

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0002660 CAF**

**SHARON ROBERTSON,
Complainant**

v.

**BISON COACH LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Sharon Robertson (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in her towable recreational vehicle (trailer or vehicle) manufactured by Bison Coach LLC (Bison or Respondent). A preponderance of the evidence shows that the warranty excludes the vehicle from coverage. Consequently, the vehicle does not qualify for repurchase, replacement, or warranty repair.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on November 1, 2023, in Denton, Texas, before Hearings Examiner Lindy Hendricks with the Department's Office of Administrative Hearings (OAH). Complainant appeared in person and was assisted by Aaron Bishoff. Respondent appeared through attorney David Kruger. The hearing concluded and the record closed the same day.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.³ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁴

A. Burden of Proof

Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁵ That is, Complainant must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.⁶ Accordingly, Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely. Failure to prove even one required fact results in denial of relief. Complainant is seeking repurchase of the subject vehicle.

B. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁷ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See* Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

⁵ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

⁶ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁷ Tex. Occ. Code § 2301.603

resulting from the loss of use of the vehicle due to the defect(s).⁸ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

- 1) the vehicle has 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” to repair the vehicle.⁹

The above terms are further defined by the Lemon Law statute and case law.

1. Serious Safety Hazard

The Lemon Law statute defines “serious safety hazard” as a life-threatening malfunction or non-conformity 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.¹⁰

2. Substantial Impairment of Use or Value

a. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use of the vehicle. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser.¹¹ For example, “while a vehicle with a

⁸ Tex. Occ. Code § 2301.604.

⁹ Tex. Occ. Code § 2301.604(a).

¹⁰ Tex. Occ. Code § 2301.601(4).

¹¹ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”¹²

b. 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.”¹³ 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.”¹⁴

3. 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.¹⁵

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

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tex. Occ. Code § 2301.605(a)(1).

[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.¹⁶

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.¹⁷

The 30 days described above do not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁸

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.¹⁹ 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.²⁰

¹⁶ Tex. Occ. Code § 2301.605(a)(2).

¹⁷ Tex. Occ. Code § 2301.605(a)(3).

¹⁸ Tex. Occ. Code § 2301.605(c).

¹⁹ *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.’”).

²⁰ *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.”).

4. Other Requirements for Repurchase/Replacement

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;²¹
- (2) the respondent was given an opportunity to cure the defect or nonconformity;²² and
- (3) the Lemon Law complaint was filed within 6 months after the earliest of:
 - (a) the warranty's expiration date; or
 - (b) 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.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 due to 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

²¹ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

²² Tex. Occ. Code § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes 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, 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. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id.* at 2.

²³ Tex. Occ. Code § 2301.606(d).

²⁴ Tex. Occ. Code § 2301.604(a).

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.²⁵ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁶

C. Warranty Repair Relief

If repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair relief.²⁷ A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle;"
- 2) the vehicle owner, or the owner's designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.²⁸

The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty" if during the term of the warranty, the owner reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor.²⁹

²⁵ 43 Tex. Admin. Code § 215.209(a).

²⁶ 43 Tex. Admin. Code § 215.208(b)(1).

²⁷ 43 Tex. Admin. Code § 215.208(e).

²⁸ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).

²⁹ Tex. Occ. Code § 2301.603.

III. DISCUSSION

A. Summary of Complainant's Evidence and Arguments

On September 15, 2021, Complainant purchased a new 2022 Bison Model 8416SR towable recreational vehicle from National Trailer Source (NTS), an authorized dealer of Respondent, in Decatur, Texas. Complainant paid \$91,775.75 for the vehicle.³⁰ The vehicle was not delivered until October 1, 2021, after the generator was installed. The vehicle has a 24-month limited warranty coverage.³¹ The warranty covers manufacturing defects and materials used to manufacture the vehicle. The warranty does not cover any vehicle used for commercial and/or business purposes or for purposes other than temporary recreational use.

