

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 20-0015237 CAF**

**JIMMY WILLIS,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

§                   **BEFORE THE OFFICE**  
§  
§  
§                   **OF**  
§  
§                   **ADMINISTRATIVE HEARINGS**  
§

**DECISION AND ORDER**

Jimmy Willis (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2019 Ford Expedition. Complainant asserts that the vehicle’s transmission malfunctions and overheats. Ford Motor Company (Respondent) argued that the vehicle has been repaired, that no defect or nonconformity currently exists in the vehicle, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase 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 December 16, 2020, before Hearings Examiner Edward Sandoval. Jimmy Willis, Complainant, appeared and represented himself at the hearing. Also appearing and testifying for Complainant was his wife, Stephanie Rodriguez. Respondent, Ford Motor Company, was represented by Carrie Boehm, Consumer Affairs Legal Analyst. Also appearing for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. The hearing record closed on December 16, 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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to these conditions, a rebuttable presumption can be established 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.<sup>6</sup>

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.<sup>7</sup>

“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.<sup>8</sup>

Finally, a rebuttable presumption can be established 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 that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs 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.<sup>9</sup>

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

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

<sup>9</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>10</sup>

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

### **1. Jimmy Willis's Testimony**

Complainant purchased a new 2019 Ford Expedition on September 16, 2019, from Covert Ford–Lincoln (Covert) located in Austin, Texas.<sup>11</sup> The vehicle's mileage at the time of delivery was 22.<sup>12</sup> Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for five (5) years or 60,000 miles. On the date of hearing the vehicle's mileage was 12,525 miles and the vehicle's warranties were still in effect.

Complainant testified that his wife, Stephanie Rodriguez, is the primary driver of the vehicle. He rarely drives the vehicle. Complainant stated that he special ordered the vehicle and that he did test drive it briefly before purchasing it.

Complainant testified that on or about November 19, 2019, the vehicle's transmission overheated and the vehicle shut down while Ms. Rodriguez was driving it. Ms. Rodriguez turned the vehicle on and off and it refused to restart. In addition, the vehicle's transmission would not go into park.<sup>13</sup> The vehicle had to be towed to Covert for repair. Covert's service technician determined that the vehicle's solenoid and latch valve were binding and that the clutch B piston was blown.<sup>14</sup> The technician replaced the vehicle's piston flush cooler lines, torque converter, and valve body in order to address the concerns with the vehicle.<sup>15</sup> The technician also reprogrammed the vehicle's powertrain control module (PCM).<sup>16</sup> The vehicle's mileage on this occasion was 5,227.<sup>17</sup> The vehicle was in Covert's possession until November 26, 2019. Complainant was provided a loaner vehicle while his vehicle was being repaired.

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<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 2, Purchase Order dated September 16, 2019.

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

<sup>13</sup> Complainant Ex. 3, Repair Order dated November 19, 2019.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Complainant testified that on November 28, 2019, he noticed a transmission leak from the vehicle. He took the vehicle to Covert for repair for the transmission leak issue on December 3, 2019. Complainant testified that while Ms. Rodriguez was driving the vehicle to Covert on the date in question smoke began coming from under the vehicle's hood, the vehicle would not accelerate over 60 mph, and the transmission overheated. Covert's service technician determined that the transmission fluid had been overfilled by half a quart.<sup>18</sup> The technician did not find any diagnostic trouble codes (DTCs) stored on the vehicle's computers and that there was not a shift concern with the transmission.<sup>19</sup> No other work was done to the vehicle at the time. The vehicle's mileage on this occasion was 5,613.<sup>20</sup> Complainant testified that the vehicle was in Covert's possession until December 23, 2019. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The vehicle drove fine after Complainant picked it up from Covert.

Complainant stated that the vehicle's transmission overheated on May 27, 2020. The transmission started shifting hard and the vehicle would not accelerate over 60 mph. The transmission temperature at the time was 228 degrees. Complainant testified that Ms. Rodriguez, who was driving the vehicle, was concerned and pulled the vehicle to the side of the road to let the transmission cool off. Complainant took the vehicle to Covert for repair for the transmission issue on May 28, 2020. Complainant testified that he was informed on June 2, 2020, that the service technician could not find a problem with the vehicle. The vehicle's mileage at the time was 8,610.<sup>21</sup> The vehicle was in Covert's possession until June 5, 2020 during this repair. Complainant was provided a loaner vehicle while his vehicle was being repaired. Complainant testified that he picked up the vehicle on June 5, 2020. However, that same day the vehicle's transmission overheated and the vehicle would not accelerate over 55 mph. Complainant took the vehicle back to Covert for further repair and the service technician replaced the vehicle's transmission heat exchanger in order to address the concern.<sup>22</sup> Complainant testified that the vehicle was at Covert until August 19, 2020. On August 4, 2020, the vehicle's transmission was replaced by the Covert technicians.

