

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0007647 CAF**

CECIL CHINN, Complainant	§	BEFORE THE OFFICE
	§	
v.	§	OF
	§	
FORD MOTOR COMPANY, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Cecil Chinn (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2020 Ford F-150 pickup truck. Complainant asserts that the vehicle has a defect which causes warning messages to appear on the vehicle’s instrument cluster and which has caused the vehicle to lose power. Ford Motor Company (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 in Carrollton, Texas on June 10, 2021, before Hearings Examiner Edward Sandoval. Complainant, Cecil Chinn, represented himself at the hearing. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified for Respondent. The hearing record closed on June 10, 2021.

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

¹ Tex. Occ. Code § 2301.604(a).

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

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2020 Ford F-150 pickup truck from AutoNation Ford (AutoNation) in Arlington, Texas on August 17, 2020, with mileage of 94 at the time of

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).

delivery.^{9,10} Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first. Respondent also provided a powertrain warranty for the vehicle which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles. The vehicle's mileage on the date of hearing was 12,944. At this time, the vehicle's warranties are still in effect.

Complainant testified that he feels that the vehicle has a defect which causes warning messages to appear on the vehicle's instrument cluster and which has caused the vehicle to lose power. He has experienced several incidents where warning messages for the vehicle have appeared and thee (3) occasions where the vehicle has lost power.

Complainant stated that he first became aware of the issues on September 24, 2020. On that date, Complainant was driving his wife to work and observed several messages on the instrument cluster. These messages were: restraints indicator lamp, hill start assist warning, powertrain malfunction/reduced power, and pre-collision assist not available.¹¹ In addition, the vehicle lost power and would not accelerate. Complainant testified that he turned the vehicle off and restarted it. Once he restarted the vehicle, the messages went away and the vehicle drove normally.

On September 28, 2020, Complainant again experienced an issue with the vehicle. The same warning messages appeared on the instrument cluster and the vehicle again lost power. Complainant took the vehicle to AutoNation for repair for the issues on that date. AutoNation's service technician was unable to duplicate the issue of the warning messages appearing, but did find some communication fault codes on the electronic engine control (EEC) module.¹² The technician cleared the codes and performed no other repair to the vehicle.¹³ The technician also indicated that the loss of power issue was a result of the warning messages and did not perform any repair for that issue once the codes had been cleared.¹⁴ The vehicle's mileage on this occasion was 3,509.¹⁵ The vehicle was in AutoNation's possession for five (5) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle drove well for a period of time after the September 28, 2020 repair. However, on November 2, 2020, the warning messages all appeared on the instrument cluster panel and the vehicle again lost power. Complainant took the vehicle to AutoNation for repair that same day. AutoNation's service technician discovered two (2) fault

⁹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated August 17, 2020.

¹⁰ Complainant Ex. 6-A, Lemon Law Complaint Form dated March 8, 2021, p. 2.

¹¹ Complainant Ex. 3, Screen Shots of Messages from Message Center, undated.

¹² Complainant Ex. 4, Repair Order dated September 28, 2020.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

codes in the vehicle's computers.¹⁶ The technician determined that there was a loose pin to the accelerator pedal sensor and replaced the pin in order to address the issues regarding the warning messages and the vehicle losing power.¹⁷ The vehicle's mileage on this occasion was 5,070.¹⁸ The vehicle was in AutoNation's possession for four (4) days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that since the repair performed on November 2, 2020, the vehicle has not lost power nor has he observed the powertrain malfunction/reduced power warning message appeared. Most of the other messages also stopped appearing. However, on December 17, 2020; December 21, 2020; and January 29, 2021, the pre-collision assist not available warning message appeared on the instrument cluster panel.¹⁹ Complainant also testified that the front camera low visibility warning message also appeared on December 21, 2020 and January 29, 2021. Finally, on January 29, 2021, a warning message that the driver mode was not available also appeared. Complainant took the vehicle to Mac Haik Ford (Haik) located in DeSoto, Texas for repair for the warning message issue on February 6, 2021. Haik's service technician reset the vehicle's anti-lock braking system (ABS) module and recalibrated the vehicle dynamics (IVD) module in order to address the issue.²⁰ The vehicle's mileage was 9,399.²¹ The vehicle was in Haik's possession for five (5) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On February 18, 2021, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.²² Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 8, 2021.²³

Complainant testified that he was contacted by Mr. Gregory, Respondent's representative, and requested that Respondent's field service engineer (FSE) be given an opportunity to inspect the vehicle. Complainant agreed to the inspection which was scheduled for March 22, 2021, at the Haik dealership. Complainant left the vehicle at the location on the date requested. The vehicle's mileage was 10,335.²⁴ Complainant was informed by Haik's representative that Respondent's FSE was not available at the time and did not inspect the vehicle. Instead, the inspection was performed by Haik's service technician. No repair was performed at the time.