On October 17, 2022, Complainant sent a letter to Respondent listing the problems they were having with the vehicle.³² On October 24, 2022, Complainant filed a complaint with the Department, alleging that 1) the generator fuel level says half full when in fact it is full, 2) kitchen drawers on right side under sink will not stay closed, 3) trough screws loose, exposed metal wall bent up, 4) ramp install not fitting correctly, 5) awning fabric ripped near front side or top, 6) electrical panel smoke, 7) hot water not getting to all faucets, 8) shower drain leaking, 9) shower hose connection leaking, 10) water heater drain valve leaking, 11) bedroom window not latching correctly, 12) city fill valve not placed on correctly, 13) electrical connection not sealed on inside of cabin, 14) hold back broken, 15) missing rivet on LQ entry door, 16) license plate light not sealed, 17) lighting shroud is cracked, 18) cabinet coming apart, 19) drop windows not closing to be water/airtight, 20) LQ horse area needs new seal, 21) roof leaking water in kitchen, 22) tail light loose, 23) slide switch is cracked, 24) trim above hat rack coming off, 25) ceiling above head coming loose, 26) wallpaper bubbling above window over couch, 27) gaskets on DS slide ripped, 28) screws around generator broken or not at all screwed in, 29) missing grommets in tack room

³⁰ Complainant Exhibit 11.

³¹ Respondent Exhibit 13.

³² Complainant Exhibits 10 and 12. The issues listed in the letters and complaint are the same. Because the complaint defines the issues to be addressed at the hearing, the issues are set out in the complaint.

ceiling, 30) saddlerack comes loose, 31) rear doors, 32) PS door latch coming loose, 33) rusting hardware - generator area, 34) rusting hardware - all door latch screws-exhaust pipe hardware, and 35) re-label breaker panel in bathroom correctly.³³

At the hearing, Mr. Bishoff testified on behalf of Complainant. He testified that there are substantial manufacturing defects that existed when the vehicle was purchased and continue to exist beginning with exterior rusting hardware. According to Mr. Bishoff, Respondent did not use stainless steel or weather resistant hardware, resulting in exterior rusting hardware. Over the course of the last 12 months, hardware fasteners were replaced, including the door-latch retaining screw. There were broken welds on the blanket racks. The interior trims came loose and fell off. A loose ceiling had to be reattached. Cabinets that would not latch or open or were not aligned correctly. Miscellaneous trim detached from the walls. Curtains and brackets fell off. The roof, shower door, and shower faucet leaked. Water from the leak will cause water damage and electrical hazards. The water pump failed twice. The fuel pump and fuel level sensor were faulty. The generator was missing when trailer was purchased. It has since malfunctioned and had to be repaired. There was a failure to secure all the electrical connections which caused a serious risk for health and fire hazards. They had an electrical fire, and the main panel was smoky. Respondent believes these issues are substantial manufacturing defects that fall under the Lemon Law.

As for the reasonable repair attempts, the vehicle has been in the shop more than four times for rusting hardware and the vehicle still has exterior rusting hardware issues. The cabinets and drawers still do not align properly to close or stay closed during travel. Additionally, the vehicle was out of service for more than 30 days. The vehicle was in the shop for the first repair on December 10, 2021, where it remained for 47 days. The vehicle was serviced on March 23, 2022, and in the shop for 55 days. On October 31, 2022, the vehicle was in the shop for 48 days.

In the first year, Complainant did not have the vehicle for 201 days while it was in the shop.

³³ The Hearings Examiner took official notice of the administrative record, including the Lemon Law complaint. For ease of reference, the listed defects are numbered.

