

TEXAS DEPARTMENT OF MOTOR VEHICLES

CASE NO. 21-0001722 CAF

**JENNIFER MCGUIRE,
Complainant**

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BEFORE THE OFFICE

v.

OF

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

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jennifer McGuire (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2018 Nissan Titan XD. Complainant asserts that the vehicle has defects or nonconformities which have caused the engine to twice fail. Nissan North America, Inc. (Respondent) argued that the vehicle has been modified by Complainant, that the manufacturer’s warranty does not cover issues that are caused by the modifications, and that no relief is warranted. The hearings examiner concludes that the vehicle has been modified, the warranty does not cover any issues caused by the modifications, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened telephonically on February 5, 2021, before Hearings Examiner Edward Sandoval. Jennifer McGuire, Complainant, appeared and represented herself. Steve DeLeon, Complainant’s boyfriend, appeared and testified for Complainant. Nissan North America, Inc., Respondent, was represented by Keaton Tillman, Arbitration Specialist. Also, appearing and testifying for Respondent was Rafael Maridueno, Dealer Technical Specialist. The hearing record closed on February 5, 2021.

II. DISCUSSION

A. Applicable Law

Texas Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle’ means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Texas Occupations Code § 2301.604 provides that “[a] manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the

use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

- (1) replace the motor vehicle with a comparable motor vehicle; or
- (2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner."

Texas Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding "not later than six months after the earliest of:

- (1) The expiration date of the express warranty term; or
- (2) The dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner."

For Complainants who fail to meet the timelines described above repair relief is available under Occupations Code § 2301.204(a) which provides that "[t]he owner of a motor vehicle or the owner's designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle." The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant's Evidence and Arguments

1. Jennifer McGuire's Testimony

Complainant purchased a new 2018 Nissan Titan XD on February 1, 2019, from IPAC Nissan (IPAC) in San Antonio, Texas with mileage of 8 at the time of delivery.¹ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a warranty for the vehicle's powertrain providing coverage for five (5) years or 100,000 miles. On the date of hearing the vehicle's mileage was 55,784. At the time of the hearing, the vehicle's new vehicle limited warranty had expired. However, the powertrain warranty was still in effect. The vehicle's mileage reached 24,000 on or about August 1, 2019.

¹ Complainant Ex. 1, Retail Purchase Agreement dated February 1, 2019.

Complainant testified that in August of 2020, she was driving the vehicle up a hill when she heard a loud clunking noise and the vehicle lost driving capability. No warning lights illuminated at the time. Complainant testified that she had some modifications done to the vehicle when the vehicle had been driven approximately 20,000 miles. These modifications were performed by her boyfriend, Steve DeLeon. Complainant stated that a tuner had been placed on the engine and the exhaust had been replaced. Complainant had not had any issues with the vehicle's engine until the incident in August of 2020.

On August 13, 2020, the vehicle was towed to Darling's Nissan (Darling's) located in Bangor, Maine for repair. Darling's service technician determined that the vehicle had suffered a connecting rod failure.² Respondent's warranty team approved an engine replacement for the vehicle after requesting photos of the modifications done to the vehicle.³ The vehicle's mileage on this occasion was 52,743.⁴ The vehicle was in Darling's possession for six (6) days while it was repaired. Complainant received a loaner vehicle while her vehicle was being repaired.

Complainant stated that the vehicle seemed to be running fine when she got it back from Darling's. After driving the vehicle approximately 1,500 miles, she noticed that the vehicle was making a "blowing" noise. She did not take the vehicle for repair at the time, but spoke to a dealer representative who stated that the vehicle might need an oil change.

On September 14, 2020, Mr. DeLeon was driving the vehicle when the engine lost compression. He was able to drive it about 10 miles before pulling the vehicle to the side of the road. No warning lights illuminated on the vehicle's dashboard when the incident occurred.

Complainant had the vehicle towed to Darling's for repair to the engine on September 14, 2020. Complainant stated that she was told by Darling's service personnel that the issue was the same as what had occurred in August of 2020. However, Complainant was also informed that the repairs would not be covered under warranty due to the modifications to the vehicle. Darling's service personnel provided an estimate to Complainant of the cost to repair the vehicle which was \$19,064.17.⁵ The vehicle's mileage at the time was 55,784.⁶

Complainant testified that she was told verbally by Darling's service personnel that the engine should not have been replaced after the first incident and that the decision to replace it was a

² Complainant Ex. 2, Repair Order dated August 13, 2020.

³ *Id.*

⁴ *Id.*

⁵ Complainant Ex. 3, Repair Estimate dated September 24, 2020.

