

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0189933 CAF**

JASON HALE,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	OF
	§	
K-Z, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jason Hale (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) for alleged warrantable defects in his recreational vehicle (RV) manufactured by K-Z, Inc. (Respondent). The evidence shows that the manufacturer’s warranty does not cover the subject vehicle in this case. Consequently, the Complainant’s vehicle does not qualify for repurchase/replacement or 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 February 1, 2019, at 9:00 a.m. in Liberty, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Elizabeth Marie Hale testified for the Complainant. Delbert Miller, vice president corporate, represented and testified for the Respondent.

¹ TEX. GOV’T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent 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 currently 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 written notice of the defect to the respondent, (2) an opportunity to repair by the respondent, 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 or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the respondent;¹³ (2) the respondent 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

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). 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

¹⁴ A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer satisfies the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

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

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 before the warranty's expiration.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 of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint must 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 forming the basis of the claim

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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.").

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

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁴ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁵ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁶

B. Summary of Complainant’s Evidence and Arguments

On September 2, 2016, the Complainant, purchased a new 2017 Sportsmen 330IK from Terry Vaughn RVs, an authorized dealer of the Respondent, in Spring, Texas. The vehicle’s limited warranty provides coverage for two years. On August 6, 2018, the Complainant or a person on behalf of the Complainant mailed a written notice of defect to the Respondent. On August 15, 2018, the Complainant filed a complaint with the Department alleging: a burner on the stove was never connected; blinds will not push up all the way or stay up; a door latch was broken; the gas monitor continuously sounded an alarm; awning lights were going out; a leak at the closet slide; a leak in the kitchen slide; the outdoor speakers sounded blown; the entertainment slide tin ripped;

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(3).

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).

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

the closet slide opened while in transit; the awning leaked; the couch frame collapsed and pulled away from the wall; corner cabinet shelves started collapsing; air conditioning (AC) stopped blowing and froze; nails protruding through the vinyl on the roof and the front of the slide; loose/detached hardware for shower doors; and loose plumbing and fittings for the fresh water connect flooded the storage compartment. The Complainant took the vehicle to the selling dealer on April 28, 2018, for repair of the alleged issues and picked up the vehicle on December 26, 2018. The Complainant confirmed that the following items were no longer at issue in this proceeding: the unconnected stove burner; broken door latch; awning lights going out; ripped entertainment slide tin; closet slide opening in transit; corner cabinet shelves collapsing; AC freezing and not blowing; loose/detached shower door hardware; and loose fresh water connection plumbing/fittings.

The Complainant testified that: the blinds were readjusted and somewhat successfully repaired. He explained that when pushing the blinds up, the fabric would fold, pinch, and become crooked. He believed that this problem resulted from the blinds installation during manufacturing.

The Complainant did not know whether the original gas monitor was faulty, but that model appeared to have issues with false alarms. He last noticed the problem in May of 2017, after which they disconnected the monitor. The gas monitor was replaced with an upgraded version, which he did not yet test.

Mrs. Hale stated that they had not yet checked the leak at the closet slide. The Complainant surmised that the leak was due to rain, noting that the RV was not completely waterproof because of the slide. Sideways rain could have caused the water leaking. The Complainant described the water intrusion as a substantial amount of water between the sink and the slide. Mrs. Hale added that the corner of the carpet would get wet. The Complainant stated that the RV did not leak every time when raining, but the leaking depended on the amount of rain and wind. Mrs. Hale stated that she last noticed the leaking right before bringing the RV in for service because it had been set up in their driveway after the Complainant returned from out of town. She noticed puddles when cleaning the RV. The Complainant pointed out that he had just returned from West Texas in February and had not been in the RV since then.

Likewise, the Complainant testified that they had not checked the leak at the kitchen slide, since they had not been in the RV for over eight months. As with the closet slide leak, Mrs. Hale

found water in the RV after setting it up in the driveway with the slides open. She confirmed that this was the last instance she noticed wetness in the RV.

The Complainant believed that the outdoor speakers did not appear to have been changed since they still had the original caulking. The speakers sounded distorted as if blown, which may simply be due to their lower quality. Mrs. Hale Responded that the sound was distorted at all volumes. The Complainant pointed out that he did not use the outdoor speakers much. He last noticed the speaker distortion in February of 2018.

The Complainant opined that the awning leak appeared somewhat repaired with caulk on the seam. He attributed this leak to the assembly of the awning, i.e., poor workmanship. The awning's seam should have been placed somewhere other than over the door (as not to drip water at the entry). He last noticed the awning leaking in February of 2018. He clarified that the problem was not necessarily the awning itself, but the railing and the way it was attached to the RV.

The couch frame appeared restored to what it looked like at purchase but the Complainant did not believe that it would be durable because of the lack of reinforcement. As with the awning, he related the couch frame issue to its workmanship: the use of what seemed to be 2" x 2" wood and staples instead of screws. The frame was already distressed though only used for probably a year. Mrs. Hale interjected that a seven-year old had been using the couch. Moreover, the couch frame was attached to the wall panel, which the Complainant characterized as paper, with one wood screw per side. The frame looked the same as when purchased, except possibly for an additional screw on each side. Mrs. Hale added that staples were also used to attach the frame.

The Complainant explained that the original vinyl, which had lifted, on the roof and side of the slide was re-stretched and nailed back down to the slide. He last noticed nails protruding from the vinyl in October of 2017.

Upon cross-examination, the Complainant confirmed that he used the RV for work and not recreation.

