TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0260 CAF

VELIA V. WATTS,	§	**BEFORE THE OFFICE**
Complainant	§	
	§	
v.	§	**OF**
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Velia V. Watts (Complainant) filed a complaint (Complaint) with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that creates a serious safety hazard. Consequently, the Complainant's vehicle qualifies for a refund.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on September 27, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Robert Watts, the Complainant's son, represented the Complainant. Mr. Watts and Heather Watts testified for the Complainant. Amanda Bemiller, Consumer Legal Analyst, represented and testified for the Respondent.

[1] TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot "conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts."[2] In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a "reasonable number of attempts" at repair.[3] In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines "serious safety hazard" as a life threatening malfunction or nonconformity that: (1) substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.[4]

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers "whether a defect or nonconformity hampers the intended normal operation of the vehicle." For instance, "while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired."[5]

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[2] TEX. OCC. CODE § 2301.604(a).

[3] TEX. OCC. CODE § 2301.604(a).

[4] TEX. OCC. CODE § 2301.601(4).

[5] *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard "does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value." Instead, under this standard, "factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle."[6]

c. Reasonable Number of Repair Attempts

For serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

> [T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have 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: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.[7]

However, the statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.[8] Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.[9]

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[6] *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) ("[T]he Division's interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute's goal of mitigating manufacturers' economic advantages in warranty-related disputes.").

[7] TEX. OCC. CODE § 2301.605(a)(2).

[8] "[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite 'reasonable number of attempts.'" *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

[9] "[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute." *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;[10] (2) the manufacturer was given an opportunity to cure the defect or nonconformity;[11] and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.[12]

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle."[13] The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."[14]

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[10] TEX. OCC. CODE § 2301.606(c)(1). The Lemon Law does not define the words "mailed" or "mail", so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines "mail" as "to send by mail; place in a post office or mailbox for transmission" or "to transmit by email." mail. Dictionary.com. *Dictionary.com Unabridged.* Random House, Inc. http://www.dictionary.com/browse/mail (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that "[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor." The Department's notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

[11] TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

[12] TEX. OCC. CODE § 2301.606(d)(2).

[13] TEX. OCC. CODE § 2301.204.

[14] TEX. OCC. CODE § 2301.603(a).

3. Burden of Proof

The law places the burden of proof on the Complainant.[15] The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that every required fact is more likely than not true.[16]

4. The Complaint Identifies the Issues in this Proceeding

The Complaint identifies the issues to be addressed in this proceeding.[17] The Complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."[18] However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.[19] Trial by implied consent occurs when a party introduces evidence on an unpleaded issue without objection.[20]

A. Complainant's Evidence and Arguments

On August 5, 2014, the Complainant, leased a new 2014 Ford Focus from Jordan Ford Ltd., a franchised dealer of the Respondent, Ford Motor Company, in San Antonio, Texas. The vehicle had seven miles on the odometer at the time of delivery. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles, whichever occurs first. On April 25, 2016, the Complainant mailed a written notice of defect to the Respondent. Also on April 25, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the subject vehicle had transmission, accelerator and clutch problems, and had stalled.

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[15] 43 TEX. ADMIN. CODE § 215.66(d).

[16] *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

[17] "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

[18] 43 TEX. ADMIN. CODE § 215.202(b).

[19] 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

[20] *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

The Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
4/6/16 5/16/16	31,111	Transmission fault message; vehicle felt like stalling[21]
4/18/16 4/21/16	31,400	Vehicle would not accelerate[22]

The Respondent's final opportunity to repair the vehicle occurred beginning on May 6, 2016, (at 32,331 miles) over 28 days.[23]

Heather Watts testified that she was the primary driver of the Complainant's vehicle. Ms. Watts explained that, after replacing the clutch, the vehicle had a problem accelerating and pressing the brakes would not stop the car. She affirmed that the clutch seemed to not disengage from the engine and added that when cold, the transmission acted fine. Ms. Watts noted that the acceleration problem happened after the transmission fault. She first noticed a problem on April 11, 2016, when the car felt like it was going to stall and displayed a transmission fault service now warning. She took the vehicle straight to the dealership but after that visit and a subsequent visit, the dealer could find nothing wrong. Mr. Watts testified that he last experienced the issues the morning of the hearing while Ms. Watts last experienced the problem the night before the hearing. She explained that while driving home from school, she tried to speed up but the speedometer did not go up though she had her foot on the gas. She also had problems with lack of power going uphill and would have to "gas super-fast" to go uphill. On the Thursday before the hearing, the vehicle, while in drive, went in reverse on a flat road. Ms. Watts affirmed that the vehicle went backwards under power as if in reverse. Mr. Watts described that the morning of the hearing, while leaving the driveway, while trying to accelerate with the transmission in drive, the transmission did not engage. Ms. Watts testified that the transmission problem would occur at least four or five times a week but the braking problem, which caused her to swerve to avoid hitting someone, only occurred once (on August 5, 2016). The repairs only improved the jerking and shuddering while stopping and going. Ms. Watts confirmed that with the braking problem, the clutch did not appear to be disengaging from the engine and required slamming on the brakes to stop the vehicle. Ms. Watts

[21] Complainant's Ex. 6, Invoice W22270.

