

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0178583 CAF**

**KHANH NGUYEN,
Complainant**

v.

**NEWMAR CORPORATION
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Khan Nguyen (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in his vehicle manufactured by Newmar Corporation (Respondent). A preponderance of the evidence does not show that the manufacturer had an opportunity to repair. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement but qualifies for warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 Tuesday, March 27, 2018, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Clyde Lemmon, attorney, represented the Complainant. Lee Green, a forensic expert, Brenda Nguyen, the Complainant's spouse, and the Complainant himself testified for the Complainant. Ed Hennessy, represented the Respondent. Steve Klontz and Mike Miller (employees of the Respondent), Douglas Lown (Vice President of Coachlight RV), and Luis Del Valle (an employee of the dealer, Holiday World of Katy) testified for the Respondent.

¹ 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.”² 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.³ 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.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

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

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, 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.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Additionally, 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:

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

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, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the manufacturer;¹³ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁵

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[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.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer satisfied the “opportunity to cure” requirement when the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt a repair on the manufacturer's behalf. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the vehicle” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.¹⁶ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that every required fact is more likely than not true.¹⁹ If any required fact appears more likely to be untrue or equally likely to be true or untrue, then the Complainant cannot prevail.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint should state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ “In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days.” TEX. GOV’T CODE §§ 2001.051; “Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(2).

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²³ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

5. Attorney Fees

When repurchase or replacement is ordered, the Department's rules allow reimbursement of "attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel." Such expense "must be reasonable and verified through receipts or similar written documents."²⁴

A. Summary of Complainant's Evidence and Arguments

On July 21, 2016, the Complainant, purchased a new 2016 Dutch Star 4369 from Holiday World of Katy, an authorized dealer of the Respondent, in Katy, Texas. The RV had 1,287 miles on the odometer at the time of purchase. The vehicle's limited warranty provides coverage for 12 months from purchase. On October 6, 2017, the Complainant's attorney provided a written notice of defect to the Respondent identifying the super slide, cracked floor tiles (caused by the dealer), and the windshield as the complained of issues. On August 3, 2017, the Complainant filed a complaint with the Department alleging that the super slide will come out while traveling, the floor molding tore, and the passenger side awning would not come in. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
August 2, 2016	2,297	Slides come out
September 8, 2016	3,042	Slides come out, windshield
September 27, 2016		Cracked tile, trim
April 12, 2017	6,020	Cracked tile
May 29, 2017	6,293	Slide comes out, rear awning comes out and starts flapping
July 18, 2017	10,859	Slide creeps out, floor molding damaged from slide, awning not extending/retracting properly, refrigerator slides out, windshield

The Complainant testified that he purchased the RV for family travel and did not use the vehicle for business or other purposes. The Complainant affirmed that the RV did not have any structural modifications. Additionally, the RV did not have modifications to the appliances that came installed with the RV and the Complainant did not add any appliances. He confirmed that the slideouts, flooring, and awning had not been modified. The Complainant explained that a slide would creep out (maybe eight inches) while driving. The Complainant would have to retract the

²⁴ 43 TEX. ADMIN. CODE § 215.209(a).

slideout and wedge it in. The Complainant testified that the RV repeatedly had problems and he would have to bring the vehicle back for repair. In one instance the refrigerator slid out and hit the Complainant's son. The refrigerator also came out on the way to the hearing. He noted the dealer repaired the cracked tile and seal six to seven times. The Complainant testified that he had spoken with someone named Spencer from the Respondent and that the dealer contacted the Respondent. He stated that the Respondent refused to repair the slideout and the other issues before retaining counsel.

On cross-examination, the Complainant stated that the main concern was the super slide and that he had filed the complaint three days before the warranty expired. The Complainant affirmed that on the complaint, he marked that he had not given the Respondent notice and that a factory representative had not inspected the vehicle. The Complainant confirmed that a factory representative first made a complete inspection of the RV on November 14, 2017. The Complainant agreed that as of the hearing date, the only real problem was the super slide coming out. The Complainant confirmed that on the third service date (September 27, 2016), the vehicle was already at the dealership, so the Complainant did not drop off the RV again on the third service date. The Complainant acknowledged that the Respondent had offered to take the RV to the factory in Indiana to repair the slideout, replace the windshield, replace the awning, and repair the cracked tiles, as of November 14, 2017. On redirect examination, the Complainant stated that the awning and flooring issues continued to exist as of July 19, 2017.

Lee Green, a mechanical engineer, testified that a fluid leak allowed the slideout to inadvertently extend. He described the transition molding as dirty and explained that the molding did not lay flat toward the front and did not lay in the strip towards the back. He added the front slideout was not level with the floor and the rear slideout was level but angled down. He explained the refrigerator would slide out when going around a corner at sufficient velocity. Mr. Green noted that screws under the slideout were either not inserted squarely or fully, causing them to hang on plastic material and make a popping noise. He also found the PVC transition molding and refrigerator bracket to have been improperly repaired.

