

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0011779 CAF**

EUGENE GOODLOW, Complainant	§ § § § § § §	BEFORE THE OFFICE
v.		OF
FORD MOTOR COMPANY, Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Eugene Goodlow (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2018 Ford Mustang GT. Complainant asserts that the vehicle has defects or nonconformities which caused the engine to fail due to excessive oil consumption and which causes the vehicle’s transmission to slip out of third gear. Ford Motor Company (Respondent) argued that the vehicle has been modified by a third party, that the engine warranty has been cancelled, that the manufacturer’s warranty does not cover issues that are caused by the modifications, and that no relief is warranted. The hearings examiner concludes that the vehicle has been modified, the warranty does not cover any issues caused by the modification, and Complainant is not eligible for relief.

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 originally convened telephonically on October 28, 2020, before Hearings Examiner Edward Sandoval. Eugene Goodlow, Complainant, appeared and represented himself. Alsee Irving, Complainant’s friend, appeared and testified for Complainant. Ford Motor Company, Respondent, was represented by Emily Austin, Consumer Affairs Legal Analyst. Also, appearing and testifying for Respondent was Patrick Johnson, Field Service Engineer. The hearing was continued to October 30, 2020, to allow the parties to present additional documentary evidence.

The hearing reconvened telephonically on October 30, 2020 before Hearings Examiner Edward Sandoval. Eugene Goodlow, Complainant, appeared and represented himself. Emily Austin, Consumer Affairs Legal Analyst, appeared and represented Respondent. Also, appearing and testifying for Respondent was Patrick Johnson, Field Service Engineer. The hearing record was closed on October 30, 2020.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a **new motor vehicle** to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

1. Eugene Goodlow’s Testimony

Complainant purchased a used 2018 Ford Mustang GT on November 9, 2019, from Bird-Kultgen Ford (Bird-Kultgen) in Waco, Texas with mileage of 6,440 at the time of delivery.¹ When the vehicle was originally sold, Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.² In addition, Respondent provided a warranty for the vehicle’s powertrain providing coverage for five (5) years or 60,000 miles.³ At the time of purchase, the warranties were still in effect. On the date of the initial hearing the vehicle’s mileage was 35,498. At the time of the hearing, the vehicle’s warranties were still in effect, except that the engine warranty which had been cancelled by Respondent prior to the hearing date.

Complainant testified that prior to purchasing the vehicle, he test drove it. He felt that the vehicle drove normally and did not observe any issues with it. Complainant was aware at the time of purchase that the vehicle had been modified. He was also aware that Respondent’s original warranty for the vehicle was still in effect. Complainant stated that he was aware that there had been prior problems with the vehicle’s transmission in that the third and fourth gears were not

¹ Complainant Ex. 2, Contract of Sale dated November 19, 2019.

² Respondent Ex. 2, 2018 Model Year Ford Warranty Guide, p. 8.

³ *Id.*

working correctly. Complainant testified that the gears were replaced prior to his purchase of the vehicle.

Complainant stated that in February of 2020, he began experiencing issues with the vehicle's transmission. The transmission would pop out of third gear while he was driving the vehicle. The gear shifter would actually go into neutral gear and he'd have to reshift the transmission to third gear in order to continue driving. Complainant stated that before he could take the vehicle to Respondent's authorized dealer to repair the issue, the vehicle's engine seized up on April 19, 2020. Complainant took the vehicle to Don Davis Auto Group (Davis) in Arlington, Texas for repair for the engine seizing and for the transmission issue. Davis' service technician determined that the engine had seized up due to lack of oil in the engine.⁴ Complainant was informed that the engine repair would not be covered under the vehicle warranty. Complainant stated that he was told that the warranty for the engine was cancelled because he had failed to put oil in the engine which had caused the engine to fail. No work was performed on the transmission issue because the vehicle was not running at the time of the repair visit.⁵ The vehicle's mileage on this occasion was 24,764.⁶ Complainant later paid out of pocket for the engine to be replaced.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on May 28, 2020.⁷ Complainant mailed a letter to Respondent on May 29, 2020, in which he indicated his dissatisfaction with the vehicle.⁸

Complainant stated that one of Respondent's representatives inspected the vehicle in August of 2020 for the transmission issue, since the vehicle's engine had been replaced by that time. Complainant was informed that no repairs could be performed for the transmission issue because the vehicle had an aftermarket gear shift assembly, which is a modification to the vehicle. Complainant stated that the shift assembly was on the vehicle when he purchased it. He also stated that he was not informed that he needed the vehicle to have the aftermarket items removed from the vehicle before repairs could be performed.

