

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0264 CAF**

STEVEN D. MILLS,	§	BEFORE THE OFFICE
Complainant	§	
	§	
v.	§	OF
	§	
NISSAN NORTH AMERICA, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Steven D. Mills (Mills) filed a “Lemon Law” complaint with the Texas Department of Motor Vehicles (Department) against Nissan North America, Inc. (Nissan), for alleged defects in his 2012 Nissan Rogue. Mills seeks repurchase relief or, alternatively, repair relief due to an alleged defect in the vehicle’s driver’s seat frame.¹ Nissan argues that Mills is ineligible for either type of relief in this proceeding. The hearings examiner finds that Mills’ repurchase request is barred by limitations, but his claim for repair relief is valid. Nissan is therefore ordered to make any warrantable repairs necessary to resolve the recurring defective condition of the driver’s seat frame.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested. These issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

On August 27, 2014, Nissan filed a “Motion to Dismiss and Briefing Upon Available Relief” (Motion), arguing that the period of limitations set forth in Texas Occupations Code § 2301.606(d) bars Mills’ request for any type of Lemon Law relief, *i.e.*, repurchase, replacement, or repair relief. The Motion was filed with the Department’s Office of Administrative Hearings (OAH) in Austin, Texas, one day prior² to the evidentiary hearing set in Houston, Texas.

On August 28, 2014, Hearings Examiner Anne K. Perez convened the hearing as scheduled. Mills appeared and represented himself. Attorney Kristina L. Culley appeared and represented Nissan. At that time, Mills acknowledged receipt of Nissan’s Motion filed the previous day, but stated that he was not an attorney and was not prepared to immediately address Nissan’s limitations argument. Given the circumstances, the hearings examiner declined to rule on the Motion and the hearing went forward. At the close of evidence, the record was held open until September 12, 2014 for the submission of written

¹ Pursuant to Texas Occupations Code §§ 2301.601-.613, the owner of a motor vehicle with a warrantable defect may be entitled to repurchase or replacement relief from the manufacturer. In place of those remedies, the Department may order repair relief. *See* Texas Occupations Code § 2301.204 and 43 Tex. Admin. Code § 215.208(e).

² The Motion was transmitted by facsimile to OAH at 4:44 p.m. on August 27, 2014, and presumably was served on Mills at the same time.

closing statements, and for Mills to respond to Nissan's Motion. The hearings examiner, after considering both the Motion and Mills' response filed September 11, 2014, denies the Motion.

II. DISCUSSION

A. Applicable Law

A manufacturer is required to make repairs necessary to conform a new vehicle to an applicable manufacturer's express warranty.³ The manufacturer's obligation extends beyond the expiration date of a warranty if, during the term of the warranty, the owner reported the defect to the manufacturer, or to a franchised dealer of the manufacturer, or if a rebuttable presumption relating to the vehicle is created under Texas Occupations Code § 2301.605.⁴

Pursuant to Texas Occupations Code § 2301.204(a), the owner of a motor vehicle may make a complaint concerning a defect in a vehicle that is covered by a manufacturer's warranty. The complaint must be in writing and specify each warrantable defect in the vehicle, and must be served on the manufacturer. Receipt of the owner's complaint by the Department invokes the agency's jurisdiction, and if the matter is not privately resolved between the complainant and the manufacturer the Department may schedule an evidentiary hearing on the complaint.⁵

In a contested case hearing before the Department, a complainant seeking repurchase or replacement of the vehicle under Texas Occupations Code § 2301.604 must establish the following criteria: (1) the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair the defect; (2) the defect creates a serious safety hazard⁶ or substantially impairs the use or market value of the vehicle;⁷

³ Tex. Occ. Code § 2301.603(a).

⁴ Tex. Occ. Code § 2301.603(b).

⁵ Tex. Occ. Code § 2301.204(b)-(d).

⁶ "Serious safety hazard" means "a life-threatening malfunction or nonconformity" that "substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes," or "creates a substantial risk of fire or explosion." *See* Tex. Occ. Code § 2301.601(4)(A) and (B).

