

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0142 CAF**

**CAROL EINKAUF
and KEITH EINKAUF,
Complainants**

v.

**DRV, LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Carol and Keith Einkauf (Complainants), whose primary residence is in Canyon Lake, Texas, seek relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects to their 2014 Mobile Suites fifth-wheel trailer manufactured by DRV, LLC (Respondent). Complainants allege numerous defects in the trailer. The hearings examiner finds that Complainants have not established the existence of a warrantable defect creating a serious safety hazard or substantial impairment to the use or market value of the vehicle. Therefore, Complainants' Lemon Law claims should be dismissed.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

There are no contested issues of jurisdiction or notice. Those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened before Hearings Examiner James D. Arbogast on May 29, 2014. At Complainants' request and without objection by Respondent, the hearing occurred at 9803 N. P Street, La Porte Texas, 77571, the location where Complainants had parked the trailer. Complainants appeared and represented themselves. Respondent was represented by Chad Olinger, Respondent's Director of Customer Relations. The record was held open following the hearing to allow the parties to submit post-hearing submissions, and closed on June 5, 2014.

II. APPLICABLE LAW

The Lemon Law provides administrative remedies for a consumer whose vehicle cannot be made to conform to an applicable express warranty. Tex. Occ. Code §§ 2301.601-.613. If the manufacturer of the vehicle "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 after a reasonable number of attempts,” the manufacturer shall reimburse the owner for reasonable incidental costs resulting from the loss of use of the motor vehicle, and either replace the motor vehicle with a comparable motor vehicle or repurchase the vehicle less a reasonable allowance for the owner’s use of the vehicle. Tex. Occ. Code § 2301.604. An impairment of market value is “a substantial loss in market value caused by a defect specific to a motor vehicle.” Tex. Occ. Code § 2301.601(1). A serious safety hazard is “a life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.” Tex. Occ. Code § 2301.601(4).

An order issued under the Lemon Law may not require a manufacturer to repurchase or replace a vehicle unless “(1) the vehicle owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.” Tex. Occ. Code § 2301.606(c). The Lemon Law provides several methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Tex. Occ. Code § 2301.605(a).

For the purposes of the Lemon Law, a “motor vehicle” is defined to include a “towable recreational vehicle.” Tex. Occ. Code § 2301.002(23). A “towable recreational vehicle” is “a nonmotorized vehicle that: (A) was originally designed and manufactured primarily to provide temporary human habitation in conjunction with recreational, camping, or seasonal use; (B) meets the requirements to be issued a certificate of title and registration by the department as a travel trailer through a county tax assessor-collector; (C) is permanently built on a single chassis; (D) contains at least one life support system; and (E) is designed to be towable by a motor vehicle.” Tex. Occ. Code § 2301.002(32).

The Lemon Law may require a manufacturer to “reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect.” Tex. Occ. Code § 2301.604. However, such incidental expenses may only be awarded in an order granting the Lemon Law remedies of repurchase or replacement. Tex. Occ. Code § 2301.604; *see also* 43 Tex. Admin. Code § 215.209 (“When a refund of the purchase price or replacement of a vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint.”)

III. DISCUSSION

A. Complainants' Purchase of the Trailer and Respondent's Warranty

On April 2, 2013, Complainants purchased a 2014 Mobile Suites fifth-wheel trailer manufactured by Respondent, model 38TKSB3, from ExploreUSA RV Supercenter of Seguin, Texas (ExploreUSA). The purchase price of the vehicle, including tax, title and other fees, was \$144,183.¹ At the time Complainants purchased the trailer, they also optioned to purchase through ExploreUSA, for \$3,595, an optional extended service contract offered by Protective Asset Protection.²

The trailer was covered by Respondent's limited warranty "to be free from defects in materials and workmanship supplied and attributable to DRV during normal use."³ In the warranty, Respondent "warrants the structure of the product for three (3) years from the date of original purchase or date first placed in service, whichever comes first. The structure of the product refers to the aluminum wall studs, floor joists, and roof rafters. All other items are covered by the DRV one (1) year warranty or each vendor's specific warranty."⁴

Respondent's limited warranty excluded "equipment, products, components, appliances or accessories not originally manufactured by DRV. Some of these products may be covered under a warranty by their manufacturers. Contact and warranty information for these items is available from DRV."⁵ Among the appliances not manufactured by Respondent, and covered by warranties issued by the manufacturer of the appliance, were the air conditioners on the trailer; the air conditioners, manufactured by Dometic, LLC, were covered by Dometic's limited two-year warranty.⁶ Similarly, Mr. Einkauf and Mr. Olinger testified that the generator on the trailer was purchased from and installed by the dealer, ExploreUSA, and was not installed at the factory by Respondent.

