

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0040 CAF**

ANGEL MUNOZ,
Complainant

v.

THOROUGHbred MOTORSports,
INC.,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

On October 6, 2014, Angel Munoz (“Complainant”) filed a petition seeking relief pursuant to Texas Occupations Code § 2301.204 for alleged warrantable defects in a motor vehicle manufactured by Thoroughbred Motorsports, Inc. (“Respondent”). Complainant sought to have the vehicle repaired. Based on the evidence, the complaint shall be dismissed for lack of jurisdiction.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The hearing in this case convened telephonically and the record was closed on January 9, 2015, before Hearings Examiner Edward Sandoval. Complainant, Angel Munoz, appeared and represented himself at the hearing. Wayne Tompkins, Vice President and General Manager, represented Respondent.

II. DISCUSSION

A. Applicable Law

The Texas Occupations Code provides that the 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.¹ The Occupations Code goes on to define an “owner” as a person entitled to enforce a manufacturer’s warranty with respect to a motor vehicle, and who: (A) purchased the vehicle at retail from a license holder; (B) is a lessor or lessee who purchased or leased the vehicle from a license holder; (C) is a resident of this state (Texas) and has registered the vehicle in this state; (D) purchased or leased the vehicle at retail and is an active duty member of the United States

¹ Tex. Occ. Code § 2301.204(a).

armed forces stationed in this state at the time a proceeding is commenced; or (E) is the transferee or assignee of a person under the above cited sections, is a resident of this state; and the person who registered the vehicle in this state.² For the purposes of both warranty performance issues and Lemon Law repurchase or replacement cases, the definition of owner is considered to be the same.³

B. Complainant's Evidence and Arguments

Complainant, a resident of Florida, purchased a 2013 Thoroughbred "Stallion" trike from Nutting Custom Trikes located in Afton, Oklahoma in April of 2014. Complainant found the vehicle by performing a Google search on the internet and decided to purchase it. Complainant purchased the used vehicle sight unseen. The vehicle had mileage of approximately 2,500 at the time of purchase. Complainant was told by the dealer that the vehicle still had an effective warranty. Complainant registered the vehicle in Florida and obtained a Florida license plate for it. Complainant has never been to Texas. Complainant filed his warranty performance complaint in the state of Texas because a representative of Nutting Trikes told him to contact the manufacturer (which is in Texas) for warranty issues. In addition, Complainant was told to contact Texas to file a complaint by a friend who is an attorney.

C. Respondent's Evidence and Arguments

Wayne Tompkins, Vice President and General Manager, testified for Respondent, the manufacturer of the vehicle. Respondent is located in Troup, Texas. Nutting Custom Trikes in Afton, Oklahoma is an authorized dealer for Respondent. The vehicle in question was originally purchased from Nutting by a third party who drove it for 2,342 miles. That individual traded in the vehicle back to Nutting who then sold the used vehicle to Complainant. The vehicle has a three year, 36,000 mile warranty which is still in effect. Respondent does not have any dealers in Florida where Complainant resides. In order for Complainant to have the vehicle repaired, he would have to take it to a dealer or get permission from Respondent to get it repaired at a non-authorized location. The vehicle is considered to be a three-wheeled motorcycle.

D. Analysis

The issue before the hearings examiner in the present case is whether the Texas Department of Motor Vehicles (TxDMV) has jurisdiction over Complainant's warranty performance complaint.

For purposes of the state's Lemon Law, the Texas Occupations Code § 2301.601(2) has defined an owner as a person entitled to enforce a manufacturer's warranty and who purchased it from a license holder; is a lessor or lessee who purchased or leased the vehicle from a license holder; is

² Tex. Occ. Code § 2301.601(2).

³ 43 TAC § 215.201(b).

a resident of this state and has registered the vehicle in this state; purchased or leased the vehicle at retail and is an active member or the armed forces stationed in this state at the time the proceeding is commenced; or, is the transferee or assignee of a person described by one of the provisions above and is a resident of the state and the person who registered the vehicle in this state. "License holder" is defined as a person who holds a license or general distinguishing number issued by the TxDMV board.⁴ In addition, Occupations Code § 2301.204 provides, in part, that the owner of a motor vehicle may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's warranty (warranty performance). Although § 2301.601(2) is found in subchapter M of the Code dealing with the Lemon Law, 43 TAC § 215.201 provides that for purposes of both warranty performance and Lemon Law complaints, the definition of owner found in § 2301.601(2) controls.

Complainant, a Florida resident, purchased the used vehicle from an Oklahoma dealer. The vehicle is registered in Florida and has a Florida license plate. Complainant did not buy or lease the vehicle from a Texas license holder, as required by Occupations Code § 2301.601(2)(A) or (B). In addition, he is not a resident of Texas as required by § 2301.601(2)(C) and (E). Finally, Complainant is not active duty military and stationed in Texas at the time the proceeding was commenced as required by Occupations Code § 2301.601(D). The only connection the Complainant or the vehicle has with Texas is the fact that the Respondent manufactured the vehicle in this state. Since Complainant has no contact with the state of Texas, is not a resident, did not purchase the vehicle in Texas, and did not register the vehicle in Texas, the Department has no jurisdiction over this complaint. As such, the complaint will be dismissed for lack of jurisdiction.

III. FINDINGS OF FACT

1. Complainant is a resident of Florida.
2. Complainant purchased a used 2013 Thoroughbred Motors Stallion Trike in April of 2014.
3. The vehicle was purchased from Nutting Custom Trikes, Respondent's authorized dealer, located in Afton, Oklahoma.
4. Complainant registered the vehicle in Florida and obtained Florida license plates for the vehicle.
5. Complainant filed a Lemon Law complaint with Texas Department of Motor Vehicles on October 6, 2014.

⁴ Tex. Occ. Code § 2301.002(18).

6. On December 9, 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.
7. The telephonic hearing on the jurisdictional issue convened and the record was closed on January 9, 2015, before Hearings Examiner Edward Sandoval. Complainant, Angel Munoz, appeared and represented himself. Wayne Tompkins, Vice President and General Manager, represented Respondent.

IV. CONCLUSIONS OF LAW

1. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
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. The Texas Department of Motor Vehicles (Department) does not have jurisdiction over this matter. Tex. Occ. Code § 2301.204 and §§ 2301.601-2301.613 (Lemon Law).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's Warranty Performance complaint is hereby **DISMISSED for lack of jurisdiction**.

SIGNED January 13, 2015



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