

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0010900 CAF**

**DANIEL ALONSO,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

§
§
§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Daniel Alonso (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2019 Chevrolet Silverado. Complainant asserts that the subject vehicle has a defect that has caused the vehicle’s brakes to fail. General Motors LLC (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 has been repaired and that repurchase, or replacement relief is not warranted.

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 was conducted on October 20, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Daniel Alonso, Complainant, appeared and represented himself at the hearing. Sonya Alonso, Complainant’s wife, also testified for Complainant in the hearing. Respondent, General Motors LLC, was represented by Kevin Phillips, Business Resource Manager. Also appearing and testifying for Respondent was Irfaun Bacchus, Field Service Engineer. Alex Montez, interpreter, provided Spanish language interpretation for Complainant. The hearing record closed on October 20, 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 provided 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 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.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

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)

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).

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

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.¹⁰

B. Complainant's Evidence and Arguments

1. Daniel Alonso's Testimony

Complainant purchased a new 2019 Chevrolet Silverado on November 14, 2019, from Moritz Chevrolet (Moritz) located in Fort Worth, Texas.¹¹ The vehicle's mileage at the time of delivery was 194.¹² 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 five (5) year or 60,000 mile powertrain warranty for the vehicle's powertrain. On the date of hearing the vehicle's mileage was 23,644 and the vehicle's warranties were still in effect.

Complainant feels that the vehicle is unsafe because the brakes failed on one occasion. In addition, his wife, Sonya Alonso, has continued to hear noises from the brakes since the repair performed by Moritz's service technician on November 2, 2020.

Complainant testified that he did not test drive the subject vehicle before purchasing it. He is not the primary driver of the vehicle, Ms. Alonso is. Complainant rarely drives the vehicle personally. Complainant allowed his wife to file the Lemon Law complaint and thought that she had included that they were hearing noises from the vehicle's brakes on the complaint. He was not aware that the complaint did not indicate that there was an issue of brake noise with the vehicle.

2. Sonya Alonso's Testimony

Sonya Alonso, Complainant's wife, testified in the hearing. She stated that she is the primary driver of the vehicle and does not drive it that often. Ms. Alonso stated that she drives the vehicle

⁹ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 2, Sales Agreement dated November 14, 2019.

¹² Complainant Ex. 3, Odometer Disclosure Statement dated November 14, 2019.

about two (2) to three (3) times per week because she does not want to put excessive mileage on the vehicle.

Ms. Alonso stated that starting in October of 2020, she began to hear noise from the vehicle's tires which sounded like something was scraping the vehicle's brake disks. In late October or early November, Ms. Alonso was driving the vehicle when the brakes stopped working. She was driving at a slow enough speed that she was able to get the vehicle to stop without incident. In addition, the vehicle's brake warning light illuminated, and a message appeared on the vehicle's display screen that she would not be able to drive the vehicle over 20 mph. As a result, Complainant had the vehicle towed to Moritz for repair. The vehicle was inspected by Moritz's service technician on November 2, 2020. The technician found a diagnostic trouble code (DTC) stored in the vehicle's brake system control module (BSCM) which led to the technician replacing the brake's master cylinder in order to address the issue of the brakes not working.¹³ The vehicle's mileage on this occasion was 10,610.¹⁴ The vehicle was returned to Complainant on November 3, 2020.¹⁵ Complainant was not provided a loaner vehicle while his vehicle was being repaired.

Ms. Alonso testified that after receiving the vehicle back from Moritz, the brakes worked as designed and that she has not experienced any other issues with the brakes not working.

Ms. Alonso stated that she began hearing a "screeching" noise from the vehicle's brakes when she drove the vehicle. As a result, Complainant took the vehicle to Moritz for repair for the noise issue on January 25, 2021. Moritz's service technician inspected the brakes and determined that they were good at 90 percent.¹⁶ However, the dealer agreed to resurface the vehicle's front rotors and pads despite the fact that the brakes were out of warranty.¹⁷ In addition, the technician lubed all contacts and pins and added adhesive to the back of the brake pads in order to resolve the noise issue.¹⁸ The vehicle's mileage on this occasion was 13,672.¹⁹ The vehicle was in Moritz's possession until February 2, 2021.²⁰ Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Ms. Alonso stated that she continued to hear a noise from the brakes when she was driving the vehicle. She took the vehicle back to Moritz for repair for the issue on March 4, 2021. The

¹³ Complainant Ex. 4, Repair Order dated November 2, 2020.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Repair Order dated January 25, 2021.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

service technician did not hear any noise from the vehicle when he test drove it at the time of the repair visit.²¹ He inspected the brakes and determined that they were in good condition and that there was no abnormal scoring on the rotors.²² The technician went ahead and resurfaced the vehicle's brakes and rotors to resolve the concern, even though he was not able to recreate the issue.²³ The vehicle's mileage on this occasion was 14,360.²⁴ Ms. Alonso was not sure how long the vehicle was in the dealer's possession on this occasion. Complainant was not provided a loaner vehicle during this repair visit.