On June 30, 2020, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.<sup>23</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 19, 2020.<sup>24</sup>

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<sup>18</sup> Complainant Ex. 4, Repair Order dated December 3, 2019.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Complainant Ex. 5, Repair Order dated May 28, 2020.

<sup>22</sup> *Id.*

<sup>23</sup> Complainant Ex. 7, Letter to Ford Motor Company dated June 30, 2020.

<sup>24</sup> Complainant Ex. 1, Lemon Law Complaint dated August 19, 2020.

Complainant stated that he was contacted by Ms. Boehm sometime in the fall of 2020 about Respondent being allowed an opportunity to perform a final repair of the transmission. Complainant testified that he took the vehicle to Covert for repair for the transmission overheating issue on October 1, 2020. While the vehicle was at Covert, Respondent's field service engineer (FSE) performed an inspection of it.<sup>25</sup> The FSE could not duplicate Complainant's concern with the vehicle's transmission.<sup>26</sup> The vehicle's mileage on this occasion was 11,333.<sup>27</sup> Complainant testified that the vehicle was in Covert's possession until December 2, 2020. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle's transmission continues to overheat. In addition, in those situations the vehicle does not seem to want to accelerate. The issue is intermittent. It does not present on a daily basis. Complainant stated that he was informed by Covert personnel that the manufacturer guidelines state that if the transmission temperature goes above 217 degrees that the transmission is overheating. Complainant stated that on September 27, 2020, the vehicle's transmission temperature raised to 228 degrees and the vehicle's transmission would not shift gears.

## 2. Stephanie Rodriguez' Testimony

Ms. Rodriguez, Complainant's wife, testified in the hearing. She stated that she is the daily driver of the vehicle.

Ms. Rodriguez stated that in November of 2019, she noticed that the vehicle's transmission was not shifting correctly. The transmission was shifting hard. The vehicle would not accelerate over 25 mph. She stated that the vehicle's powertrain system malfunction warning light illuminated. Ms. Rodriguez stated that she turned off the vehicle at one point and it would not restart. The vehicle had to be towed to Covert for repair.

In December of 2019, Ms. Rodriguez noticed that the vehicle was leaking fluid. She drove the vehicle to Covert. While driving to Covert the vehicle would not accelerate over 60 mph. Smoke began to come out from under the vehicle's hood while she was driving the vehicle.

Ms. Rodriguez stated that on May 20, 2020, while on a trip out of town, the transmission started shifting hard. In addition, the transmission overheated.

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<sup>25</sup> Complainant Ex. 6, Repair Order dated October 1, 2020.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Ms. Rodriguez stated that on June 5, 2020, while driving the vehicle to her home, she noticed that the transmission temperature started to rise. She contacted the service advisor at Covert about the issue. The service advisor had the vehicle picked up and taken to the dealership for repair. The vehicle was at Covert from June of 2020 until August of 2020.

Ms. Rodriguez stated that even after the new transmission was installed in the vehicle in August of 2020, she still experienced issues with the transmission shifting hard and not being able to accelerate over 55 to 60 mph when driving the vehicle.

## C. Respondent's Evidence and Arguments

### 1. Carrie Boehm's Testimony

Carrie Boehm, Consumer Affairs Legal Analyst, testified for Respondent. She stated that she has never personally seen the vehicle.

Ms. Boehm stated that Respondent received Complainant's written notice regarding his dissatisfaction with the vehicle on July 20, 2020. Ms. Boehm stated that she contacted Complainant and asked for an opportunity to inspect the vehicle. The inspection took place on October 7, 2020, at the Covert dealership.

