

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0240 CAF**

**RAUL RODRIGUEZ,  
Complainant**

v.

**GULF STATES TOYOTA, INC.,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

On April 15, 2016, Raul Rodriguez (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 Gulf States Toyota, Inc. (Respondent). Complainant sought to have the vehicle repurchased or replaced and appeared at the hearing held on August 3, 2016, to provide testimony to support his complaint. The hearing was continued based on the parties indicating that they would work on a settlement of the complaint. Complainant did not wish to participate in the post-hearing conference scheduled for September 14, 2016. Based on the circumstances, good cause exists to dismiss the complaint.

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

The hearing in this case convened on August 3, 2016, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant and his wife, Yolanda Rodriguez, appeared and testified at the hearing. Dan Lee, Technical Services Manager, appeared and represented Respondent. During the course of the hearing, the parties began discussing the possibility of repairing the complained of vehicle and, if Respondent was unable to do so, then possibly replacing it. The parties decided that they wanted to work toward a settlement and to discuss the issue in a post-hearing telephonic conference scheduled for September 14, 2016.

On September 14, 2016, Complainant was contacted by the staff of the Office of Administrative Hearings (OAH) in order to participate in the post-hearing conference. Complainant indicated to the staff that he is dealing with medical issues and that he was not going to participate in the post-hearing conference. He also indicated that he did not want to reschedule the post-hearing conference.

On June 10, 2016, the OAH issued a Notice of Hearing to the parties advising them that a hearing was scheduled on Complainant's Lemon Law complaint on August 3, 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 215 Blazing Star Trl., Burleson, Texas 76028. The Notice was received by Complainant.

## II. FINDINGS OF FACT

1. Complainant filed a Lemon Law complaint alleging defects in his 2016 Toyota Tundra on April 15, 2016.
2. On June 10, 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 mailing address at 215 Blazing Star Trl., Burleson, Texas 76028. 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 on August 3, 2016, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant appeared and testified at the hearing. Dan Lee, Technical Services Manager, appeared and represented Respondent.
5. Testimony was taken from the parties and a post-hearing conference was scheduled and agreed to by the parties.
6. On September 14, 2016, the date of the post-hearing conference, Complainant indicated that he was not going to participate in the conference because of medical issues and that he did not want to reschedule it.

## 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 September 14, 2016**



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