On cross-examination, Mr. Green confirmed that the Respondent did not manufacture the slideout but HWH manufactured the slideout. Mr. Green answered that he did not contact HWH because HWH has documentation that a leak may cause the slideout to move. Mr. Green confirmed

that if repaired, the RV should operate as designed. He did not know if the Respondent had worked on the RV.

Mrs. Nguyen testified that the slideout had a couple of issues and the refrigerator was a safety concern. She stated that the refrigerator came loose and bruised her son while she was driving. She testified that they had spoken with Spencer from the Respondent.

B. Summary of Respondent's Evidence and Arguments

Mike Miller, a service technician for the Respondent, stated that the Respondent's first complete opportunity to inspect the vehicle occurred on November 14th, 2017. Mr. Klotz and Mr. Lown were also present. Mr. Miller test drove the RV with Mr. Lown. The slideout was flush and did not creep out at any time. The slideout appeared to operate normally except for a popping noise. The slideout did not exhibit any leaking. He did not know if the hydraulic fluid was a maintenance issue for the consumer, but he confirmed that hydraulic systems may leak and the reservoir must be kept full and checked. Referring to the Lemon Law complaint form and the work orders, Mr. Miller looked at slideout, operated the slide, and inspected the broken tile at the front of the slideout by the dinette. He explained the transition was a rubber piece attached to the front of the slideout floor covering back between the slideout floor and the main floor. He did not know why the transition had adhesive since the transition had a tongue and groove design. Mr. Miller confirmed that the Respondent did not make any repairs as of the hearing date but did offer to make repairs. Mr. Miller pointed out that on every vehicle they build, L-brackets fasten the refrigerators at the top. They tested the awning – running it in and out. They noticed wrinkles, which they believe resulted from rolling away the awning wet. They also found that the dinette booth latch and engine door latch needed repair. In August 2017, while in the area on a matter unrelated to the subject vehicle, Mr. Miller visited the dealer to ensure the dealer had everything needed and if the dealer had any questions. At the dealership, Mr. Miller visited about the windshield. At the November inspection, Mr. Miller could see a flaw in the windshield when viewed at a particular angle through polarized sunglasses.

On cross-examination, Mr. Miller answered that he first heard about the vehicle on August 9, 2017. At that visit, he discussed the vehicle with the dealer's technician for no more than a couple of minutes. He was not aware of the awning issue at that visit. He did not see a defect in the windshield at that time.

Mr. Lown testified that he sold Newmar RVs as well as other manufacturers' RVs. He stated that he was not an employee of the Respondent but consulted for the Respondent. He explained that any reduction in value is normally the cost of repair, so if no repair is necessary, then there is no reduction in value, that is, if the issue is take care of, there is no loss of market value. He stated that the repairs for the RV could be done at his repair facility. Once repaired, the vehicle would have no impairment of value.

On cross-examination, Mr. Lown confirmed he was present with Mr. Miller at the inspection. He stated that when they extended the room, they heard popping but did not hear this when subsequently extending the slideout. He inspected the tiles and looked at the slideout mechanism. He believed the slideout had a problem with a valve but did not see leaking fluid at the time. Mr. Lown explained that the slideout never moved more than five to six inches, which is not really a safety issue. He had never experienced a slideout (inadvertently) coming out further. Mr. Lown stated that the brackets and tiles were repairable. He responded that the screws did not appear seated correctly in the photos. He did not know of any recalls on the Dutch Star model.

C. Inspection

Upon inspection at the hearing, the subject vehicle had 11,332 miles on the odometer. The awning operated normally. A plastic fitting on the slide mechanism appeared pink with hydraulic fluid but did not actually drip any fluid. The molding on the edge of the slideout exhibited some damage. Some tiles had chips and cracks. Mrs. Nguyen commented that one of the tiles was cracked during replacement of another tile. The refrigerator had a dent from hitting a door handle. Under the slide, some screws were angled and/or not completely flush. Under the slide, some screws were angled and not completely flush. The windshield had a barely perceptible spot darker than the surrounding area and only visible at a particular angle.