Ms. Alonso testified that she continued to hear a noise from the vehicle's brakes whenever she applied them. She stated that as a result of the noise continuing to occur, she took the vehicle to Moritz for repair on May 5, 2021. Mr. Alonso stated that Moritz's service technician did not inspect the vehicle or perform any repairs at the time. However, the technician stated that he knew what was wrong with the vehicle and that he was going to order some parts in order to repair the vehicle. Complainant did not receive an invoice for the repair visit and, as a result, she does not know what the mileage was on the vehicle at the time.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 6, 2021.²⁵ In addition, Ms. Alonso testified that she sent a letter to Respondent advising them that Complainant was dissatisfied with the vehicle.²⁶

Ms. Alonso testified that Complainant agreed to allow Respondent's field service engineer to inspect the vehicle on July 15, 2021, at AutoNation Chevrolet (AutoNation) in North Richland Hills, Texas. No repairs were performed at that time.

During cross-examination, Ms. Alonso stated that the brake noise started after the brake's master cylinder was replaced on November 2, 2020. She stated that she hears the noise every time she uses the brakes or makes a turn in the vehicle. Ms. Alonso stated that the brake malfunction warning light has not illuminated in the vehicle. She has not seen any warning messages on the vehicle's display screen regarding a brake issue.

²¹ Complainant Ex. 6, Vehicle History Listing dated August 23, 2021.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 1, Lemon Law Complaint dated May 6, 2021.

²⁶ Although Ms. Alonso testified that she sent a letter to Respondent regarding the issues with the vehicle, she did not provide a copy of the letter as evidence and Respondent's representative, Mr. Phillips, stated that Respondent never received a letter from Complainant.

C. Respondent's Evidence and Arguments

1. Kevin Phillip's Testimony

Kevin Phillips, Business Resource Manager, testified for Respondent. Mr. Phillips testified that Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle, plus a five (5) or 60,000 mile powertrain warranty for the vehicle's powertrain.

Mr. Phillips also stated that the issue regarding the brake noise was not included on Complainant's Lemon Law complaint. Instead the issue listed on the complaint regarded the functioning of the brakes. Mr. Phillips pointed out that the vehicle's brake pads and linings are considered maintenance items, have a 7,500 mile warranty, and are not covered under Respondent's new vehicle limited warranty.²⁷ Mr. Phillips stated that Respondent never received written notice from Complainant of his dissatisfaction with the vehicle.

2. Irfaun Bacchus' Testimony

Irfaun Bacchus, Field Service Engineer (FSE), testified for Respondent in the hearing. Mr. Bacchus stated that he has worked in the automotive industry for nineteen (19) years. He has worked for several automobile dealers as a service technician and team leader. In 2013, Mr. Bacchus was hired by Respondent for his present position. Mr. Bacchus is an Automotive Service Excellence (ASE) Certified Master Technician. In addition, he is a GM World Class Master Certified Technician.

Mr. Bacchus testified that he inspected the subject vehicle on July 15, 2021, at AutoNation Chevrolet (AutoNation) in North Richland Hills, Texas. The vehicle's mileage at the time was 17,836.²⁸ Mr. Bacchus stated that during his inspection he checked the vehicle's computers for diagnostic trouble codes (DTC's) and found none. He inspected the brake system and determined that there was not any abnormal wear on the brake pads and no leaks in the system. Mr. Bacchus then took the vehicle on a test drive and the brakes operated properly and he did not hear any noise from the brakes. Mr. Bacchus stated that after returning to AutoNation from the test drive, he did hear a slight chirping noise from the left front of the vehicle. However, this is a noise that Respondent is aware of and for which they have issued a Preliminary Information Powertrain (PIP) Bulletin. There is no fix for the noise yet, but Respondent has determined that it does not affect durability or operation of the vehicle.²⁹

²⁷ Respondent Ex. 1, New Vehicle Limited Warranty, undated.

²⁸ Respondent's Ex. 2, Vehicle Legal Inspection dated July 15, 2021.

