

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0230 CAF**

DAVID LARKIN,
Complainant

v.

KEYSTONE RV COMPANY,
Respondent

§
§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

David Larkin (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 2013 Voltage V3950 manufactured by Keystone RV Company (Respondent). The hearings examiner concludes that the Complainant failed to timely file his Lemon Law complaint and that the warranty excludes the vehicle from coverage. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

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 on October 13, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The record closed on October 21, 2015, the deadline for filing written submissions. William Cronin, attorney, represented the Complainant. Christopher Lowman, attorney, represented the Respondent. Brent Giggy, Product Team Lead, testified for the Respondent.

II. Discussion

A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is "unable to conform a motor vehicle to an applicable

express warranty.”¹ Additionally, warranty repair under Section 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”² Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have a defect under an applicable warranty (warrantable defect).

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect must either (1) create a serious safety hazard or (2) substantially impair the use or market value of the vehicle despite a “reasonable number of attempts” at repair.³ 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.⁴ The Department applies a reasonable purchaser standard for determining whether the defect substantially impairs the value of the vehicle.⁵ The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.⁶ The first applies generally,⁷ the second applies to serious safety hazards,⁸ and the third applies to vehicles out of service for repair for at least 30 days.⁹ In this case, the presumption for vehicles out of service at least 30 days applies.

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;¹⁰ (2) the manufacturer was given an

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ “[F]actfinders 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.” *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁶ TEX. OCC. CODE § 2301.605(a).

⁷ TEX. OCC. CODE § 2301.605(a)(1).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.606(c)(1).

opportunity to cure the defect or nonconformity;¹¹ 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.¹²

B. Complainant's Evidence and Arguments

On April 16, 2013, the Complainant, David Larkin, purchased a new 2013 Voltage V3950 from Lone Star RV Sales, Inc., a dealer of the Respondent, Keystone RV Company, in Houston, Texas. On May 1, 2014, the Complainant mailed a written notice of defect to the Respondent.¹³ On April 16, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).¹⁴ The Complainant raised the following issues regarding his vehicle: the generator will not operate the vehicle; doors do not open and close correctly; vehicle will not stay cool with three air conditioning (AC) units running; battery will not hold a charge; water leaks/low water pressure; lights falling out of the ceiling and burning out prematurely; sewage valves are not working (sewage will come out with valve closed) ; entry light works intermittently; auto leveling system rarely works; breakers tripping; only the living room television (TV) receives reception (in remote areas); DVD/stereo sound only going to outside speakers; keyless entry/keypad will stop working; no heat in the back or front bedroom; leak above refrigerator; brakes do not work; outdoor ladder will not properly fit/secure; three tires de-treaded; indicators do not work for gray or black water tanks; vehicle will freeze at 30 degrees.¹⁵ The Complainant testified that the following issues have been resolved: generator not operating the vehicle; breakers tripping; DVD/stereo sound only going to the outside speakers; outdoor ladder not properly fitting/securing; and tires de-treading. Additionally, the Complainant testified that he himself repaired the brake issue, caused by screws driven through wiring.

During the inspection at the hearing, the vehicle failed to level properly. Additionally, the vehicle's battery did not appear to maintain a charge, even though the Complainant charged the

¹¹ TEX. OCC. CODE § 2301.606(c)(2).

¹² TEX. OCC. CODE § 2301.606(d)(2).

¹³ Complainant's Ex. 5, Notice of Defect.

¹⁴ Complainant's Ex. 7, Lemon Law Complaint.

¹⁵ Complainant's Ex. 7, Lemon Law Complaint.

battery from 3:00 p.m. the day before the hearing until 6 a.m. the morning of the hearing and had the vehicle hooked to his truck since then. The Complainant noted that the door fit depended on the leveling of the vehicle. Also a light was coming out of the ceiling. The Complainant noted that water leaked from the base of the shower with a person in the shower. In the vehicle's basement, drops of water were observed coming from the plumbing and dried water marks could be seen on the frame of the vehicle. Approximately two gallons of sewage emptied from the vehicle's drain pipe after removing the cap although the valve had been closed. The Complainant explained that the entry keypad itself worked, but the locking mechanism would stick and require frequent lubrication. The entry light turned on when the door opened but the Complainant noted that the light would also randomly turn on and off. The Complainant added that with a dead battery, the break-away brakes will not work if the vehicle unhooked from the truck. The Complainant testified that the water in the rear bathroom, then the kitchen, and finally the front bathroom will freeze after about twelve hours of freezing temperatures, even with the heater on.

C. Respondent's Evidence and Arguments

The manufacturer's limited warranty covers the vehicle for one year from the date of retail delivery or the date first placed in service, whichever occurs first.¹⁶ The manufacturer's warranty expired on April 16, 2014. The Complainant purchased an extended warranty through a third party, but made no claims under the third party extended warranty.