Complainant testified that vehicle's transmission pops out of third gear on an almost daily basis and that the problem has gotten worse. The vehicle's transmission currently will not shift from second to third gear at all.

⁴ Complainant Ex. 3, Repair Order dated April 20, 2020.

⁵ *Id.*

⁶ *Id.*

⁷ Complainant Ex. 1, Warranty Performance Complaint dated May 28, 2020.

⁸ Complainant Ex. 4, Letter to Ford Motor Company dated May 29, 2020.

2. Alsee Irving's Testimony

Alsee Irving, Complainant's friend, testified for Complainant. Mr. Irving stated that he had witnessed the vehicle's transmission popping out of gear when accompanying Complainant on a ride in the vehicle. In addition, Mr. Irving stated that he had driven the vehicle and had the transmission pop out of gear while he was driving it.

C. Respondent's Evidence and Arguments

1. Emily Austin's Testimony

Emily Austin, Consumer Affairs Legal Analyst, testified for Respondent. She stated that Respondent provided a five (5) year or 60,000 mile powertrain warranty for the vehicle's powertrain. She testified that the warranty was denied for the engine repair and that the engine warranty was ultimately cancelled on June 10, 2020, due to Respondent's determination that the engine had been improperly maintained.⁹

2. Patrick Johnson's Testimony

Patrick Johnson, Field Service Engineer, testified for Respondent at the hearing. Mr. Johnson testified that he has worked in the automotive industry for 22 years. He began working for Respondent approximately three (3) years ago. He was hired by Respondent in his present position. Mr. Johnson is a Ford Certified Master Technician.

Mr. Johnson testified that he inspected the vehicle on August 4, 2020, at AutoNation Ford located in Arlington, Texas. He stated that he visually inspected the vehicle and determined that several aftermarket items had been added to the vehicle, including an aftermarket short rise gear shifter assembly. The shifter is two (2) inches shorter than the standard gear shifter normally installed in Respondent's vehicles. This can affect the vehicle's gear linkage and affect how the transmission operates. The shorter gear shifter allows for faster shifting by the driver and affects the geometry of the gear linkage.

Mr. Johnson stated that he test drove the vehicle and verified that the vehicle's transmission would pop out of third gear while he was driving. Mr. Johnson testified that in order for proper repairs to be made on the vehicle and to ensure that it operates as designed, all Ford parts need to be reinstalled on the vehicle. Mr. Johnson did not perform any repairs to the vehicle during the

⁹ Respondent Ex. 2, 2018 Model Year Ford Warranty Guide, p. 21.

inspection that took place in August of 2020. Mr. Johnson also indicated that warranty coverage could be denied if an issue is caused by “abuse, neglect, improper maintenance, or unapproved modifications.”¹⁰

Mr. Johnson stated that the vehicle’s engine warranty was cancelled in June of 2020, but the powertrain warranty for the other powertrain components remains in effect through the end of the warranty period.

D. Analysis

1. Engine Issue

Complainant testified that the vehicle’s engine seized up in April of 2020. Respondent cancelled the warranty for the vehicle’s engine due to lack of maintenance. Complainant paid out of pocket to have the engine replaced. At the time of hearing, the vehicle’s engine was operating as designed. Since the issue with the vehicle’s engine was resolved prior to the hearing date, the hearings examiner cannot order repair for the issue. In addition, § 2301.204 of the Occupations Code does not authorize reimbursement for the cost of repairs paid for by Complainant. As such, the hearings examiner holds that the issue currently does not warrant repair relief.