²⁹ *Id*

Mr. Bacchus stated that all vehicles make noise to some extent. However, he did not hear any noise from the vehicle's brakes during his inspection of the vehicle. Mr. Bacchus does not feel that there is any defect with 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 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 subject vehicle on November 14, 2019 and presented the vehicle to Respondent's authorized dealer for repair to the vehicle's brakes on November 2, 2020. In addition, Complainant provided the vehicle for repair for the brake noise issue on January 25, 2021; March 4, 2021; and May 5, 2021. The vehicle's brake's master cylinder was replaced on November 14, 2020. The vehicle was inspected for a brake noise during the other repair visits and the technicians were not able to hear the noise. In addition, the vehicle was inspected by Respondent's FSE on July 15, 2021, at which time the FSE indicated that the vehicle did not need repair.

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.³⁰ 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

³⁰ Tex. Occ. Code § 2301.605.

Complainant is not warranted.

In addition, Ms. Alonso testified that she heard a “screeching” noise from the vehicle’s brakes whenever she used them and when she makes a turn in the vehicle. However, none of the technicians who have inspected the vehicle have been able to hear any noise from the vehicle’s brakes. The fact that Ms. Alonso states that she hears a noise from the brakes is insufficient to prove the existence of a warrantable defect in a vehicle. There has to be a relationship between the complained of noise and a warrantable defect or nonconformity in the vehicle, or alternatively, that a warrantable defect or nonconformity is the source of the complained of noise. It is understandable that the noise can be annoying and/or concerning. However, the noise, in and of itself, does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It’s not a life-threatening malfunction or nonconformity that substantially impedes Complainant’s ability to control or operate the vehicle and it does not create a substantial risk of fire or explosion.

In addition, the noise does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it’s questionable that the issue would affect the purchase price.

Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code 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 23,664 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. Daniel Alonso (Complainant) purchased a new 2019 Chevrolet Silverado on November 14, 2019, from Moritz Chevrolet (Moritz) located in Fort Worth, Texas with mileage of 194 at the time of delivery.

2. The manufacturer or distributor of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for the first three (3) years or 36,000 miles after delivery, whichever comes first. In addition, Respondent provided a powertrain warranty which provides 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 23,664.
4. At the time of hearing the vehicle's warranties were still in effect.
5. In early November of 2020, the vehicle's brakes stopped working and the vehicle had to be towed to Moritz for repair.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Moritz, to address his concerns with the vehicle's brakes on the following dates:
 - a. November 2, 2020, at 10,610 miles;
 - b. January 25, 2021, at 13,672 miles;
 - c. March 4, 2021, at 14,360 miles; and
 - d. May 5, 2021, at unknown miles.
7. On November 2, 2020, Moritz's service technician replaced the vehicle's brake's master cylinder because the brakes had locked up and were not working.
8. On January 25, 2021, Moritz's service technician resurfaced the front brakes' rotor and pads in order to address Complainant's concerns regarding noise coming from the brakes. However, the technician was not able to verify the noise issue.
9. On March 4, 2021, Moritz's service technician resurfaced the front brakes' rotor and pads a second time in order to address Complainant's concerns regarding noise coming from the brakes. However, the technician was not able to verify the noise issue.
10. On May 5, 2021, Moritz's service technician did not inspect the vehicle, but advised Complainant that he was going to order some parts to address the brake noise issue.
11. On May 6, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

12. On July 15, 2021, Respondent's field service engineer, Irfaun Bacchus, performed an inspection of the vehicle at AutoNation Chevrolet (AutoNation) located in North Richland Hills, Texas. The vehicle's mileage was 17,836 at the time.
13. During the inspection described in Findings of Fact #12, Mr. Bacchus did not hear any abnormal noises from the vehicle's brakes and determined that the brakes were working as designed.
14. Mr. Bacchus did hear a "squeaking" noise from the vehicle's front axle of which Respondent is aware and for which they have no repair at this time.
15. Respondent has issued a bulletin for the squeaking noise and has determined that it does not affect the operation of the vehicle or the vehicle's durability.
16. Complainant has not experienced any issues with the vehicle's brakes not working properly since prior to November 2, 2020.
17. On July 22, 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.
18. The hearing in this case was conducted on October 20, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Daniel Alonso, Complainant, appeared and represented himself at the hearing. Sonya Alonso, Complainant's wife, also testified for Complainant in the hearing. Respondent, General Motors LLC, was represented by Kevin Phillips, Business Resource Manager. Also appearing and testifying for Respondent was Irfaun Bacchus, Field Service Engineer. Alex Montez, interpreter, provided Spanish language interpretation for Complainant. The hearing record closed on October 20, 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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED October 27, 2021.



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