

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0006412 CAF**

**BRITTANY COLE,
Complainant**

v.

**KEYSTONE RV COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Brittany Cole (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 recreational vehicle (RV) manufactured by Keystone RV Company (Keystone, Respondent, or manufacturer). A preponderance of the evidence shows that Complainant's vehicle qualifies for repurchase relief.

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 June 13, 2023, in Weatherford, Texas, before Hearings Examiner Andrew Kang with the Department's Office of Administrative Hearings (OAH).¹ Complainant appeared in person and represented herself. Respondent appeared in person through its representative Matt Gaines. The hearing concluded the same day. On October 3, 2023, the record was reopened to allow Complainant to submit additional evidence and Respondent an opportunity to respond.² The record closed on October 20, 2023.

¹ Hearings Examiner Lindy Hendricks reviewed the record of the hearing and issued this decision.

² Complainant timely filed additional written testimony and photographs. Respondent did not file any response, objections, or written testimony by the deadline.

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.³ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.⁴ 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.⁵ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁶

A. Burden of Proof

Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁷ That is, Complainant must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.⁸ 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.⁹ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).¹⁰ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

³ Tex. Occ. Code § 2301.603(a).

⁴ Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

⁵ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁶ 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.

⁷ 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.”).

⁸ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁹ Tex. Occ. Code § 2301.603

¹⁰ Tex. Occ. Code § 2301.604.

- 1) the vehicle has a defect covered by an applicable warranty (applicable 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.¹¹

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.¹²

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.¹³ For example, “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.”¹⁴

¹¹ Tex. Occ. Code § 2301.604(a).

¹² Tex. Occ. Code § 2301.601(4).

¹³ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

¹⁴ *Id.*

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.”¹⁵ 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.”¹⁶

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.¹⁷

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.¹⁸

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Tex. Occ. Code § 2301.605(a)(1).

¹⁸ 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, 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.¹⁹

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.²⁰

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.²¹ 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.²²

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;²³

¹⁹ Tex. Occ. Code § 2301.605(a)(3).

²⁰ Tex. Occ. Code § 2301.605(c).

²¹ *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.’”).

²² *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.”).

²³ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

- (2) the respondent was given an opportunity to cure the defect or nonconformity;²⁴ 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.²⁵

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.²⁶ 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.²⁷ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁸

²⁴ 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.

²⁵ Tex. Occ. Code § 2301.606(d).

²⁶ Tex. Occ. Code § 2301.604(a).

²⁷ 43 Tex. Admin. Code § 215.209(a).

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

C. Warranty Repair Relief

If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.²⁹ 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.³⁰

III. DISCUSSION

A. Summary of Complainant Evidence and Argument

On February 21, 2022, Complainant purchased a 2022 Coleman Light 3215BH from Southwest RV Centers, LLC d/b/a Camping World RV Sales (Camping World), an authorized dealer of Respondent, in Denton, Texas. The purchase price of the vehicle was \$45,279.20.³¹ The vehicle’s warranty provided a one-year limited base warranty. The warranty covers defects in materials and workmanship supplied by and attributable to Respondent’s manufacturing and assembly of the vehicle when the vehicle is used solely for its intended purpose of recreational camping. Water leaks are covered under the one-year limited warranty, unless the water leak is the result of the owner’s failure to properly maintain exterior seals or if the leaks or related consequential damages arose after the one-year base warranty period.³²

²⁹ 43 Tex. Admin. Code § 215.208(e).

³⁰ Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

³¹ Complainant Exhibit 1. The purchase price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. 43 Tex. Admin. Code § 215.208 (b)(1).

³² Complainant Exhibit 2.

Complainant testified that she received the vehicle from the dealership on February 25, 2022. Complainant's main concern is that the vehicle's shower leaked water onto the floor which resulted in water damage to the floors and behind the shower walls. Complainant took the vehicle to Camping World for repair on three separate occasions: October 27, 2022, November 26, 2022, and December 31, 2022. All three repair visits were regarding warranty issues.

