

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0005017 CAF**

**TIARRAH SMITH,
Complainant**

v.

**HYUNDAI MOTOR AMERICA,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Tiarrah Smith (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her new 2018 Hyundai Tucson Sport. Complainant asserts that the vehicle is defective because she has experienced problems with the vehicle’s engine and radio/audio system not working properly. Hyundai Motor America (Respondent) argued that the vehicle does not have a current defect or nonconformity and that Complainant is not entitled to relief under the Lemon Law. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is 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 telephonically on April 2, 2020, before Hearings Examiner Edward Sandoval. Complainant, Tiarrah Smith, appeared and represented herself at the hearing. Also present and testifying for Complainant was her mother, Tamara Smith. Respondent, Hyundai Motor America, was represented by Susan Lucas, contract representative. The hearing record closed on April 2, 2020.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by

repairing or correcting a defect after a reasonable number of attempts.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 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

¹ Tex. Occ. Code § 2301.604(a).

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).

B. Complainant's Evidence and Arguments

1. Tiarrah Smith's Testimony

Complainant purchased a new 2018 Hyundai Tucson Sport (the vehicle) from Red McCombs Hyundai Northwest (McCombs) in San Antonio, Texas on December 22, 2018.⁹ The vehicle's mileage was 245 at the time of delivery.¹⁰ At the time of purchase, Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for five (5) years or 60,000 miles, whichever occurs first.¹¹ Respondent also provided a powertrain warranty for the vehicle which provides coverage for the powertrain for ten (10) years or 100,000 miles.¹² The vehicle's mileage on the date of hearing was 21,648.

Complainant testified that she test drove the vehicle before purchasing it. She did not notice any problems with the vehicle at the time. The vehicle's radio and engine operated as designed during the test drive.

Approximately a month after purchasing the vehicle, Complainant experienced an issue where the vehicle's radio screen went black. In addition, the navigation system and back up camera would not operate. Complainant was driving on the highway when the incident occurred and pulled the vehicle to the side of the road to turn off the vehicle to see if she could get the radio/audio system to work. Complainant turned the vehicle off and then restarted it in an attempt to get the radio to operate again, but it would not turn back on.

Complainant took the vehicle to McCombs on January 11, 2019, to repair the issue with the radio/audio system not working. McCombs' service technician inspected the vehicle and special ordered a new radio for the vehicle in order to address the concern.¹³ The vehicle's mileage was 1,499 at the time of the repair.¹⁴ Complainant testified that the vehicle was in McCombs' possession for two (2) weeks during this repair and that she was provided with a loaner vehicle while her vehicle was being repaired.

On January 22, 2019, McCombs' service technician replaced the vehicle's radio assembly in order to address Complainant's concern about the radio not working.¹⁵ The vehicle's mileage at the time was 1,500.¹⁶

⁹ Complainant Ex. 2, Motor Vehicle Buyer's Order dated December 22, 2018.

¹⁰ *Id.*

¹¹ Respondent Ex. 1, Respondent's Position Statement, p. 1.

¹² *Id.*

¹³ Respondent Ex. 2, Copies of Repair Orders for Tiarrah Smith, p. 1.

¹⁴ *Id.*

¹⁵ *Id.*, p. 2.

¹⁶ *Id.*

Complainant testified that the vehicle's radio/audio system worked fine for a while after the radio was replaced. However, the radio then started malfunctioning again. This time the radio volume would go up or down on its own. In addition, the radio controls would not work and she could not adjust the volume on those occasions. Complainant testified that this was occurring approximately once or twice per week. However, Complainant did not take the vehicle for repair for the issue until January of 2020. She testified that she took the vehicle for repair for the radio on two occasions.

In October of 2019, Complainant began having trouble with the vehicle not starting. Complainant took the vehicle to McCombs for scheduled maintenance and to have the no start issue addressed on October 25, 2019. McCombs' service technician was able to verify the no start issue and determined that there was low compression on cylinder 4 and the spark plugs were full of gas and carbon.¹⁷ The technician replaced the vehicle's engine to address the issue.¹⁸ However, the vehicle still would not start, so the technician replaced the vehicle's battery assembly as the battery had failed.¹⁹ The engine still would not crank after the battery had been replaced, so the technician replaced the vehicle's high pressure fuel pump to address the issue.²⁰ The vehicle's mileage on this occasion was 13,716.²¹ The vehicle was in McCombs' possession until November 4, 2019. Complainant received a loaner vehicle while her vehicle was being repaired. During this repair visit, Complainant did not raise any issues regarding any problems with the vehicle's radio/audio system.

Complainant testified that she mailed a letter to Respondent on November 4, 2019, in which she indicated to Respondent that she was dissatisfied with the vehicle.²² In addition, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on November 18, 2019.²³

Complainant testified that the vehicle drove fine after the repairs performed during the October 25, 2019 repair visit. However, Complainant soon began to hear an unusual noise from the vehicle's engine compartment. Complainant took the vehicle to McCombs for repair for the noise issue on November 18, 2019. McCombs' service technician determined that the engine had a broken injector seal and replaced the seal and a plastic washer in order to resolve the noise issue.²⁴ The vehicle's mileage on this occasion was 13,799.²⁵ The vehicle was in McCombs' possession

¹⁷ *Id.*, p. 4.