B. Complainants' Issues with the Trailer Prior To Hearing

The Complainants' testimony, and the documentary evidence, establish an unsatisfactory ownership experience that began soon after they accepted delivery of the trailer.

The Complainants' issues with the trailer began in April, 2013, on the first weekend the trailer was used following purchase. Mr. Einkauf testified that Complainants were using the vehicle in a remote

¹ Complainant Ex. 1 (purchase invoice).

² Complainant Ex. 1 (Motor Home and Towable Service Contract Registration Page; Extended Service Contract Election).

³ Respondent Ex. 1 (2014 Model Year Warranty).

⁴ Respondent Ex. 1 (2014 Model Year Warranty).

⁵ Respondent Ex. 1 (2014 Model Year Warranty).

⁶ Complainant Ex. 2 (Dometic warranties and owner's registration card for those warranties).

area without electrical hookups, requiring use of the electrical generator. During this trip, a breaker on the generator malfunctioned, so that the batteries were drained. When Mr. Einkauf was preparing to attach the trailer to his truck at the end of the weekend, he discovered the batteries were dead. When Mr. Einkauf connected the electrical system of the trailer to the truck in order to power the trailer to allow it to be hooked up to the truck for transport, the levelers on the trailer suddenly retracted, crashing the trailer down on the back of his truck and nearly injuring him. Mr. Einkauf testified that he brought the trailer to ExploreUSA the next day, where a repair technician observed the same issue, with the levelers suddenly raising and dropping the trailer on the truck when the trailer's electrical system was connected to the truck. Complainants submitted into evidence an invoice documenting that repairs to fix the damage caused by the trailer crashing down on the truck totaled \$4,834.10.⁷

The next major issue involved the repeated failure of the air conditioning units on the trailer. Installed on the trailer were two Dometic brand air conditioning units. Mr. Einkauf testified, and the documents in the record substantiate, that each air conditioning unit was replaced at least twice, and perhaps three times. The air conditioning units were first replaced in May, 2013, at the ExploreUSA facility in Seguin, Texas. Throughout June and July 2013, the air conditioning units were serviced several times where the trailer was parked in La Porte, Texas. Eventually, Complainants were required to bring the trailer back to ExploreUSA in Seguin, Texas to again replace the air conditioning units. Mr. Einkauf testified the repeated failure of the air conditioning units caused him substantial financial loss, because the trailer was unavailable for its intended use as a second home while he was working in the Houston, Texas area, and also because of the fuel costs in transporting the trailer several times between La Porte and Seguin, a distance of nearly 200 miles.

Complainants also raised a continuing issue with the ice maker dispenser on the trailer's refrigerator and freezer unit. Complainants allege that the ice maker would not dispense ice through the freezer door, as it was designed to do. Complainants submitted one invoice dated July 23, 2013 from ExploreUSA showing repair services performed on the ice maker, but Mr. Einkauf testified the ice maker dispenser was subject to at least 10 unsuccessful repair attempts by ExploreUSA.

Another issue involved a faulty brake line on the trailer. When returning the vehicle to La Porte from Seguin after a service visit in late August or early September 2013, the brakes on the trailer failed. By the time Mr. Einkauf arrived at the trailer's parking location in La Porte, the brakes on his truck had burnt out, caused by the overload of the combined weight of the truck and a trailer without brakes. Complainants submitted an invoice from Centex Diesel Performance of New Braunfels, Texas, dated September 3, 2013, documenting \$1,325.81 in repairs to his truck's brakes.⁸ When contacted by Complainants, Respondent acknowledged that the trailer's brake system was defective,

⁷ Complainant Ex. 2 (Dr. Goodbody Auto Body invoice). Complainants were reimbursed by their truck insurance for this amount, minus a \$500 deductible.

