TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0003442 CAF

BRADLEY and KELLY DOUGHTY, **Complainants**	§	**BEFORE THE OFFICE**
v.	§	**OF**
ENTEGRA COACH, INC., **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Bradley and Kelly Doughty (Complainants) 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 their recreational vehicle (RV) manufactured by Entegra Coach, Inc. (Respondent) a division of Jayco, Inc. A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] 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 23, 2020, by telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. John Nelson, attorney, represented the Complainants. Andrew Alvarado, attorney, also appeared for the Complainants. Christopher (Chris) Lowman, attorney, represented 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 mailed 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]

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[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: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.[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: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.[8]

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[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).

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 and: (A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.[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 mailed written notice of the alleged defect or nonconformity to the manufacturer;[13]

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[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). The Lemon Law does not define the words "mailed" or "mail", so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines "mail" as "to send by mail; place in a post office or mailbox for transmission" or "to transmit by email." *Mail. Dictionary.com Unabridged*. Random House, Inc. http://www.dictionary.com/browse/mail (accessed: April 01, 2016). Also, 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 that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

(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]

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 Complainants.[18] The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.[19] Accordingly, the Complainants 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

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[14] TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See 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).

[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,

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 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 Complainants 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 Complainants' Evidence and Arguments

On June 15, 2017, the Complainants, purchased a new 2018 Entegra Cornerstone from Motor Home Specialist, LP, an authorized dealer of the Respondent, in Alvarado, Texas. The Complainants actually took delivery on August 17, 2017. The vehicle had 1,797 miles on the odometer at the time of purchase. The vehicle's limited warranty provides coverage for two years

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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).

[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).

or 24,000 miles, whichever occurs first. On July 2, 2019, the Complainants' attorney provided a written notice of defect to the Respondent. On October 28, 2019, the Complainants filed a complaint with the Department alleging that the RV's Vegatouch control system, did not function properly.

Mr. Doughty testified that he first noticed problems with the RV five days after taking delivery, specifically, the Vegatouch screen displayed a flashing error message. He explained that the Vegatouch system monitored and controlled the electronic components of the RV. After bringing the RV to North Carolina, the Vegatouch system continued to malfunction. Communication errors would occur where the Vegatouch system could not communicate with the RV's parts. After connecting to shore power, the Vegatouch system exhibited an alarm for too much power/not enough power. Mr. Doughty would need to reboot the Vegatouch system. Thereafter, he took the RV to an authorized repair center. After the repair visit, the RV's motorized steps would only move halfway and would not retract or come all way out. After eight months, on a subsequent repair visit, a technician found that the generator was sticking out of the RV. The technician explained that the generator needed to be repositioned every day because it would come out by itself. After repairs, when plugged into shore power, errors would begin again. A tech continued to work on the Vegatouch system but it still would not work. Mr. Doughty inquired about taking the RV to the factory but the Respondent instructed him to continue using the service center. A technician managed to get the system working and Mr. Doughty brought the RV to Blowing Rock. He was sent a new touchscreen, which he had to install. Later, on a trip to Tennessee, an error occurred again. The main error was a communication error: the system could communicate with components for starting the generator, air conditioning (AC), etc. He had to reboot the system 4 to 5 times a day. After the Tennessee trip, the Complainant contacted the Respondent about taking the RV to the factory but was again instructed to have the RV taken to a service center. He subsequently took the RV to Tom Johnson in Concord. After repairs, Mr. Doughty took the RV to the adjacent campsite as before and plugged the RV into shore power but could not get it to work so he returned it to the service center. After repairs, Mr. Doughty again camped next door but the RV again exhibited an error. After completing repairs, the Complainants planned a west coast trip. While staying at Hot Springs, Arkansas, the system could not communicate with different components. Mr. Doughty had to reboot the system, so he took the RV to Motorhome Specialist in Alvarado. The Complainants left the RV and finished their trip by

plane. After two weeks, Mr. Doughty picked up the RV and hooked it up at the adjacent and errors started. The technician could not resolve the issue but got in touch with a Firefly (Vegatouch) specialist. The RV was rewired and worked momentarily. When staying overnight, errors occurred all the time. Mr. Doughty then arranged to take the RV to Tom Jones in Concord. He stopped in Hot Springs, Arkansas and the errors never stopped so he took the RV to the local Tom Jones facility. After taking the RV to Tom Johnson in Concord and picking it up, Mr. Doughty stayed at the adjacent camp ground to test the RV. The Tom Johnson dealership did not successfully repair the RV. The electrical issues on every trip except for the first few days after purchasing the RV. When going to pick up the RV from Tom Jones on April 18, 2020, the leveling jacks did not function. A technician tried to reset the leveling system but it would not work, so Mr. Doughty left the RV. The RV was still not ready as of the day of the hearing.