Summary of Repairs. Complainant took the vehicle for repair as shown below:

Date	Repair Order	Issue
12/10/2021-1/27/2022 ³⁴	1302109A	<ol style="list-style-type: none"> 1. Screws around generator broken or unscrewed; 2. Bottom of the seam not welded all the way; 3. Slant window missing screw; 4. Light on passenger side was not hooked up and came out of bell cap; 5. Ceiling did not have grommets installed; 6. Saddlerack comes loose; 7. Hold back on the passenger side rear door was loose and missing metal backer; 8. Passenger taillight screw was loose; 9. Trough screws exposed metal wall bent up; 10. Slide switch was cracked; 11. Right kitchen drawers will not stay closed; 12. Trim above hat rack coming off; 13. Ceiling above bed coming loose; 14. Wallpaper bubbled over window; 15. Driver side gaskets slide ripped; 16. Driver side lower trim needs seal; 17. Generator fuel level and gauge incorrect; 18. Roof leaking with water in kitchen and bathroom and kitchen light; 19. Rusting hardware near generator, all door latch screws, and exhaust pipe hardware; 20. Breaker panel in bathroom not labeled correctly.
12/10/2021-1/27/2022 ³⁵	1302109B	<ol style="list-style-type: none"> 1. Rusting hardware near generator, all door latch screws, and exhaust pipe hardware; 2. Breaker panel in bathroom not labeled correctly.
3/23/2022-5/17/2022 ³⁶	1302109C	<ol style="list-style-type: none"> 1. Trough screws exposed metal wall bent up; 2. Roof leaking with water in kitchen and bathroom and kitchen light; 3. Generator fuel level and gauge incorrect; 4. Bathroom drawers not closing; 5. Two windows in loft area not close and lock.
3/23/2022-5/24/2022 ³⁷	1302109D	<ol style="list-style-type: none"> 1. Mount back-up camera; 2. Missing rivet on LQ entry door; 3. Missing fire extinguisher;

³⁴ Complainant Exhibit 1. Appointment was initiated October 25, 2021. The summary tracks date in and date out.

³⁵ Complainant Exhibit 2.

³⁶ Complainant Exhibit 3.

³⁷ Complainant Exhibit 4.

		<ol style="list-style-type: none"> 4. Cabinet door of entertainment stand keeps opening behind slide; 5. Need stainless steel door latch hardware; 6. License plate light is not sealed; 7. Lightning shroud is cracked – rear of trailer; 8. Cabinet coming apart; 9. Drop windows not closing to be water/air tight; 10. Slide is hard to open – takes 2 people; 11. LQ door to horse area needs new seal; 12. Missing screws and rivets in horse area; 13. Oily residue on roof of horse area.
6/13/2022-6/17/2022 ³⁸	1302109E	<ol style="list-style-type: none"> 1. Mount back up camera (moved to invoice 1302109G); 2. Shower drain leaking; 3. Awning fabric ripped near front side of top (moved to invoice 1302109G); 4. Shower hose connection leaking; 5. Ramp install (moved to invoice 1302109G); 6. Water heater drain valve leaking; 7. Tighten 2nd cabinet above couch and bottom cabinet; 8. Passenger-side bedroom window still not latching properly; 9. City fill valve is loose; 10. Check hot water not getting to all faucets (moved to invoice 1302109G); 11. Electrical connection not sealed on inside of cabinet; 12. Generator fuel gauge not reading correctly (moved to invoice 1302109G); 13. Hold back broken (moved to invoice 1302109G)
8/12/2022-28/12/2022 ³⁹	1302109G	<ol style="list-style-type: none"> 1. Mount back up camera; 2. Ramp install; 3. Check hot water not getting to all faucets;
10/31/2022-12/29/2022 ⁴⁰	1302109H	<ol style="list-style-type: none"> 1. Generator fuel gauge not reading correctly; 2. Passenger-side drop windows 1 and 3 have broken holdbacks; 3. City fill connection screw is coming out of side of trailer; 4. Customer wants hinges to go into top/end of ramp like before;

³⁸ Complainant Exhibit 5.

³⁹ Complainant Exhibit 6.

⁴⁰ Complainant Exhibit 7.