⁸ Complainant Ex. 2 (9/3/2013 Centex Diesel Performance invoice).

with the loss of braking power caused by a brake fluid line rubbing against a tire, which eventually led to a loss of brake fluid. After an unsatisfactory attempt to have the brakes repaired by an RV service company, Mr. Einkauf himself repaired the brakes using parts provided by Respondent. Respondent compensated Complainants for the cost of repairing the truck brakes, and for fuel charges and other charges incurred in repairing the trailer's brakes, in the amount of \$3063.86.⁹

Because of the continuing issues with the trailer, Complainants decided to attempt to sell it. Mr. Einkauf took the vehicle to ExploreUSA's lot in Seguin so that it could be displayed for sale. The vehicle remained on ExploreUSA's lot from October to December, 2013. However, the vehicle did not sell for the amount Complainants were seeking. When Mr. Einkauf picked up the trailer after this failed attempt to sell it, he discovered that the stereo, satellite receiver, liquid propane bottles, batteries, and other items had been stolen from the trailer while it was parked at ExploreUSA's lot. Mr. Einkauf testified that ExploreUSA replaced the stolen items. After the trailer was returned this final time from ExploreUSA, Complainants allege that the heater did not work.

Because of the continuing issues with the trailer, Complainants filed a Lemon Law complaint on January 13, 2014. On that same date, Complainants sent written notice of the problems with the trailer to Respondent. The notification to the manufacturer raised the following issues which were described above: (1) the failed generator breaker draining the batteries and indirectly causing damage to the truck; (2) the repeated attempts to repair and replace the air conditioning units; (3) the trailer's brake failure and subsequent damage to the truck's brakes; and (4) the failure of the heater to work. The notification letter requested repurchase of the trailer under the Lemon Law.¹⁰ In addition to these issues, the Lemon Law complaint itself raised the issue of the ice maker dispenser, as well as an alleged propane leak of which Complainants were "not sure of dates."¹¹

In response to the notice to the manufacturer and the Lemon Law complaint, the trailer was transported to Respondent's factory in Howe, Indiana to allow Respondent to inspect the vehicle and attempt to repair any defects found. After several weeks of inspection, testing and repair, Respondent purported to address and repair all issues raised by Complainants and other issues discovered during the inspection of the trailer.

In an April 14, 2014 email, Respondent's Director of Customer Relations Chad Olinger addressed the following issues that had been raised by Complainants and that are relevant to this hearing:¹²

⁹ Respondent Ex. 2 (12/12/2013 check authorization for "reimbursement in warranty repairs, service calls and fuel" approved by Chad Olinger).

¹⁰ Complainant Ex. 4 (1/13/2014 letter from Complainants to Respondent).

¹¹ Lemon Law Complaint, signed January 13, 2014.

¹² Respondent Ex. 3. These issues are summarized and not directly quoted. In this email, Mr. Olinger also addressed other repairs made to fix mostly minor or cosmetic issues that Complainants had raised, such as loose trim, discolored or misaligned panels and doors, and shower leaks, which are not at issue in this hearing.

- (1) Air conditioner: the breaker on the main electrical panel for the air conditioner was turned off. When turned on, there was no issue found with the air conditioner.
- (2) Heater: the thermostat was not recognizing the existence of a heater on the trailer because a series of switches on the air conditioner unit were not properly set. Upon properly setting the switches, the heater operated normally.
- (3) Brakes: there was no indication of brake issues on the trailer's transport to Howe, Indiana. Inspection of the brakes indicated brakes were functioning properly and in good shape.
- (4) Ice maker: Inspection indicated that the ice maker was turned off. When turned on, the ice maker operated normally.
- (5) Propane leak: No propane smell detected. Liquid Propane system pressurized and all lines were tested for leaks, but no leaks detected.

In addition to the issues raised by Complainants, Mr. Olinger's April 14, 2014 email indicated that the inspection of the trailer led to the discovery of two other issues of significance to this hearing:

- (1) "Power cord hook-up on outside of trailer had been pulled from its location. This is an electrical junction where power enters the fifth wheel and at some point it appears that someone pulled the trailer from its location with the power cord still hooked to the trailer, which broke the junction box loose from its position. DRV replaced the junction box as it was damaged beyond repair. Depending on when this happened, if there were a loose wire from this happening, any 110 volt operated appliance could have been affected. We checked all appliance for proper operation and all checked as functioning normally."
- (2) "When the unit arrived, all of the water had not been evacuated from the water system and several areas of the water system froze and broke. DRV replaced the following as a result. Water filter housing (the filter was overdue to be changed so DRV replaced with new), 1" water line at the bottom of both water manifold inlets were replaced, water solenoid on the back of the refrigerator was replaced as it broke from the freeze, shower faucet replaced, and outside shower hose and head were replaced due to freezing."¹³

After this inspection and repair at Respondent's Howe, Indiana facility, the trailer was returned the first week of May, 2014 to its parking place in La Porte, Texas.