⁷ "Impairment of market value" means "a substantial loss in market value caused by a defect specific to a motor vehicle." *See* Tex. Occ. Code § 2301.601(1).

(3) the manufacturer has been given a reasonable number of attempts to repair the defect;⁸ (4) the owner mailed written notice of the defect to the manufacturer;⁹ and (5) the manufacturer has been given an opportunity to cure the defect.¹⁰

A complainant who seeks repurchase or replacement relief is subject to the limitations period prescribed by Texas Occupations Code § 2301.606(d):

A proceeding under this subchapter¹¹ must be commenced not later than six months after the earliest of:

- (1) the expiration date of the express warranty term; or
- (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

Should the Department determine after a hearing that the complainant's vehicle does not qualify for repurchase or replacement, the Department may enter an order requiring repair work to be performed, or other action taken to obtain compliance with the manufacturer's warranty obligations.¹²

⁸ Pursuant to Texas Occupations Code § 2301.605(a), a complainant may establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. The rebuttable presumption is established if the defect creates a serious safety hazard and continues to exist after being subject to repair two or more times and: (1) one of the repair attempts was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (2) at least one other repair attempt was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt. *See* Tex. Occ. Code § 2301.605(a)(2).

If the defect is not hazardous but substantially impairs the use or market value of the vehicle, a complainant may establish the rebuttable presumption through two other statutory provisions. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if a defect that substantially impairs the vehicle's use or market value still exists after being subject to repair four or more times and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt. *See* Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Likewise, it is presumed that a reasonable number of attempts have been made to correct a warrantable defect if the same defect continues to exist and (A) the vehicle was out of service for repair for a cumulative 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; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner. *See* Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

⁹ Tex. Occ. Code § 2301.606(c)(1).

¹⁰ Tex. Occ. Code § 2301.606(c)(2).

¹¹ Texas Occupations Code, Title 14, Subtitle A, Chapter 2301, Subchapter M (Warranties: Rights of Vehicle Owners).

¹² 43 Tex. Admin. Code § 215.208(e).

B. Complainant's Evidence and Arguments

Complainant and his spouse Claudia V. Arellano-Mills purchased a new 2012 Nissan Rogue (the vehicle) from Gillman Companies of Richmond, Texas on August 31, 2012, with mileage of thirty-nine (39) at the time of delivery.¹³ Nissan, the manufacturer, issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first.¹⁴

On the date of hearing the vehicle's mileage was 77,066, and coverage under Nissan's basic limited warranty was expired. According to Complainant's Lemon Law complaint filed with the Department, the vehicle's mileage reached 24,000 on April 10, 2013.¹⁵ And, according to two repair orders in evidence, the vehicle's mileage was 30,697 on June 5, 2013, and 44,469 on October 3, 2013.¹⁶

Mills testified that he purchased the 2012 Nissan Rogue because of his positive experience with the manufacturer (he previously owned three Nissan-made vehicles), and because Nissan's marketing materials portrayed the Rogue as a durable, low-maintenance vehicle. These attributes were appealing, he explained, because his work in outside sales requires that he drive about 40,000 miles per year. He purchased the 2012 Rogue with the expectation that he would continue driving it for six to eight years, *i.e.*, between 250,000 and 300,000 miles.

Mills said he is usually alone in the vehicle with the radio turned up, and thus probably failed to notice the first signs of noise coming from the driver's seat track. In December 2012, however, he drove the car on a family trip from Houston to Lubbock, Texas and noticed a "metal-on-metal" sound coming from under the driver's seat each time he accelerated or decelerated the vehicle. He recalled thinking "it was some random noise" and put the issue out of his mind. He subsequently sprayed "WD-40" on the track under the driver's seat, but as the weeks went by the metallic noise persisted and grew louder. Anytime the vehicle experienced a "shift in inertia" (*e.g.*, turning a corner), he could hear a "clicking" or "grinding" noise emanating from under the driver's seat.