		<ol style="list-style-type: none"> 5. Power Panel smoked/burn mark caused by 30amp short power circuit; 6. Secure 3 remaining kitchen drawers; 7. Both blanket bar hinges have come apart and rusting; 8. Need swing out saddlerack; 9. Awning has tear near front and top rear; 10. Rear door hinges rusting; 11. Manger doors on driver-side missing screws; 12. All power lines coming from control box were not secured with electrical claims (moved to invoice 1302109I); 13. Do not winterize (comment and not an issue); 14. Misc. screws rusting; 15. Spline on awning coming apart; 16. Rear door hold back rusting; 17. Rusting hardware throughout trailer; 18. Change skylight parts in staging; 19. Water pump inoperable.
4/1/2023-4/1/2023 ⁴¹	1302109I	<ol style="list-style-type: none"> 1. All power lines coming from control box were not secured with electric clamps.

After the repairs, there were issues with rusting, electrical, generator, trim falling off, floor debris, floor crack and ripple. Originally, Complainant sought replacement. However, after all the issues, Complainant is asking that the vehicle be repurchased. Complainant was out of pocket for repairing the water pump⁴² and rental payments when hers was in the shop. While the vehicle was in the shop, Complainant had to rent another trailer with a 5-horse living quarters at a cost of \$9,000.⁴³ In the meantime, Complainant continued to make payments for the vehicle and insurance.⁴⁴

On cross-examination, Complainant uses the vehicle for business and personal use and is surprised to hear that business use is not covered under warranty because she requested but did not receive the warranty from Respondent. Complainant agreed that the list of items in Respondent's Exhibit 13 are the same as those listed in her Lemon Law complaint. According to

⁴¹ Respondent Exhibit 6.

⁴² The water pump was first noted as inoperable on invoice 1302109H and not mentioned in the complaint.

⁴³ Complainant Exhibits 15 and 16.

⁴⁴ Complainant Exhibits 8 and 9.

Complainant, items 4 through 17, 21 through 24, 28 through 32, and 35 were repaired. However, items 2, 3, 18 19, 20, 25 through 27, 33 and 34 were not repaired. She is uncertain if the electrical panel smoking (item 6) was repaired. Complainant agreed the majority of the defects have been repaired. However, she testified the remaining items cause a substantial risk of injuries to others on the road, affect the use of the vehicle, and have diminished the value of the vehicle.

The generator powers the vehicle. Without knowing the fuel level, she is unable to use the vehicle. She has not tried to sell the vehicle but believes the value has been diminished. The vehicle is towable, and the issues do not prevent the vehicle from being towed or transported.

The vehicle was brought to the hearing. Respondent was given an opportunity to inspect the vehicle but declined, explaining that they had worked out all their issues and did not need an inspection.

Complainant argues that there are issues that have not been repaired despite the repair opportunities. Complainant contends that the defects pose a serious safety hazard and diminish the value of their trailer. Complainant requests a repurchase of the vehicle.

B. Summary of Respondent's Evidence and Arguments

1. Testimony of Jayson Johnson

Mr. Johnson is the Chief Operating Officer for NTS in Decatur, Texas. He is familiar with the vehicle's design and layout. The vehicle has a bed, kitchen, and bath in the living portion of the trailer and provides 3 sleeping areas. The back of the half of the trailer has 4 horse stalls for transporting. The vehicle is a side-load which supports a full rear tack for storage. The vehicle's intended use is transportation of horses and temporary living, Mr. Johnson was present at the inspection on October 25, 2023. Based on his inspection, the vehicle appeared to have been used with personal items and shavings in the back, indicating horses have been hauled back there. Regarding the ramp, he does not know if the ramp was installed by the manufacturer, but NTS reinstalled the ramp because there was damage to the ramp at some point. It was not a warrantable

issue and Complainant paid for the repairs. The generator was installed by NTS and did not come from Bison.

On cross-examination, it is standard operating procedure that warranties are signed at the time of purchase by the purchaser of the vehicle. The salesperson may go over some high points of the warranty, or the finance officer will go over all the signed documents which typically includes the warranty, whether it is a separate document or included in the owner's manual. When asked if it was standard operating procedure for the salesperson to know and educate the customers that a mixed business use of the vehicle would not be covered under the warranty, Mr. Johnson stated that in cases where there is a living quarter, that would be a significant issue. He cannot say definitely that the exclusion is explained on every trailer that they sell. He reviewed the buyer's order which listed a generator is to be provided with the trailer. During the COVID pandemic, there was a shortage of generators, and several manufacturers were unable to get generators. In some cases, NTS could get generators when manufacturers could not so manufacturers would ship the trailer to them, and they would add the generator.