⁶ *Id.*

mistake. She was also told that the modifications performed to the vehicle were what caused the damage to the engine and caused it to fail.

Complainant stated that the vehicle was still not running as of the date of hearing and was at Darling's location. The engine still needs to be replaced.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on October 6, 2020.

2. Steve DeLeon's Testimony

Steve DeLeon, Complainant's boyfriend, testified in the hearing. He stated that he was driving the vehicle on September 14, 2020, when the engine failed the second time. Mr. DeLeon stated that the engine started running rough while he was driving the vehicle and white-gray smoke was coming out of the vehicle's exhaust. Mr. DeLeon was able to drive the vehicle back to his house before parking it. He then had the vehicle towed to Darling's for repair. Mr. DeLeon stated that he and Complainant received a call from Darling's service personnel a few days later and were told that repairs would not be covered under warranty.

Mr. DeLeon stated that he performed modifications to the vehicle when the vehicle had been driven about 20,000 miles. He added a cool air intake to the engine to let more air in to the engine when it's being driven. Mr. DeLeon also added a new after-market exhaust (Sinister) to the vehicle to help it breath better. In addition, Mr. DeLeon added an after-market tuner to the vehicle in an attempt to provide better fuel mileage and to allow better throttle response.

Mr. DeLeon stated that he is a self-employed automotive mechanic and that he has installed approximately ten to twenty tuners on vehicles for customers. He has an associate's degree in diesel engines. However, he is not an Automotive Service Excellence (ASE) certified technician. Mr. DeLeon stated that the modifications to Complainant's vehicle were done to provide better gas mileage and to improve the vehicle's performance.

C. Respondent's Evidence and Arguments

1. Keaton Tillman's Testimony

Keaton Tillman, Arbitration Specialist, testified for Respondent. He stated that he has never seen the vehicle. He also testified that Respondent provided a five (5) year or 100,000 mile powertrain warranty for the vehicle's powertrain.

Mr. Tillman testified that the vehicle's engine was replaced in August of 2020 because of a connecting rod failure. Mr. Tillman stated that Respondent's powertrain warranty team could not, at the time, confirm that the damage to the engine which caused the engine failure was a result of Complainant's modifications of the vehicle. As a result, the engine replacement was authorized by Respondent. However, in September of 2020, after the engine failed again, the vehicle's computers had stored diagnostic trouble (DTC) codes which indicated that the engine failure was due to the after-market parts added to the vehicle.⁷ Mr. Tillman stated that the vehicle warranty can be denied if any damage is caused by after-market parts added to a vehicle. The warranty provides that the warranty does not cover damage, failures or corrosion resulting from or caused by installation of non-Nissan approved accessories or components.⁸ In addition, the warranty provides that it may be voided if damage or failure of a part is caused by modification of the vehicle from the original factory specifications.⁹ Mr. Tillman stated that Complainant had modified the vehicle by adding an after-market tuner, air filter, lift kit, and new wheels. As a result, Respondent decided not to cover the repairs under its warranty.

2. Rafael Mariduena's Testimony

Rafael Mariduena, Dealer Technical Specialist, testified for Respondent at the hearing. Mr. Mariduena testified that he has worked in the automotive industry for 30 years. He began working for Respondent approximately five (5) years ago in his present position which was the position he was hired for. Mr. Mariduena is a Nissan Certified Master Technician and an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Mariduena testified that he has not seen nor inspected the vehicle in person. However, Mr. Mariduena stated that Darling's service technicians took several pictures of the vehicle which he was able to examine prior to the hearing.¹⁰ The photos indicate that Complainant modified the vehicle to allow more air flow to the vehicle's intake. The modifications also included: removing the vehicle's diesel particulate filter (DPF), installing an after-market air filter which allows for increased air flow to the engine, installing a tuner kit to the vehicle, and adding additional lights to the vehicle.

Mr. Mariduena stated that it appears that some of the modifications indicate that Complainant was attempting to increase the vehicle's horsepower. If the vehicle is overpowered, then the

⁷ Respondent Ex. 1, TXDMV Supporting Documents – Excerpt from 2018 New Vehicle Limited Warranty, p. 1.

⁸ *Id.*, p. 2.

⁹ *Id.*, p. 3.

¹⁰ *Id.*, pp. 4-10.

vehicle's engine can be damaged. The engine parts are designed for a certain amount of stress and they can fail if the designed stress level is exceeded.

Mr. Mariduena also testified that Complainant installed a tuner kit which is designed to defeat the vehicle's emissions system and increase the vehicle's horsepower. Such kits are illegal and should not be used.