Mr. Giggy testified that the vehicle's energy management system (EMS) should have been set at 50 amps (at the time of inspection the EMS was set to a lower amperage). Mr. Giggy explained that the EMS would usually start shedding load if running anything more than the three air conditioning units. He further explained that this was a limitation in the vehicle's design. Mr. Giggy also stated that the AC was designed to lower the temperature by about 20 degrees when the outside temperature is 90 degrees. Mr. Giggy testified that the leveling system, manufactured by LCI, consisting of the control board, sensors, hydraulics, comes together as a kit. Mr. Giggy noted that the door latches functioned correctly. Mr. Giggy stated that various components draw power from the batteries. Mr. Giggy noted that the bathroom did not exhibit moisture from the shower. Regarding water from above the refrigerator, Mr. Giggy conjectured that the water could

¹⁶ Respondent's Ex. 1, Dutchmen Fifth Wheel & Travel Trailer Owner's Manual at 17.

be coming from the washer. With regard to the sewage, Mr. Giggy explained that debris could get wedged in the valve. Mr. Giggy stated that the discharge from the washer should go straight to the outside and not to the tanks. With regard to the leaking sewage valve issue, Mr. Giggy responded that debris may become trapped in the valve preventing it from closing. He also noted that the valves are located close to the tank and that the pipe (located after the valve) may contain sewage, which may empty when opening the cap on the pipe. Mr. Giggy explained that the water tanks have four probes on the side that detect the current from the last probe as the water rises. However, wet paper or anything else wet conducting current (contacting the probes) could cause a false reading. Mr. Giggy testified the all-weather package consists of a radiant barrier, enclosed underbelly and enclosed tank valves. In essence, this package only extends usability and does not guarantee any particular level of performance. The inspection at the hearing showed that the vehicle contained four TVs of three different brands. The living room had a Samsung TV, the bedroom and garage had Haier TVs, and the exterior had a Sansui TV. All TV's functioned properly during the inspection at the hearing. The brake issue appears to have been raised for the first time after the warranty expired.

D. Analysis

1. Complaint Filing Deadline

The record shows that the Complainant did not timely file a complaint for repurchase or replacement relief. The Lemon Law specifies that:

A proceeding under this subchapter must be commenced 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.¹⁷

In this case, the manufacturer's warranty expired on April 16, 2014, one year after the Complainant's purchase of the vehicle on April 16, 2013. Accordingly, the complaint must have been filed no later than October 16, 2014. However, the Complainant filed his complaint on April 16, 2015, six months after the deadline for commencing a Lemon Law proceeding. Consequently, the vehicle does not qualify for repurchase or replacement relief.

¹⁷ TEX. OCC. CODE § 2301.606(d)(2) (emphasis added).

2. Warranty Exclusion of Vehicles Used for Business

The manufacturer's warranty expressly excludes the Complainant's vehicle from coverage. The warranty states that it does not provide coverage for "[v]ehicles used for business, rental, commercial, residential, or disaster relief purposes, or any other purpose other than recreational travel and family camping."¹⁸ The Complainant testified that, in addition to recreational use, he used the vehicle for business travel when working in the oil fields as a directional driller. However any use other than recreational travel or family camping essentially voids the warranty. Because the Complainant used the vehicle for business travel, the warranty excludes the vehicle from coverage. Consequently, the vehicle's non-conformities are not warrantable defects eligible for relief.¹⁹

III. Findings of Fact

1. On April 16, 2013, the Complainant, David Larkin, purchased a new 2013 Voltage V3950 from Lone Star RV Sales, Inc., a dealer of the Respondent, Keystone RV Company, in Houston, Texas.
2. The vehicle manufacturer's limited warranty covers the vehicle for one year from the date of retail delivery or the date first placed in service, whichever occurs first.
3. The warranty expired on April 16, 2014.
4. On May 1, 2014, the Complainant mailed a written notice of defect to the Respondent.
5. On April 16, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
6. The Complainant filed his complaint more than six months after the warranty's expiration date.
7. The warranty does not cover "[v]ehicles used for business, rental, commercial, residential, or disaster relief purposes, or any other purpose other than recreational travel and family camping."

¹⁸ Respondent's Ex. 1, Dutchmen Fifth Wheel & Travel Trailer Owner's Manual at 17 (emphasis added).

¹⁹ TEX. OCC. CODE §§ 2301.204 and 2301.604(a).

8. The Complainant, who works in oil fields as a horizontal driller, used the vehicle for business travel, including trips to the Texas Panhandle and western Oklahoma.
9. On June 22, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, Keystone RV Company, 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.
10. The hearing in this case convened on October 13, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The record closed on October 21, 2015, the deadline for filing written submissions. William Cronin, attorney, represented the Complainant. Christopher Lowman, attorney, represented the Respondent. Brent Giggy, Product Team Lead, testified for the Respondent.

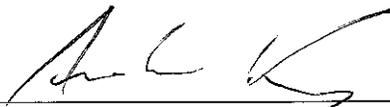
IV. Conclusions of Law

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 parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
4. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
5. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.604(a).
6. The Complainant did not timely file his complaint. TEX. OCC. CODE § 2301.606(d).

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 **DISMISSED**.

SIGNED December 16, 2015



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