[22] Complainant's Ex. 7, Invoice W23447.

[23] Respondent's Ex. 1, Manufacturer's Response Form

added that the vehicle last stalled in the last week of August 2016. Ms. Watts noted that the dealership did not document all service visits because the technicians would find nothing wrong.

B. Respondent's Evidence and Arguments

The Respondent contended that the vehicle did not qualify for replacement or repurchase because it did not meet the requirements of a rebuttable presumption. The concern was first reported on April 6, 2016, at 31,111 miles and the next repair occurred on April 18, 2016, at 31,400 miles, with a final repair attempt at Bluebonnet Ford at 32,311 miles. The vehicle had no further visits. Accordingly, the Respondent asserted that the vehicle had been successfully repaired. Ms. Bemiller added that, the vehicle's particular transmission design may have more shift points than a consumer may be accustomed to and that the shifts may seem hard or may bang.

C. Inspection and Test Drive

The vehicle had 37,057 miles on the odometer upon inspection before the test drive. The vehicle was driven on the freeway and the freeway service roads for a total 23 miles over approximately 30 minutes. The vehicle did not exhibit the complained of failure to accelerate. The vehicle did present several instances of shudder on acceleration from low speeds, which may normally occur with the vehicle's transmission.

D. Analysis

The vehicle has an existing warrantable defect, failure to accelerate and stalling, that constitutes a serious safety hazard that qualifies for Lemon Law relief as explained below.

1. Warrantable Defect

The Lemon Law only applies to defects covered by an applicable warranty. In the present case, the vehicle's warranty specifies that it applies to a "manufacturing defect in factory-supplied materials or factory workmanship."[24] Courts have affirmed that language covering "defects in material or workmanship" did not cover design defects.[25] The courts have explained that "[a]

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[24] Complainant's Ex. 2, 2014 Model Year Ford Warranty Guide.

[25] *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship . . . .' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty.");

manufacturing defect is one created by a manufacturer's failure to conform to its own specifications, i.e., the product would not have been defective if it had conformed to the manufacturer's design specifications."[26] In contrast, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves."[27] Because design defects exist in the specifications themselves, every vehicle manufactured according to the specifications will share the same design flaw. Whereas, manufacturing defects only exist in vehicles not manufactured according to specifications and "are not identical to their mass-produced siblings."[28] Here, the principal nonconformity, failing to accelerate and stalling, does not appear to be a normal characteristic of the vehicle's design. Although the vehicle's PowerShift transmission performs differently than a conventional automatic transmission, the vehicle appeared to deviate from the PowerShift transmission's normal characteristics.

2. Serious Safety Hazard

The inability to control acceleration fits the definition of "serious safety hazard", which means a life threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a vehicle. For example, a driver may need to accelerate to avoid a collision while merging onto a freeway but may not be able to do so because of the defect.

3. Reasonable Repair Attempts

Although the repair attempts may not precisely fit any of the statutory presumptions, the Complainant has nevertheless shown a reasonable number of repair attempts given the circumstances. The statutory presumption applicable to serious safety hazards requires a repair attempt in the first 12 months or 12,000 miles after delivery and at least one other attempt within 12 months or 12,000 miles after the first attempt. In this case, the first repair attempt occurred after 12 months and 12,000 miles. However, as explained previously, circumstances different from the

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see GT & MC, Inc. v. Texas City Refining, Inc., 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

[26] *E.g., Torres v. Caterpillar, Inc.*, 928 S.W.2d 233 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

[27] *E.g., Torres v. Caterpillar, Inc.*, 928 S.W.2d 233 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

[28] *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), aff'd in part and rev'd in part on other grounds, 715 S.W.2d 629 (Tex. 1986).

statutory presumption criteria may support finding a reasonable number of repair attempts. Here, the first instance of any transmission issues did not occur until April of 2016 (about 20 months and 31,104 miles after delivery), so the Complainant would have had no reason to seek repair of the transmission prior to that time. Moreover, Ms. Watts promptly took the vehicle to a dealership for repair the same day the vehicle first exhibited problems. The second repair attempt occurred less than two weeks and 300 miles after the first attempt. Given that: (1) the vehicle had no discernible defect until after the first 12 months/12,000 miles; (2) the first repair attempt occurred the same day the vehicle first exhibited problems; and (3) the second repair attempt occurred within 12 months or 12,000 miles after the first attempt, the vehicle had a reasonable number or repair attempts.