2. Transmission Issue

The evidence established that there is an issue with the vehicle’s transmission popping out of third gear when the vehicle is being driven. However, the evidence also shows that the vehicle has been modified, specifically the gear shift assembly has been replaced with a short rise gear shifter and that such modification could be the cause of the transmission issue. Since Respondent’s warranties allow for denial of warranty coverage for issues caused by an unapproved modification, the hearings examiner must hold that repair relief is not warranted under the present circumstances. Complainant is free to have the aftermarket items replaced to allow Respondent an opportunity to repair the issue at a later date.

On the date of the initial hearing, the vehicle’s mileage was 35,498 and it remains covered under Respondent’s warranties, except the engine warranty which has been cancelled. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

Complainant’s request for repair relief is denied.

¹⁰ *Id.*, p. 25.

III. FINDINGS OF FACT

1. Eugene Goodlow (Complainant) purchased a used 2018 Ford Mustang GT on November 9, 2019, from Bird-Kultgen Ford (Bird-Kultgen) in Waco, Texas with mileage of 6440 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first. In addition, Respondent provided a powertrain warranty for the vehicle which covers the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 35,498.
4. The vehicle's engine warranty was cancelled on June 10, 2020, because of Complainant's failure to properly maintain the vehicle's engine.
5. At the time of hearing the vehicle's new vehicle limited warranty and powertrain warranty (except for the engine warranty) were still in effect.
6. Complainant has experienced a problem with the vehicle's transmission popping out of third gear when he is driving the vehicle.
7. The vehicle's engine seized up on April 19, 2020.
8. Complainant took the vehicle for repair to Respondent's authorized dealer, Don Davis Auto Group (Davis) located in Arlington, Texas, on April 20, 2020, in order to address his concerns with the engine seizing up and with the transmission popping out of gear.
9. The vehicle's mileage at the time of the repair visit described in Findings of Fact #8 was 24,764.
10. During the repair visit described in Findings of Fact #8, Davis' service technician inspected the vehicle and determined that the vehicle's engine had seized up due to lack of maintenance as the vehicle's engine did not have any oil in it.
11. Also during the repair visit described in Findings of Fact #8, the service technician did not perform any repair for the transmission issue as the vehicle was not running at the time.

12. Complainant paid out of pocket for the vehicle's engine to be replaced.
13. On May 28, 2020, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
14. On May 29, 2020, Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.
15. Respondent's field service engineer, Patrick Johnson, performed an inspection of the vehicle on August 4, 2020, at AutoNation Ford in Arlington, Texas.
16. During the inspection described in Findings of Fact #15, Mr. Johnson discovered that several aftermarket items had been installed on the vehicle, including an aftermarket short rise gear shifter assembly.
17. Mr. Johnson could not perform any repairs to the vehicle until it was restored to its original state and the modifications taken out, so no repair was done for the transmission issue.
18. Respondent's warranty provides that warranty coverage can be denied if an issue is caused by abuse, neglect, improper maintenance, or unapproved modifications.
19. On August 11, 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.
20. The hearing in this case originally convened telephonically on October 28, 2020, before Hearings Examiner Edward Sandoval. Eugene Goodlow, Complainant, appeared and represented himself. Alsee Irving, Complainant's friend, appeared and testified for Complainant. Ford Motor Company, Respondent, was represented by Emily Austin, Consumer Affairs Legal Analyst. Also, appearing and testifying for Respondent was Patrick Johnson, Field Service Engineer. The hearing was continued to October 30, 2020, to allow the parties to present additional documentary evidence. The hearing reconvened telephonically on October 30, 2020 before Hearings Examiner Edward Sandoval. Eugene Goodlow, Complainant, appeared and represented himself. Emily Austin, Consumer Affairs Legal Analyst, appeared and represented Respondent. Also, appearing and

testifying for Respondent was Patrick Johnson, Field Service Engineer. The hearing record was closed on October 30, 2020.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law) and § 2301.204 (Warranty Performance).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604 and § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for repair relief. 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 repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED December 30, 2020.



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