In February 2013, at mileage of 19,757, Mills brought the vehicle in for service at Gillman Nissan (Gillman) of Rosenberg, Texas. Gillman is a franchised dealer of Respondent. Following inspection of the driver's seat assembly, a Gillman service representative ("Steve") spoke with Mills. Based on this discussion, Mills understood that the driver's seat track had failed and unless the entire seat assembly was replaced, the driver's seat would eventually separate from the track, impairing Mills' ability to control the vehicle. The repair required Gillman to special-order the necessary parts. On March 4, 2013, Mills returned to Gillman and waited while the driver's seat track assembly in his vehicle was replaced.

¹³ Complainant Ex. 7, Buyer's Order.

¹⁴ Complainant Ex. 9, 2012 Nissan Warranty Information Booklet.

¹⁵ Complainant Ex. 10, Lemon Law complaint.

¹⁶ Complainant Exs. 1 and 2.

The March 2013 repair attempt did not fix the underlying defect, however. After Mills drove the vehicle another 10,000 miles or so, he noticed a familiar noise coming from under the driver's seat each time he accelerated or stopped the vehicle. This time he did not delay bringing the car in for service. Although Gillman's June 5, 2013 repair order notes Mills' description of the problem as a "rattle noise while driving," he testified that his concern was not noise, *per se*. Rather, the noise signaled a recurring nonconformity in the driver's seat track. His overreaching concern was that the defect in the seat assembly posed a risk to his safety, as well as the safety of passengers riding in his vehicle.

Mills' apprehension about the potential safety risk led to a new practice: as soon as he or his wife noticed the return of "clicking" or "grinding" sounds coming from underneath the driver's seat, he brought the vehicle in for service without delay. He noted that Gillman's repair orders reflect a regular pattern. Following the first seat track replacement in March 2013, he was able to drive the vehicle approximately 10,000 miles before the noise started up again. Each time this happened he brought the vehicle in for service at Gillman. Four more seat track replacements were performed by Gillman with similar mileage (*i.e.*, 9,000- 13,000) between each repair.

The repair orders generated by Gillman for Complainant's vehicle reflect the following information:¹⁷

Date	Mileage	Reported Concern	Diagnostic Action And Dealer's Findings
2-22-13 (repair on 3-4-13)	19,757	Driver's seat makes grinding noise at take-off & stops	Left Front Seat Frame Broken; Replaced Left Seat Back Frame Assembly
6-5-13	30,697	Driver's seat makes rattle noise while driving	Found Seat Frame Making Noise; Need to Replace Seat Track Assembly; Replaced Seat Track Assembly; OK at This Time
10-3-13	44,469	Driver's seat squeaks	Found Faulty Driver's Seat Frame Causing Squeaks; Need to Replace Driver's Seat Frame; Performed Replacement of the Driver's Seat Frame; OK at This Time
1-20-14	55,407	Driver's seat makes rattling noise at random speeds	Need to Replace Driver's Front Seat Track; Replaced Driver's Front Seat Track; OK at This Time
5-7-14	66,588	Driver's seat makes rattle noise at random speeds	Test Drove & Found Seat Track Making a Rattle Noise; Track Makes Noise When Adjusted to Furthest Rear Seating Position; Performed Replacement of the Driver's Seat Frame; OK at This Time
8-11-14	75,402		Test Drove & Found Seat Track Making a Rattle Noise; Track Makes Noise When Adjusted to Furthest Rear Seating Position; Need To Contact Nissan for Future Repairs

¹⁷ The repair orders were admitted as Complainants Exs. 1-6.

Mills noted that the cost of warranty repairs performed on his vehicle was not inexpensive. For the five seat assembly replacements, Gillman billed Nissan for parts and labor totaling more than \$8,400.¹⁸ Given that the problem is recurring, and that he purchased the 2012 Nissan Rogue new for less than \$24,000 (excluding taxes and fees), he expressed surprise that Nissan was unwilling to work with him to resolve the ongoing issue. Mills expressed the belief that the defective seat assembly is a safety hazard. The fact that the problem did not surface within the vehicle's first 12,000 miles is a fact that he believes should not be held against him. Along the same lines, he contends that the situation warrants waiver of Texas Occupations Code § 2301.606(d)'s limitations period.

