

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0248 CAF**

**GALEN HUSTON,  
Complainant**

v.

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

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Galen Huston (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his 2014 Crossroads Elevation manufactured by DS Corp d/b/a Crossroads RV (Respondent). The hearings examiner concludes that the vehicle has been out of service at least 30 days for repair of a warrantable defect that substantially impairs the vehicle's value. Consequently, the Complainant's vehicle qualifies for repurchase/replacement.

**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 and the record closed on October 7, 2015, in Wichita Falls, Texas, before Hearings Examiner Andrew Kang. The Complainant represented himself. Kimberly Huston, the Complainant's spouse, Duane Jones, a master technician for ExploreUSA RV Supercenter, and Tim Holt, a service advisor for ExploreUSA RV Supercenter, testified for the Complainant. John Woodcox, consumer affairs, represented 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.”<sup>1</sup> 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.”<sup>2</sup> 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). The Complainant must prove the existence of a warrantable defect by a preponderance, that is, the evidence must show that a warrantable defect more likely than not exists.<sup>3</sup>

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.<sup>4</sup> 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>5</sup> The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of 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> The present case involves a vehicle out of service for repair for over 30 days. The “out of service” statutory presumption applies when:

[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>

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<sup>1</sup> TEX. OCC. CODE § 2301.604(a).

<sup>2</sup> TEX. OCC. CODE § 2301.204.

<sup>3</sup> *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>4</sup> TEX. OCC. CODE § 2301.604(a).

<sup>5</sup> TEX. OCC. CODE § 2301.601(4).

<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).

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>

However, regardless of the existence of a warrantable defect, 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 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>

### B. Complainant's Evidence and Arguments

The Complainant alleged various defects in the subject vehicle.<sup>16</sup> The Complainant took the vehicle to a dealer or the Respondent for repair on the following dates as shown below:

Date In	Date Out	Days
March 31, 2014	April 11, 2014	11
November 17, 2014	May 12, 2015	176
July 18, 2015	September 2, 2015	46

Although most of the complained of issues had been resolved, other issues remained, including, among other things, water leaking onto the floor, a malfunctioning air vent, malfunctioning lights, and glass not secure in the cabinet door.

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

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

<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2).

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

<sup>16</sup> Complainant's Ex. 5, Repair Order, March 31, 2014; Complainant's Ex. 1, Lemon Law Complaint; Complainant's Ex. 6, Repair Order, November 17, 2014; Respondent's Ex. 3, Days Out of Service.

### C. Respondent's Evidence and Arguments

Mr. Woodcox testified that most items have been corrected satisfactorily. Mr. Woodcox explained that some of the time the vehicle spent at the factory and at the dealer reflected time when parts were not available and needed to be shipped as well as delays in the warranty process (e.g., delays in approval of warranty repairs). Mr. Woodcox noted that the vehicle actually required 25 hours of labor, roughly 3 days. Mr. Holt added that the actual repair hours did not reflect the factory approved hours; he noted that the actual time totaled about 100 hours.

Mr. Woodcox noted that if the glass issue had been on the Lemon Law complaint, the Respondent would have taken care of it. Mr. Woodcox further affirmed the Respondent's willingness to resolve the propane and regulator issues and to provide an extended warranty as well as to compensate for payments made while the vehicle was out of service for repairs.

### D. Analysis

The statutory presumption applicable to this case, for vehicles out of service for 30 days, has four elements: (1) the vehicle must have an existing defect; (2) the defect must substantially impair the use or value of the vehicle; (3) the vehicle must have been out of service for repair for at least 30 days in the first 24 months; and (4) the vehicle must have had at least two repairs in the first 12 months. Although most of the complained of issues were successfully resolved, the vehicle had a water leak that remains unrepaired. The evidence shows that water entered the vehicle, apparently from around the left slide by the garage. The Complainant's photographic evidence showed water on the floor from the couch to the kitchen.<sup>17</sup> Although the manufacturer's testing could not verify the leak, water obviously did enter the vehicle. Further, the Respondent made no repair for the leak because it could not verify the leak. As a result, the leak remains unrepaired. Furthermore, Mr. Holt and Mr. Jones, who are both experienced in the field of recreational vehicles, both testified that they personally would not want the subject vehicle. Although the Respondent inferred that the actual hours of repair should be used when applying the statutory presumption, the law itself only states that the vehicle must be out of service for repair for at least 30 days, not that vehicle must actually be undergoing repair for at least 30 days. In this case the Complainant did not have use of his vehicle for significantly longer than 30

