

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0241 CAF**

**APRIL DE HOYOS,  
Complainant**

**v.**

**KIA MOTORS AMERICA, INC.,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

On April 14, 2016, April De Hoyos (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 Kia Motors America, Inc. (Respondent). Complainant sought to have the vehicle repurchased or replaced but did not appear at the hearing to provide testimony to support her complaint. Based on the circumstances, good cause exists to dismiss the complaint for want of prosecution.

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

The hearing in this case was scheduled for October 5, 2016, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Neither party appeared at the hearing.

On July 11, 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 October 5, 2016. A prehearing conference was conducted with the parties on September 23, 2016. During the prehearing conference, Complainant indicated that she had been provided with an offer from Respondent in order to settle the complaint and was considering the offer. Complainant was informed to notify the Office of Administrative Hearings (OAH) if she accepted the settlement offer in order to dismiss her complaint. Complainant never contacted OAH. Neither Complainant nor Respondent appeared at the hearing location at the scheduled time and date. The staff of OAH attempted to contact Complainant to determine whether she accepted the settlement offer, but were unable to reach her.

## II. FINDINGS OF FACT

1. Complainant filed a Lemon Law complaint alleging defects in her 2013 Kia Soul on April 14, 2016.
2. On July 11, 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 2626 Babcock Rd., Apt. 2204, San Antonio, TX 78229. 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 was scheduled for October 5, 2016, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Neither party appeared for the hearing.

## III. CONCLUSIONS OF LAW

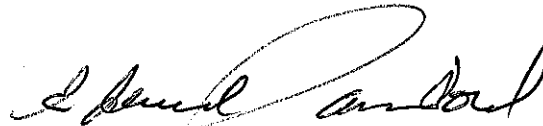
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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 October 6, 2016**



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