

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0351 CAF**

**ANTWAIN R. BURKS,  
Complainant**

v.

**GENERAL MOTORS LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

On July 30, 2015, Antwain R. Burks (“Complainant”) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in a motor vehicle manufactured by General Motors LLC (“Respondent”). Complainant sought to have the vehicle repurchased or replaced but did not appear at the hearing to provide testimony to support his complaint. Respondent filed a motion to dismiss the complaint based on Complainant’s non-appearance. Based on the circumstances, good cause exists to grant Respondent’s motion to dismiss the complaint.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

The hearing in this case convened and the record was closed on January 21, 2016, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Kevin Phillips, Business Resource Manager, appeared and represented Respondent. Also present to testify for Respondent were Kevin Brown, Field Service Engineer, and Anthony Jetter, Service Manager for Ancira-Winton Chevrolet.

On October 19, 2015, the Texas Department of Motor Vehicles, Office of Administrative Hearings (OAH) issued a Notice of Hearing to the parties advising them that a hearing was scheduled on Complainant’s Lemon Law complaint on January 13, 2016. A prehearing conference was conducted with the parties on December 14, 2015. During the prehearing conference, Respondent submitted a motion to change the hearing date due to a scheduling conflict. Complainant, who participated in the prehearing conference, agreed to the new hearing date. Pursuant to Order No. 2: Memorializing Prehearing Conference the hearing was rescheduled for January 21, 2016. Both the Notice and Order No. 2 were mailed via certified mail, return receipt requested, to Complainant at 10102 Ingram Rd., Apt. 3306, San Antonio, TX 78245. The return receipt for Order No. 2 was signed by Mike Noriega on December 17, 2015.

2015. Complainant did not appear at the hearing location at the scheduled time and date. Respondent moved for a dismissal of Complainant's petition.

## II. FINDINGS OF FACT

1. Complainant filed a Lemon Law complaint alleging defects in his 2013 Chevrolet Camaro on July 30, 2015.
2. On October 19, 2015, the staff of the Office of Administrative Hearings (OAH) timely mailed a Notice of Hearing by certified mail, return receipt requested, to Complainant's last known mailing address at 10102 Ingram Rd., Apt. 3306, San Antonio, TX 78245. The Notice of Hearing contained information regarding the date, time, and place of the hearing, the statutes involved, the legal authorities under which the hearing would be held, and the matters asserted.
3. The Notice of Hearing also informed the parties on page one (1) that their failure to appear will not prevent the hearings examiner from issuing a decision and order granting relief to an appearing party.
4. A Prehearing Conference was conducted on December 14, 2015, at which time the parties agreed to reschedule the hearing for January 21, 2016.
5. The hearing on the merits convened and the record was closed on January 21, 2016, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Kevin Phillips, Business Resource Manager, appeared and represented Respondent. Also present to testify for Respondent were Kevin Brown, Field Service Engineer, and Anthony Jetter, Service Manager for Ancira-Winton Chevrolet.
6. Respondent moved for dismissal of Complainant's Lemon Law complaint, since Complainant failed to appear to offer testimony.

## III. 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).
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. Procedures in the hearings, except where otherwise provided by the Department's rules or in the notice of hearing, shall be insofar as reasonably practicable in accordance with the Texas Rules of Civil Procedure applicable in district and county courts in civil actions heard before the court without a jury. 43 Tex. Admin. Code § 215.42.
6. A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing of which the party had notice. Tex. R. Civ. P. 165a.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED** for want of prosecution.

**SIGNED January 21, 2016**



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