Mr. Johnson reviewed the repair orders and communications, and it appears that NTS was very responsive to Complainant. There were communications and updates provided to Complainant when they were waiting on parts. He reviewed the repair orders and the parts appeared to be timely ordered. However, the availability of parts has been an issue for all manufacturers and dealers during the pandemic.

On redirect, Mr. Johnson testified that none of the remaining issues substantially affect the value of the trailer. During the pandemic, it was difficult to get parts from suppliers. When there was a delay with the trailer in the shop, it was connected to a part. Anything they were able to fix, they fixed at that time. Repairs that were carried over to the next iteration of the original work order were predominantly due to repairs that were waiting on parts.

2. Testimony of Carl Martin

Mr. Martin has been a technician with NTS for 13 years. He conducted the inspection on October 25, 2023. Mr. Martin testified that the original invoice is numbered. When items could not be addressed or were checked out for timeliness for warranty-billing, a new ticket was created. The same invoice number was used, but a letter was added. Ticket “A” would be billed, and ticket “B” would be created for the remaining repairs. Therefore, 8 tickets does not mean 8 instances of repair. He reviewed the tickets in this matter. The electrical issue with the smoking panel is a safety concern that needs to be addressed immediately. Many of the other issues are cosmetic issues such as rusting hardware.

Respondent’s Exhibit 13 is a true and correct copy of his inspection report. He was unable to check the fuel level for the generator. He did not bring a gas canister or drain the tank. The fuel sending unit was under the trailer and not accessible to him during the inspection. Mr. Martin did not know if the fuel level was full and was not able to check the level. However, he posited that even if the fuel level could not be repaired, this did not cause any catastrophic or debilitating issues for the trailer being towed.

According to Mr. Martin, the kitchen drawer was repaired. As for the exposed metals, there is an inch long piece of curled piece of metal where the manger tray meets the slant wall that divides the tack room from the horse area. Mr. Martin testified that it appears as if the manufacturer either cut it too short or something happened there. He does not consider it an unsafe item but more of a cosmetic issue. The ramp was fixed. Based on the tickets he reviewed, the ramp was not an original item but had been replaced. The awning, electrical panel, hot water, shower drain, shower hose connection, water heater drain valve, bedroom window not latching, city valve, electrical connection ceiling, hold back, the missing rivet, license plate light, light trough, and cabinet were repaired.

The Lemon Law complaint alleged an issue with the drop windows being watertight on the passenger side. Mr. Martin examined those windows. There had been some substantial rain before the inspection, but he did not observe any water leaking. The only place he found a little bit of

residual water was on the escape door which is on the driver's side. Mr. Martin could not determine if the water came from the escape door or from the drop window. That was a separate issue from what was originally listed on the previous tickets. He does not know if anyone was aware of or had an opportunity to address that issue on the driver's side.

As for the LQ horse area seal, there was more than a gap than needed to be there. Mr. Martin stated that a new seal could possibly fix the issue or simply adjusting the striker plate could fix the issue without replacing the seal. This issue would not affect the trailer's function, is not a safety concern, and is more cosmetic in nature.

Roof leaking in kitchen, taillight, slide switch, trim above hat rack were repaired. As for the ceiling above the head coming loose in the bed area, there is some sagging in the center where the front and rear pieces are attached together. A staple gun could re-secure and fix that. As for the wallpaper bubbling, it appears as if the paper film on top of the paneling did not adhere properly over the couch and near the valance. These issues are cosmetic, do not affect the functionality of the travel, and do not pose safety concerns. The remaining issues numbered 27 through 35 were repaired.

