

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0173 CAF**

**OLIVER A. MONTEJO,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

On February 10, 2016, Oliver A. Montejo (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 July 21, 2016, in El Paso, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Tim Barry, District Manager for After-Sales, appeared and represented Respondent.

On April 27, 2016, 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 July 21, 2016, 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. The Notice was mailed via certified mail, return receipt requested, to Complainant at 14633 Ava Leigh Ave., El Paso, TX 79938. The Notice was returned to OAH by the U.S. Postal Service as not being able to be forwarded. 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 2015 Chevrolet Colorado on February 10, 2016.
2. On April 27, 2016, 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 14633 Ava Leigh Ave., El Paso, TX 79938. 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. The hearing on the merits convened and the record was closed on July 21, 2016, in El Paso, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Tim Barry, District Manager for After-Sales, appeared and represented Respondent.
5. 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 July 25, 2016



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