

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0186453 CAF**

**ANTHONY AGUILAR and
MYRA SANCHEZ,
Complainants**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Anthony Aguilar and Myra Sanchez (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2017 Ford F-250 Platinum truck. Complainants assert that the vehicle is defective because the driver's side front door is not aligned correctly. Ford Motor Company (Respondent) argued that the vehicle is repaired and that no defect exists. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainants are entitled only to repair relief, as the defect does not substantially impair the use or market value of the vehicle and it does not create a serious safety hazard as defined in the Occupations Code.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on September 11, 2018, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Anthony Aguilar, co-Complainant, represented Complainants in the hearing. Respondent was represented telephonically by Robert Kendall, Dispute Resolutions Specialist. In addition, Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent.

The hearing was continued until September 18, 2018, at which time additional testimony was provided by the parties. Present were co-Complainant, Anthony Aguilar, who represented Complainants. Respondent was represented telephonically by Robert Kendall, Dispute Resolutions Specialist. In addition, Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. The hearing record was closed on September 18, 2018.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met.

First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

A “serious safety hazard” is defined as a “life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.”⁵

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 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 comes first, following the date of original delivery to the owner.⁶

To establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken for an issue that causes a serious safety hazard, the safety hazard must continue to exist after being 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

B. Complainant’s Evidence and Arguments

Complainants purchased a new 2017 Ford F-250 Platinum pickup truck (the vehicle) from Red McCombs Ford (McCombs) in San Antonio, Texas on December 5, 2017.⁸ The vehicle’s mileage

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.601(4).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B). Texas Occupations Code § 2301.605(a)(3) provides an alternative 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. However, 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.

⁸ Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract dated December 5, 2017.

was 37 at the time of delivery.⁹ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles. The vehicle's mileage on the date of hearing was 15,892. The warranty was still in effect at the time of hearing.

Mr. Aguilar is the primary driver of the vehicle. He test drove the vehicle and inspected it prior to purchase. He did not notice any issue with the vehicle at the time of purchase. Mr. Aguilar showed the vehicle to some of his employees, one of whom mentioned that the driver's side front door did not look like it was flush with the side of the vehicle. Mr. Aguilar notified the salesperson who sold the vehicle to him of the issue. The salesperson advised Mr. Aguilar to take the vehicle to McCombs for repair for the issue.

Mr. Aguilar took the vehicle to McCombs for repair to front driver's side door on February 28, 2018. McCombs' service technician adjusted the door in order to address the issue.¹⁰ The vehicle's mileage on this occasion was 6,134.¹¹ The vehicle was in the dealer's possession for one (1) day during this repair visit. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Mr. Aguilar was informed by McCombs' representative that the technician moved the door hinges in order to address the issue. Mr. Aguilar indicated that the repair prevented the door from closing flush and that the step down remained extended unless he slammed the driver's side door closed. He felt that there was a gap of $\frac{1}{4}$ to $\frac{1}{2}$ inch between the door and the vehicle's body. He contacted McCombs' representative and informed him that the door was still not closing flush. Mr. Aguilar was then advised to take the vehicle back to the dealer for further repair.

Mr. Aguilar took the vehicle to McCombs for repair to the driver's side front door on March 6, 2018. The dealer's service technician indicated on the repair order that the problem with the vehicle was that the front door was hard to close/open and that the latches were misaligned from the factory.¹² McCombs' service technician removed the front door, realigned the latches, and reinstalled the door.¹³ The vehicle's mileage when it was taken to the dealership on this occasion was 6,323.¹⁴ The vehicle was in the dealer's possession for eight (8) days. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Mr. Aguilar stated that the front driver's side door was back to its original setting after the repair on March 6. He felt that the door was not flush on the bottom of the door. In addition, he felt that

⁹ Complainant Ex. 3, Odometer Disclosure Statement dated December 5, 2017.

¹⁰ Complainant Ex. 4, Repair Order dated February 28, 2018.

¹¹ *Id.*

¹² Complainant Ex. 5, Repair Order dated March 6, 2018.

¹³ *Id.*

¹⁴ *Id.*

if the door hinges were pushed in, the top of the door would be too close to the body. Mr. Aguilar also indicated that he was hearing wind noise through the door after this repair. Mr. Aguilar contacted his service advisor with McCombs and took the vehicle to McCombs for further repair to the door.

Mr. Aguilar testified that he took the vehicle to McCombs for repair on March 28, 2018. The technician determined that the front driver's side door was warped and needed to be replaced.¹⁵ The technician took pictures of the door and submitted the pictures along with some measurements of the gap between the door and various parts of the vehicle to Respondent in order to obtain approval to replace the door.¹⁶ The technician got approval to replace the door which involved sanding, painting, adding clear coat, transferring the door latch, panel, locks, door rods, seals, handle, and felt to the new door.¹⁷ The vehicle's mileage on this occasion was 7,261.¹⁸ The vehicle was at the dealer's location for a couple of days for pictures and then later for the door installation.