C. Respondent's Evidence and Arguments

Respondent offered the testimony of Neil Barnes, a dealer technical specialist employed by Respondent. Mr. Barnes testified that he has worked in the automotive industry for more than 30 years. He holds multiple certifications issued by the National Institute for Automotive Service Excellence. In his current position, he performs vehicle diagnostic inspections for Respondent, in addition to assisting dealer service technicians with diagnostic problems. On August 19, 2014, he performed an inspection of Complainant's vehicle at Gillman.

Mr. Barnes testified that on the date of inspection he "road-tested" the vehicle, accompanied by Mills and Gillman's shop foreman. While accelerating and decelerating the vehicle in a parking lot, Mr. Barnes observed a "slight ticking noise" coming from under the driver's seat, and on closer inspection (by pushing on the seat frame), he believed he heard the sound coming from under the front left part of the seat.¹⁹ Mr. Barnes also noticed that the threads of the left-side bolt (attaching the seat frame to the seat track) were "shiny," indicating to him that the bolt had been removed multiple times.

Mr. Barnes said he was aware that the seat track had been replaced several times, and it occurred to him that the technician who performed the most recent seat assembly replacement did not properly tighten the bolts.²⁰ Theorizing that a loose bolt was the source of the noise, he removed an identical bolt from the passenger seat frame and installed it in place of the "shiny" bolt on the left side of the driver's seat track. He testified that he did not have a torque wrench handy, but tightened the bolt as best he could before testing his theory. According to Barnes, when he pushed on the driver's seat frame the noise was no longer present.

Mr. Barnes testified that he asked Mills to leave the vehicle at Gillman overnight. Barnes wanted to tighten the "test" bolt with a torque wrench and perform another road test. In addition, Barnes intended

¹⁸ Complainant Exs. 1-5.

¹⁹ Barnes also noticed the presence of coins and other debris in or near the seat track, and he implied that such items might be the source of Mills' complaint. Barnes' photographs of the driver's seat track on the date of inspection were admitted as Respondent Exs. 1 and 2.

²⁰ Barnes testified that the driver's seat assembly, inclusive of the seat frame, seat back, and seat track, is identified by one part number.

to order new bolts and install them on the driver's seat track, then drive the vehicle again to determine if the repair was completely successful. However, Mills refused to leave the vehicle at Gillman for this purpose.²¹

Mr. Barnes' investigation of the problem extended beyond inspecting and testing Mills' vehicle on August 19, 2014. The driver's seat assembly that was removed from the vehicle on May 7, 2014, was still present at Gillman, and Barnes testified that he thoroughly inspected the assembly and found nothing wrong with it. In other words, Mr. Barnes strongly implied that Gillman's replacement of the driver's seat assembly in Mills' vehicle on May 7, 2014, was performed in error. He noted that the technician who performed the work was no longer employed by Gillman. Mr. Barnes was also emphatic on one point: given the manner in which the driver's seat is welded to the chassis frame, Mills' fear that the driver's seat could come loose from the track was unfounded.

Nissan's argument regarding Mills' complaint may be summarized as follows. No warrantable defect in the driver's seat frame of the vehicle exists. Mills' complaint is about noise rather than a warrantable defect, and tightening the bolts on the driver's seat frame would likely address the issue. No evidence establishes that the noise is indicative of a safety hazard. Moreover, the period of limitations set forth in Texas Occupations Code § 2301.606(d) bars Mills' request for repurchase, replacement, or repair relief in this proceeding.

D. Analysis

Mills has established, by a preponderance of the evidence, that an intermittent defect exists in the driver's seat assembly of his vehicle. Mills credibly testified that the noise signaling this defective condition recurs every 10,000 miles or so, and his testimony is consistent with the vehicle's repair history. The language of the repair orders is also telling. On February 22, 2014, a Gillman service technician noted that the vehicle's left front seat frame was "broken." Barely seven months later, another technician determined that the "faulty" driver's seat frame was causing the noise emanating from the driver's seat frame. Whether this defect constitutes a safety hazard, however, was not established by credible evidence.