Complainant indicated that she first noticed the water leak in the beginning of October 2022. After Complainant's child played in mud, he was placed in the shower and Complainant noticed water leaking from under the shower along the wall. The shower was then turned off, and Complainant called Camping World to schedule an appointment but could not get one until 3 weeks later on October 27, 2022.³³

After the first repair visit on October 27, 2022, Complainant noticed the shower was still leaking after the first shower and made another repair appointment. On November 26, 2022, Complainant brought the vehicle back to Camping World for the second repair visit. After the second repair, the shower was still leaking. Complainant testified that after each repair, she assessed whether water would leak by placing her child in the shower and watching from outside the vehicle for any water leakage. On both occasions, the water immediately began leaking.

On December 28, 2022, Complainant sent written notice of the vehicle's defects to Respondent.

On December 31, 2022, Complainant dropped the vehicle off at Camping World for a third repair attempt. Complainant picked the vehicle up on May 29, 2023, and was unsure whether the shower leaking issue was fixed, due to not having any pictures. Moreover, there was a substantial amount of silicone from the repairs which prevented them from determining whether there was a

³³ The date when the defect was first reported would be approximately October 6, 2022, at the beginning of October and three weeks before the first available repair appointment.

water leak unless the water was left on. Although the dealership indicated the water damage had been repaired, Complainant pointed out that there was no way to verify the repair since the dealership had replaced the wall panel and covered the damage.

Complainant was told it would take about 4 weeks for repairs, but it had taken 8 months. Complainant had been without an RV for 8 months. During that time, she had been making payments on the vehicle, missed family events, and paid roughly \$5,500 in payments and insurance. Complainant stated that Respondent offered them \$3,000, but she explained that the amount offered was not even remotely close to what she paid on the vehicle within the 8 months.

Complainant alleged that the dealership called the day before the pre-hearing conference on May 25, 2023, to notify them that the vehicle was finished. Prior to that, the manufacturer stated they were working on the vehicle. It appeared that conflicting information was being relayed by the dealership and manufacturer. Complainant stated that when they showed up to the dealership on May 29, 2023, the vehicle was still being serviced. Complainant indicated there were additional issues being fixed on the vehicle, but it is not worth being discussed. Complainant also indicated that the water heater was working prior to dropping the vehicle at the dealership and was unsure why the water heater was replaced.

On October 11, 2023, Complainant timely submitted additional evidence to show the vehicle had not been fully repaired. Complainant provided photographs and testimony to show the shower was still leaking after the third repair and that there was new water damage. Complainant has now owned the vehicle for 19 months but has only been able use it for 7 months.

B. Summary of Respondent's Evidence and Argument

Mark Gaines testified on behalf of Respondent. Mr. Gaines is the senior product manager at Keystone and possesses a RIVA master certified level 4 certification. He is also an in-house fire inspector for Keystone. In February 2023 when the vehicle was at the dealership for the third

repair, Mr. Gaines conducted an inspection. With the use of a moisture meter, Mr. Gaines found that water had seeped under the linoleum. Mr. Gaines stated that there were loose connections in the drain lines, which was the main contributor to the leaks in the vehicle. He stated that the linoleum, shower pan, shower walls, wall panels, and plumbing were all replaced. The dealership was confident that they had stopped the leaks.

Mr. Gaines explained that \$3,000 was offered as goodwill compensation. Mr. Gaines mentioned that as a gesture of goodwill, the dealership replaced the water heater and when inspected, it appeared new.

C. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief. To qualify for relief, Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, Complainant established the facts necessary for relief. The Hearings Examiner agrees that repurchase of the vehicle is the appropriate remedy under the circumstances.

A preponderance of the evidence shows that the subject vehicle qualifies for repurchase relief. The subject vehicle does not operate as intended and has a defect covered by an applicable warranty. The one-year limited warranty covers defects in materials and workmanship supplied by and attributable to Respondent's manufacturing and assembly of the vehicle when the vehicle is used solely for its intended purpose of recreational camping. Water leaks are covered under the one-year limited warranty, unless the water leak is the result of the owner's failure to properly maintain exterior seals or if the leaks or related consequential damages arose after the one-year base warranty period. The preponderance of the evidence shows that the shower leaks after regular use. Nothing in the record suggests the leaks were caused by Complainant's failure to properly maintain an exterior seal, and the leaks occurred during the one-year base warranty period.