During his inspection, the trailer appeared to be used. Mr. Martin testified that the issues listed on the inspection were cosmetic or issues that he was not given a chance to repair such as the metal or the escape door.

On cross-examination, Mr. Martin clarified that a new ticket is an iteration, or something carried over. However, new items can be added to the ticket. If an item was not resolved in invoice A, the item can be moved onto ticket B. While a ticket is open, a customer can take the trailer for use while waiting for repairs. Regarding electrical wiring, he can see the back of the panel through the back of the bathroom cabinet. Mr. Martin checked electrical connection to ensure they were

properly seated but not those he did not have access to, such as behind the wall. He agreed that if a connection behind the wall is not properly seated,⁴⁵ it could be a fire hazard.

Water leaking in the trailer could be a safety concern for slipping, electrical hazard, or rot. Taillights were working but was just a loose screw. One of the marker lights was not working. Failing ceiling could be a safety concern if it fell on someone. The curling metal could put the horse at risk for injury if he grabbed or got cut by it.

The generator runs the trailer. Not knowing the fuel level in the generator could cause someone to run out of fuel and cause the air conditioner or heater to not work. Mr. Martin agreed that could be a safety concern in extreme heat or cold temperatures. Regarding hardware rusting, Mr. Martin did not recall replacing any hinges but did replace screws for the holdback. As for water, Mr. Martin agreed that that water intrusion could cause damage and decrease the value of the trailer. The skylight over the shower was installed by the manufacturer. It was listed as a defect and has been repaired.

On redirect, Mr. Martin recalled the extreme winter weather in the last couple of years in which roads had to be treated. He testified that salt treatment may cause rust.

Respondent argues that there was no evidence of substantial impairment, major safety hazard, or value of the trailer was seriously impacted by the defects. Further, Respondent argues that the majority of the defects were repaired. Items that were not repaired were items that were not brought to anyone's attention, not given an opportunity to repair, and are cosmetic. Repairs took longer due to the pandemic and shortage of parts. Finally, Respondent argues that Complainant's use of the vehicle for mixed business purposes negated the warranty.

⁴⁵ Respondent objected that any seating issue not listed in the complaint.

C. Analysis

The Lemon Law (and Warranty Performance Law) does not apply to all problems that may occur with a vehicle but only to warrantable defects that continue to exist after repairs.⁴⁶ As explained in the discussion of applicable law, the law imposes the burden of proof on Complainant. Accordingly, Complainant must affirmatively prove every Lemon Law element by a preponderance of the evidence. In this case, the preponderance of the evidence does not show that the vehicle qualifies for relief.

As a threshold matter, to qualify for any relief, a vehicle must have a defect covered under warranty (warrantable defect). Respondent's warranty applicable to Complainant's vehicle provides a limited warranty for 24 months from the original retail purchase date and covers components, assemblies, and systems not excluded under the section "What is Not Covered."⁴⁷ The warranty states in relevant part:

What the Warranty Does Not Cover:

This Limited Warranty does not cover: any towable product sold or registered outside of the United States or Canada; **any towable product used for commercial and/or business purposes**, rental purposes; any towable product used for purposes other than temporary recreational use (e.g. use of the towable product as a residence); items which are added or changed after the towable product leaves Warrantor's possession; items that are working as designed but which you are unhappy with because of the design; normal wear and usage, such as fading or discoloration of fabrics, or the effects of moisture inside the towable product; defacing, scratching, dents and chips on any surface or fabric of the towable product, not caused by Warrantor; owner maintenance, including by way of example resealing exterior sealant areas; appliances and components cover by their own manufacturer's warranty including, by way of example the tires, tubes, batteries, gauges, microwave, refrigerator, ice maker, stove, oven, generator, roof air conditioners, hydraulic jacks, VCR, television(s), water heater, furnace, stereo radio, compact disc player, washer, dryer, inverter and cellular phone; 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 airborne pollutants, salt, tree sap and hail. Component part and appliance manufacturers issue limited

⁴⁶ Tex. Occ. Code §§ 2301.603(a), 2301.604(a); Tex. Occ. Code § 2301.204.

