

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0006097 CAF**

JULIO GARCIA,
Complainant

v.

**VOLKSWAGEN GROUP OF
AMERICA, INC.,**
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Julio Garcia (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2019 Volkswagen Atlas. Complainant asserts that the vehicle has a defect or nonconformity which causes the vehicle to pull to the right and the vehicle’s front end to vibrate when driving at 65 mph or higher. Volkswagen Group of America, Inc. (Respondent) argued that they have not been provided a reasonable number of attempts to repair the vehicle, that no warrantable repairs have been performed on the vehicle, and that no relief is warranted. 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 July 2, 2020, before Hearings Examiner Edward Sandoval. Julio Garcia, Complainant, appeared and represented himself. Respondent, Volkswagen Group of America, Inc., was represented by Susan Lucas, contract representative. The hearing was continued to September 23, 2020, in order to provide the hearings examiner an opportunity to inspect and test drive the subject vehicle.

On September 15, 2020, Complainant filed a Motion for Continuance for the hearing scheduled for September 23, 2020. The hearings examiner issued Order No. 4: Granting Continuance and Scheduling Hearing on September 18, 2020, granting the requested Motion and rescheduling the continued hearing for December 19, 2020.

The continuance was conducted by Hearings Examiner Edward Sandoval on December 19, 2020, at the Texas Department of Motor Vehicles’ regional office in Houston, Texas. Julio Garcia, Complainant, appeared and represented himself. Respondent was represented by Susan Lucas, contract representative. The hearing record was closed on December 19, 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 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

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.⁵

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.⁶

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 § 2301.605(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.

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

“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.⁷

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2019 Volkswagen Atlas (the vehicle) from Volkswagen Cyprus (Cyprus), in Houston, Texas on August 31, 2019. The vehicle’s mileage was 9 at the time of delivery.⁸ Respondent issued a new vehicle limited warranty for the vehicle which provides coverage for six years (3) years or 72,000 miles, whichever occurs first.⁹ At the time of hearing, the vehicle’s warranty was still in effect.

Complainant testified that he did not test drive the vehicle before purchasing it. In addition, Complainant requested that the dealer replace the original equipment manufacturer (OEM) tires (20 inch tires) with larger tires (21 inch tires) before he picked up the vehicle. The dealer installed the new tires as requested.

Complainant stated that he picked up the vehicle about a week after purchasing it. While driving the vehicle home, Complainant noticed a vibration from the front of the vehicle and that it tended to pull to the right. He took the vehicle back to Cypress to have the issue repaired, but was told that he would need to schedule an appointment for any repair to be performed. Complainant scheduled the appointment for Saturday, September 14, 2019. Complainant took the vehicle to Cypress on the scheduled date. Cypress’ service technician test drove the vehicle and indicated that the tires needed balancing which was done at the time. Complainant waited for the vehicle, so he did not receive a loaner vehicle. Complainant did not receive an invoice for the repair visit.

Complainant noticed that the vehicle continued to vibrate and pull to the right when he drove it. He took the vehicle to Cypress for repair for the issues on September 17, 2019. Cypress’ service technician noted that new wheels and tires were installed on the vehicle the week prior.¹⁰ No repair was performed to the vehicle at the time. The vehicle’s mileage on this occasion was 578.¹¹

Complainant stated that he continued to notice that the vehicle continued to vibrate and pull to the right when he drove it. On October 4, 2019, Complainant took the vehicle to Cypress for

⁷ Tex. Occ. Code § 2301.601(4).

⁸ Complainant Ex. 8, Odometer Disclosure Statement dated August 31, 2019.

⁹ Respondent Ex. 1, Respondent Hearing Packet, p. 2.

¹⁰ Complainant Ex. 3, Repair Order dated September 17, 2019.

¹¹ *Id.*

repair for the issues. Cypress' service technician verified that the vehicle would "slowly drift to the right" when driving on a straight road.¹² The technician determined that the left front toe and right rear toe were both out of range and adjusted them to meet the manufacturer's specifications in order to resolve the pulling to the right issue.¹³ In addition, the technician recalibrated the vehicle's front radar sensor and front camera.¹⁴ The technician also verified a "very slight vibration" when driving the vehicle at 65 mph.¹⁵ The technician performed a road balance and straight track balance on the vehicle's tires in order to resolve the vibration issue.¹⁶ The vehicle's mileage when it was taken to Cypress on this occasion was 1,607.¹⁷ The vehicle was in the dealer's possession for three (3) days.¹⁸

Complainant stated that the issues kept occurring whenever he drove the vehicle at 65 mph or more. On one occasion on a trip to San Antonio, the vehicle's front end was shaking so much that the front seats were vibrating and the vibration in the steering wheel was very strong. Complainant stated that he took the vehicle for repair for the issues on other occasions, but did not get invoices from the dealer. In addition, he could not recall the dates of those visits.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on December 19, 2019.¹⁹ Complainant also mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.²⁰

Complainant took the vehicle to Cypress for regular maintenance and for repair for the vibration issue on February 28, 2020. Cypress' service technician indicated that Respondent's technical assistance center needed to be contacted for the issue and that Complainant was going to reschedule an appointment to return.²¹ The vehicle's mileage on this occasion was 10,058.²²

During the test drive taken during the continuance on December 19, 2020, Complainant stated that the vibration that he feels when driving the vehicle is affected by the road surface that he is driving on.

¹² Complainant Ex. 4, Repair Order dated October 4, 2019.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 1, Lemon Law complaint dated December 19, 2019.