¹³ Respondent Ex. 3.

C. Manufacturing Defects Alleged to Exist on Date of Hearing

On May 29, 2014, the date of the hearing, Complainants raised for the first time two additional issues with the trailer that had not been the subject of prior correspondence with Respondent or stated on the Lemon Law complaint.

First, Complainants alleged that the hot water heater was not working. The breaker switch for the hot water heater had tripped, and Complainants alleged that as soon as the breaker was reset, it immediately tripped again, so that the hot water heater would never turn on and heat water.

Second, Complainants alleged that the water manifold, or header, was leaking. The water manifold is a series of copper valves and tubes located in a panel on the outside of the unit ensuring equal water pressure to, and allowing the user to control the flow of cold and hot water to, the various systems in the trailer.

In addition to these two newly raised concerns, Complainants alleged that two of the longstanding problems discussed in the previous section still had not been satisfactorily resolved by the date of the hearing. First, Complainants alleged there were still issues with the air conditioning units. Second, Complainants alleged that the ice maker dispenser still was not working properly.

D. Analysis

Under the Lemon Law, Complainants bear the burden of proof to establish by a preponderance of the evidence that Respondent is unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that constitutes a serious safety hazard or that substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.

Complainants provided credible evidence and documentation to show that they experienced numerous problems with the fifth-wheel trailer they purchased from Respondent. However, Complainants did not establish that they were entitled to relief from Respondent on any alleged defect under the Lemon Law.

Some of the alleged problems would certainly constitute a manufacturing defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle, if they had not already been repaired. Specifically, the defective brake line which led to the failure of the trailer's brakes, and to damage to the truck's brakes, would obviously constitute a serious safety hazard. The apparently leaking liquid propane system would also constitute a serious safety hazard. However, the preponderance of the evidence establishes that these conditions have been repaired. Mr. Einkauf himself repaired the trailer's brakes with parts supplied by Respondent, and the brakes

were later found to be in good condition when the trailer was inspected in Howe, Indiana. Mr. Einkauf also testified that the liquid propane leak had been repaired by the dealer, ExplorerUSA, and no defects in the propane system were detected during the Howe, Indiana inspection. Similarly, the allegedly faulty heater raised in the Lemon Law complaint was fixed during this inspection, when the switches on the air conditioning unit were properly configured to allow the thermostat to interface with the heater. None of these defects were alleged to be among the remaining unrepaired conditions existing at the time of the hearing, and thus cannot support an order that the manufacturer replace or repurchase the trailer under the Lemon Law.

Other problems with the trailer relate to appliances or components that are not covered by Respondent's warranty. The record establishes that the air conditioning units were replaced multiple times, and might still constitute faulty equipment (although both were working on the day of the hearing). However, Respondent's warranty excluded these components from coverage, and the air conditioning units were instead covered by warranties issued by their manufacturer, Dometic. The allegedly defective ice maker dispenser is a component of a refrigerator manufactured by Whirlpool, and thus subject to the warranty of that manufacturer and excluded from Respondent's warranty.¹⁴ Similarly, the serious issues experienced on Complainants' first trip in the trailer related to a faulty generator that was not factory installed equipment covered by Respondent's warranty, but rather an after-market unit sold and installed by the dealer, ExploreUSA. Problems with appliances and components excluded from Respondent's warranty cannot support the grant of Lemon Law relief against Respondent.

Finally, two of the problems related to issues raised for the first time at the hearing, without written notice provided to the manufacturer and without an opportunity given to the manufacturer to cure the defects: the water heater breaker and the leaking water manifold. On the day of the hearing, the hearing examiner observed that the water heater breaker switch did constantly trip when reset, and observed that the water manifold was in fact leaking water. Both parties provided discussion and speculation as to the cause of these problems during the hearing. The issue with the water heater may have been caused by attempting to turn on the water heater when it was empty, burning out the electrical heating unit, or may have been caused by the damage to the power cord junction box discovered during the inspection of the trailer in Howe, Indiana. The issue with the water manifold may have been caused by the failure to drain all water from the unit before it was towed from Texas to Indiana in February 2014, which led to freezing in the water system and damage to several other components in the water system.