Mr. Barnes attempted to discount the servicing dealer's findings by testifying that the seat assembly replacement performed on May 7, 2014, was unnecessary. His testimony implied that the other four seat assembly replacements were also unnecessary. Although he acknowledged hearing noise from the driver's seat assembly during his inspection of the vehicle on August 19, 2014, he immediately diagnosed the problem in the manner most favorable to Nissan: he theorized that a loose bolt (its threads

²¹ Respondent Ex. 3, Repair Order dated August 19, 2014. On rebuttal, Mills testified that the noise from under the driver's seat frame was present when he drove the vehicle off the lot following Barnes' August 19, 2014 inspection. Mills also testified that given the intermittent nature of the defect, and the fact that the hearing was scheduled to convene nine days after Mr. Barnes' inspection, he preferred that the hearing examiner be able to observe, first-hand, the defective condition of the driver's seat track. And, indeed, the noise coming from the driver's seat assembly was present on the day of hearing.

stripped from several seat assembly replacements) was causing the noise, and the problem most likely occurred because a hurried service technician failed to tighten, or replace the loose bolt. However, Mr. Barnes' eagerness to discount five previous seat assembly replacements by the servicing dealer substantially undermines the credibility of his testimony.

That matter aside, Mills' request for repurchase relief is barred by limitations under Texas Occupations Code § 2301.606(d)(2). Mills purchased the vehicle on August 31, 2012, with mileage of thirty-nine (39) at the time of delivery. According to his Lemon Law complaint filed with the Department, the vehicle's mileage reached 24,000 on April 10, 2013. Mills' complaint was received by the Department on May 28, 2014, more than six months after the vehicle's mileage reached 24,000 miles. A statutory period of limitations is not subject to waiver, under any circumstances. Because Mills' claim for repurchase relief is barred, it is unnecessary to discuss other required elements of his claim, such as whether he allowed Nissan an opportunity to cure the defect. *See* Tex. Occ. Code § 2301.606(c)(2).

Conversely, Mills' claim for repair relief is not subject to Texas Occupations Code § 2301.606(d)'s limitations period. The referenced section applies only to "[a] proceeding under this subchapter," *i.e.*, Subchapter M of Texas Occupations Code, Chapter 2301. Subchapter M provides consumers with two discrete remedies: repurchase relief or replacement relief. However, the Department has jurisdiction over *all* motor vehicle warranty complaints it receives, regardless of the relief sought. *See* Tex. Occ. Code § 2301.204. The Department is authorized to hold an evidentiary hearing on any warranty performance complaint filed with the agency, and the period of limitations in Section 2301.606(d) is applicable only if the Department orders a manufacturer to provide repurchase or replacement relief. Consistent with this analysis, 43 Texas Administrative Code § 215.208(e) states:

If the final order authority finds that a complainant's vehicle does not qualify for replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.²²

Mills' request for repair relief under Section 2301.204 falls outside of Subchapter M, and the claim is not barred by limitations. Nissan's express limited warranty issued for Mills' vehicle covers defects in the driver's seat assembly. Although the vehicle's warranty coverage expired sometime between June 5, 2013 (when mileage was at 30,697) and October 3, 2013 (when mileage was at 44,469), Mills' first report of the defect to Nissan's franchised dealer occurred during the period of the warranty (on February 22, 2013, at mileage of 20,733). Therefore, pursuant to Texas Occupations Code § 2301.603, Nissan has a continuing obligation to repair the defective condition of the driver's seat assembly, *ad infinitum*.

²² 43 Tex. Admin. Code § 215202(b) lends further support to this analysis.

