

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0186966 CAF**

DENISE RIGSBY,
Complainant

v.

FCA US LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

On May 23, 2018, Denise Rigsby (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 FCA US LLC (Respondent). Complainant sought to have the vehicle repurchased or replaced but did not appear at the hearing to provide testimony to support her 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 September 27, 2018, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Jan Kershaw, Early Resolution Case Manager, appeared and represented Respondent. Also present to testify for Respondent was Torri Piechowski, Technical Advisor. Jason Gonzalez, Auditor for the Texas Department of Motor Vehicles, was present as an observer.

On July 2, 2018, the Texas Department of Motor Vehicles, Office of Administrative Hearings (OAH) issued Order No. 1: Notice of Hearing and Procedures to the parties advising them that a hearing was scheduled on Complainant's Lemon Law complaint on September 5, 2018. Order No. 1 was mailed via certified mail, return receipt requested, to Complainant at 10550 Valley Forge Dr., Apt. 226L, Houston, TX 77042. The return receipt for Order No. 1 was signed by Denise Rigsby and received by OAH on July 19, 2018. A prehearing conference was conducted with the parties on August 14, 2018, at which time the hearing date was confirmed, the parties indicated that they did not have a conflict with the hearing date, and that they were prepared to proceed to hearing. On August 30, 2018, Complainant filed a Motion for Continuance which Respondent did not object to and which was granted. That same day Order No. 3: Granting Motion for Continuance and Rescheduling Hearing was issued which informed the parties that

the hearing was rescheduled for September 27, 2018. Order No. 3 was mailed via USPS to Complainant at 10550 Valley Forge Dr., Apt. 226L, Houston, TX 77042. Complainant did not appear at the hearing location at the scheduled time and date. On the date of hearing, the staff of OAH made several attempts to contact Complainant via telephone and email, but Complainant did not respond. Respondent moved for a dismissal of Complainant's petition.

II. FINDINGS OF FACT

1. On May 23, 2018, Complainant filed a Lemon Law complaint alleging manufacturer defects in her 2017 Jeep Compass.
2. On July 2, 2018, the staff of the Office of Administrative Hearings (OAH) mailed Order No. 1: Notice of Hearing and Procedures by certified mail, return receipt requested, to Complainant's last known mailing address at 10550 Valley Forge Dr., Apt. 226L, Houston, TX 77042.
3. Order No. 1 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.
4. On page one (1) of Order No. 1 the parties were informed that their failure to appear will not prevent the hearings examiner from issuing a decision and order granting relief to an appearing party.
5. A prehearing conference was conducted on August 14, 2018, at which time the parties agreed they were prepared to proceed to hearing on September 5, 2018.
6. On August 30, 2018, Complainant filed a Motion for Continuance asking that the hearing be rescheduled.
7. On August 30, 2018, Order No. 3: Granting Motion for Continuance and Rescheduling Hearing was issued by the hearings examiner informing the parties that the hearing was rescheduled for September 27, 2018.
8. The hearing on the merits in this case convened and the record was closed on September 27, 2018, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Jan Kershaw, Early Resolution Case Manager, appeared and represented Respondent. Also present to testify for Respondent was Torri Piechowski, Technical Advisor. Jason Gonzalez, Auditor for the Texas Department of Motor Vehicles, was present as an observer.

9. 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 October 1, 2018



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