⁴⁷ Respondent Exhibit 14.

warranties covering those portions of the towable product not covered by the Limited Warranty issued by Warrantor. To learn more on what specific component parts and appliances are excluded from the Limited Warranty issued by Warrantor please contact your selling dealership or Warrantor directly or review the warranty packet inside the towable product.⁴⁸

The manufacturer's warranty expressly excludes Complainant's vehicle from coverage. The warranty states that it does not provide coverage if the vehicle is "used for commercial and/or business purposes, rental purposes...or used for purposes other than temporary recreational use (e.g. use of the towable product as a residence)."⁴⁹ Complainant testified that she used the vehicle for personal and business purposes. Complainant testified that she runs a lessons program and had to rent another trailer when her vehicle was in the shop. However, any use other than temporary recreational use essentially voids the warranty. Complainant did not dispute the warranty exclusion for business purposes but argued that she was not provided with a copy of the warranty as requested. However, the Buyer's Order provides that a new vehicle is subject to the standard written manufacturer's warranty.⁵⁰ Because Complainant used the vehicle for business purposes, the warranty excludes the vehicle from coverage. Consequently, the vehicle's non-conformities are not warrantable defects eligible for relief.⁵¹

Based on the foregoing, the Hearings Examiner finds the vehicle does not qualify for repurchase, replacement, or repair relief.

IV. FINDINGS OF FACT

1. On September 15, 2021, Sharon Robertson (Complainant) purchased a new 2022 Bison Model 8416SR, a towable trailer (trailer or vehicle) from National Trailer Source (NTS), an authorized dealer of Bison Coach LLC (Respondent), in Decatur, Texas.
2. The vehicle has a living portion with sleeping areas, kitchen, and bathroom. The back half of the trailer has 4 horse stalls for transporting.

⁴⁸ Respondent Exhibit 14.

⁴⁹ Respondent Exhibit 14 (emphasis added).

⁵⁰ Complainant Exhibit 11.

⁵¹ Tex. Occ. Code §§ 2301.204, .604(a).

3. The vehicle manufacturer's limited warranty covers the vehicle for 24 months from the original purchase date.
4. The warranty does not cover any vehicle used for commercial and/or business purposes or used for purposes other than temporary recreational use.
5. Complainant uses the vehicle for personal and business purposes.
6. Complainant runs a lessons program and had to rent another trailer when her vehicle was in the shop.
7. Complainant was not provided with a copy of the warranty as requested and was unaware of the business-use exclusion.
8. The Buyer's Order provides that a new vehicle is subject to the standard written manufacturer's warranty.
9. On October 17, 2022, Complainant sent a letter to Respondent, providing written notice of the alleged defects.
10. On October 24, 2022, Complainant filed a complaint with the Department of Motor Vehicles (Department).
11. On May 5, 2023, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of her rights under the applicable rules and statutes.
12. On October 17, 2023, OAH issued Order No. 4 Resetting Hearing Date to November 1, 2023.
13. The Notice of Hearing and Order No. 4 advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
14. On November 1, 2023, a hearing on the merits convened in Denton, Texas, before OAH Hearings Examiner Lindy Hendricks. Complainant appeared and represented herself with the assistance of Aaron Bishoff. Respondent appeared through attorney David Kruger. The hearing concluded and the record closed the same day.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, .601-.613.

2. A Hearings Examiner with the Department's OAH 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. Complainant filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.
4. Proper and timely notice of the hearing was provided. Tex. Gov't Code Ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainant, or a person on behalf of Complainant, or the Department provided sufficient notice of the alleged defect(s) to Respondent. Tex. Occ. Code § 2301.204, .606(c)(1); 43 Tex. Admin. Code § 215.202.
7. Complainant did not prove that the vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code §§ 2301.204, .604.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is **DISMISSED**.

SIGNED December 21, 2023.



LINDY HENDRICKS
Hearings Examiner
Office of Administrative Hearings
Texas Department of Motor Vehicles