Mr. Aguilar testified that he was still unhappy with the vehicle. He felt that the door's alignment was still off even after it had been replaced. He attempted to work through the issue with Respondent's customer service center, but was unable to achieve any satisfaction. Mr. Aguilar testified that he mailed a letter to Respondent advising them of his dissatisfaction with the vehicle. He instructed one of his employee to write and send the letter to Respondent, but did not retain a copy of the letter for his records nor did have the letter sent by certified or registered mail.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 6, 2018.¹⁹

Respondent requested an opportunity for a final repair attempt on the vehicle. This was performed on May 23, 2018, at McCombs. The repair order received by Complainant indicated that the "Ford engineers fixed door."²⁰ Mr. Aguilar indicated that he does not know what repairs were performed on this occasion. The vehicle's mileage at the time was 8,520.²¹ The vehicle was in McCombs' possession for four (4) days.²² Complainants were provided with a loaner vehicle while their vehicle was being repaired.

¹⁵ Complainant Ex. 6, Repair Order dated March 28, 2018.

¹⁶ Respondent Ex. 2, Hearing Packet 2 – Photographs of Vehicle, pp. 6-20.

¹⁷ Complainant Ex. 6, Repair Order dated March 28, 2018.

¹⁸ *Id.*

¹⁹ Complainant Ex. 1, Lemon Law complaint dated May 6, 2018.

²⁰ Complainant Ex. 7, Repair Order dated May 23, 2018.

²¹ *Id.*

²² Respondent Ex. 1, Hearing Packet 1 – Manufacturer Response Form, p. 3.

Mr. Aguilar feels that the vehicle has not been repaired to the standards that he expects. He indicated that the vehicle's other doors do not have the same issue. He began feeling a strong vibration in the front driver's side door when he has the radio turned on which began after the repair in May. Prior to that date he had not had any vibration issues in the door. Mr. Aguilar feels that this indicates that the door is not a natural fit. He did take the vehicle to McCombs for repair for the issue in July of 2018, but was informed at the time that they would not work on the door until after the Lemon Law complaint was resolved. In addition, Mr. Aguilar feels that the door hinge is hitting metal which can cause damage to the door locking mechanism. Mr. Aguilar did not indicate that the gaps in the door allowed any water leakage into the vehicle cabin. He did state that mud or water may sometimes accumulate in the door frame, but there was no indication of water inside the cabin.

During cross-examination, Mr. Aguilar stated that he did not notice the issue with the front driver's side door initially until it was pointed out by his employee. He feels that the issue is very important. However, he did wait three (3) months before taking the vehicle to the dealer for repair. Mr. Aguilar stated that he waited so long because he had been assured by a dealer representative that the problem had an easy fix. Mr. Aguilar verified that he heard a wind noise from the door after the second repair on the door was performed on March 28, 2018.

C. Respondent's Evidence and Arguments

1. Robert Kendall's Testimony

Robert Kendall, Dispute Resolution Specialist, represented Respondent in the hearing. He stated that Respondent's position is that the issue does not create a substantial impairment of the market value of the vehicle and that it does not create a serious safety hazard.

Mr. Kendall stated that Respondent does not have record of receipt of Complainants' letter indicating that they were dissatisfied with the vehicle. The final repair attempt request was prompted by a letter from the Department's case advisor notifying Respondent that Complainants had filed a Lemon Law complaint with the state. Mr. Kendall stated that the final repair attempt was performed by Darren Patillo on May 24, 2018, at McCombs. Mr. Patillo indicated on his inspection report that the driver's side front door at the bottom was not flush with the vehicle's rear door and the top of the door was sitting slightly lower than left rear door.²³ In addition, Mr. Patillo found that there was a tight margin near the bottom of the front door near the fender and a larger margin where the door is not flush near the left rear door.²⁴ Mr. Patillo readjusted the door

²³ Respondent Ex. 2, Hearing Packet 2 – FSE Vehicle Inspection Report, pp. 3-4.

²⁴ *Id.*

and re-secured the door striker which was found to be loose.²⁵ Mr. Patillo indicated that he had brought the front door margins back to specifications.²⁶

Mr. Kendall stated that he is not aware whether the vehicle's market value has been affected by the issue. Respondent was never notified of any water leaks due to the front driver's door not being flush.

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has been in the automotive industry for 19 years. He is an Automotive Service Excellence (ASE) Certified Master Technician. He has worked for Respondent since 2007. He was hired for his present position in 2009.

Mr. Bashir testified that he is familiar with how the vehicle's doors are designed. He said that the doors are engineered so that they are "shingled," *i.e.*, the front door is designed to overlap the rear door in order to limit wind noise. The wind will skip over the door seams which will limit the wind noise in the cabin. Mr. Bashir feels that this may be the reason why the front driver's side door does not appear to Complainant to be flush. Mr. Bashir also indicated that there are specifications for the size of the door gaps at different parts of the door where it meets different parts of the frame or the between the front and rear door. The specifications are within a particular range depending on the location of the door and as long as the gaps are within the range, the door is considered to be within manufacturer's specifications.