III. FINDINGS OF FACT

1. Steven D. Mills (Complainant) and his spouse Claudia V. Arellano-Mills purchased a new 2012 Nissan Rogue (the vehicle) from Gillman Companies of Richmond, Texas on August 31, 2012, with mileage of thirty-nine (39) at the time of delivery.
2. The manufacturer of the vehicle, Nissan North America, Inc. (Respondent), issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first.
3. The vehicle's mileage on the date of hearing was 77,066.
4. At the time of hearing, coverage of the vehicle under Respondent's basic limited warranty was expired.
5. In December 2012, Complainant became aware of a "metal-on-metal" sound coming from under the driver's seat each time he accelerated or decelerated the vehicle. As the weeks went by, the metallic noise persisted and grew louder. Anytime the vehicle experienced a "shift in inertia" (e.g., turning a corner), a "clicking" or "grinding" noise emanated from under the driver's seat.
6. Between February 2013 and August 2014, the vehicle was serviced on six occasions by Gillman Nissan (Gillman) of Rosenberg, Texas.
7. During each service visit at Gillman, Complainant reported that a "grinding" or "ticking" noise was coming from under the driver's seat frame when the vehicle experienced a "shift in inertia" (i.e., accelerating, stopping, or turning).
8. Gillman is a franchised dealer of Respondent.
9. On February 22, 2013, when the vehicle's mileage was at 19,757, Gillman service technicians determined that the driver's seat frame was "broken." Gillman replaced the driver's seat assembly and billed Respondent for warranty repairs performed on the vehicle.
10. On June 5, 2013, when the vehicle's mileage was at 30,697, Gillman replaced the driver's seat assembly for the second time, and billed Respondent for warranty repairs performed on the vehicle.
11. On October 3, 2013, at mileage of 44,469, Gillman service technicians determined that the driver's seat frame was "faulty." Gillman replaced the driver's seat assembly and billed Respondent for warranty repairs performed on the vehicle.

12. On two additional occasions, Gillman replaced the driver's seat assembly, and billed Respondent for warranty repairs performed on the vehicle:
 - a. January 20, 2014, at 55,407 miles; and
 - b. May 7, 2014, at 66,588 miles;
13. The grinding noise indicating the defective condition of the vehicle's driver's seat frame is a recurring, intermittent problem that surfaces every 10,000 miles or so, following replacement of the driver's seat assembly.
14. On May 28, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department). His complaint described the repetitive failure of the driver's seat assembly in the vehicle.
15. On May 5, 2014, Complainant provided written notice to Respondent of the defect in the vehicle's driver's seat assembly.
16. On August 11, 2014, when the vehicle's mileage was at 75,402, Complainant brought the vehicle in for service at Gillman for the sixth time. He reported that the "grinding" noise emanating from under the driver's seat had returned.
17. On August 11, 2014, Gillman service personnel refused to repair the vehicle. Although Gillman service technicians verified that a "rattle" noise was coming from the driver's seat track, the repair order states "Need To Contact Nissan for Future Repairs."
18. The recurring, intermittent noise emanating from the vehicle's driver's seat assembly is indicative of an underlying warrantable defect in the vehicle.
19. The warrantable defect referenced in Finding of Fact No. 16 has not been cured by replacing the driver's seat assembly. Despite five separate replacements of the driver's seat assembly, the noise signaling the defect can be heard after the vehicle is driven approximately 10,000 miles.
20. Complainant reported the warrantable defect described in Finding of Fact No. 16 to one of Respondent's franchised dealers prior to the expiration of Respondent's express limited warranty issued for the vehicle.
21. On July 14, 2014, 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.
22. The hearing convened on August 28, 2014, in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Complainant appeared and represented himself. Attorney Kristina L. Culley represented Respondent. The record closed on September 12, 2014.

IV. CONCLUSIONS OF LAW

1. The 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. Tex. Occ. Code § 2301.604. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
6. Complainant proved by a preponderance of the evidence that the vehicle has a verifiable defect or condition that is covered by Respondent's express limited warranty issued for the vehicle.
7. Because Complainant reported the warrantable defect to a franchised dealer of Respondent during the period of Respondent's express limited warranty issued for the vehicle, Respondent has a continuing obligation to make any repairs necessary to resolve the recurring defective condition of the driver's seat frame. Tex. Occ. Code § 2301.603(b)(1).
8. The Department is authorized to order Respondent to perform any repairs necessary to cure the defective condition of the vehicle's driver's seat assembly. Tex. Occ. Code § 2301.204 and 43 Tex. Admin. Code § 215.208(e).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Respondent make any repairs necessary to conform Complainant's motor vehicle to the applicable express warranty, as described herein.

SIGNED November 3, 2014.



ANNE K. PEREZ
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES