

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0015164 CAF**

ANGELINA ROSA, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
THOR MOTOR COACH, INC. Respondents		

DECISION AND ORDER

Angelina Rosa (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 her recreational vehicle (RV) manufactured by Thor Motor Coach, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. 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 April 9, 2020, by telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself herself. John Arnold, attorney, represented the Respondent.

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

¹ TEX. GOV’T CODE § 2001.051.

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 cure 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

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

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).

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:

[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

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).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

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 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

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.

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 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 for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to

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)(3).

hearing 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 May 23, 2019, the Complainant, purchased a new 2019 Thor ACE 27.2 from Motor Home Specialist, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,131 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for 12 months or 15,000 miles on the odometer, whichever occurs first. On September 23, 2019, the Complainant provided a written notice of defect to the Respondent. On August 28, 2019, the Complainant filed a complaint with the Department alleging the following issues: scratch/gouge on the back left (exterior), scratches on various areas, decal coming up in some areas, rust spots on back bumper, missing window screen (behind driver seat in front of table, right of table), black stain on the couch, cut on table, no caulking on shower stall, steering wheel vibration / unbalanced tires, air conditioning (AC) water (condensation) leaking

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).

into the RV, USB port not working, under dash power outlet not working, (entrance) door not sealing properly, light visible through door and rattling when driving, (window) screen near couch rattling (screw missing), windshield washer not spraying well, AC condensation dripping over slide covers, headlights not bright (low beam), one headlight brighter than other, and back of the driver's seat touches the slide.

The Complainant testified that the door was supposed to be fixed by a dealer but was not fixed properly. The bent screen door remained bent and was hard to open and close. The entrance door was replaced but not properly. She had to yank and push it open and damage was done. The door had problems locking, unlocking, sealing, closing and opening, requiring a shove to get out. The whole door was replaced and caused damage to the trim. The lock was also changed. The headlights pointed down and she could not see ahead, causing blind spots at night. When asked about the current condition of the headlights, the Complainant explained that RV was currently at a dealer for repair. She last noticed the door issues when picking up the RV on February 3, 2020, when she inspected the RV with Bruce McManus. She test-drove the RV on March 1, 2020, and found the screen door rattling, which was bent. The Complainant tried for months to resolve the issues and could not use the RV except to drive from Texas to Florida. The Respondent was supposed to inspect the RV before releasing the but the wheels had no weights on. The RV currently had 3,185 miles on the odometer. Bruce McManus characterized the RV as "horrible to drive." Michelle Payne concurred with the Complainant's testimony.

On cross-examination, the Complainant noted that the RV had been damaged during warranty service. She affirmed that the RV performed better and the heavy vibration went away because Ford put weights on the wheels. She confirmed that the RV was still at a dealer awaiting parts from the Respondent, specifically for the headlights and entry door. When at the dealer a few days ago, she noticed that the dealer caulked the entry door area and the door was hard to open. The Complainant acknowledged that the missing screen had been replaced. She also confirmed that the AC condensation dripping on the passenger side had been corrected and that she was notified that the condensation dripping from the roof AC was normal. She affirmed that measuring voltage at the USB port showed a little over 5V, which a dealer pointed out was normal. The Complainant confirmed that she did not get any instruction on using the under-dash power port and did not know the generator needed to be on. She elaborated that the screen door was bent, though it still opened and closed. The door would lock with difficulty. She added that the door did

not seal properly as evidenced by visible light and rattling/shaking when driving. The Complainant explained that she found information from a government website that headlights should be able to shine 350 feet ahead, but apparently, lights used for everyday purposes are pointed to the ground. She noted that when Mr. McManus stretches out, the seat back will bump against the slide. When checking on the RV, a dealership technician opened the entry door for the Complainant. She could not tell that he had any difficulty opening the door. She did not think the mark on the couch or scratch on the table still existed.

The Complainant added that photos from the dealer showed that screen door was not aligned and exhibited bending. She asserted that the Respondent should have inspected for cosmetic issues and should have known about the missing wheel weights.

C. Summary of Respondent's Evidence and Arguments

Mark Stanley, consumer affairs manager, testified that Ford had balanced the tires and the RV did not exhibit abnormal vibration. He confirmed that the issues with the decals, gouged paint and rust were cosmetic. Moreover, the warranty did not cover rust. Mr. Stanley confirmed that the Respondent ordinarily has a "walk around" of the RV's (at the factory). Also, such inspections occur when checking in the RVs at the dealer and upon sale of an RV to consumers. Mr. Stanley found the headlights to be within specifications but can be adjusted for customer preference, but the dealer did not know what the Complainant wanted. Mr. Stanley affirmed that the warranty excluded external sealants. He noted that the entry door opened and closed normally. He explained that the door has two-stage locking. Closing to the first stage leaves a gap and allows rattling. But closing to the second latch eliminates those issues. He pointed out that the RV had a new door assembly, which included a screen door. Mr. Stanley explained that the USB port only outputs one amp, not designed for large phones or the like. However, the port can be replaced with an aftermarket version. On the other hand, the under-dash port operates at 110V AC. However, the 110V system runs on shore power or generator power, so the 110V port will not work driving down the road without the generator on.

On cross-examination, Mr. Stanley elaborated that the screen door comes as a part of the entry door assembly. He acknowledged a delay in obtaining parts. He could not confirm that the wheel vibration resulted from missing wheel weights, since the Respondent did not perform the tire balancing. Mr. Stanley stated that he did not test the headlights at night but he used the dealer's

alignment tool to confirm that they were within specifications. Mr. Stanley did not notice a bend in the screen door. Regarding the door rattle, he pointed out that the RVs are driven to where they are sold, so parts can move or loosen.

D. Analysis

As an initial matter, the complaint determines what issues can be addressed. In the present case, the Complainant touched on issues not pleaded in the Complaint and the Respondent objected to such issues. As a result, any issues outside the scope of the complaint will not be addressed here. To qualify for any relief, the vehicle must have a currently existing defect covered by warranty (warrantable defect).²⁷ The record shows a variety of problems with the vehicle. However, Lemon Law relief does not apply to all problems that a consumer may have but only to defects covered by warranty (warrantable defects).²⁸ 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. Instead, the Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In this case, the vehicle's warranty states that:

THIS LIMITED WARRANTY COVERS

- i. ONLY the first retail owner and any second retail owner of the NEW motorhome;
- ii. ONLY those portions of a NEW motorhome not excluded under the section "What is Not Covered," when sold by an authorized dealership and used for its intended purpose of recreational travel and camping; and,
- iii. ONLY defects in workmanship performed and/or materials used to assemble those portions of your motorhome not excluded under the section "What is Not Covered." "Defect" means the failure of the workmanship performed and/or materials used to conform with the design and manufacturing specification and tolerances of Thor Motor Coach ("TMC").

COVERAGE ENDS

Twelve (12) months after the first retail owner takes delivery of the motorhome from an authorized dealership OR after the odometer reaches 15,000 miles, whichever occurs first. . . .

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

²⁸ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

If the motorhome is used for full time recreational travel and camping or as a residence **OR** is not of the current or prior model year when the first retail owner takes delivery of the motorhome **OR** was purchased, titled, or registered in a business name or used for any commercial or business purposes other than for rental purposes, the Limited Warranty ends ninety (90) days after the first retail owner takes delivery of the motorhome **OR** after the odometer reaches 5,000 miles, whichever occurs first.²⁹

Under these terms, the warranty only applies to defects in materials or workmanship used to assemble the vehicle (manufacturing defects).³⁰ 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. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as improper dealer repairs (which occur after manufacturing) are not warrantable defects. Furthermore, the warranty specifies the following exclusions from the warranty:

WHAT IS NOT COVERED

- Any motorhome used for rental purposes or sold or registered outside of the United States or Canada;
- Any motorhome not used solely for recreational travel and camping;
- Accessories and equipment added or changed after the motorhome leaves the factory;
- Accessories and equipment that are working as designed, but which you are unhappy with the design;
- Normal wear and usage, such as fading or discoloration of fabrics, or damage caused by condensation;
- Defacing, scratching, dents and chips on any surface or fabric;

²⁹ Respondent's Ex. 1, Warranty Guide.

³⁰ 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.").

- Owner maintenance, including replacement of wiper blades, bulbs, filters, wheel alignments and resealing exterior sealant areas (see “Care and Maintenance” section of the Owner’s Manual);
- The leveling jacks, the automotive chassis and power train, including, by way of example the engine, drive-train, steering, ride and handling, braking, wheel balance, muffler, tire wear or failure, tubes, batteries and gauges;
- Appliances and components covered by their own manufacturer’s warranty including the microwave, refrigerator, ice maker, stove, oven, generator, roof air conditioners, DVD players, televisions, water heater, furnace, stereo, radio, compact disc player, washer, dryer, and inverter;
- Rust and corrosion; Or flaking, peeling and chips or other defects or damage in or to the exterior or finish caused by rocks or other road hazards, the environment, including chemical off-gassing, airborne pollutants, salt, tree sap and hail causing any damage including but not limited to rust and corrosion.³¹

In sum, the warranty only applies to manufacturing defects attributable to the Respondent. Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the warranty covers the issue. The Lemon Law does not require the vehicle to operate/performance to the Complainant’s satisfaction, but only requires the vehicle to conform to the warranty. Further, damage occurring after the vehicle is manufactured, that is, after the vehicle leaves the factory, is not a manufacturing defect and is therefore not covered by the warranty. In this case, the warranty does not cover the alleged defects in the complaint.

