

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0217 CAF**

**PABLO CANTU GONZALEZ,  
Complainant**

v.

**DS CORP. D/B/A CROSSROADS RV,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Pablo Cantu Gonzalez (Complainant) filed a complaint with the Texas Department of Motor Vehicles seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by DS Corp. d/b/a Crossroads RV (Respondent). The hearings examiner concludes that the vehicle has an existing warrantable defect that substantially impairs the value of the vehicle. Consequently, the Complainant's vehicle qualifies for repurchase/replacement relief.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on December 4, 2015, in Pharr, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Jim Izbicki, Consumer Affairs Manager, represented the Respondent.

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<sup>1</sup> TEX. GOV'T CODE § 2001.051.

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “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.”<sup>2</sup> In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.<sup>3</sup> In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

##### a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.<sup>4</sup>

##### b. Substantial Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. Under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”<sup>5</sup>

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

<sup>5</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

**c. Reasonable Number of Repair Attempts**

The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.<sup>6</sup> The first applies generally,<sup>7</sup> the second applies to serious safety hazards,<sup>8</sup> and the third applies to vehicles out of service for repair for at least 30 days.<sup>9</sup> In this case, the third presumption applies. For vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.<sup>10</sup>

However, the statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.<sup>11</sup> Furthermore, the Department adopted a decision implying that if the consumer takes the vehicle for a service visit then that visit would constitute a repair attempt unless the consumer was at fault for failure to repair the vehicle.<sup>12</sup>

**d. Other Requirements**

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;<sup>13</sup> (2) the manufacturer was given an

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<sup>6</sup> TEX. OCC. CODE § 2301.605(a).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> “[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’” *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

<sup>12</sup> “[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.” *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1).

opportunity to cure the defect or nonconformity;<sup>14</sup> and (3) the owner filed the Lemon Law complaint within six months after the earliest of: the warranty's expiration date or 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.<sup>15</sup>

## 2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair under Section 2301.204 of the Texas Occupations Code if the vehicle has a "defect . . . that is covered by a manufacturer's . . . warranty agreement applicable to the vehicle."<sup>16</sup>

### A. Complainant's Evidence and Arguments

On December 13, 2014, the Complainant, purchased a new Sunset Trail 32FR from Ron Hoover Companies of Houston, Inc. an authorized dealer of the Respondent, in Houston, Texas.<sup>17</sup> The Complainant received delivery of the vehicle on the same day. The vehicle's limited warranty covers the vehicle for one year from the date of purchase.<sup>18</sup>

In relevant part, the Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
December 22, 2014	Water leaking around slide out, water damage <sup>19</sup>
February 23, 2015	Water leaking, water damage <sup>20</sup>

The Respondent picked up the vehicle on June 9, 2015, for a final opportunity to repair. The Complainant received the vehicle back on August 17, 2015.

On March 20, 2015, the Complainant mailed a written notice of defect to the Respondent. On April 2, 2015, the Complainant filed a Lemon Law complaint (Complaint) alleging that the

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<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2). Note: a repair visit to a dealer satisfies the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>16</sup> TEX. OCC. CODE § 2301.204.

<sup>17</sup> Complainant's Ex. 1, Purchase Agreement.

<sup>18</sup> Complainant's Ex. 7, Owners Manual, Warranty at 6.

<sup>19</sup> Complainant's Ex. 4, Work Order # 13222.

<sup>20</sup> Complainant's Ex. 5, Work Order # 3724.

water leaked into the vehicle and caused damage. The Complainant first noticed water leaking about the second week after purchasing the vehicle. The vehicle was out of service for 69 days for the manufacturer's final repair attempt.

The Complainant testified that the water leak did not improve after the repairs. The Complainant stated that the water would leak at every rain. The Complainant provided photographic evidence showing water leaks from December 28, 2014, through August 20, 2015.<sup>21</sup> The Complainant testified that on September 14, 2015, during a light rain, in an area covered by trees, water still seeped in the vehicle despite new gaskets. On cross-examination, the Complainant confirmed that he stored the vehicle with the slide outs in. He further stated that after running out the slides, he noticed water leaking from one of the slide outs. The Complainant explained that the vehicle began leaking two to three weeks after repair. The Complainant stated a preference for repurchase relief.

#### **B. Respondent's Evidence and Arguments**

Mr. Izbicki testified that the Respondent did not deny any warranty repairs and he stated his belief that they had repaired every issue. Mr. Izbicki noted that they changed out the floor, carpet until no more water damage could be seen. Mr. Izbicki stated that the mashed-up debris indicated that the slides had been opened and closed more than once. An inspection of the vehicle at the hearing did not reveal any issues.

