

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0013623 CAF**

WILLIAM BEVANS and KAITLYN THOMPSON,	§	BEFORE THE OFFICE
	§	
Complainants	§	
	§	
v.	§	OF
	§	
HYUNDAI MOTOR AMERICA,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Williams Bevens and Kaitlyn Thompson (Complainants) seek repair relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in their 2017 Hyundai Elantra. Complainants assert that the vehicle has a defect or nonconformity which causes the vehicle's transmission to slip in third gear when driving up an incline and then to bang into gear. Hyundai Motor America (Respondent) argued that the vehicle is operating as designed, does not have a manufacturing defect, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainants are eligible for repair 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 convened telephonically on January 7, 2021, before Hearings Examiner Edward Sandoval. William Bevens and Kaitlyn Thompson, Complainants, appeared and represented themselves at the hearing. Hyundai Motor America, Respondent, was represented by Thomas Sheehan, Customer Service Specialist. Also present as an observer for Respondent was Donna Bilardo, Customer Service Supervisor. The hearing record closed on January 7, 2021.

II. DISCUSSION

A. Applicable Law

Texas 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

Complainants purchased a used 2017 Hyundai Elantra on December 22, 2018, from CarMax Auto Superstore (CarMax) in Irving, Texas.¹ The vehicle’s mileage at the time of delivery was 38,331.² Respondent provided a new vehicle limited warranty for the vehicle which provides bumper-to-bumper warranty coverage for the vehicle for five (5) years or 60,000 miles, whichever comes first. On the date of hearing the vehicle’s mileage was 68,105. At the time of hearing the vehicle’s new vehicle limited warranty had expired.

1. William Bevans’ Testimony

Mr. Bevans stated that the vehicle was purchased by him and his fiancée. It is the only vehicle that they own and they each drive it an equal amount of time. Mr. Bevans stated that they test drove the vehicle prior to purchasing it and did not notice any transmission issues during the test drive.

Mr. Bevans testified that they first noticed an issue with the vehicle about ten (10) days after purchasing it. They noticed that the vehicle’s transmission would slip out of third gear and then bang into gear when driving up the incline to their neighborhood. Complainants took the vehicle to Fenton Hyundai (Fenton) in Mesquite, Texas for repair for the issue on January 2, 2019. Fenton’s service advisor advised Complainants that the vehicle had not been properly maintained and that several repairs had to be done to the vehicle before they could look at the vehicle’s transmission. The cost for the maintenance repairs was \$916.78.³ Complainants refused to pay for the maintenance repairs and no work was performed at the time. The vehicle’s mileage on this occasion was 39,774.⁴

Mr. Bevans testified that since Complainants purchased the vehicle from CarMax, they took it there for repair for the transmission issue on January 4, 2019. The CarMax representative

¹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated December 22, 2018.

² Complainant Ex. 2, Odometer Disclosure Statement dated December 22, 2018.

³ Complainant Ex. 4, Repair Order dated January 2, 2019.

⁴ *Id.*

verified the issue raised by Complainants and took the vehicle to Freeman Mazda–Hyundai (Freeman) in Irving, Texas for repair. Freeman’s service technician was unable to duplicate the issue with the vehicle’s transmission.⁵ No repairs were performed during the repair visit. The vehicle’s mileage at the time was 39,819.⁶ The vehicle was in Freeman’s possession until January 14, 2019. Complainants received a loaner vehicle from CarMax while their vehicle was being repaired.

Mr. Bevans stated that the vehicle’s transmission continued to slip and bang into gear when they drove the vehicle. Complainants took the vehicle to CarMax again for repair on July 31, 2019. The CarMax representative again took the vehicle to Freeman for repair for the transmission issue. Freeman’s service technician couldn’t duplicate the issue, but did reset the transmission’s adaptive values during the repair visit.⁷ The vehicle’s mileage on this occasion was 47,977.⁸ The vehicle was in Freeman’s possession for seven (7) days. Complainants received a loaner vehicle while their vehicle was being repaired.