On cross-examination, Mr. Doughty confirmed that a Firefly (the Vegatouch manufacturer) employee assisted with the Vegatouch issues on several occasions. He also acknowledged that the RV was inspected at a Firefly facility. Mr. Doughty affirmed that the RV's leveling system could not be repaired because the manufacturer was closed. He confirmed that the leveling system controls were on a separate screen from the Vegatouch, but he did not know if the Vegatouch was related to the leveling system issue.

Mrs. Doughty testified that she and Mr. Doughty had planned on taking the RV on long trips. However, they never took a trip in it when it did not work and they never completed a trip. Mrs. Doughty confirmed that the RV was already at the dealership in July 2019. She did not know why a second work order was opened in July 2019. The RV had been at the dealer since November 2018.

C. Summary of Respondent's Evidence and Arguments

Jacob Shearer, customer service manager, testified that he first became involved after the RV went to Tom Jones. Mr. Doughty informed Mr. Shearer about the RV, including that the Vegatouch system was not functioning. Mr. Shearer corresponded with Firefly regarding the Vegatouch errors and Firefly determined that the screen should be replaced. After that, Firefly contacted Mr. Doughty directly. Mr. Shearer explained that Firefly manufactured and warranted the Vegatouch system, and because of its complexity, the manufacturer prefers that they address

its issues. He noted that his last contact with the Complainants was an email to offer to bring the RV to the factory, which they declined.

On cross-examination, Mr. Shearer explained that the Respondent did not necessarily refuse Mr. Doughty's request to take the RV to the factory but that they operated by appointment except for emergencies. He affirmed that the factory was not set up to address the Vegatouch issue and that he had referred the Complainants to the dealerships for repair. On redirect, Mr. Shearer explained that Firefly was in the same city as the Respondent and that they would have involved Firefly in any repair in their facility. He also confirmed that the backup camera and leveling system were manufactured by separate manufacturers.

Phil Houser, consumer affairs manager, testified that the Vegatouch system, which was separately warranted, was excluded from the RV's warranty. Nevertheless, the Respondent would assist with an RV's problems, which is why the Respondent contacted Firefly on behalf of the Complainants. Mr. Houser affirmed that the floor heater and backup camera issues did not relate to the Vegatouch system. Additionally, the leveling system was manufactured by Equalizer Systems and was operated from a separate touch pad. He also noted that the dash camera, side camera and backup camera operated on separate lines. These components operated on the 12V system not the 110V system. Any problems with these components would be separate unless the issues tied back to the battery (which powers the 12V system), which would be easy to diagnose. However, there was no indication of any problems with the battery bank. Mr. Houser concluded that the Complainants complained about the Vegatouch system and not electrical issues.

On cross-examination, Mr. Houser acknowledged that the Vegatouch system had problems even after replacement. He confirmed that the RV's warranty covered the harnesses the Respondent built and the installation of the harnesses. He affirmed the possibility that a component may be operable but improperly installed. On redirect, Mr. Houser confirmed that no Vegatouch system issues were reported after August 3, 2019. On re-cross, he expressed that the Vegatouch system was repaired because it will function after rebooting. However, the manufacturer's (Firefly's) software settings, the high and low voltage thresholds for voltage spikes and drops, may need to be reset. He responded that multiple reboots a day may be normal if getting "dirty power" and reflects the Vegatouch system protecting itself. However, the work orders did not identify this as a cause of the Vegatouch issue. Mr. Houser acknowledged that the RV had a leveling system

issue the weekend before the hearing. However, the leveling system is both electrical and hydraulic.

D. Analysis

To qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)[27] that continues to exist, even after repair.[28] In this case, the warranty generally provides that:

> This limited warranty covers: (i) the motorhome when it is used for its intended purpose of recreational travel and camping; (ii) only the first retail purchaser and any second retail owner; (iii) only those portions of the Motorhome not excluded under the section "What is Not Covered"; (iv) the motorhome only when sold by an authorized dealership; and, (v) only defects in workmanship performed and/or materials used to assemble those portions of the Motorhome not excluded under the section "what is Not Covered".
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> . . . .
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> The duration of this warranty is 2 years after the first retail owner takes delivery of the Motorhome from an authorized dealer or 24,000 miles of use, whichever occurs first.[29]

Additionally, the warranty specifically excludes:

> Equipment and appliances installed after the Motorhome is assembled by Entegra; . . . normal wear, tear or usage, such as tears, punctures, soiling, mildew, rust, fading, or discoloration of exterior plastic or fiberglass, or soft goods, such as upholstery, drapes, carpet, vinyl, screens, cushions, mattresses and fabrics; the effects of condensation or moisture from condensation inside the RV; mold or any damage caused by mold to the interior or exterior; imperfections that do not affect the use of the Motorhome for its intended purpose of recreational use; items working as designed but that you are unhappy with; damage caused by misuse, mishandling, neglect, abuse, failure to maintain the Motorhome in accordance with the owner's manual, or failure to perform other routine maintenance such as inspections, lubricating, adjustments, tightening of screws and fittings, tightening of lug nuts, sealing, rotating tires; damage caused by accident, whether or not foreseeable; damage caused by weather or corrosion due to the environment; damage caused by theft, vandalism or fire; damage caused by tire wear or tire failure; defacing, scratches, dents, chips on any surface or fabric of the Motorhome;

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

[28] TEX. OCC. CODE § 2301.605.

[29] Respondent's Ex. 1, 2018 Entegra Cornerstone Limited Warranty.

> damage caused by off road use, overloading the Motorhome or any of its components or parts; wheel alignment or adjustments to axles caused by improper maintenance, loading or damage from road hazards, including off road travel; wheel damage or balancing. Also, this limited warranty does not cover any material, component, system or part that is warranted by another entity, including, by way of example, the: automotive chassis, (which includes the power train, steering, handling, braking, wheel balance, muffler, tires, tubes, batteries and gauges), generator, hydraulic jacks, inverter, converter, microwave, television, DVD/CD player, radio, speakers, television, refrigerator, range, water heater, water pump, stove, carbon monoxide detector, smoke detector, propane detector, furnace or any air conditioner. The written warranty provided by the manufacturer of the component part is the direct and exclusive responsibility of that manufacturer).[30]

Given the terms above, the warranty does not cover any of the individual components alleged to have malfunctioned. Therefore, any defects in such components cannot support any relief. However, the Complainants contend that some underlying electrical defect attributable to the Respondent's workmanship caused the nonconformities in these individual components. The Complainants must prove the existence of such a defect by a preponderance. Moreover, such defect must continue to exist.

In this case, the record does not show that the subject vehicle has a warranted defect that continues to exist. The latest work order in the record shows December 16, 2019, as the completed date.[31] Mr. Doughty's testimony reflects that he went to retrieve the RV from the dealer on April 18, 2020. However, Mr. Doughty found that the leveling system did not function. As an initial matter, the RV's warranty does not cover the leveling system, so any defect in the leveling system itself cannot support any relief. Nevertheless, the Complainants contend that the malfunctioning leveling system is a symptom of an underlying electrical defect attributable to the Respondent. However, the leveling system involves mechanical as well as electrical components but the evidence does not indicate that the malfunction arises from an electrical as opposed to a mechanical issue. Even assuming this malfunction is electrical in nature, the evidence does not show that the issue more likely arises from a warranted, underlying electrical defect as opposed to a defect in the leveling system itself. In sum, a preponderance of the evidence does not show that a warranted defect continues to exist.

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[30] Respondent's Ex. 1, 2018 Entegra Cornerstone Limited Warranty.

[31] Respondent's Ex. 5, Tom Johnson Work Order # 34965 (10/21/19).

III. Findings of Fact

1. On June 15, 2017, the Complainants, purchased a new 2018 Entegra Cornerstone from Motor Home Specialist, LP, an authorized dealer of the Respondent, in Alvarado, Texas. The Complainants actually took delivery on August 17, 2017. The vehicle had 1,797 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provides coverage for two years or 24,000 miles, whichever occurs first.

3. The limited warranty covers "only defects in workmanship performed and/or materials used to assemble those portions of the Motorhome not excluded under the section 'what is Not Covered'".

4. The limited warranty expressly excludes, in part:

> any material, component, system or part that is warranted by another entity, including, by way of example, the: automotive chassis, (which includes the power train, steering, handling, braking, wheel balance, muffler, tires, tubes, batteries and gauges), generator, hydraulic jacks, inverter, converter, microwave, television, DVD/CD player, radio, speakers, television, refrigerator, range, water heater, water pump, stove, carbon monoxide detector, smoke detector, propane detector, furnace or any air conditioner.

5. On July 2, 2019, the Complainants' attorney provided a written notice of defect to the Respondent.

6. On October 28, 2019, the Complainants filed a complaint with the Department alleging that the RV's Vegatouch control system, did not function properly.

7. On February 6, 2020, the Department's Office of Administrative Hearings issued a corrected 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 23, 2020, by telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. John Nelson, attorney,

represented the Complainants. Andrew Alvarado, attorney, also appeared for the Complainants. Christopher (Chris) Lowman, attorney, represented the Respondent.

9. The vehicle's odometer displayed 6,066 miles at the time of the hearing.

10. The limited warranty expired on June 15, 2019.

11. The last work order shows the dealer completed repairs on December 16, 2019. Mr. Doughty went to retrieve the RV from the dealer on April 18, 2020. The leveling system did not function. The evidence does not show the current existence of any other nonconformities. The leveling system includes both electrical and hydraulic components. The evidence does not show whether malfunction related to an electrical or hydraulic issue nor whether the malfunction originated in the leveling system itself or from some underlying electrical defect in the RV.

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 Complainants 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 Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).

6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not prove that the vehicle continues to have a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).

7. The Complainants do 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. The Complainants' vehicle does not qualify for warranty repair. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED June 22, 2020

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