

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0012259 CAF**

**JOSHUA and AMANDA SEGOVIA,
Complainants**

v.

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

§
§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Joshua and Amanda Segovia (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in their vehicle manufactured by Nissan North America, Inc. (Respondent). A preponderance of the evidence does not show that the Complainant's vehicle qualifies for warranty repair relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on January 18, 2023, in El Paso, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). The Complainants appeared and represented themselves. Respondent appeared through Arbitration Specialist Alice Burks. The hearing concluded, and the record closed the same day.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.³

The Lemon Law statute only applies to new motor vehicles with warrantable defects (defects covered by warranty) that create a serious safety hazard or substantially impair the vehicle's use or value. A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).⁴ If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.⁵

The Warranty Performance Law applies to both new and used vehicles with any warrantable defects. Both the Lemon Law and the Warranty Performance Law require prior notice of the defect to the respondent to qualify for relief.⁶ In this case, the Complainants are seeking reimbursement for the repair of alleged warrantable defects.

A. Warranty Repair Relief

A vehicle may qualify for warranty repair relief if all of the following conditions are met:

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Tex. Occ. Code § 2301.604.

⁵ 43 Tex. Admin. Code § 215.208(e).

⁶ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.202(b)(3).

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”⁷
- 2) the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration;⁸ and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.⁹

B. Burden of Proof

The Complainants have the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.¹⁰ That is, the Complainants must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.¹¹

C. The Lemon Law Complaint Identifies the Relevant Issues in the Case

The complaint filed with the Department identifies the relevant issues to address in this case. The complaint must state “sufficient facts to enable the [D]epartment and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”¹² However, the parties may expressly or impliedly consent to hearing issues not included in the complaint or pleadings.¹³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.¹⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.¹⁵

⁷ Tex. Occ. Code § 2301.204(a).

⁸ Tex. Occ. Code § 2301.204(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

⁹ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

¹⁰ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

¹¹ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹² 43 Tex. Admin. Code § 215.202(a)(3), (b)(1).

¹³ 43 Tex. Admin. Code § 215.42; Tex. R. Civ. P. 67.

¹⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App. – San Antonio 1953, writ ref’d).

¹⁵ *See Tex. Gov’t Code* §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

III. DISCUSSION

A. Summary of Complainants' Evidence and Arguments

On January 21, 2021, the Complainants purchased a used 2017 Nissan NV200 from Lone Star Auto Center, an independent dealer, in Spring, Texas. The vehicle had 29,532 miles on the odometer at the time of purchase.¹⁶ The vehicle was purchased "AS IS." However, the vehicle's limited warranty provided powertrain coverage for 60 months or 60,000 miles, whichever occurred first.¹⁷

On April 13, 2022, the Complainants filed a complaint with the Department alleging that the vehicle lost power while accelerating and emitted white smoke. On or about April 19, 2022, the Department sent a copy of the complaint to Respondent, providing written notice of the alleged defects.

In relevant part, the Complainants took the vehicle for repair of the alleged issues as follows:

Date	Miles	Issue	Repair/Recommendation
09/07/2021	39,249	Losing power; would not accelerate past 20 mph	Catalytic converter replaced by Respondent
09/23/2021	46,730	Losing power; would not accelerate past 30-40 mph; emitting white smoke	Respondent recommended engine replacement
05/25/2022	46,744	Same as above	Engine and transmission replaced by local mechanic
06/01/2022	46,788	Losing power; difficulty accelerating	Catalytic converter for new engine replaced by Respondent

In February 2021, shortly after purchasing the vehicle, the Complainants drove the vehicle from Spring, Texas, to El Paso, Texas. During the drive, the Complainants noticed that the vehicle began smoking. On approximately February 12, 2021, the Complainants took the vehicle to a local

¹⁶ Complainants' Ex. 3.

¹⁷ Respondent's Ex. 5.

mechanic for inspection. The mechanic advised that there was sludge in the engine oil. The mechanic recommended changing the oil every 1,000 miles to clean out the sludge.

The Complainants had the oil changed every 1,000 miles for the first 3,000 miles they drove the vehicle. The oil was then changed every 3,000 miles. The Complainants had the oil changed before they drove the vehicle to El Paso. The second oil change occurred on February 22, 2021, at 30,360 miles. The third oil change occurred on March 15, 2021, at approximately 31,000 miles. The vehicle then started losing power and would not accelerate beyond 20 miles per hour. This occurred every time the vehicle was driven. The Complainants took the vehicle to a Nissan dealer in El Paso. The catalytic converter was replaced by Nissan on September 7, 2021. The vehicle's mileage was 39,249.

