

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-004279 CAF**

**JAMIE LEMONS,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

On December 18, 2020, Jamie Lemons (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in a motor vehicle manufactured or distributed by Nissan North America, Inc. (Respondent). Complainant sought to have the subject vehicle repaired 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 via Microsoft Teams and the record was closed on November 30, 2021, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Jan Kershaw, Early Resolution Case Manager, and Stuart Ritchey, Technical Advisor, appeared for Respondent.

On May 25, 2021, the staff of the Office of Administrative Hearings (OAH) issued a Notice of Hearing to the parties advising them that the hearing on the merits was scheduled on Complainant's Warranty Performance complaint for July 20, 2021. 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 1271 Sadler Dr., Apt. 7108, San Marcos, Texas 78666. The Notice was also sent to Complainant via email at the same time.

On June 28, 2021, Complainant filed a Motion for Continuance of the hearing due to her illness. The hearings examiner granted the Motion in Order No. 2: Granting Motion for Continuance and

Scheduling Hearing issued on June 29, 2021. In the order the hearings examiner rescheduled the hearing on the merits for October 26, 2021, at 9:00 a.m. in Austin, Texas.

On October 4, 2021, the parties participated in a prehearing conference at which time Respondent's representative requested a continuance of the hearing due to the unavailability of Respondent's primary witness who was scheduled to be off work on October 26, 2021, the date of hearing. The hearings examiner granted the continuance request and rescheduled the hearing for November 30, 2021, at 9:00 a.m. in Austin, Texas.

On October 22, 2021, the hearings examiner issued Order No. 4: Changing Hearing Format in which he advised the parties that the hearing on the merits was being changed from an in person hearing in Austin to a Microsoft Teams meeting because Complainant had moved to Florid for her job. The hearings examiner indicated in the order that the hearing date and time remained the same.

On November 30, 2021, Complainant failed to appear for the hearing and Respondent filed a Motion to Dismiss the Lemon Law complaint.

II. FINDINGS OF FACT

1. Complainant filed a Warranty Performance complaint on December 18, 2020, alleging manufacturing defects in her 2018 Jeep Cherokee which had not been repaired.
2. On May 25, 2021, 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 1271 Sadler Dr., Apt. 7108, San Marcos, Texas 78666. 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 would not prevent the hearings examiner from issuing a decision and order granting relief to an appearing party.
4. On June 28, 2021, the hearings examiner issued Order No. 2: Granting Motion for Continuance and Scheduling Hearing in which he advised the parties that Complainant's Motion for Continuance due to her illness was granted and that the hearing on the merits was rescheduled for October 26, 2021, at 9:00 a.m. in Austin, Texas.
5. On October 4, 2021, the hearings examiner conducted a prehearing conference during which Respondent's representative requested a continuance of the hearing due to the unavailability of their primary witness.

6. During the prehearing conference described in Findings of Fact #5, the parties agreed to a new hearing date of November 30, 2021, at 9:00 a.m. in Austin, Texas.
7. On October 22, 2021, the hearings examiner issued Order No. 4: Changing Hearing Format in which the hearings examiner advised the parties that the hearing on the merits was being changed from in person to Microsoft Teams due to Complainant's relocation to Florida. However, the hearing time and date remained unchanged.
8. The hearing on the merits convened via Microsoft Teams on November 30, 2021, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing.
9. Since Complainant failed to appear to offer testimony, the Hearings Examiner dismissed the complaint pursuant to Respondent's motion.

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 § 2301.204 is hereby **DISMISSED** for want of prosecution.

SIGNED November 30, 2021

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**