D. Analysis

The issue to be determined in this hearing was whether Respondent failed to repair Complainant's vehicle under the terms of their powertrain warranty. Complainant testified that the vehicle's engine has failed on two (2) separate occasions. The first engine failure was covered under the terms of Respondent's warranty and the engine was replaced. However, Respondent failed to cover the second engine failure which occurred approximately one (1) month and 3,000 miles after the original engine had been replaced. Respondent refused to apply the powertrain warranty to the second engine failure as Complainant had modified the vehicle and Respondent's technicians felt that the modifications caused the damage to the engine. Respondent's warranty provides that the warranty does not cover damage, failures or corrosion resulting from or caused by installation of non-Nissan approved accessories or components. In addition, the warranty provides that the warranty may be voided if damage or failure of a part is caused by modification of the vehicle from the original factory specifications. Complainant admits that she modified the vehicle's engine. Complainant added a cool air intake (which allows more air into the vehicle's engine when driving), a Sinister exhaust (to help the engine breath better), and a tuner (to improve fuel mileage and provide better throttle response) to the vehicle's engine. Since Respondent's warranties allow for denial of warranty coverage for damage caused by the installation of non-Nissan approved parts or components and/or the modification of the vehicle from the original factory specifications, the hearings examiner must hold that repair relief is not warranted under the present circumstances.

On the date of the hearing, the vehicle's mileage was 55,784 and the bumper-to-bumper warranty had expired.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Jennifer McGuire (Complainant) purchased a new 2018 Nissan Titan XD on February 1, 2018, from IPAC Nissan (IPAC) in San Antonio, Texas with mileage of 8 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Nissan North America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first. In addition, Respondent provided a powertrain warranty for the vehicle which covers the vehicle's powertrain for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 55,784.
4. At the time of hearing the vehicle's new vehicle limited warranty was expired; however, the powertrain warranty was still in effect.
5. On approximately August 1, 2019, the vehicle had been driven 24,000 miles.
6. Complainant's boyfriend, Steve DeLeon, modified the vehicle when it had been driven approximately 20,000 miles.
7. Mr. DeLeon added a cool air intake (which allows more air into the vehicle's engine when driving), a Sinister exhaust (to help the engine breath better), and a tuner (to improve fuel mileage and provide better throttle response) to the vehicle's engine.
8. On August 13, 2020, Complainant was driving the vehicle up a hill when she heard a loud clunk and the vehicle lost driving capability. No warning lights illuminated on the vehicle's dashboard.
9. Complainant had the vehicle towed for repair to Respondent's authorized dealer, Darling's Nissan (Darling's) located in Bangor, Maine, on August 13, 2020, in order to address her concerns with the vehicle.
10. The vehicle's mileage at the time of the repair visit described in Findings of Fact #9 was 52,743.

11. During the repair visit described in Findings of Fact #9, Darling's service technician inspected the vehicle and determined that the vehicle had suffered a connecting rod failure.
12. Respondent's powertrain team approved an engine replacement for the vehicle in order to correct the issue described in Findings of Fact #11.
13. The vehicle was returned to Complainant on August 19, 2002, after the engine had been replaced.
14. On September 14, 2020, the vehicle's engine lost compression, the vehicle was running rough and had to be towed to Darling's for repair. The vehicle's mileage was 55,784.
15. During the repair visit described in Findings of Fact #14, Darling's service technician determined that the vehicle's engine had suffered a mechanical failure.
16. Respondent determined that the engine failure was not warrantable, as they determined that the engine failure was due to Complainant's modifications to the vehicle.
17. On October 6, 2020, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
18. Respondent's warranty provides that the warranty does not cover damage, failures or corrosion resulting from or caused by installation of non-Nissan approved accessories or components.
19. In addition, Respondent's warranty provides that the warranty may be voided if damage or failure of a part is caused by modification of the vehicle from the original factory specifications.
20. On November 12, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving 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.

21. The hearing in this case convened telephonically on February 5, 2021, before Hearings Examiner Edward Sandoval. Jennifer McGuire, Complainant, appeared and represented herself. Steve DeLeon, Complainant's boyfriend, appeared and testified for Complainant. Nissan North America, Inc., Respondent, was represented by Keaton Tillman, Arbitration Specialist. Also, appearing and testifying for Respondent was Rafael Mariduena, Dealer Technical Specialist. The hearing record closed on February 5, 2021.

IV. 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) and § 2301.204 (Warranty Performance).
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. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604 and § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for repair relief. Tex. Occ. Code § 2301.204.

ORDER

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

SIGNED February 23, 2021.



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