D. Analysis

1. Manufacturer's Opportunity to Repair

As an initial matter, the vehicle does not qualify for repurchase or replacement because the Complainant failed to provide an opportunity for the manufacturer, as opposed to the dealer, to repair the alleged issues. The Lemon Law prohibits granting repurchase or replacement relief unless "the owner or a person on behalf of the owner has mailed written notice of the alleged defect

or nonconformity to the manufacturer” and “the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.” In this case, the Complainant’s Lemon Law complaint (filed on August 3, 2017) was the first written notice of defect to the Respondent. Thereafter, the Complainant’s attorney provided a written notice on October 6, 2017. After receiving written notice, the Respondent offered to repair the alleged defects as of November 14, 2017; however, the Complainant declined the Respondent’s repair. A dealer repair can constitute a repair attempt by the manufacturer, if the manufacturer authorizes the dealer to repair the alleged defects after the manufacturer receives written notice of such defects. However, the record shows no opportunity to repair at all after written notice of the alleged defects. As a result, the law prohibits granting repurchase or replacement relief.

2. Specific Defects

The August 3, 2017, complaint alleged three issues: the slideout extending while traveling, the floor molding torn by the slide’s operation, and the passenger side awning not coming in. The October 6, 2017, notice of defect identified three issues: the slideout extending, tiles damaged by the slide, and a spot on the windshield. As explained in the discussion of applicable law, if a vehicle does not qualify for repurchase or replacement, it may still qualify for repair relief. In this case, the issues cited above appear to qualify for repair relief. In addition, though the complaint and notice of defect did not address the refrigerator bracket, the repair attempts did include this issue. Therefore, the refrigerator brackets qualify for repair. The angled/non-flush screws under the slideout were not identified in the complaint, notice of defect, or any repair order/invoice. Therefore, the screws do not qualify for repair relief.

III. Findings of Fact

1. On July 21, 2016, the Complainant, purchased a new 2016 Dutch Star 4369 from Holiday World of Katy, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,287 miles on the odometer at the time of purchase.
2. The vehicle’s limited warranty provides coverage for 12 months from purchase.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
August 2, 2016	2,297	Slides come out
September 8, 2016	3,042	Slides come out, windshield
September 27, 2016		Cracked tile, trim
April 12, 2017	6,020	Cracked tile
May 29, 2017	6,293	Slide comes out, rear awning comes out and starts flapping
July 18, 2017	10,859	Slide creeps out, floor molding damaged from slide, awning not extending/retracting properly, refrigerator slides out, windshield

4. On October 6, 2017, the Complainant's attorney provided a written notice of defect to the Respondent identifying the super slide, cracked floor tiles, and the windshield as the complained of issues.
5. On August 3, 2017, the Complainant filed a complaint with the Department alleging that the super slide will come out while traveling, the floor molding tore, and the passenger side awning would not come in.
6. On October 17, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 factual matters asserted.
7. The hearing in this case convened on Tuesday, March 27, 2018, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Clyde Lemmon, attorney, represented the Complainant. Lee Green, a forensic expert, Brenda Nguyen, the Complainant's spouse, and the Complainant himself testified for the Complainant. Ed Hennessy, represented the Respondent. Steve Klontz, Mike Miller, and Douglas Lown (employees of the Respondent), and Luis Del Valle (an employee of the dealer, Holiday World of Katy) testified for the Respondent.
8. The vehicle's odometer displayed 11,332 miles at the time of the hearing.
9. The warranty expired on July 21, 2017.

10. Upon inspection at the hearing, the subject vehicle had 11,332 miles on the odometer. The awning operated normally. A plastic fitting on the slide mechanism appeared pink with hydraulic fluid but did not actually drip any fluid. The molding on the edge of the slideout exhibited some damage. Some tiles had chips and cracks. Mrs. Nguyen commented that one of the tiles was cracked during replacement of another tile. The refrigerator had a dent from hitting a door handle. Under the slide, some screws were angled and/or not completely flush. Under the slide, some screws were angled and not completely flush. The windshield had a barely perceptible spot darker than the surrounding area and only visible at a particular angle.
11. The Respondent offered to repair the vehicle after receiving written notice of the alleged defects as of November 14, 2017. However, the Complainant declined to have the Respondent repair the vehicle.
12. The angled/non-flush screws were not addressed in the complaint, notice of defect, or any repair order/invoice.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
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 filed a sufficient complaint with the Department. 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 § 206.66(d).

6. The Complainant's vehicle does not qualify for replacement or repurchase. The Respondent did not have an opportunity to cure the alleged defect(s). This Order may not require repurchase or replacement of the vehicle without an opportunity to cure by the Respondent. TEX. OCC. CODE § 2301.606(c)(2).
7. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
8. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

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**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the: slideouts, damaged plastic slideout trim/molding, damaged tiles, windshield, awning, and refrigerator brackets to the applicable warranty. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²⁵ Within 20 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

²⁵ (1) This Order becomes final if a party does not file a motion for rehearing within 25 days after the date of this Order, or (2) if a party files a motion for rehearing within 25 days after the date of this Order, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date of this Order.

SIGNED May 29, 2018



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