Robert Saffle, Field Service Engineer, inspected the vehicle on October 7, 2020. The vehicle's mileage was 11,338 at the time of inspection.<sup>28</sup> Mr. Saffle did not find any stored diagnostic trouble codes on the vehicle's computers at the time of the inspection.<sup>29</sup> He test drove the vehicle extensively and attached a diagnostic device to the vehicle to monitor the transmission temperature.<sup>30</sup> Mr. Saffle noted on his repair that the vehicle's highest temperature during the 130 mile test drive of the vehicle was 210 degrees.<sup>31</sup> Mr. Saffle indicated that the vehicle's transmission did not overheat during the inspection and no repairs to the vehicle were needed.<sup>32</sup>

Ms. Boehm testified that Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles. In addition, Respondent provided a powertrain warranty for the vehicle's powertrain providing coverage for five (5) years or 60,000 miles.

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<sup>28</sup> Respondent Ex. 1, FSE Vehicle Inspection Report dated October 7, 2020.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

## 2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent at the hearing. Mr. Bashir testified that he has worked in the automotive industry for 21 years. For the first eight (8) years of his career, Mr. Bashir worked for various independent automotive repair shops. He was hired by Respondent in 2007, as a claims adjuster in their warranty department. In 2009, Mr. Bashir was hired in his present position. He is an Automotive Service Excellence (ASE) Master Certified Technician and is enrolled in Respondent's senior master technician certification program.

Mr. Bashir testified that he has never seen the subject vehicle. He stated that the normal temperature range for the vehicle's transmission is between 206 to 215 degrees. The vehicle does have a transmission temperature gauge on the vehicle's instrument cluster. Mr. Bashir stated that the warning level for the transmission temperature begins at 240 degrees. Mr. Bashir testified that the vehicle's computers won't set a DTC until the transmission temperature reaches 270 degrees or higher.

Mr. Bashir stated that if the vehicle's transmission does overheat, the transmission will default to a lower speed and the number of gears available for the transmission to shift into will be limited.

Mr. Bashir stated that the November 19, 2019, repair to the vehicle was due to a fault with the vehicle's clutch. The vehicle's valve body and B clutch were replaced.

On December 3, 2019, the transmission fluid was overfilled which was causing transmission to leak onto the engine, creating smoke as the fluid burned. He was not aware if it is common for a vehicle in such circumstances not to be able to accelerate over 60 mph.

On May 28, 2020, the vehicle's transmission heat exchanger which cools the vehicle's transmission fluid was replaced. Mr. Bashir stated that Respondent would not have recommended this repair for Complainant's concern regarding the transmission temperature. However, the repair was covered under Respondent's warranty.

Mr. Bashir testified that the vehicle's transmission was replaced in August of 2020. The vehicle's CEL had illuminated and the transmission's 10<sup>th</sup> gear's ratio was incorrect. Due to the vehicle's low mileage, Respondent determined that the vehicle's transmission should be replaced. He stated that an authorized dealer can replace a vehicle's transmission at its discretion if the vehicle's mileage is low or within one (1) year of purchase.

#### **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 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. Complainant's concern with the vehicle is that the vehicle's transmission malfunctions and overheats intermittently.

The evidence presented at the hearing established that there have been several issues with the vehicle's transmission. The first hand testimony provided by Complainant indicates that the problem continues to occur despite several repair attempts by the dealer's service technicians. The last incident prior to the hearing date occurred on September 27, 2020, when the vehicle's transmission temperature went to 228 degrees and the vehicle's transmission would not shift gears. As such, the hearing examiner must hold that Complainant has met the burden of persuasion to establish the existence of a defect or nonconformity (the vehicle's transmission malfunctioning and overheating) in the subject vehicle. The defect or nonconformity with the vehicle substantially impairs the use or market value of the vehicle, as Complainant cannot rely on the vehicle to be able to go on a trip or even cross town without the transmission overheating and possibly not shifting gears. In addition, the vehicle's market value is adversely affected as it would be difficult to sell the vehicle at market price if it has a transmission problem.

Complainant also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainant presented the vehicle for repair to Respondent's authorized dealer on four (4) separate occasions for repair for the complained of issue prior to the filing of the Lemon Law complaint: November 19, 2019; December 3, 2019; May 28, 2020; and August 4, 2020. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) provides 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. In the present case, despite the repair attempts, the problem continues to exist. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent and the vehicle has not been repaired.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainant informed Respondent via letter dated June 30, 2020, of his concerns with the vehicle's transmission and providing Respondent with an opportunity to cure. Respondent field service engineer inspected the vehicle on October 1, 2020, and was unable to recreate any issues with the vehicle's transmission.