¹⁶ Complainant Ex. 5, Repair Order dated November 2, 2020.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 10, Screen Shots of Messages from Message Center #2, undated.

²⁰ Complainant Ex. 6, Repair Order dated February 6, 2021.

²¹ *Id.*

²² Complainant Ex. 7, Letter to Ford Motor Company dated February 18, 2021.

²³ Complainant Ex. 6-A, Lemon Law Complaint dated March 8, 2021.

²⁴ Complainant Ex. 8, Repair Order dated March 22, 2021.

Complainant was later contacted by Mr. Gregory who again requested that Respondent's FSE be given an opportunity to inspect the vehicle. This inspection took place at Haik on April 27, 2021. The vehicle's mileage was 11,217.²⁵ No repair was performed at the time.

Complainant testified that the vehicle has not suffered from a loss of power since prior to the November 2, 2020 repair. In addition, Complainant has not observed any warning messages appear since prior to the February 6, 2021 repair. He stated that the vehicle is currently driving well.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, testified for Respondent. He stated that Respondent has provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain.

Mr. Gregory stated that Respondent received Complainant's letter dated February 18, 2021, in which Complainant indicated his dissatisfaction with the vehicle. Mr. Gregory contacted Complainant and made arrangements for Complainant to take the vehicle to Haik for an inspection by Respondent's field service engineer. The inspection was scheduled to take place on March 22, 2021. However, the inspection was performed by Haik's personnel. Respondent's field service engineer (FSE) did not show up to inspect the vehicle. Mr. Gregory testified that once he found out that the FSE did not inspect the vehicle, he contacted Complainant to schedule another inspection of the vehicle. This inspection took place at the Haik dealership on April 27, 2021. The vehicle's mileage on this occasion was 11,217.²⁶ The inspection was performed by Harrison Douglass, Respondent's FSE. Mr. Douglass indicated on the report that he inspected the vehicle for the warning messages appearing (the warning messages specified were: pre-collision assist not available, restraints indicator lamp warning, powertrain malfunction/reduce power) and for the vehicle losing power.²⁷ Mr. Douglass was unable to duplicate any of the concerns and did not find any stored fault codes.²⁸ No repairs to the vehicle were performed at the time.

²⁵ Complainant Ex. 9, Repair Order dated April 27, 2021.

²⁶ Respondent Ex. 1, FSE Vehicle Inspection Report dated April 28, 2021.

²⁷ *Id.*

²⁸ *Id.*

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry for 21 years. Prior to being hired by Respondent, Mr. Bashir worked for eight (8) years with independent automotive repair facilities. He was hired by Respondent in 2007. Mr. Bashir worked two (2) years as a claims adjuster for Respondent before being hired as an automotive technical consultant. Mr. Bashir has worked in his present position since 2009. Mr. Bashir is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Bashir stated that he has never inspected nor seen the vehicle. Mr. Bashir testified that AutoNation's service technician resolved the issue of the vehicle losing power during the repair on November 2, 2020. One of the warning messages/lights that appeared on the vehicle's instrument cluster prior to the repair was a wrench symbol indicating an issue with the vehicle's powertrain. Mr. Bashir stated that AutoNation's technician discovered two (2) diagnostic trouble codes (DTC's) indicating a fault with the vehicle's accelerator pedal sensor. An issue with the sensor could affect the vehicle by reducing power to the vehicle's engine or forcing the vehicle to idle and not accelerate at all. He feels that the issue was repaired by the technician who replaced a loose pin to the accelerator pedal sensor. The issue did not recur after that repair.

Mr. Bashir stated that he feels that the vehicle has now been repaired and that it is operating as designed.

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.

