²⁴ (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.

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 December 9, 2020



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