²⁰ Complainant Ex. 5, Letter to Volkswagen Group of America dated January 6, 2020.

²¹ Complainant Ex. 7, Repair Order dated February 28, 2020.

²² *Id.*

C. Respondent's Evidence and Arguments

Susan Lucas, contract representative, appeared and represented Respondent in the hearing. Ms. Lucas testified that Respondent has not performed any warranty repairs for the vehicle. She stated that there does not appear to be any problem with the vehicle. Ms. Lucas also emphasized that Complainant had replaced the OEM tires with larger tires which might be affecting the way the vehicle drives.

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.

Complainant's Lemon Law complaint regarding the vehicle is that it pulls to the right and the front end vibrates when driving at 65 mph or higher. During the test drive taken at the continued hearing, the hearings examiner noticed a slight vibration when Complainant was driving at highway speeds. The vibration did not seem to impede the driver's handling of the vehicle and did not create a safety issue. In addition, when Complainant released the vehicle's steering wheel the vehicle drifted slightly to the right.

It is not uncommon for a vehicle to have a slight vibration when driving on different road surfaces at different speeds. As such, the hearings examiner must hold that the vibration issue is not a defect in the vehicle and will not order relief for this issue.

However, the evidence did indicate that the vehicle drifts to the right when driving at highway speeds. The issue does not substantially impair the use or market value of the vehicle and does not create a safety hazard as a driver is supposed to keep their hands on the steering wheel when driving a vehicle. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle nor does it create a substantial risk of fire or explosion. As such, the hearings examiner must hold that the defect does not warrant repurchase or replacement of the vehicle. However, he will order Respondent to repair the issue of the vehicle drifting to the right when driving at highway speeds.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for six (6) years or 72,000 miles whichever comes first. On the date of the initial hearing, the vehicle's mileage was 13,169 and the warranty is still in effect. As such, Respondent is under an obligation to repair the vehicle whenever there is any other problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied. However, repair relief as indicated below is ordered for the issue of the vehicle drifting to the right when driving at highway speeds.

III. FINDINGS OF FACT

1. Julio Garcia (Complainant) purchased a new 2019 Volkswagen Atlas on August 31, 2019, from Volkswagen Cyprus (Cyprus) located in Houston, Texas, with mileage of 9 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Volkswagen Group of America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for six (6) years or 72,000 miles, whichever occurs first.
3. At the time of hearing, the vehicle's warranty was still in effect.
4. Before taking possession of the vehicle, Complainant had the original equipment manufacturer (OEM) tires replaced with larger tires.
5. Within one (1) to two (2) weeks after taking possession of the vehicle, Complainant noticed that the vehicle would pull to the right and the front end would vibrate when he was driving at 65 mph or higher.
6. Complainant took the vehicle to Respondent's authorized dealer, Cypress, in order to address his concerns with the vehicle pulling to the right and the front end vibrating at 65 mph or higher on the following dates:
 - a. September 14, 2019, at unknown miles;
 - b. September 17, 2019, at 578 miles; and
 - c. October 4, 2019, at 1,607 miles.
7. On September 14, 2019, Cypress' service technician balanced the vehicle's tires in order to address Complainant's concerns

8. On September 17, 2019, Cypress' service technician commented that new wheels and tires were installed on the vehicle a week before. No repairs were performed at the time.
9. On October 4, 2019, Cypress' service technician adjusted the vehicle's right rear and left front toes to within specifications and then calibrated the vehicle's front radar sensor and front camera in order to address the issue of the vehicle pulling to the right.
10. Also, on October 4, 2019, Cypress' service technician performed a road force balance and straight track balance on the vehicle's tires in order to address the issue of a slight vibration from the front end when driving the vehicle at 65 mph or higher.
11. On December 19, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On January 6, 2020, Complainant sent a letter to Respondent notifying them of his dissatisfaction with the vehicle.
13. On February 28, 2020, Complainant took the vehicle to Cypress for maintenance and for repair for the issue of the vehicle's front end vibrating at 55 to 70 mph. The vehicle's mileage was 10,058 at the time.
14. During the repair described in Findings of Fact #13, Cypress' service technician noted that Respondent's technical assistance center would have to be contacted about the issue and that Complainant was going to reschedule an appointment for the vehicle.
15. On April 2, 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.
16. The hearing in this case convened telephonically on July 2, 2020, before Hearings Examiner Edward Sandoval. Julio Garcia, Complainant, appeared and represented himself. Respondent, Volkswagen Group of America, Inc., was represented by Susan Lucas, contract representative. The hearing was continued to September 23, 2020, in order to provide the hearings examiner an opportunity to inspect and test drive the subject vehicle. On September 15, 2020, Complainant filed a Motion for Continuance for the hearing scheduled for September 23, 2020. The hearings examiner issued Order No. 4:

Granting Continuance and Scheduling Hearing on September 18, 2020, granting the requested Motion and rescheduling the continued hearing for December 19, 2020. The continuance was conducted by Hearings Examiner Edward Sandoval on December 19, 2020, at the Texas Department of Motor Vehicles' regional office in Houston, Texas. Julio Garcia, Complainant, appeared and represented himself. Respondent was represented by Susan Lucas, contract representative. The hearing record was closed on December 19, 2020.


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. 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.*, the vehicle drifts to the right when driving at highway speeds. 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 remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
9. 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 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 (*i.e.*, the vehicle drifts to the right when driving at highway speeds) 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 § 2001.144.²³ 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 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 January 20, 2021



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

²³ (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.