

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0080 CAF**

**ADRIENNE M. MARTIN,
Complainant**

v.

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

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Adrienne M. Martin (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2014 Nissan Sentra. Complainant asserts that she feels a vibration in the vehicle when the vehicle is stopped while in gear. 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 on February 19, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. Respondent was represented by Neal Barnes, Dealer Technical Specialist. The hearing concluded on February 19, 2016. The hearing record was closed on February 19, 2016, upon the receipt of documents requested from Respondent by the hearings examiner.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.204(a) 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

Complainant purchased a 2014 Nissan Sentra from Tom Peacock Nissan (Peacock) in Houston, Texas on May 30, 2014. The vehicle’s mileage was 8 at the time of purchase.¹ Respondent’s

¹ Complainant Ex. 1, Motor Vehicle Retail Installment Contract and Motor Vehicle Purchase Order dated May 30, 2014.

original bumper-to-bumper warranty provided coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent also provided a powertrain warranty for five (5) years or 60,000 miles. On the date of hearing the vehicle's mileage was 42,350. At this time, Respondent's bumper-to-bumper warranty for the vehicle has expired.

Complainant testified that she started feeling a vibration in the vehicle's steering wheel when the vehicle was in gear at a full stop after the vehicle had been driven about 2,000 miles. She felt that the vehicle was going to die on her on several occasions. No trouble lights illuminated and Peacock's service technicians could not find any problems with the vehicle regarding this issue.

Complainant took the vehicle to Peacock for repair for the vibration issue on October 23, 2014, at 10,507 miles;² October 29, 2014, at 11,076 miles;³ January 14, 2015, at 16,279 miles;⁴ January 28, 2015, at 17,367 miles;⁵ February 20, 2015, at 19,287 miles;⁶ and October 15, 2015 at 39,206 miles.⁷ On each occasion, Peacock's service technicians inspected the vehicle and could not find any diagnostic trouble codes (DTC's). Also, the technicians could not duplicate the vibration issue on any of the visits.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective October 28, 2015.⁸ She also mailed a letter to Respondent on October 22, 2015, informing them of her concerns with the vehicle.⁹

Complainant testified that she was contacted by Neal Barnes, Respondent's Dealer Technical Specialist, in November of 2015, in order for Respondent to perform an inspection of the vehicle. The inspection was performed on November 13, 2015, at Peacock. The vehicle's mileage at the time was 40,007.¹⁰ Complainant stated that some repairs were made during this repair visit. The technician adjusted the vehicle's main engine mount and wish bone mount.¹¹ Also, the vehicle's torque mount was replaced.¹²

Complainant testified that after the November 13, 2015, repairs, she did not feel the vibration in the vehicle immediately afterwards. However, the vibration returned after about a day.

² Complainant Ex. 2, Repair Order dated October 23, 2014.

³ Complainant Ex. 3, Repair Order dated October 29, 2014.

⁴ Complainant Ex. 4, Repair Order dated January 14, 2015.

⁵ Complainant Ex. 5, Repair Order dated January 28, 2015.

⁶ Complainant Ex. 6, Repair Order dated February 20, 2015.

⁷ Complainant Ex. 7, Repair Order dated October 15, 2015.

⁸ Complainant Ex. 8, Lemon Law complaint dated October 28, 2015. Although the complaint was signed by Complainant on October 22, 2015, it was not received by Texas Department of Motor Vehicles until October 28, 2015, which is the effective date of the complaint.

⁹ Complainant Ex. 9, Letter to Consumer Affairs, Nissan North America dated October 22, 2015.

¹⁰ Complainant Ex. 11, Repair Order dated November 13, 2015.

¹¹ *Id.*

¹² *Id.*

Complainant contacted Peacock again about the concern. However, she was informed by the dealer representative that nothing else could be done to the vehicle. She was informed that she should contact Respondent again. At that point, Complainant decided to continue with her Lemon Law complaint.

During the test drive taken by the hearings examiner and the parties, Complainant testified that she was able to feel the vibration in the steering wheel at several stops.

C. Respondent's Evidence and Arguments

Neal Barnes, Dealer Technical Specialist, testified for Respondent. He is employed by Respondent to provide technical support to automobile dealers with recurring or unresolved issues with vehicles.

