

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0007 CAF**

**ELIAS R. CORTEZ,**  
**Complainant**

v.

**NISSAN NORTH AMERICA, INC.,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Elias R. Cortez (“Complainant”) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2013 Nissan Altima. Complainant asserts that the vehicle’s airbag light doesn’t work correctly and will intermittently illuminate when it’s supposed to be off. Nissan North America, Inc. (“Respondent”) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect, and Complainant is 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 and the record closed on December 17, 2015, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Adriana Cortez, daughter, in the hearing. Complainant, Elias Cortez, was also present to provide testimony. Respondent was represented by Anthony Panno, Dealer Technical Specialist. Lisa Watson was also present to provide Spanish interpretive services.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.606(d) provides that a “[a] proceeding under this subchapter [Subchapter M – Warranties: Rights of Vehicle Owners (Lemon Law)] 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.” If a vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant 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.” This section applies only if the Complainant raised his concern while the vehicle’s warranty was still in effect.

**B. Complainant's Evidence and Arguments**

Complainant purchased a new 2013 Nissan Altima from Nissan of Fort Worth in Fort Worth, Texas on September 13, 2013. The vehicle's mileage was 45 at the time of purchase.<sup>1,2</sup> Respondent's new vehicle limited bumper-to-bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 48,268. At this time, Respondent's basic warranty on the vehicle has expired.

Elias Cortez testified that the vehicle's airbag light doesn't work correctly. The light intermittently illuminates when it's not supposed to. He first noticed the problem a few days after purchasing the vehicle, but did not raise it as an issue with Respondent until more than a year after purchasing the vehicle.

Adriana Cortez, Complainant's daughter, is one of the primary drivers of the vehicle. In addition, she provided most of the testimony regarding Complainant's concern with the vehicle at the hearing.

Ms. Cortez testified that she noticed the issue with the airbag light intermittently illuminating improperly soon after purchasing the vehicle. However, at the time that she first noticed the issue she did not realize that the light was not working correctly. It was not until she did some research on the internet and read the owner's manual did she realize that the light was staying on when it was supposed to turn off.

Ms. Cortez testified that the first time that the vehicle was taken to the dealer for repair for the airbag light issue was on January 17, 2015. Complainant took the vehicle to Nissan of Fort Worth for the repair. He raised several concerns with the vehicle during this repair visit, including the airbag light issue. During this visit, the dealer's service technician performed a recall for the vehicle which required that the airbag sensor be reprogrammed.<sup>3</sup> Complainant was not aware of the recall, since he had not received the recall notice. The vehicle's mileage on this repair visit was 28,663.<sup>4</sup> The vehicle was in the dealer's possession for two days during this repair visit. Complainant was not provided with a rental or loaner vehicle while his vehicle was being repaired.

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<sup>1</sup> Complainant Ex. 1, Motor Vehicle Buyer's Order dated September 13, 2013.

<sup>2</sup> Complainant Ex. 2, Odometer Disclosure Statement dated September 13, 2013.

<sup>3</sup> Complainant Ex. 3, Repair Order dated January 17, 2015.

<sup>4</sup> *Id.*

Ms. Cortez testified that soon after the repair on January 17, 2015, she observed the vehicle's airbag light illuminated when it was supposed to be off. Complainant took the vehicle back to Nissan of Fort Worth for repair on January 31, 2015. However, the dealer's service technician was unable to duplicate the concern and did not find any diagnostic trouble codes (DTC's) on the vehicle's computer.<sup>5</sup> Complainant was advised that since the problem could not be duplicated, no repairs could be performed for the issue. The vehicle was in the dealer's possession for four days during this repair visit. Complainant was provided with a rental vehicle during this visit. The vehicle's mileage when it was turned over to the dealer on this occasion was 29,559.<sup>6</sup>

Ms. Cortez further testified that they were frustrated because nothing had been done to address their concern with the vehicle. As a result, they decided not to take the vehicle for further repair for the issue for several months. The problem began to occur more frequently as time passed, so they decided to return the vehicle to the dealer for repair. On July 20, 2015, Complainant took the vehicle to Nissan of Fort Worth again for repair. At this time the dealer's service technician replaced the vehicle's Occupant Classification System (OCS) sensors and control module for the passenger side seat.<sup>7</sup> Complainant was provided with a loaner vehicle for seven days during this repair visit. The mileage on the vehicle at the time of the repair was 41,119.<sup>8</sup>

The vehicle's airbag light continued to illuminate improperly after the July 2015 repair. As a result, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective September 1, 2015.<sup>9</sup> In addition, Complainant mailed a letter expressing his dissatisfaction with the vehicle to Respondent on August 21, 2015.<sup>10</sup>

Complainant was then contacted by Respondent's representative in order to schedule a final repair attempt on the vehicle. The final repair attempt took place on November 2, 2015, at Nissan of Fort Worth. Respondent's technician assigned to perform the final repair attempt could not duplicate the concern.<sup>11</sup> No further attempt to correct Complainant's concern has been done by Respondent.

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<sup>5</sup> Complainant Ex. 4, Repair Order dated January 31, 2015.

<sup>6</sup> *Id.*

<sup>7</sup> Complainant Ex. 5, Repair Order dated July 20, 2015.

<sup>8</sup> *Id.*

<sup>9</sup> Complainant Ex. 7, Lemon Law complaint signed August 21, 2015. Although the complaint was signed by Complainant on August 21, 2015, it was not received by Texas Department of Motor Vehicles until September 1, 2015, which is the effective date of the complaint.