¹⁴ Because Respondent's warranty does not cover the refrigerator, it is not necessary to determine whether the alleged defects in the ice maker substantially impairs the use or market value of the trailer at issue so that Lemon Law relief is appropriate.

It is unclear whether the water heater breaker and the leaking water manifold are manufacturing defects or problems caused by damage to the trailer subsequent to delivery. However, neither of these issues were raised in the Lemon Law complaint nor otherwise conveyed to Respondent before the date of the hearing. A hearings examiner may not issue an order requiring a manufacturer to repurchase or replace a vehicle unless “(1) the vehicle owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.” Tex. Occ. Code § 2301.606(c).

In sum, Complainants credibly testified to and established many issues and problems with the trailer, but did not establish by a preponderance of the evidence any warrantable manufacturing defects covered by Respondent’s warranty that had not been repaired prior to the hearing. For this reason, Complainants are not entitled to an order granting the repurchase or replacement of the trailer, or to the reimbursement of incidental damages related to a failure to conform the trailer to Respondent’s warranty.

IV. FINDINGS OF FACT

1. Carol and Keith Einkauf (Complainants) purchased a 2014 Mobile Suites fifth-wheel trailer, model 38TKSB3, manufactured by DRV, LLC (Respondent), from ExploreUSA RV Supercenter of Seguin, Texas (ExploreUSA), on April 2, 2013.
2. The purchase price of the vehicle, including tax, title and other fees, was \$144,183.
3. The trailer is covered by Respondent’s limited warranty “to be free from defects in materials and workmanship supplied and attributable to DRV during normal use,” and Respondent “warrants the structure of the product for three (3) years from the date of original purchase or date first placed in service, whichever comes first. The structure of the product refers to the aluminum wall studs, floor joists, and roof rafters. All other items are covered by the DRV one (1) year warranty or each vendor’s specific warranty.”
4. Respondent’s limited warranty excluded “equipment, products, components, appliances or accessories not originally manufactured by DRV. Some of these products may be covered under a warranty by their manufacturers. Contact and warranty information for these items is available from DRV.”
5. Among the appliances and components that are not covered by Respondent’s limited warranty are the air conditioning units and the refrigerator.

6. During Complainants' first trip in the trailer in April 2013, a breaker on the generator malfunctioned, draining the batteries. When Mr. Einkauf connected the trailer to his truck's electrical system, the trailers levelers suddenly retracted, causing the trailer to crash into his truck and nearly injuring him. The damage to the truck totaled \$4,834.10.
7. The generator was sold and installed by ExploreUSA after the trailer was manufactured by Respondent. The generator is not covered by Respondent's warranty.
8. Complainants have had repeated and continuing problems with the trailer's air conditioning units, requiring the replacement of both units at least three times. The air conditioning units are manufactured by Dometic, LLC.
9. The air conditioning units are excluded by Respondent's warranty and are covered instead by Dometic's warranty.
10. Since taking possession of the unit, Complainants have experienced continuing problems with the ice maker dispenser on the trailer's refrigerator and freezer unit.
11. The refrigerator and freezer unit is excluded from coverage by Respondent's warranty, and is covered instead by the warranty of its manufacturer, Whirlpool.
12. In late August or early September 2013, Mr. Einkauf towed the trailer from the ExploreUSA lot in Seguin, Texas to the trailer's parking location in La Porte, Texas. During this trip, the trailer's brake line rubbed against a tire and leaked fluid, leading to a failure of the trailer's brakes. The weight of the trailer, unassisted by brakes on the trailer, caused damage to the truck's brakes in the amount of \$1,325.81.
13. After a failed attempt by an RV service company to repair the trailer's brakes, Mr. Einkauf himself repaired the brakes using parts supplied by Respondent.
14. Respondent reimbursed Complainants for expenses incurred with respect to the failed brake line repair, including fuel costs, in the amount of \$3063.86.
15. At the time of the hearing, there was no evidence that there was a continuing defect or condition with respect to the trailer's brakes.
16. At some point prior to filing the Lemon Law complaint, Complainants also reported a propane leak to ExploreUSA. ExploreUSA repaired the propane leak, and there was no evidence of a propane leak during the subsequent inspection of the trailer by Respondent.