In addition, the vehicle continues to have a warrantable defect that substantially impairs the market value of the vehicle. Despite a reasonable number of attempts to repair the vehicle, the shower still leaks. Under the reasonable prospective purchaser standard, the condition of the vehicle would deter a purchaser from buying the vehicle or substantially negatively affect how much the purchaser would be willing to pay. Further, the defect continues to exist after a reasonable number of repair attempts. The vehicle's repair history shows that the vehicle continues to have the same problem after the vehicle was out of service for repair for at least 30 days. Accordingly, the vehicle meets the statutory presumption for reasonable repair attempts. The repair attempts were made during the applicable warranty period. In addition, written notice of the defect was provided to Respondent, and Respondent was given an opportunity to cure the defect. Finally, the Lemon Law complaint was timely filed. Accordingly, repurchase relief applies in this case.

The Department's rules list the appropriate calculations for repurchase,³⁴ and the specific calculations are applied as follows:

| | |
|--|-------------|
| Purchase price, including tax, title, license & registration | \$45,279.20 |
| Date of delivery | 02/25/22 |
| Date of first report of defective condition | 10/06/22 |
| Date of hearing | 06/13/23 |
| Days out of service | 192 |
| Useful life determination | 3,650 |

3,650 days presumption
or 1,825 days, if occupied full time

| | | | |
|---|-------------|--------------|-------------|
| Purchase price, including tax, title, license & registration | \$45,279.20 | | |
| <i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery | 10/06/22 | - 02/25/22 = | 223 |
| <i>Impaired Days:</i> Date of hearing less date of first report of defective condition | 06/13/23 | - 10/06/22 = | 250 |
| Less days out of service for repair | | | <u>-192</u> |
| | | | 58 |

³⁴ 43 Tex. Admin. Code § 215.208(b)(1),(2).

| | |
|--|---|
| Reasonable Allowance for Use Calculations: | |
| Unimpaired days | $223 \div 3,650 \times \$45,279.20 = \$2,766.37$ |
| Impaired days | $58 \div 3,650 \times \$45,279.20 \times 50\% = \359.75 |
| Total reasonable allowance for use deduction | \$3,126.13 |
| Purchase price, including tax, title, license & registration | \$45,279.20 |
| Less reasonable allowance for use deduction | -\$3,126.13 |
| Plus filing fee refund | \$35.00 |
| Plus incidental expenses | \$0.00 |
| TOTAL REPURCHASE AMOUNT | \$42,188.07 |

Based on the above calculations, Respondent shall repurchase the subject vehicle in the amount of **\$42,188.07**.

IV. FINDINGS OF FACT

1. On February 21, 2022, Brittany Cole (Complainant) purchased a 2022 Coleman Light 3215BH from Southwest RV Centers, LLC d/b/a Camping World RV Sales (Camping World), an authorized dealer of Keystone RV Company (Respondent), in Denton, Texas.
2. The purchase price of the vehicle was \$45,279.20, including tax, title, license, and registration.
3. The vehicle's limited base warranty provided coverage for one year.
4. The one-year limited base warranty covers defects in materials and workmanship supplied by and attributable to Respondent's manufacturing and assembly of the vehicle when the vehicle is used solely for its intended purpose of recreational camping.
5. The one-year limited base warranty covers water leaks, unless the water leak is the result of the owner's failure to properly maintain exterior seals or if the leaks or related consequential damages arose after the one-year base warranty period.
6. The shower leaked during the one-year base warranty period, and the leaks were not caused by Complainant's failure to properly maintain an exterior seal.
7. Complainant took the vehicle to a dealer for repair on October 27, 2022, November 26, 2022, and December 31, 2022.
8. On December 28, 2022, Complainant sent a letter to Respondent, providing written notice of the alleged defect.

