

**KENDRIC CEASER,**  
**Complainant**

**v.**

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

**and**

**NISSAN-INFINITI LT LESSOR,**  
**Intervenor**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

On November 27, 2018, Kendric Ceaser (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 or distributed by Nissan North America, Inc. (Respondent) and leased by Nissan-Infiniti LT Lessor (Intervenor). Complainant sought to have the vehicle repurchased or replaced under the Lemon Law but did not appear at the hearing at the scheduled time in order to provide testimony to support his complaint. At the hearing, 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.

The hearing in this case convened and the record was closed on June 7, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Rafael Mariduena, Dealer Technical Specialist, appeared for Respondent. Intervenor did not appear at the hearing.

On February 1, 2019, the staff of the 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 for May 15, 2019. The notice also gave 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 5022 Bricker St., Houston, Texas 77033. The notice was also sent to Complainant via email at the same time. A signed return receipt from Complainant was not received by OAH.

Complainant participated in a prehearing conference on February 21, 2019, at which time the Hearings Examiner advised the parties, including Complainant, of the hearing date, time, and location. On April 4, 2019, Respondent filed a motion requesting a continuance in the matter to which Complainant did not object. On April 12, 2019, the hearings examiner issued Order No. 3: Granting Motion for Continuance and Scheduling Hearing which advised the parties that the hearing had been rescheduled for June 7, 2019. Order No. 3 was mailed to the parties via USPS and was also emailed to the parties.

## II. FINDINGS OF FACT

1. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on November 27, 2018, alleging the existence of a defect or nonconformity in his 2018 Infiniti Q50 which has not been repaired by Respondent or its agents.
2. On February 1, 2019, the staff of the Office of Administrative Hearings (OAH) timely mailed a Notice of Hearing by certified mail, return receipt requested, and by email to Complainant's mailing address at 5022 Bricker St., Houston, Texas 77033. 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 two (2) that their failure to appear will not prevent the hearings examiner from issuing a decision and order granting relief to an appearing party.
4. Order No. 3: Granting Motion for Continuance and Scheduling Hearing was issued by the hearings examiner on April 12, 2019, advising the parties that the hearing date had been rescheduled to June 7, 2019.
5. Order No. 3 was mailed to the parties via USPS and was emailed to the parties.
6. The hearing on the merits convened on June 7, 2019, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing.

7. At the time of hearing, Respondent moved for a dismissal of the Lemon Law complaint.
8. Pursuant to Respondent's motion described in Findings of Fact #7, the Hearings Examiner dismissed the complaint.

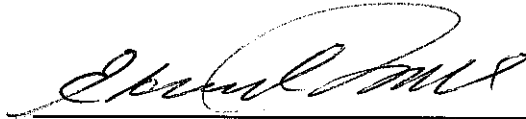
### III. CONCLUSIONS OF LAW

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 June 14, 2019**

A handwritten signature in black ink, appearing to read "Edward Sandoval", is written over a horizontal line.

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