Although Respondent has been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainant has met his burden of persuasion to establish that the vehicle has a warrantable and existing defect or condition which substantially impairs the use or market value of the vehicle. Therefore, the hearings examiner will order Respondent to repurchase the vehicle as requested by Complainant.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

### III. FINDINGS OF FACT

1. Jimmy Willis (Complainant) purchased a new 2019 Ford Expedition on September 16, 2019, from Covert Ford–Lincoln (Covert) located in Austin, Texas with mileage of 22 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for the first three (3) years or 36,000 miles after deliver, whichever comes first. In addition. Respondent provided a powertrain warranty providing 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 12,525.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant has experienced several situations where the vehicle's transmission has malfunctioned and overheated.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Covert, in order to address his concerns with the vehicle's transmission on the following dates:
  - a. November 19, 2019, at 5,227 miles;
  - b. December 3, 2019, at 5,613 miles;
  - c. May 28, 2020, at 8,610 miles; and
  - d. August 4, 2020, at 8,830 miles.
7. On November 19, 2019, the vehicle was taken to Covert for repair because the check engine light (CEL) was illuminated, the transmission would not shift into park, and the vehicle would not accelerate over 25 mph.
8. During the repair visit described in Findings of Fact #7, in order to address Complainant's concerns, Covert's service technician replaced the vehicle's piston flush cooler lines, torque converter, and valve body. In addition, the technician reprogrammed the vehicle's powertrain control module (PCM).
9. On December 3, 2019, Complainant took the vehicle to Covert because the vehicle would not accelerate over 60 mph, the transmission would not shift gears, and smoke was coming from under the vehicle's hood.
10. During the repair visit described in Findings of Fact #9, Covert's service technician determined that the vehicle's transmission fluid level was one half quart too high which was causing the smoke to occur. The technician adjusted the transmission fluid level and determined that there were no other issues with the vehicle's transmission at the time.
11. On May 28, 2020, Covert's service technician replaced the vehicle's transmission heat exchanger in order to address an issue with the vehicle's transmission overheating.
12. On June 30, 2020, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.

13. On August 4, 2020, Covert's service technician replaced the vehicle's transmission to address the issue of the vehicle's transmission overheating.
14. On August 19, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. On September 27, 2020, the vehicle's transmission overheated and would not shift gears. Complainant did not take the vehicle to Respondent's authorized dealer for repair for the issue at the time.
16. On October 7, 2020, Respondent's field service engineer, Robert Saffle, performed an inspection of the vehicle at the Covert location. The vehicle's mileage was 11,338 at the time.
17. During the inspection performed on October 7, 2020, Mr. Saffle determined that the vehicle's transmission was not overheating and did not perform any repairs to the vehicle' for the issue.
18. The vehicle's transmission continues to overheat periodically.

19. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$76,749.00
Delivery mileage	22
Mileage at first report of defective condition	5,227
Mileage on hearing date	12,525
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$76,749.00
Mileage at first report of defective condition					5,227
Less mileage at delivery					<u>-22</u>
Unimpaired miles					5,205
Mileage on hearing date					12,525
Less mileage at first report of defective condition					<u>-5,227</u>
Impaired miles					7,298
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>5,205</u>				
	120,000	X	\$76,749.00	=	\$3,328.99
Impaired miles					
	<u>7,298</u>				
	120,000	X	\$76,749.00	X .5 =	<u>\$2,333.81</u>
Total reasonable allowance for use deduction:					\$5,662.80
Purchase price, including tax, title, license and registration					\$76,749.00
Less reasonable allowance for use deduction					-\$5,662.80
Plus filing fee refund					<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>					\$71,121.20

20. On November 12, 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.

21. The hearing in this case convened telephonically on December 16, 2020, before Hearings Examiner Edward Sandoval. Jimmy Willis, Complainant, appeared and represented himself at the hearing. Also appearing and testifying for Complainant was his wife, Stephanie Rodriguez. Respondent, Ford Motor Company, was represented by Carrie Boehm, Consumer Affairs Legal Analyst. Also appearing for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. The hearing record closed on December 16, 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's vehicle has an existing defect or condition (the transmission malfunctions and overheats) that substantially impairs Complainant's use or market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable 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. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and repurchase of the 2019 Ford Expedition under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$71,121.20**. (This total includes the \$35.00 Lemon Law filing fee.) The total refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and

6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

### **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-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Ford Motor Company, shall repair the warrantable defect (the vehicle's transmission malfunctioning and overheating) in the reacquired vehicle identified in this Decision.

**SIGNED February 22, 2021.**



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