1. Cosmetic Issues

The scratch/gouge on the back left (exterior), scratches on various areas, and decal coming up are specifically excluded as “defacing, scratching, dents and chips on any surface or fabric.” The rust spots on back bumper are excluded under the “rust and corrosion” provision.

2. Issues Not Currently Existing (Resolved Issues)

As previously described, a defect must currently exist to support any relief. The record reflects that the missing window screen, screw missing from a rattling window screen, and clogged windshield sprayers³² were replaced and no longer presented any currently existing issues. Additionally, the condensation leak was successfully repaired. Likewise, the evidence reflects that the black stain on the couch and cut on the table have been resolved. Further, these cosmetic issues

³¹ Respondent’s Ex. 1, Warranty Guide (emphasis added).

³² The clogging of the windshield sprayers do not appear to be manufacturing defects in the first place.

are specifically excluded by the “defacing, scratching, dents and chips on any surface or fabric” provision.

3. Normal Design Characteristics

The apparent absence of caulking on the shower stall does not appear to be a manufacturing defect but is a design characteristic, which also falls under “accessories and equipment that are working as designed, but which you are unhappy with the design.” The same applies to the AC condensation dripping on the slide covers, headlight position, and the back of the driver’s seat touching the slide. Similarly, evidence does not show any defects in the USB port or under dash 110V power outlet, instead the Complainant’s unfamiliarity with the design characteristics of the USB port and 110V outlet appear to have led to the belief that a defect existed.

4. Chassis Issues

The warranty expressly excludes the chassis from coverage, including “wheel balance”, making steering wheel vibration/unbalanced tires ineligible for any relief.

5. Non-Manufacturing Defects

As explained above, issues arising after the Respondent manufactured the vehicle do not constitute warrantable defects subject to relief. The evidence indicates that the problem with the entry door not sealing properly, resulted from damage to the new replacement door assembly, which was bent.

III. Findings of Fact

1. On May 23, 2019, the Complainant, purchased a new 2019 Thor ACE 27.2 from Motor Home Specialist, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,131 miles on the odometer at the time of purchase.
2. The vehicle’s limited warranty provides bumper to bumper coverage for 12 months or 15,000 miles on the odometer, whichever occurs first.
3. The limited warranty covers:
 - i. ONLY the first retail owner and any second retail owner of the NEW motorhome;

- ii. ONLY those portions of a NEW motorhome not excluded under the section “What is Not Covered,” when sold by an authorized dealership and used for its intended purpose of recreational travel and camping; and,
 - iii. ONLY defects in workmanship performed and/or materials used to assemble those portions of your motorhome not excluded under the section “What is Not Covered.” “Defect” means the failure of the workmanship performed and/or materials used to conform with the design and manufacturing specification and tolerances of Thor Motor Coach (“TMC”).
4. The warranty excludes: accessories and equipment that are working as designed; defacing, scratching, dents and chips on any surface or fabric; the automotive chassis and power train, including wheel balance; rust and corrosion; and flaking, peeling and chips or other defects or damage in or to the exterior or finish.
5. On September 23, 2019, the Complainant provided a written notice of defect to the Respondent.
6. On August 28, 2019, the Complainant filed a complaint with the Department alleging the following issues: scratch/gouge on the back left (exterior), scratches on various areas, decal coming up in some areas, rust spots on back bumper, missing window screen (behind driver seat in front of table, right of table), black stain on the couch, cut on table, no caulking on shower stall, steering wheel vibration/unbalanced tires, air conditioning (AC) water (condensation) leaking into the RV, USB port not working, under dash power outlet not working, (entrance) door not sealing properly, light visible through door and rattling when driving, (window) screen near couch rattling (screw missing), windshield washer not spraying well, AC condensation dripping over slide covers, headlights not bright (low beam), one headlight brighter than other, and back of the driver’s seat touches the slide.
7. On December 16, 2019, 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.

8. The hearing in this case convened on April 9, 2020, by telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself herself. John Arnold, attorney, represented the Respondent.
9. The vehicle's odometer displayed 3,185 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The issues with the missing window screen, screw missing from a rattling window screen, clogged windshield sprayers, condensation leak, the black stain on the couch and cut on the table were successfully resolved.
12. The apparent absence of caulking on the shower stall, AC condensation dripping on the slide covers, headlight position, and the back of the driver's seat touching the slide, are normal characteristics of their design. Similarly, the USB port and under dash 110V power outlet are operating as designed.
13. The issue with the entry door not sealing properly, resulted from damage to the new replacement door assembly, and did not arise from the manufacture of the vehicle.

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 or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. 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).
9. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
10. 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**.

SIGNED June 8, 2020



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