¹⁸ *Id.*

¹⁹ *Id.*, p. 5.

²⁰ *Id.*

²¹ *Id.*, p. 4.

²² Complainant Ex. 9, Letter to Hyundai Motor America dated November 4, 2019.

²³ Complainant Ex. 1, Lemon Law complaint dated November 18, 2019.

²⁴ *Id.*, p. 7.

²⁵ *Id.*

until November 20, 2019.²⁶ Complainant was provided a loaner vehicle while her vehicle was being repaired.²⁷

Complainant testified that she began to detect a fuel odor and to hear a rattling noise from the vehicle's engine in December of 2019. She took the vehicle to North Freeway Hyundai (Freeway) in Spring, Texas on January 9, 2020, in order to address the issue. Freeway's service technician checked the vehicle for a fuel leak, but was unable to find one.²⁸ In addition, the technician did not detect any unusual noises coming from the vehicle's engine.²⁹ The vehicle's mileage on this occasion was 16,585.³⁰ The vehicle was in Freeway's possession overnight during this repair visit. Complainant was not provided a loaner vehicle during this repair visit.

On January 11, 2020, Complainant picked up the vehicle from Freeway and while driving home, her mother observed smoke coming from the vehicle's tailpipe. Complainant immediately returned the vehicle to Freeway for repair. She raised several concerns with the vehicle when she returned it, these were: a fuel smell in the vehicle cabin, smoke coming out of the vehicle's tailpipe when the vehicle is started and during acceleration, a ticking noise from the vehicle's engine, when the Apple cord is plugged in the USB connector the radio screen will go black, and intermittently the radio volume will get stuck on high and the radio controls will not adjust the volume. Freeway's service technician inspected the vehicle for the complaints and was unable to duplicate the concern regarding the fuel odor and no repair was performed for the issue.³¹ The technician determined that the smoke coming out of the tailpipe was condensation and no repair was performed for the issue.³² The technician determined that the ticking noise was the normal noise made by the gasoline direct injection (GDI) pump and no repair was performed for the issue.³³ The technician determined that the issue with the USB connector was that Complainant was using an after-market Apple cord and performed no repair for the issue.³⁴ Finally, the technician was unable to duplicate the issue with the radio/audio system's volume going to high and not responding to the radio controls and performed no repair for the issue.³⁵ The vehicle's mileage on this occasion was 16,593.³⁶ The vehicle was in Freeway's possession for a day and a half. Complainant was not provided with a loaner vehicle during this repair visit.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, p. 9.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*, p. 10.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*, p. 11.

³⁶ *Id.*, p. 10.

Complainant testified that she was never contacted by Respondent for a final inspection or repair attempt on the vehicle. Complainant also testified that the vehicle's engine was operating fine as of the date of hearing.

2. Tamara Smith's Testimony

Tamara Smith, Complainant's mother, testified in the hearing. She stated that issues are still intermittently occurring with the vehicle. She feels that McCombs personnel were deceptive and not putting the true complained of issues on the repair orders for the vehicle.

Ms. Smith stated that she feels that the vehicle is unsafe. She feels that the problems with the vehicle's engine and with the radio going up to the highest volume on its own is dangerous for the driver.

C. Respondent's Evidence and Arguments

Susan Lucas, contract representative, appeared and represented Respondent in the hearing. Ms. Lucas did not testify, but presented Respondent's position statement, copies of repair orders for Complainant's vehicle, and a technical service bulletin for submission in to the record.

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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is 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, Complainant is entitled to have the vehicle repurchased or replaced.

1. Engine Issue

Complainant initially alleged that the vehicle's engine is not working properly. The evidence taken at the hearing indicates that the vehicle's engine was replaced on October 25, 2019. Complainant asserts that since the engine replacement, she has detected a fuel odor in the vehicle and that she has heard abnormal engine noises. However, Complainant also stated in the hearing under oath that the vehicle's engine was working fine at the time of hearing. In addition, the evidence also indicates that Complainant has not taken the vehicle to a service dealer for repair for any engine issue since January 11, 2020. Since the evidence is conflicting as to whether there is currently an issue with the vehicle's engine, the hearings examiner must hold that Complainant has failed to

meet the burden of persuasion to establish the existence of a defect or nonconformity in the vehicle's engine. Therefore, the hearings examiner must hold that there is not sufficient evidence to establish the existence of a defect or nonconformity in the vehicle's engine and, thus, there are no grounds to order repurchase or replacement of the vehicle for this issue.