<sup>10</sup> Complainant Ex. 6, Letter to Nissan Consumer Affairs dated August 21, 2015.

<sup>11</sup> Complainant Ex. 9, Repair Order dated November 2, 2015.

### C. Respondent's Evidence and Arguments

Anthony Panno, Dealer Technical Specialist, testified for Respondent. His current job duties include repairing vehicles that Respondent's authorized dealers have trouble repairing and to meet with customers to clarify issues with their vehicles. Mr. Panno has worked in the automotive industry for the past 29 years. He has been certified as a Honda Master Technician, a Dodge Master Technician, and a Nissan International Master Technician. He is an Automotive Service Excellence (ASE) Master Technician. He has worked with Respondent since 2005 and has worked as a dealer technical specialist for the past two (2) years.

Mr. Panno testified that he had not seen the vehicle prior to the hearing date. Robert Underwood, another dealer technical specialist, performed the final repair attempt on the vehicle on November 2, 2015. Mr. Panno also stated that the airbag status light should only be illuminated at start-up of the vehicle and then should only stay illuminated if there is a child or small adult in the passenger seat. At all other times the light should be off. When the vehicle is started the airbag status light will illuminate and then turn off. If there's a person sitting in the passenger's seat, the sensor may take up to 30 seconds to determine that there is a person in the seat and whether the person is sitting properly in order to turn off the sensor light and activate the airbag. If the passenger is fidgeting or not seated appropriately, the airbag status light may not properly read that there is an adult in the passenger seat and may indicate that the status light should stay on and deactivate the airbag. However, that should change if the passenger sits appropriately for a few seconds. If there is an average sized or above adult sitting in the passenger seat, the airbag status light should not stay illuminated during the drive.

Mr. Panno also testified that Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. In addition, a five (5) year or 60,000 mile powertrain warranty was provided for the vehicle.

### D. Analysis

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since Complainant's vehicle's mileage exceeded 24,000 in November of 2014, more than six months prior to the filing of the complaint on September 1, 2015.<sup>12</sup> In order to determine whether Complainant has a remedy under this section of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

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<sup>12</sup> Complainant Ex. 7, Lemon Law Complaint Form signed August 21, 2015.

Complainant's Lemon Law complaint and his and his daughter's testimony specify that Complainant was concerned with an intermittent issue with the vehicle's airbag status light. The airbag status light would sometimes stay illuminated after the initial start-up of the vehicle under circumstances in which it should have turned off, i.e., an adult passenger or no passenger in the passenger's side. The same issue occurred during an inspection of the vehicle at the time of hearing. As such, the hearings examiner must hold that Complainant has met his burden of proof to establish that there is a defect or condition in the vehicle that has not been repaired by Respondent or its authorized dealers. As such, Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Respondent's warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. Since the vehicle's mileage is now in excess of 48,000, the vehicle's bumper-to-bumper warranty has expired. However, this does not preclude Complainant from raising the issue of the improper performance of the vehicle's airbag status light, since Occupations Code § 2301.603(b) provides that a manufacturer shall make necessary repairs to conform a new motor vehicle to its express warranty, even after the warranty has expired, if the concern was raised during the term of the warranty. Complainant raised the issue regarding the airbag status light when the vehicle's mileage was 28,663 and the vehicle was still under warranty. Therefore, Respondent is still obligated to repair the vehicle's airbag status light.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the cause of the issue with the vehicle's airbag status light and perform any necessary repairs to conform the vehicle to the express warranty.

### III. FINDINGS OF FACT

1. Elias R. Cortez (Complainant) purchased a new 2013 Nissan Altima on September 13, 2013, with mileage of 45 from Nissan of Fort Worth, in Fort Worth, Texas.
2. The vehicle's mileage on the date of hearing was 48,268.
3. The manufacturer of the vehicle, Nissan North America, Inc. (Respondent), issued an express bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.
4. At the time of hearing the vehicle's bumper-to-bumper warranty had expired.
5. In early 2014, Complainant began experiencing intermittent issues with the vehicle's airbag status light illuminating improperly.

6. Complainant's vehicle was serviced by Respondent's authorized dealer, Nissan of Fort Worth, on the following dates for the airbag status light illuminating improperly:
  - a. January 17, 2015, at 28,663 miles;
  - b. January 31, 2015, at 29,559 miles; and
  - c. July 20, 2015, at 41,119 miles.
7. On January 17, 2015, the dealer's service technician performed a recall on the vehicle's airbag sensor and reprogrammed it as required by the recall.
8. On January 31, 2015, the dealer's service technician could not duplicate Complainant's concern.
9. On July 20, 2015, the dealer's service technician replaced the vehicle's Occupant Classification System (OCS) sensors and control module for the passenger side seat.
10. On September 1, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On November 2, 2015, Respondent performed a final repair attempt on the vehicle and could not duplicate the concern.
12. On October 28, 2015, 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.
13. The hearing in this case convened and the record closed on December 17, 2015, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Adriana Cortez, daughter, in the hearing. Complainant, Elias Cortez, was also present to provide testimony. Respondent was represented by Anthony Panno, Dealer Technical Specialist. Lisa Watson was also present to provide Spanish interpretive services.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 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 established by a preponderance of the evidence that the vehicle currently has a verifiable defect or condition that is covered by Respondent's warranty. 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.

### 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 **GRANTED**. Respondent is further **ORDERED** to determine the cause of the problem with the vehicle's airbag status light and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

**SIGNED December 22, 2015**

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