17. Complainant provided written notice to Respondent of the problems with the trailer on January 13, 2014. The notification raised the following issues: the failed generator breaker, the repeated air conditioner failures, the trailer's brake failure and subsequent damage to Complainants' truck, and a failure of the heater to properly work. The notification requested repurchase of the trailer under the Lemon Law.
18. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 13, 2014. In addition to issues raised in the notification to Respondent, the Lemon Law complaint also raised the issue of the ice maker dispenser not working properly, and a propane leak.
19. In response to the notice to the manufacturer and the Lemon Law complaint, the trailer was transported to Respondent's factory in Howe, Indiana for inspection and repair.
20. On April 14, 2014, Respondent's Director of Customer Relations Chad Olinger sent Complainants an email reporting on the inspection and repair of the trailer.
21. Mr. Olinger's April 14, 2014 email reported that there were no issues with the air conditioning units after a breaker on the main electrical panel was reset.
22. Mr. Olinger's April 14, 2014 email reported that the heater was not working because a series of switches on the air conditioning unit were not properly set, so that the thermostat did not recognize the existence of the heater. After the switches were properly set, the heater operated normally.
23. Mr. Olinger's April 14, 2014 email reported that there was no indication of brake issues during the trailer's transport to Howe, Indiana, and that they appeared to be functioning normally and were in good shape.
24. Mr. Olinger's April 14, 2014 email reported that the ice maker operated normally when turned on.
25. Mr. Olinger's April 14, 2014 email reported that the liquid propane system was pressurized and tested for leaks, but no leaks were detected.
26. Mr. Olinger's April 14, 2014 email reported that the power cord electrical junction box on the outside of the trailer appeared to have been pulled from the trailer and broken loose from its normal position, which may have affected certain appliances on the trailer. The junction box was replaced as it was damaged beyond repair, and all electrical appliances were tested and appeared to be functioning normally.

27. Mr. Olinger's April 14, 2014 email reported that when the trailer arrived in Howe, Indiana, all of the water had not been evacuated from the water system. Frozen water caused several areas of the water system to freeze and break. Respondent replaced the water filter housing, 1" water lines at the bottom of the water manifold units, the water solenoid on the back of the refrigerator, the shower faucet, and the outside shower hose and head.
28. On the date of the hearing, Complainants raised an issue with the hot water heater breaker. The hot water heater breaker continually tripped when reset, so that the hot water heater would not operate. There is no evidence that Complainants provided written notice of this issue to Respondent prior to the hearing, or that Respondent had an opportunity to repair this issue after receiving notice prior to the hearing. There is insufficient evidence to establish that the issue with the hot water heater breaker is a manufacturing defect, as opposed to the result of damage to the trailer or improper operation of the hot water heater.
29. On the date of the hearing, Complainants raised an issue with the water manifold, which was leaking water. There is no evidence that Complainants provided written notice of this issue to Respondent prior to the hearing, or that Respondent had an opportunity to repair this issue after receiving notice prior to the hearing. There is insufficient evidence to establish that the issue with the leaking water manifold is a manufacturing defect, as opposed to the result of damage to the trailer caused by the failure to drain the water system before transporting the trailer into freezing weather.
30. On April 30, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.
31. The hearing convened on May 29, 2014 in La Porte, Texas before Hearings Examiner James D. Arbogast. Complainants appeared and represented themselves. Respondent was represented by Director of Customer Relations Chad Olinger. The record was held open to allow the parties to submit post-hearing submissions, and closed on June 5, 2014.

V. CONCLUSIONS OF LAW

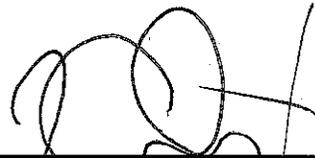
1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).

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. Complainants 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 and 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle does not have an existing defect or condition covered by Respondent's warranty that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
5. Complainant's vehicle does not have an existing defect or condition covered by Respondent's warranty that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
6. Based on the above Findings of Fact and Conclusions of Law, Complainant is not entitled to an order granting replacement or repurchase of the trailer at issue, or for incidental expenses related to alleged manufacturing defects. Tex. Occ. Code §§ 2301.601-.613.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** that Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

SIGNED July 16, 2014



**JAMES D. ARBOGAST, HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**