2. Radio Issue

Complainant asserts that the vehicle's radio volume goes up and down on its own and cannot be adjusted using the radio controls. Complainant submitted the vehicle to a servicing dealer for repair for the issue with the radio/audio system twice before filing the Lemon Law complaint (January 11, 2019 when a part was ordered and January 22, 2019 when the part was installed). In addition, she submitted the vehicle once for repair (January 11, 2020) for the radio/audio system issue after filing the complaint. The evidence taken at hearing (including videos submitted by Complainant) indicates that the radio/audio system does not work properly and that it sometimes will not respond to the controls. However, the issue does not substantially impair the use or market value of the vehicle and does not create a serious safety hazard as defined in the Occupations Code. As such, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle; however, the hearings examiner will order Respondent to repair the concern with the radio/audio system.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the defective radio/audio system in the vehicle. Such repairs must be completed within the time frame indicated below.

III. FINDINGS OF FACT

1. Tiarrah Smith (Complainant) purchased a new 2018 Hyundai Tucson Sport on December 22, 2018, from Red McCombs Hyundai Northwest (McCombs) in San Antonio, Texas, with mileage of 245 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Hyundai Motor America (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for five (5) years or 60,000 miles, whichever occurs first, and a powertrain warranty providing coverage for the vehicle's powertrain for ten (10) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 21,648.
4. Complainant has had issues with the vehicle's engine and radio not working properly.
5. The vehicle's engine has been replaced, but Complainant asserts that intermittently there

is a fuel smell in the vehicle.

6. The vehicle's radio volume intermittently will increase or decrease on its own and the controls won't work to allow Complainant to adjust the volume.
7. Prior to filing the Lemon Law complaint, Complainant took the vehicle to Respondent's authorized dealers, McCombs and North Freeway Hyundai (Freeway) in Spring, Texas, in order to address her concerns with the vehicle on the following dates:
 - a. January 11, 2019, at 1,499 miles;
 - b. January 22, 2019, at 1,500 miles;
 - c. October 25, 2019, at 13,716 miles; and
 - d. November 18, 2019, at 13,799 miles.
8. On January 11, 2019, McCombs' service technician special ordered a radio assembly to replace the radio assembly in Complainant's vehicle which had stopped working and which had a blank screen preventing the backup camera and navigations system from operating.
9. On January 22, 2019, McCombs' service technician replaced the vehicle's radio assembly in order to address the concerns described in Findings of Fact #8.
10. On October 25, 2019, Complainant took the vehicle to McCombs for repair because it would not start and for regular maintenance.
11. During the October 25, 2019 repair visit, McCombs' service technician replaced the vehicle's engine, battery assembly, and high pressure fuel pump in order to address the no start issue raised by Complainant.
12. On November 4, 2019, Complainant sent a letter to Respondent advising them that she was dissatisfied with the vehicle.
13. On November 18, 2019, McCombs' service technician replaced a broken injector seal and plastic washer in the vehicle's engine in order to address Complainant's concern that the engine was making an abnormal noise.
14. On November 18, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. On January 9, 2020, Complainant took the vehicle to Freeway due to her concerns regarding an unusual rattling noise from the engine compartment and a fuel smell in the vehicle. The vehicle's mileage at the time was 16,585.

16. During the repair visit described in Findings of Fact #15, Freeway's service technician inspected the vehicle for a fuel leak and was unable to find one. The technician was unable to duplicate either concern and no repairs were performed.
17. On January 11, 2020, Complainant took the vehicle to Freeway due to her concerns regarding a fuel smell in the vehicle, smoke emitting from the vehicle's tailpipe, ticking noise from the engine, the radio screen going black, and the radio volume going up and down on its own and the radio controls not being able to adjust the radio volume. The vehicle's mileage at the time was 16,593.
18. During the repair visit described in Findings of Fact #17, Freeway's service technician was unable to detect a fuel odor. In addition, the technician determined that the smoke from the tailpipe was normal condensation, that the ticking noise was normal and caused by the vehicle's gasoline direct injection (GDI) pump, and that the radio screen was going black because Complainant was using an after-market Apple cord. Finally, the technician was unable to duplicate the issue with the radio volume changing on its own.
19. The vehicle's radio volume still goes up and down on its own intermittently and cannot be adjusted using the radio controls.
20. On January 13, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
21. The hearing in this case convened telephonically on April 2, 2020, before Hearings Examiner Edward Sandoval. Complainant, Tiarrah Smith, appeared and represented herself at the hearing. Also present and testifying for Complainant was her mother, Tamara Smith. Respondent, Hyundai Motor America, was represented by Susan Lucas, contract representative. The hearing record closed on April 2, 2020.

22. 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. 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 proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity, *i.e.*, vehicle's radio volume goes up and down on its own and cannot be adjusted using the radio controls. However, that defect does not present a serious safety hazard nor substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent was not provided with a reasonable number of attempts to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Respondent had a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
11. Complainant is 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 Complainant's petition for repurchase or replacement 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's radio/audio system to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁷ Within 40 days after receiving

³⁷ (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

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 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 May 5, 2020



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

Department has not acted on the motion within 45 days after the party receives a copy of this Order.