#### **C. Analysis**

The record shows that the vehicle continues to have a warrantable defect that substantially impairs the value of the vehicle, despite being out of service over 30 days for repairs and after three repair attempts within a year of the vehicle's purchase on December 13, 2014. Accordingly, the vehicle qualifies for repurchase. The evidence clearly shows that water continued to leak in even after the final repair attempt. The Complainant received the vehicle back from the final repair attempt on August 17, 2015. However, photographs taken on August 20, 2015, clearly show water penetrating into the vehicles interior, soaking the carpet and wetting the linoleum. Moreover, the Complainant testified that water seeped in during the rain on September 14, 2015. The record

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<sup>21</sup> Complainant's Ex. 8, Complainant's Ex. 9, Complainant's Ex. 10, Complainant's Ex. 11, Complainant's Ex. 12, and Complainant's Ex. 13.

reflects that the vehicle was out of service for 69 days due to the final repair attempt by itself (June 9, 2015, through August 17, 2015) and the two prior attempts, on December 22, 2014, and February 23, 2015, took at least one and three days respectively.

### III. Findings of Fact

1. On December 13, 2014, the Complainant, purchased a new Sunset Trail 32FR from Ron Hoover Companies of Houston, Inc. an authorized dealer of the Respondent, in Houston, Texas.
2. The vehicle's limited warranty covers the vehicle for one year from the date of purchase.
3. The vehicle's warranty was in effect at the time of the hearing.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
December 22-23, 2014	Water leaking around slide out, water damage <sup>22</sup>
February 23-26, 2015	Water leaking, water damage <sup>23</sup>

The Respondent picked up the vehicle on June 9, 2015, for a final opportunity to repair. The Complainant received the vehicle back on August 17, 2015.

5. The vehicle was out of service for 73 days due to repair.
6. On March 20, 2015, the Complainant mailed a written notice of defect to the Respondent.
7. On April 2, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
8. On July 23, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, DS Corp. d/b/a Crossroads RV, 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.

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<sup>22</sup> Complainant's Ex. 4, Work Order # 13222.

<sup>23</sup> Complainant's Ex. 5, Work Order # 3724.

9. On October 23, 2015, the Department's Office of Administrative Hearings granted a continuance and reset the hearing for December 4, 2015.
10. The hearing in this case convened and the record closed on December 4, 2015, in Pharr, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Jim Izbicki, Consumer Affairs Manager, represented the Respondent.
11. The Complainant first noticed water leaking into the vehicle about the second week after purchasing the vehicle.
12. Water continued to leak into the vehicle during rains even after the final repair attempt.
13. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$32,000.01
Date of delivery	12/13/14
Date of first report of defective condition	12/22/14
Date of hearing	12/04/15
Days out of service	73
Useful life determination	3,650

Purchase price, including tax, title, license and registration	\$32,000.01			
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	12/22/14	-	12/13/2014	= 9
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition Less days out of service for repair	12/04/15	-	12/22/2014	= 347
				-73
				274
<i>Reasonable Allowance for Use Calculations:</i> Unimpaired days	9	÷	3,650	× \$32,000.01 = \$78.90
Impaired days	274	÷	3,650	× \$32,000.01 × 50% = \$1,201.10
<b>Total reasonable allowance for use deduction</b>	<b>\$1,280.00</b>			
Purchase price, including tax, title, license and registration	\$32,000.01			
Less reasonable allowance for use deduction	-\$1,280.00			
Plus filing fee refund	\$35.00			
<b>TOTAL REPURCHASE AMOUNT</b>	<b>\$30,755.01</b>			

#### 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).
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. The Complainant timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant met the statutory requirement for a reasonable number of repair attempts. TEX. OCC. CODE § 2301.605(a)(1).
8. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that substantially impairs the use or market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604.

#### V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Decision. **IT IS THEREFORE ORDERED** that:

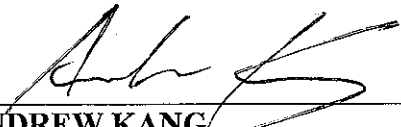
1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the



- vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. The Respondent shall repurchase the subject vehicle in the amount of **\$30,755.01**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainant is responsible for providing the Respondent with clear title to the vehicle;
  3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, the Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
  4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
  5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
  6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name,

address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

**SIGNED February 2, 2016**



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**ANDREW KANG**  
**HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**