Complainant purchased the vehicle on August 17, 2020, and presented the vehicle to Respondent's authorized dealers for repair for the issues of the warning messages (the messages were restraints indicator lamp, hill start assist warning, powertrain malfunction/reduced power, and pre-collision assist not available) appearing and/or the vehicle losing power on September 28, 2020; November 2, 2020, and February 6, 2021. The issue regarding the vehicle losing power was repaired on November 2, 2020, when the technician determined that there was a loose pin to

the accelerator pedal sensor and replaced the pin in order to address the issues regarding the warning messages and the vehicle losing power. At that time, most of the warning messages stopped appearing and Complainant has not experienced any other issues regarding the vehicle losing power since that date. However, the warning message regarding the pre-collision assist not being available appeared on the vehicle's instrument cluster panel three times after that date. In addition, a message for front camera low visibility appeared twice and a message that drive mode was not available appeared once. On February 6, 2021, Haik's service technician reset the vehicle's anti-lock braking system (ABS) module and recalibrated the vehicle dynamics (IVD) module in order to address the issue. The messages have not reappeared since that the repair on February 6, 2021.

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.²⁹ 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 bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 12,944 and it remains covered under the 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. Cecil Chinn (Complainant) purchased a new 2020 Ford F-150 pickup truck on August 17, 2020, from AutoNation Ford (AutoNation) in Arlington, Texas, with mileage of 94 at the time of delivery.

²⁹ Tex. Occ. Code § 2301.605.

2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty providing coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty providing coverage for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 12,944.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Since purchasing the vehicle, Complainant has experienced several issues where warning messages have appeared when driving the vehicle (the messages included restraints indicator lamp, hill start assist warning, powertrain malfunction/reduced power, and pre-collision assist not available) and at least three (3) occasions where the vehicle lost power.
6. Prior to filing his Lemon Law complaint, Complainant took the vehicle to Respondent's authorized dealers, AutoNation and Mac Haik Ford (Haik) located in DeSoto, Texas, on the following dates in order to address his concerns regarding the warning messages appearing and/or the vehicle losing power:
 - a. September 28, 2020, at 3,509 miles;
 - b. November 2, 2020, at 5,070 miles; and
 - c. February 6, 2021, at 9,399 miles.
7. On September 28, 2020, AutoNation's service technician was unable to duplicate the issue of the warning messages appearing, but did find some communication fault codes on the electronic engine control (EEC) module. The technician cleared the codes and performed no other repair to the vehicle.
8. During the repair visit described in Findings of Fact #7, the service technician was not able to determine why the vehicle lost power, but assumed it was in conjunction with the issue regarding the warning messages. No repair was performed specifically for this issue.
9. On November 2, 2020, AutoNation's service technician determined that there was a loose pin to the accelerator pedal sensor and replaced the pin in order to address the issues regarding the warning messages and the vehicle losing power.
10. On February 6, 2021, Haik's service technician reset the vehicle's anti-lock braking system (ABS) module and recalibrated the vehicle dynamics (IVD) module in order to address the issue of a warning messages regarding the pre-collision assist not being

available, front camera low visibility, and drive mode not being available appearing on the vehicle's instrument cluster panel.

11. On February 18, 2021, Complainant wrote a letter to Respondent advising them that he was dissatisfied with the vehicle.
12. On March 8, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On March 22, 2021, Complainant took the vehicle to Haik at Respondent's request for an inspection of the vehicle. The vehicle's mileage at the time was 10,335.
14. The inspection described in Findings of Fact #13 was performed by Haik's service technician who could not duplicate any issue regarding the warning messages appearing or the vehicle losing power.
15. On April 27, 2021, Complainant took the vehicle to Haik at Respondent's request for an inspection of the vehicle. The vehicle's mileage at the time was 11,217.
16. The inspection described in Findings of Fact #15 was performed by Respondent's field service engineer, Harrison Douglass.
17. Mr. Douglass was unable to duplicate any concerns with the vehicle during the inspection performed on April 27, 2021.
18. The issue regarding the vehicle losing power has not occurred since prior to November 2, 2020.
19. The issue regarding the warning messages appearing on the vehicle's instrument cluster panel has not occurred since prior to February 6, 2021.
20. On April 23, 2021, 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 in Carrollton, Texas on June 10, 2021, before Hearings Examiner Edward Sandoval. Complainant, Cecil Chinn, represented himself at the hearing. Respondent was represented by Anthony Gregory, Consumer Affairs Legal

Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified for Respondent. The hearing record closed on June 10, 2021.

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 June 14, 2021



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