Mr. Bevans testified that they continued to experience problems with the vehicle’s transmission and that the same problems continued to occur. He took the vehicle to Freeman for repair for the transmission issues on August 28, 2019. Freeman’s service technician was unable to duplicate the concern.⁹ No repairs were performed at the time. The vehicle’s mileage on this occasion was 48,295.¹⁰ The vehicle was in Freeman’s possession until September 13, 2019 during this repair visit. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Mr. Bevans stated that the vehicle’s transmission continued to slip out of gear and then bang into gear after getting the vehicle back from Freeman in August of 2019. As a result, Complainants took the vehicle to Freeman for repair for the transmission issue on February 10, 2020. In addition, the vehicle’s check engine light (CEL) had illuminated.¹¹ Freeman’s service technician discovered a diagnostic trouble code (DTC) on the vehicle’s computers which indicated that the vehicle’s #1 cylinder ignition coil had failed.¹² The technician replaced the coil, updated the vehicle’s electronic control module (ECM), and reset the transmission’s adaptive values in order to resolve the transmission issue and the CEL issue.¹³ The vehicle’s mileage on this occasion was 55,233.¹⁴ The vehicle was in Freeman’s possession for nine (9) days on this occasion.

⁵ Complainant Ex. 5, Repair Order dated January 4, 2019.

⁶ *Id.*

⁷ Complainant Ex. 6, Repair Order dated July 31, 2019.

⁸ *Id.*

⁹ Complainant Ex. 7, Repair Order dated August 28, 2019.

¹⁰ *Id.*

¹¹ Complainant Ex. 8, Repair Order dated February 10, 2020.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Mr. Bevans stated that the vehicle's transmission continued to slip out of third gear when driving up an incline and to bang into gear when they drove it. Complainants took the vehicle to Freeman for repair for the transmission issue on May 25, 2020. Freeman's service technician verified the issue during a test drive.¹⁵ The technician found metal shavings in the vehicle's transmission valve body.¹⁶ The technician thereupon replaced the vehicle's transmission in order to repair the vehicle.¹⁷ The vehicle's mileage at the time was 58,080.¹⁸ The vehicle was in Freeman's possession until June 3, 2020. Complainants were not provided a loaner vehicle on this occasion.

Also on May 25, 2020, Mr. Bevans presented a letter to Kenneth Demarest, Freeman's service advisor, that Complainants were going to be filing a complaint about the vehicle with the Texas Department of Motor Vehicles (Department).

Complainants filed a Warranty Performance complaint with the Department on July 16, 2020.¹⁹

Mr. Bevans testified that the vehicle's transmission still slips out of third gear when driving up an incline and that it bangs into gear, even though the transmission has been replaced.

Mr. Bevans feels that the problem is a safety issue and that the vehicle is not behaving as designed. He feels that he cannot travel in the vehicle because he feels that the transmission may not break down during a trip.

2. Kaitlyn Thompson's Testimony

Kaitlyn Thompson, co-Complainant, also testified in the hearing. She stated that she does not feel safe driving the vehicle. She doesn't know if the transmission will break down and leave her stranded on the side of the road. Ms. Thompson stated that she does not want to be worried when driving the vehicle. She does not feel that she can take any trips in the vehicle due to her concern about the vehicle's transmission.

C. Respondent's Evidence and Arguments

Thomas Sheehan, Customer Service Specialist, represented and testified for Respondent at the hearing. Mr. Sheehan stated that he does not have a technical background. He has never inspected nor seen the vehicle.

¹⁵ Complainant Ex. 9, Repair Order dated May 25, 2020.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Mr. Sheehan stated that Respondent has never had an opportunity to inspect the vehicle or to determine what was wrong with it. He did not know why Respondent's prior representatives had never asked for an inspection of the vehicle prior to the hearing date.