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<sup>17</sup> Complainant's Ex. 18, photo of water from the slide to the stove; Complainant's Ex. 19, photo of water by the carpet; Complainant's Ex. 20, photo of water by the refrigerator.

days. The evidence showed that the vehicle was out of service for repair for 187 days at the dealer and an additional 46 days at the manufacturer, for a cumulative total of 233 days.<sup>18</sup>

### III. Findings of Fact

1. On March 12, 2014, the Complainant, Galen Huston, executed a purchase contract for a new 2014 Crossroads Elevation from ExploreUSA RV Supercenter, a franchised dealer of the Respondent, DS Corp d/b/a Crossroads RV, in Denton, Texas. The Complainant took delivery of the vehicle on March 19, 2014.
2. The vehicle's limited warranty covered the vehicle for one year from the date of purchase.
3. The vehicle's warranty expired on March 19, 2014.
4. The Complainant took the vehicle to the dealer and Respondent to address the complained of issues as follows:

Date In	Date Out	Days
March 31, 2014	April 11, 2014	11
November 17, 2014	May 12, 2015	176
July 18, 2015	September 2, 2015	46

5. The vehicle was out of service for repair at the dealer and manufacturer for a total of 233 days in the first 24 months after delivery.
6. The vehicle had two repair visits in the first 12 months after delivery.
7. On April 24, 2015, the Complainant mailed a written notice of defect to the Respondent.
8. On May 4, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
9. On June 26, 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;

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<sup>18</sup> Complainant's Ex. 5, Repair Order, March 31, 2014; Complainant's Ex. 1, Lemon Law Complaint; Complainant's Ex. 6, Repair Order, November 17, 2014; Respondent's Ex. 3, Days Out of Service.

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 and the record closed on October 7, 2015, in Wichita Falls, Texas, before Hearings Examiner Andrew Kang. The Complainant represented himself. Kimberly Huston, the Complainant's spouse, Duane Jones, a master technician for ExploreUSA RV Supercenter, and Tim Holt, a service advisor for ExploreUSA RV Supercenter, testified for the Complainant. John Woodcox, consumer affairs, represented the Respondent.
11. The water leak issue remained unresolved at the time of the hearing.
12. The current condition of the vehicle would deter a reasonable purchaser from buying the vehicle.
13. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$58,081.59
Date of delivery	03/19/14
Date of first report of defective condition	03/31/14
Date of hearing	10/07/15
Days out of service	233
Useful life determination	3,650
Purchase price, including tax, title, license and registration	\$58,081.59
Date of first report of defective condition less date of delivery	12
Date of hearing less date of first report of defective condition	555
less days out of service for repair	322
Reasonable Allowance for Use Calculations:	
Unimpaired days	12
	$3,650 \times \$58,081.59 = \$190.95$
Impaired days	322
	$3,650 \times \$58,081.59 \times 50\% = \$2,561.96$
Total reasonable allowance for use deduction:	\$2,752.91
Purchase price, including tax, title, license and registration	\$58,081.59
Less reasonable allowance for use deduction	-\$2,752.91
Plus filing fee refund	\$35.00
<b>TOTAL REPURCHASE AMOUNT</b>	<b>\$55,363.68</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's vehicle qualifies for replacement or repurchase. TEX. OCC. CODE § 2301.604.

#### V. Order

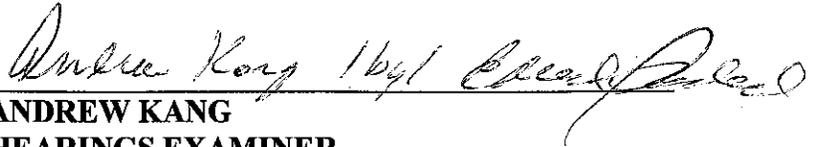
Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect in the reacquired vehicle 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 **\$55,363.68**. 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 December 4, 2015**

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