III. Findings of Fact

1. On August 5, 2014, the Complainant, leased a new 2014 Ford Focus from Jordan Ford Ltd., a franchised dealer of the Respondent, Ford Motor Company, in San Antonio, Texas. The vehicle had seven miles on the odometer at the time of delivery.

2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles, whichever occurs first.

3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
4/6/16 5/16/16	31,111	Transmission fault message; vehicle felt like stalling
4/18/16 4/21/16	31,400	Vehicle would not accelerate

The Respondent's final opportunity to repair the vehicle occurred beginning on May 6, 2016, (at 32,331 miles) over 28 days.

4. On April 25, 2016, the Complainant mailed a written notice of defect to the Respondent.

5. Also on April 25, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the subject vehicle had transmission, accelerator and clutch problems, and had stalled.

6. On July 11, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, Ford Motor Company, 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.

7. The hearing in this case convened and the record closed on September 27, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Robert Watts, the Complainant's son, represented the Complainant. Mr. Watts and Heather Watts testified for the Complainant. Amanda Bemiller, Consumer Legal Analyst, represented and testified for the Respondent.

8. The vehicle's odometer displayed 37,057 miles at the time of the hearing.

9. The vehicle's powertrain coverage was in effect at the time of the hearing but the bumper to bumper coverage had expired.

10. The vehicle will fail to accelerate and or stall.

11. The vehicle last stalled in the last week of August 2016.

12. The vehicle last failed to accelerate on September 27, 2016.

13. The appropriate calculations for the refund are:

Purchase price, including tax, title, license and registration	$20,110.27
Total paid at inception of lease	$1,000.00
Monthly payment amount	$358.45
Number of payments made at time of decision issuance	28
Delivery mileage	7
Mileage at first report of defective condition	31,111
Mileage on hearing date	37,057
Useful life determination	120,000

Purchase price, including tax, title, license and registration, less rebates/incentives					$20,110.27			
Mileage at first report of defective condition	31,111							
Less mileage at delivery	-7							
Unimpaired miles	31,104							
Mileage on hearing date	37,057							
Less mileage at first report of defective condition	-31,111							
Impaired miles	5,946							
Reasonable Allowance for Use Calculations:								
Unimpaired miles	31,104	÷	120,000	×	$20,110.27		=	$5,212.58
Impaired miles	5,946	÷	120,000	×	$20,110.27	× 50%	=	$498.23
Total reasonable allowance for use deduction								$5,710.81
Lessee's Calculation:								
Total paid at inception of lease					$1,000.00			
Total amount for monthly payments					$10,036.60			
Less allowance for use					-$5,710.81			
Refund filing fee					$35.00			
TOTAL REPURCHASE AMOUNT TO LESSEE					**$5,360.79**			
Lessor's Calculation:								
Purchase price, including tax, title, license and registration					$20,110.27			
5% allowance by Rule 215.208(B)(ii)					$1,005.51			
Less total paid by Lessee					-$11,036.60			
TOTAL REPURCHASE AMOUNT TO LESSOR					**$10,079.18**			

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613.

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. The Complainant timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).

6. The Complainant provided sufficient notice of the defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

7. The Respondent had an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).

8. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Decision. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the 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. The Respondent shall repurchase the subject vehicle in the amount of **$15,439.97**. The refund shall be allocated as follows: **$5,360.79** to the Complainant and **$10,079.18** to the lessor. Refunds shall be made to the lessor and any lienholders as their interest may appear. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted refund to the lessor does not pay all liens in full, the lessor is responsible for providing the Respondent with clear title to the vehicle. The lessor shall transfer title of the vehicle to the Respondent, as necessary to effectuate the Complainant's rights. The lease shall be terminated without penalty to the Complainant.

3. Within 20 days after the date this Order becomes final under Texas Government Code § 2001.144,[29] the parties shall complete the return and repurchase of the subject vehicle. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. The 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. The 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. The 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 days of the transfer.

SIGNED November 17, 2016

ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES

[29] (1) If a party does not timely file a motion for rehearing, this Order becomes final when the period for filing a motion for rehearing expires, or (2) if a party timely files a motion for rehearing, 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 Decision and Order.