

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 20-0014243 CAF**

**ROQUE BARRIOS LOPEZ,**  
**Complainant**

v.

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

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

On July 28, 2020, Roque Barrios Lopez (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 vehicle repaired but did not appear at the hearing to provide testimony to support his 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 telephonically and the record was closed on January 14, 2021, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing. Jesse Juan, Arbitration Specialist, appeared for Respondent.

On November 12, 2020, 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 Warranty Performance complaint for January 14, 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 106 Kiowa Trail, Lockhart, Texas 78644. The notice was also sent to Complainant via email at the same time. In addition, Complainant's representative participated in a prehearing conference on December 14, 2020, at which time the Hearings Examiner advised the representative of the hearing date, time, and location.

## **II. FINDINGS OF FACT**

1. Complainant filed a Warranty Performance complaint on July 28, 2020, alleging defects in his 2017 Nissan Pathfinder which had not been repaired.
2. On November 12, 2020, 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 106 Kiowa Trail, Lockhart, Texas 78644. 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. The hearing on the merits convened telephonically on January 14, 2021, before Hearings Examiner Edward Sandoval. Complainant did not appear and was not represented at the hearing.
5. 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 January 14, 2021**



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