Less than one month later, the vehicle began losing power again, and white smoke emitted from vehicle. The vehicle would not accelerate beyond 30-40 miles per hour. On September 23, 2021, the Complainants took the vehicle back to Nissan. The mileage was 46,730. Nissan advised that the engine needed to be replaced.

The Complainants had the engine replaced by a local mechanic on May 25, 2022. The Complainants paid for the replacement. The vehicle mileage was 46,744. After the engine replacement, the vehicle began losing power again. The Complainants took the vehicle to a local mechanic who took the vehicle to Nissan. On June 1, 2022, Nissan replaced the catalytic converter for the new engine. The vehicle mileage was 46,788. The Complainants were also told that the vehicle's transmission needed to be replaced. The Complainants paid for the transmission to be replaced by a local mechanic. The vehicle has operated normally since the above-listed repairs were made.

The Complainants spoke with Ms. Burks prior to the engine replacement. Ms. Burks asked to schedule a vehicle inspection. However, the Complainants advised that they knew what the vehicle needed and were handling things on their own. They also advised that they would be filing a Lemon Law complaint.

The Complainants argue that the replacement of the vehicle's engine and transmission were caused by a manufacturing defect and should have been covered by the powertrain warranty. They are seeking \$10,058.75 as reimbursement for replacement of the vehicle's engine and transmission.¹⁸

B. Vehicle Inspection

The vehicle was not present for inspection at the hearing. The Complainants advised that they no longer had any issues with the vehicle's performance since the repairs.

C. Summary of Respondent's Evidence and Arguments

Respondent argues that the problems with the vehicle were not due to a warrantable manufacturing defect but, rather, due to improper maintenance. According to the CarFax report for the vehicle, the first oil change for the vehicle occurred at 27,034 miles.¹⁹ However, the owner's manual recommends having the oil changed every 5,000 miles or 6 months, whichever occurs first.²⁰ In addition, the previous owner took the vehicle in for service at 29,419 miles because the "check engine" light was activated and the vehicle was running rough. The vehicle was inspected and found to have sludge in the oil. An engine replacement was recommended, but the previous owner declined the repair and later sold the vehicle.²¹ Complainants purchased the vehicle shortly thereafter.

Respondent also argues that Complainants failed to provide written notice of any alleged defects prior to the expiration of the vehicle's powertrain warranty. Ms. Burks testified that the vehicle's powertrain warranty expired on March 29, 2022. She confirmed that the powertrain warranty included coverage for the engine and transmission. However, she pointed out that Respondent did not receive written notice of any alleged defects until April 19, 2022, after the

¹⁸ Complainants' Ex. 1.

¹⁹ Respondent's Ex. 1.

²⁰ Respondent's Ex. 3.

²¹ Respondent's Ex. 2.

powertrain warranty had expired. Respondent only received notice when the Lemon Law complaint was received.

Respondent further argues that since the Complainants had the engine replaced, they were made whole by the repair. Although Nissan replaced the catalytic converters for the original and replaced engines, Nissan was not aware that there was sludge in the engine oil.

Ms. Burks also testified that she contacted the Complainants to schedule a vehicle inspection prior to the engine replacement. However, the Complainants advised that they would have the engine replaced. She told them that if they did so, Respondent would not have any further involvement. The Complainants disconnected the call. Ms. Burks stated that the Complainants did not tell her they intended to seek reimbursement for the repairs.

D. Analysis

The Complainants had the burden of proof to show that the subject vehicle qualified for warranty repair relief. To qualify for relief, the Complainants must prove the required elements by a preponderance of the evidence. Failure to prove even one of the required facts, causes the vehicle to be ineligible for relief. Based on the evidence presented, the Complainants failed to establish the facts necessary for warranty repair relief.

First, the Complainants failed to prove that the vehicle had a “defect. . . covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the vehicle.”²² The vehicle’s powertrain warranty provided coverage for “any repairs needed to correct defects in materials or workmanship” and included coverage for components of the vehicle’s engine and transmission.²³ However, the warranty did not cover damage, failures, or corrosion resulting from or caused by “[f]ailure to operate the vehicle in accordance with the Owner’s Manual.”²⁴

²² Tex. Occ. Code § 2301.204(a).

²³ Respondent’s Ex. 5.

²⁴ *Id.*

The Owner's Manual recommended having the oil changed every 5,000 miles or 6 months, whichever occurred first.²⁵ However, the first oil change for the vehicle occurred at 27,034 miles.²⁶ At 29,419 miles, the vehicle was found to have sludge in the oil and an engine replacement was recommended. Because the vehicle did not receive the proper maintenance, it is more likely than not that the issues with the vehicle's engine were not due to a manufacturing defect but, rather, due to improper maintenance. Therefore, the vehicle's engine problems were not a warrantable defect covered by the powertrain warranty and do not qualify for relief.