Mr. Bashir stated that most of the door gaps prior to the repair performed on March 28, 2018 (when the door was replaced) were within specifications except for two (2) locations: the gap from the hood to the body side and the door to the body side.^{27,28} Mr. Bashir also testified that Mr. Patillo the field service engineer who performed the final repair attempt on the vehicle indicated in his report that the front door margins were put back to specifications during the repair performed on May 23, 2018.²⁹

²⁵ *Id.*

²⁶ *Id.*

²⁷ Respondent Ex. 2, Hearing Packet 2 – Vehicle Photographs, p. 10. This photograph's annotation indicates that the gap from the hood to the body side was 0.01mm when the acceptable range was 1.9 mm to 4.9 mm.

²⁸ Respondent Ex. 2, Hearing Packet 2 – Vehicle Photographs, p. 12. This photograph's annotation indicates that the gap from the door to the body side (middle) was 5.32 mm when the acceptable range was 1.9 mm to 4.9 mm.

²⁹ Respondent Ex. 2, Hearing Packet 2 – FSE Vehicle Inspection Report, pp. 3-4.

Mr. Bashir testified that he does not feel that the vehicle's usage has been affected by the door issue. Neither does he feel that the value of the vehicle has been affected. He does not believe that the issue is a safety hazard.

D. Analysis

Under the Lemon Law, Complainants bear 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, Complainants must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainants are required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainants are entitled to have the vehicle repurchased or replaced.

Complainants allege that the vehicle's front driver's side door was misaligned prior to the time of purchase. Respondent's authorized dealer, McCombs, made several attempts to realign the door and, in fact, replaced the door in March of 2018. However, there is still a problem with the door as evidenced by the vibrations being felt in the door when the radio is turned on and which did not begin to occur until after Respondent's final repair attempt in May of 2018. The issue regarding the front driver's side door does not create a serious safety hazard nor does it *substantially* impair the use or market value of the vehicle. The issue is probably annoying and aesthetically disturbing, but does not create sufficient grounds to order repurchase or replacement of the vehicle. Instead, the hearings examiner will order Respondent to repair the door so that it meets manufacturer specifications and so that the vibration is no longer present.

Complainants' request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the vehicle's driver's side front door to ensure that it meets specifications. Such repairs must be completed within 40 days of this order becoming final.

III. FINDINGS OF FACT

1. Anthony Aguilar and Myra Sanchez (Complainants) purchased a new 2017 Ford F-250 Platinum pickup truck on December 5, 2017, from Red McCombs Ford (McCombs) in San Antonio, Texas, with mileage of 37 at the time of delivery.

2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 15,892.
4. At the time of hearing the vehicle was still covered under Respondent's bumper-to-bumper warranty.
5. Complainants feel that the vehicle is defective because the front driver's side door is not properly aligned.
6. Complainants took the vehicle to Respondent's authorized dealers (McCombs) in order to address their concerns with the front driver's side door not being properly aligned, on the following dates:
 - a. February 28, 2018, at 6,134 miles;
 - b. March 6, 2018, at 6,323 miles; and
 - c. March 28, 2018, at 7,261 miles.
7. On February 28, 2018, McCombs' service technician adjusted the vehicle's front driver's side door in order to correct the issue.
8. On March 6, 2018, McCombs' service technician realigned the vehicle's front driver's side door latches because Complainant indicated that the door was hard to open and close.
9. On March 28, 2018, McCombs' service technician replaced the vehicle's front driver's side door after receiving permission from Respondent to do so.
10. Complainant currently feels a severe vibration in the driver's side front door when he plays the radio. The vibration was not present when he first purchased the vehicle or after the first three (3) repairs to the door.
11. On May 6, 2018, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On May 23, 2018, Respondent's field service engineer, Darren Patillo, performed a final inspection of the vehicle.

13. On May 23, 2018, Mr. Patillo adjusted the front driver's door to bring it within specifications and re-secured the door latch.
14. On July 2, 2018, 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.
15. The hearing in this case convened on September 11, 2018, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Anthony Aguilar, co-Complainant, represented Complainants in the hearing. Respondent was represented telephonically by Robert Kendall, Dispute Resolutions Specialist. In addition, Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. The hearing was continued until September 18, 2018, at which time additional testimony was provided by the parties. Present were co-Complainant, Anthony Aguilar, who represented Complainants. Respondent was represented telephonically by Robert Kendall, Dispute Resolutions Specialist. In addition, Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. The hearing record was closed on September 18, 2018.

IV. CONCLUSIONS OF LAW

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

6. Complainants proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity. However, that defect does not present a serious safety hazard or substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainants' vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
9. Complainants' vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
10. Complainants are entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle to the applicable warranty (*i.e.*, ensure that the driver's side door is aligned properly and does not vibrate when the radio is playing). Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁰ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the

³⁰ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.

failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED September 25, 2018



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