9. On January 28, 2023, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the shower would leak.
10. On April 17, 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 their rights under the applicable rules and statutes.
11. The Notice of Hearing 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.
12. On June 13, 2023, a hearing on the merits was convened in Weatherford, Texas, before OAH Hearings Examiner Andrew Kang. Complainant appeared and represented herself. Respondent appeared through its representative Matt Gaines. The hearing concluded the same day.
13. On October 3, 2023, the record was reopened to allow Complainant to file additional evidence regarding the shower leak issue and allow Respondent an opportunity to respond.
14. Despite numerous attempts to repair the vehicle, the shower still leaks.
15. The shower leaks were not caused by Complainant's failure to properly maintain an exterior seal.
16. The vehicle does not operate as intended and has a defect covered by an applicable warranty.
17. The vehicle continues to have a warrantable defect that substantially impairs the market value of the vehicle.
18. The vehicle's repair history shows that the vehicle continues to have the same problem after being out of service for repair for at least 30 days or more.
19. The repair attempts were made during the applicable warranty period.
20. Respondent was given an opportunity to cure the defect after being provided notice.
21. The Lemon Law complaint was timely filed.
22. The vehicle qualifies for repurchase relief.
23. The appropriate calculations for repurchase are as follows:

| | |
|--|-------------|
| Purchase price, including tax, title, license & registration | \$45,279.20 |
| Date of delivery | 02/25/22 |
| Date of first report of defective condition | 10/06/22 |
| Date of hearing | 06/13/23 |
| Days out of service | 192 |
| Useful life determination | 3,650 |

3,650 days presumption
or 1,825 days, if occupied full time

| | | | | | |
|--|--------------------|---|----------|---|------------------------------|
| Purchase price, including tax, title, license & registration | \$45,279.20 | | | | |
| <i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery | 10/06/22 | - | 02/25/22 | = | 223 |
| <i>Impaired Days:</i> Date of hearing less date of first report of defective condition Less days out of service for repair | 06/13/23 | - | 10/06/22 | = | 250 -192 58 |
| Reasonable Allowance for Use Calculations: | | | | | |
| Unimpaired days | 223 | ÷ | 3,650 | × | \$45,279.20 = \$2,766.37 |
| Impaired days | 58 | ÷ | 3,650 | × | \$45,279.20 × 50% = \$359.75 |
| Total reasonable allowance for use deduction | \$3,126.13 | | | | |
| Purchase price, including tax, title, license & registration | \$45,279.20 | | | | |
| Less reasonable allowance for use deduction | -\$3,126.13 | | | | |
| Plus filing fee refund | \$35.00 | | | | |
| Plus incidental expenses | \$0.00 | | | | |
| TOTAL REPURCHASE AMOUNT | \$42,188.07 | | | | |

V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with 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. 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. The Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. The Complainant, or a person on behalf of the Complainant, or the Department provided sufficient notice of the alleged defect(s) to the Respondent. Tex. Occ. Code § 2301.606(c)(1).
7. The Respondent had an opportunity to cure the alleged defect(s). Tex. Occ. Code § 2301.606(c)(2).
8. The Complainant's vehicle qualifies for repurchase. A warrantable defect that substantially impairs the market value of the vehicle continues to exist after a reasonable number of repair attempts. Tex. Occ. Code § 2301.604(a).


VI. 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-.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase, the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. The Respondent shall repurchase the subject vehicle in the amount of **\$42,188.07**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainant is responsible for providing the Respondent with clear title to the vehicle;

3. The parties shall complete the return and repurchase of the subject vehicle within **20 days** after the date this Order becomes final under Texas Government Code § 2001.144.³⁵ However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address, and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 days of the transfer.

SIGNED December 7, 2023.



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

³⁵ This Order does not become final on the date this Order is signed; instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending, or (2) after the grant of a motion for rehearing.