D. Analysis

The issue to be addressed is whether Complainants' vehicle has a defect or condition which has not been repaired by Respondent. The preponderance of the evidence shows that the vehicle's transmission will slip out of third gear when driving up an incline and that it will occasionally bang into gear. Respondent did not provide any testimony to dispute the allegations raised by Complainants. Respondent's representatives have not been able to repair the vehicle's transmission despite repeated attempts. As such, the hearings examiner must hold that the vehicle's transmission does not meet Respondent's warranty and should be repaired. Respondent will be ordered to repair the transmission so that it conforms to their warranty.

Complainants' request for repair relief is granted.

III. FINDINGS OF FACT

1. William Bevans and Kaitlyn Thompson (Complainants) purchased a used 2017 Hyundai Elantra on December 22, 2018, from CarMax Auto Superstore (CarMax) in Irving, Texas with mileage of 38,331 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 warranty coverage for the vehicle for five (5) years or 60,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 68,105.
4. At the time of hearing the vehicle's new vehicle limited warranty had expired.
5. Soon after purchasing the vehicle, Complainants noticed that the vehicle's transmission seemed to slip out of third gear when driving up an incline and then bang into gear.
6. Complainants took the vehicle for repair to Respondent's authorized dealers, Fenton Hyundai (Fenton) in Mesquite, Texas and Freeman Mazda-Hyundai (Freeman) in Irving,

¹⁹ Complainant Ex. 3, Warranty Performance Complaint dated July 16, 2020.

Texas, in order to address their concerns with the vehicle's transmission on the following dates:

- a. January 2, 2019, at 39,774 miles;
 - b. January 4, 2019, at 39,819 miles;
 - c. July 31, 2019, at 47,977 miles;
 - d. August 28, 2019, at 48,295 miles;
 - e. February 10, 2020, at 55,233 miles; and
 - f. May 25, 2020, at 58,080 miles.
7. On January 2, 2019, Fenton's service technician provided an estimate for maintenance work to be performed before any work could be done on the vehicle's transmission. No repair was performed on the vehicle at the time because Complainants did not feel that they should pay out of pocket for any repairs.
 8. On January 4, 2019, Freeman's service technician was unable to duplicate a harsh shift issue with the vehicle. No repair was performed at the time.
 9. On July 31, 2019, Freeman's service technician was unable to duplicate the issue of the transmission slipping. The transmission's adaptive values were reset at the time.
 10. On August 28, 2019, Freeman's service technician was unable to duplicate the issue of the transmission slipping. No repair was performed at the time.
 11. On February 10, 2020, Freeman's service technician replaced the vehicle's #1 cylinder ignition coil, updated the vehicle's electronic control module (ECM), and reset the transmission's adaptive values in order to resolve the issues of the vehicle's transmission banging into gear and the check engine light (CEL) illuminating.
 12. On May 25, 2020, Freeman's service technician inspected the vehicle and found metal shavings in the vehicle's transmission valve body which could have been causing the vehicle's transmission to slip in third gear and to bang into gear.
 13. During the repair visit described in Findings of Fact #12, Freeman's service technician replaced the vehicle's transmission in order to resolve the issue with the vehicle's transmission.

14. On May 25, 2020, Complainants provided a letter to Freeman's service advisor that they were dissatisfied with the vehicle and would be filing a complaint about it with the Texas Department of Motor Vehicles (Department).
15. On July 16, 2020, Complainants filed a Warranty Performance complaint with the Department.
16. On September 18, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.
17. The hearing in this case convened telephonically on January 7, 2021, before Hearings Examiner Edward Sandoval. William Bevans and Kaitlyn Thompson, Complainants, appeared and represented themselves at the hearing. Hyundai Motor America, Respondent, was represented by Thomas Sheehan, Customer Service Specialist. Also present as an observer for Respondent was Donna Bilardo, Customer Service Supervisor. The hearing record closed on January 7, 2021.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance) and §§ 2301.601-2301.613 (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 Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition in the vehicle. Tex. Occ. Code § 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent shall make any repairs needed to conform the vehicle's transmission (the vehicle's transmission slipping out of third gear on an incline and then banging into gear) to the applicable warranty. Complainants shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²⁰ Within 40 days after receiving the vehicle from Complainants, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainants 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 8, 2021.



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

²⁰ (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.