Mr. Barnes testified that he was contacted by one of Respondent's consumer affairs representative and asked to perform an inspection on Complainant's vehicle. The representative scheduled an appointment on November 13, 2015, for Mr. Barnes to meet Complainant at Peacock in order to perform the vehicle inspection. Mr. Barnes spoke to Complainant about her concerns with the vehicle. Mr. Barnes then checked the vehicle. He did not find any diagnostic trouble codes (DTC's); however, he verified a vibration in the steering wheel. He checked the vehicle's engine mounts which he thought might be causing the vibration. Mr. Barnes stated that the engine mounts are designed to dampen engine vibration and are bolted to the frame. If the mounts are bolted off-center, the mounts may not dampen the vibration adequately. Mr. Barnes determined that one of the mounts was torn and needed to be replaced. Mr. Barnes felt that by replacing the engine mount, Complainant's concerns would be resolved. He also felt that by replacing the mount, he had done everything that could be done to repair the vehicle. He felt that the severity of the vibration was affected by the damaged mount. Mr. Barnes also stated that the vehicle's engine does create some vibration and that this is a characteristic of the vehicle.

D. Analysis

Complainant's Lemon Law complaint indicated that the vehicle had three issues: the front inner trim wouldn't stay secure, the left inner pillar wouldn't stay secure, and the vehicle's steering wheel vibrating when the vehicle was in gear and at a full stop. However, during the hearing, Complainant indicated that the first two issues had been addressed and she was satisfied with the repairs. The only issue to be addressed in the hearing and decision was the vibration issue.

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. Texas Occupations Code § 2301.204.

The evidence presented in the hearing indicates that there is a vibration in the steering wheel that only seems to occur when the vehicle is in gear and at a dead stop. Complainant has raised the concern several times and Respondent has not been able to repair the issue.

Respondent's basic warranty applicable to Complainant's vehicle provided coverage for three (3) years or 36,000 miles whichever came first. However, this warranty is no longer in effect. Since the concern raised by Complainant first occurred prior to the expiration of the warranty, Respondent is still obligated to determine what is causing the vibration and to repair the vehicle. Texas Occupations Code § 2301.603.

Respondent's powertrain warranty provides coverage for five (5) years or 60,000 miles from the date of original purchase, whichever comes first. This warranty is still applicable. Respondent is liable to repair the vehicle whenever there is any other problem covered by the powertrain warranty.

Complainant's request for repair relief is granted.

III. FINDINGS OF FACT

1. Adrienne M. Martin (Complainant) purchased a 2014 Nissan Sentra on May 30, 2014, from Tom Peacock Nissan (Peacock) in Houston, Texas with mileage of 8 at the time of purchase.
2. The vehicle's mileage on the date of hearing was 42,350.
3. The manufacturer of the vehicle, Nissan North America, Inc. (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles and a powertrain warranty for five (5) years or 60,000 miles.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle was no longer in effect.
5. After driving the vehicle for approximately 2000 miles after purchasing it, Complainant began to feel a vibration from the front of the vehicle through the vehicle's steering wheel when the vehicle was stopped while in gear.
6. Complainant's vehicle was serviced by Respondent's authorized dealer on the following dates because of Complainant's concerns regarding the vibration she felt in the vehicle:

- a. October 23, 2014, at 10, 507 miles;
 - b. October 29, 2014, at 11,076 miles;
 - c. January 14, 2015, at 16,279 miles;
 - d. January 28, 2015, at 17,367 miles;
 - e. February 20, 2015, at 19,287 miles; and
 - f. October 15, 2015, at 39,206 miles.
7. The dealer's service technicians could not duplicate Complainant's concerns during any of the repair visits listed in Finding of Fact #6, so no repairs were ever performed for the vibration issue.
 8. On October 28, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 9. Respondent performed a final repair attempt on the vehicle on November 13, 2015. The mileage on the vehicle at this time was 40,007.
 10. During the final repair attempt, the vehicle's engine mount and wish bone mount were adjusted and the torque mount was replaced.
 11. There is still a vibration in the steering wheel when the vehicle is in gear and at a dead stop.
 12. On December 7, 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 on February 19, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. Respondent was represented by Neal Barnes, Dealer Technical Specialist. The hearing concluded on February 19, 2016. The hearing record was closed on February 19, 2016, upon the receipt of documents requested from Respondent by the hearings examiner.

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 has proved 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 vibration in the vehicle's steering wheel and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

SIGNED February 26, 2016



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