C. Inspection

The weather was rainy at the time of the inspection. The blinds appeared to function normally except that the fabric would not fold evenly or bunch up with the blinds pushed up (opened). The gas monitor was tested and appeared to function normally. The gas monitor was not

randomly sounding an alarm. The interior showed no signs of leaking. The awning showed some tearing at the edges. The couch appeared to remain attached to the wall. The wall around the entertainment center/dinette slide exhibited some cracking in the upper left and upper right corners of about 1" and 3" respectively. The outdoor speakers sounded normal at lower volumes but crackled at higher volumes. Some bumpiness could be seen where the nails pushed up on the vinyl lining the top of the slide. A screw was missing from a window valance bracket, leaving the valance loose.

D. Summary of Respondent's Evidence and Arguments

Mr. Miller testified that the Respondent received the Complainant's notice of defect last summer/fall and contacted the dealer to accelerate repairs. However, the dealer had some challenges dealing with changes in personnel. The RV was dropped off on April 27, 2018. The warranty expired in that time period (at the dealer) but the RV was brought in before expiration. The speaker issue did not appear on the dealer's work order or on the warranty claim. Mrs. Hale interjected that they told the dealership about the speakers and assumed the dealership wrote down the issue.

E. Analysis

To qualify for Lemon Law relief, the vehicle must have a defect covered by warranty (warrantable defect).²⁷ Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to warrantable defects. The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, the warranty generally states that:

KZRV warrants the structure of every towable recreational vehicle or truck camper purchased from an authorized KZRV dealer to the first retail consumer for a period of two (2) years, to be free from substantial defects in materials and workmanship when used for its intended purpose. The warranty period begins on the date of purchase or the date the unit is first placed into service, whichever is earlier. For

²⁷ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

purposes of this Towable Limited Warranty [“TLW”], the term “structure” includes the interior and exterior sidewalls, floor, roof, and frame.²⁸

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁹ A manufacturing defect is generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer’s specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle’s design (which exists before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing), are not warrantable defects. Design characteristics result from the vehicle’s specified design and not from any error during manufacturing.³⁰ In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects. Additionally, the warranty specifies that: “Excluded from coverage under the TLW are: . . . units used for any commercial purpose; . . . minor imperfections that do not interfere or affect the suitability of the unit for its intended use; . . . and components that are warranted separately by another manufacturer.”³¹ Regardless of how undesirable or troublesome a problem may be, the Lemon Law provides no relief unless the warranty provides coverage.

In the present case, the warranty broadly excludes RV’s used for “any commercial purpose.” In this case, the Complainant acknowledged that he had used his RV for work and not recreation. Although the Complainant’s work-related use of the RV may not have caused excessive

²⁸ Complainant’s Ex. 3, KZ Owner’s Manual at 10.

²⁹ Courts have affirmed that warranty language covering “defects in material or workmanship” do not cover design issues. *E.g., Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 (“The manufacturer’s express warranty in the case sub judice provides: ‘Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship’ The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty.”); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) (“the language in the contract of May 12, 1980, expressly limited TCR’s recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.”).

³⁰ In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.” *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

³¹ Complainant’s Ex. 3, KZ Owner’s Manual at 10.

wear, the warranty's exclusion nevertheless applies to any commercial use, regardless of wear. As a result, the warranty provides no coverage of the subject RV.

III. Findings of Fact

1. On September 2, 2016, the Complainant, purchased a new 2017 Sportsmen 330IK from Terry Vaughn RVs, an authorized dealer of the Respondent, in Spring, Texas.
2. The vehicle's limited warranty provides coverage for two years.
3. The Complainant took the vehicle to the selling dealer on April 28, 2018, for repair of the alleged issues and picked up the vehicle on December 26, 2018.
4. The vehicle was at the dealer for repair for 242 days.
5. On August 6, 2018, the Complainant or a person on behalf of the Complainant mailed a written notice of defect to the Respondent.
6. On August 15, 2018, the Complainant filed a complaint with the Department alleging: a burner on the stove was never connected; blinds will not push up all the way or stay up; a door latch was broken; the gas monitor continuously sounded an alarm; awning lights were going out; a leak at the closet slide; a leak in the kitchen slide; the outdoor speakers sounded blown; the entertainment slide tin ripped; the closet slide opened while in transit; the awning leaked; the couch frame collapsed and pulled away from the wall; corner cabinet shelves started collapsing; A/C stopped blowing and froze; nails protruding through the vinyl on the roof and the front of the slide; loose/detached hardware for shower doors; and loose plumbing and fittings for the fresh water connect flooded the storage compartment.
7. The Complainant confirmed that the following items were no longer at issue in this proceeding: the unconnected stove burner; broken door latch; awning lights going out; ripped entertainment slide tin; closet slide opening in transit; corner cabinet shelves collapsing; AC freezing and not blowing; loose/detached shower door hardware; and loose fresh water connection plumbing/fittings.
8. On October 8, 2018, 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.

9. The hearing in this case convened on February 1, 2019, at 9:00 a.m. in Liberty, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Elizabeth Marie Hale testified for the Complainant. Delbert Miller, represented and testified for the Respondent.
10. The warranty expired on September 2, 2018.
11. The warranty excludes coverage of “units used for any commercial purpose.”
12. The Complainant used the subject vehicle for work related purposes.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 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, repurchase, or warranty repair. The Complainant did not prove that the Respondent’s warranty covered the subject vehicle. TEX. OCC. CODE §§ 2301.603 and 2301.604(a); TEX. OCC. CODE § 2301.204.

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 April 2, 2019



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