Second, the Complainants failed to provide written notice of the alleged defects to Respondent prior to the warranty's expiration.²⁷ The vehicle's powertrain warranty provided coverage for 60 months or 60,000 miles, whichever occurred first.²⁸ The warranty expired on March 29, 2022. But Respondent did not receive written notice of any alleged defects until April 19, 2022, after the powertrain warranty had expired. Notice of the alleged defects only occurred when the Lemon Law complaint was received.

Although the Complainants filed a complaint with the Department specifying the vehicle's alleged defects,²⁹ proof of this element alone is insufficient to sustain the Complainants' burden. Because the Complaints failed to establish all the facts necessary for warranty repair relief, their request for relief is denied.³⁰

IV. FINDINGS OF FACT

1. On January 21, 2021, Joshua and Amanda Segovia (Complainants) purchased a used 2017 Nissan NV200 from Lone Star Auto Center, an independent dealer, in Spring, Texas.

²⁵ Respondent's Ex. 3.

²⁶ Respondent's Ex. 1.

²⁷ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1), (3).

²⁸ Respondent's Ex. 5.

²⁹ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

³⁰ It should be noted, however, that even if the Complainants had proven all the elements necessary for relief, warranty repair is the only remedy available pursuant to 43 Texas Administrative Code § 214.202(b), which is titled, "Warranty performance complaints (repair-only relief)." Complainants would not be entitled to reimbursement for any repairs.

The vehicle was manufactured by Nissan North America, Inc. (Respondent). The vehicle had 29,532 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provided powertrain coverage for 60 months or 60,000 miles, whichever occurred first.
3. In part, the subject vehicle's warranty provided coverage for any repairs needed to correct defects in materials or workmanship and included coverage for components of the vehicle's engine and transmission.
4. The warranty did not cover damage, failures, or corrosion resulting from or caused by failure to operate the vehicle in accordance with the Owner's Manual.
5. The Complainants took the vehicle for repair as shown below:

Date	Miles	Issue	Repair/Recommendation
09/07/2021	39,249	Losing power; would not accelerate past 20 mph	Catalytic converter replaced by Respondent
09/23/2021	46,730	Losing power; would not accelerate past 30-40 mph; emitting white smoke	Respondent recommended engine replacement
05/25/2022	46,744	Same as above	Engine and transmission replaced by local mechanic
06/01/2022	46,788	Losing power; difficulty accelerating	Catalytic converter for new engine replaced by Respondent

6. The Complainants paid \$10,058.75 for replacement of the vehicle's engine and transmission.
7. On April 13, 2022, the Complainants filed a complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle was losing power while accelerating and emitting white smoke.
8. On or about April 19, 2022, written notice of the alleged defects was provided to Respondent.
9. On June 14, 2022, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
10. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.

11. On January 18, 2023, a hearing on the merits was convened in El Paso, Texas, before OAH Chief Hearings Examiner Bennie Brown. The Complainants appeared and represented themselves. Respondent appeared through Arbitration Specialist Alice Burks. The hearing concluded, and the record closed the same day.
12. The Owner's Manual for the subject vehicle recommended having the oil changed every 5,000 miles or every 6 months, whichever occurred first.
13. The vehicle's first oil change occurred at 27,034 miles.
14. At 29,419 miles, sludge was found in the vehicle's engine oil. An engine replacement was recommended, but the previous owner declined the repair.
15. The engine oil sludge was not due to a warrantable manufacturing defect but due to improper maintenance.
16. The vehicle's powertrain warranty expired on March 29, 2022, and was not in effect at the time of the hearing.
17. Respondent did not receive written notice of any alleged defects until April 19, 2022, after the powertrain warranty had expired.
18. The vehicle operated normally after the engine and transmission replacements.

V. CONCLUSIONS OF LAW

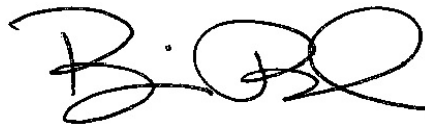
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A hearings examiner with the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. The Complainants filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.
4. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. The Complainants bear the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).

6. The Complainants failed to show, by a preponderance of the evidence, that the vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code § 2301.204(a).
7. The Complainants failed to show, by a preponderance of the evidence, that written notice of the alleged defects was provided to Respondent prior to the warranty's expiration. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1), (3).

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.204 is **DISMISSED**.

SIGNED March 15, 2023

A handwritten signature in black ink, appearing to read 'B. Brown', written over a horizontal line.

**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**