

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0002903 CAF**

GEORGE and JOYCE HILL, Complainants	§	
	§	BEFORE THE OFFICE
	§	
v.	§	OF
	§	
FOREST RIVER, INC., Respondent	§	ADMINISTRATIVE HEARINGS
	§	
	§	

DECISION AND ORDER

George and Joyce Hill (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 Forest River, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that qualifies for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on January 22, 2021, by videoconference/telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented themselves. Michael Locke, Owner Relations Manager, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² 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.”³ 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.⁴ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁵

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

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

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.”⁷

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

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

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [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.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

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.¹⁰

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.¹¹

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.¹² 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.¹³

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the respondent;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *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.’”).

¹³ *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.”).

¹⁴ 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;¹⁵ 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.¹⁶

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.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainants.¹⁹ 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.²⁰ Accordingly, the Complainants cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

¹⁵ 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 allows a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2. 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.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

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.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 (for example, through receipts

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” 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.”).

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

²³ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

or similar written documents).²⁷ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁸

B. Summary of Complainants’ Evidence and Arguments

On July 31, 2020, the Complainants, purchased a new 2020 Freedom 195RBS from Campers RV Center, an authorized dealer of the Respondent, in Shreveport, Louisiana. The vehicle’s limited warranty provides coverage for one year. On November 6, 2020, the Complainants provided a written notice of defect to the Respondent. On November 6, 2020, the Complainants filed a complaint with the Department alleging that their RV had a leak in the bathroom, bubbles/soft spots on the roof, an awning leak, and a loose cabinet door. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Issue
September 11, 2020	Leak in bathroom; soft spots on roof; awning leak; shower leak (shower surround not connected to the wall); cabinet needs adjusting

Mrs. Hill testified that dealer, Amazing RVs, notified the Complainants that the cabinet door and awning had been fixed. However, the Complainants primary complaint related to the leak coming through the roof and down a wall. Mrs. Hill confirmed that the Complainants had not evaluated the repairs since picking up the RV from the dealer. She described that water leaked onto the bathroom floor. Mr. Hill checked the roof and found bubbling and soft spots. The Complainants first noticed the leaking during Labor Day weekend, 2020 and last noticed the leaking on the Monday after that weekend. Mr. Hill noted that they did not have the RV connected to city water and did not have the air conditioning (AC) running. He checked the roof because he thought that the leak came from the AC. Mrs. Hill explained that the awning leaked when out and raining but she did not know if the AC contributed to the awning leak. Mr. Hill elaborated that the AC leaked down between the awning and the RV, which he first noticed when first using the RV, less than a month after purchase. Mrs. Hill probably last noticed the awning leak on Labor Day weekend, when the Complainants last used the RV. Regarding the cabinet door, she explained that it just needed adjustment because it was loose. She first noticed the loose door when first using the

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

outdoor kitchen during a trip to Galveston. The cabinet door appeared to have been successfully fixed. Mrs. Hill added that the shower surround was not attached to the wall and sealed. The complaint did not include the shower issue but Mrs. Hill noted that the issue was on a work order. The dealer removed the surround, installed anchors, and applied sealant. She first noticed the shower issue when first using the RV and last noticed it when last used, on Labor Day weekend. She explained that the shower repair had not been tested, since they picked up the vehicle the Saturday before the hearing and left town soon after. The Complainants parked the RV in their backyard but did not have electricity or water connected.

C. Summary of Respondent's Evidence and Arguments

Mr. Locke testified that the roof appeared to be the main issue. He explained that Dicor (the third-party supplier of the roof material) had to determine whether to replace the roof. He elaborated that a defect existed in the material, not the Respondent's installation. He pointed out that a defect in the roof could have allowed water to get through and loosen the glue. He noted that the Respondent's warranty covered the other issues. However, the dealer did not submit the warranty claims. On cross-examination, Mr. Locke explained that a 10-year warranty was included in a packet from Dicor. Along with Dicor, the Respondent determined the issue concerned Dicor's material and not the installation. Mr. Locke clarified that the claim for the roof under the Respondent's warranty was denied because the warranty did not cover the roof.

D. Analysis

A preponderance of the evidence does not show that the subject RV qualifies for relief. As explained in the discussion of applicable law, the law requires the Complainant to prove every element under the Lemon Law (or Warranty Performance Law for repair relief) by a preponderance. In other words, the Complainant must prove that every required fact is more likely than not true. As an initial matter, 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)²⁹ that continues to exist, even after repair.³⁰ In relevant part, the warranty states as follows:

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³⁰ TEX. OCC. CODE § 2301.605.

WARRANTY COVERAGE SUMMARY OF WARRANTY: Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.

EXCLUSIONS FROM THIS WARRANTY: Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer.

. . . .

OTHER WARRANTIES: As indicated in the paragraph above, entitled ‘Exclusions From This Warranty’, certain items that are not covered by this Warranty may be warranted separately by their manufacturers or suppliers. In order to validate those warranties, you may also be required to complete and return to the appropriate manufacturer the warranty forms included with the information package. See these warranties with respect to their terms and conditions. These other warranties may cover such items as chassis, tires, tubes, batteries, optional generators, and appliances, which are not covered by this Limited Warranty. For service or parts required for these products, it may be necessary to write or call the product manufacturer to obtain the nearest authorized service center location. In requesting parts for separately warranted products from the manufacturer of the product or its authorized service center, it may also be necessary to first obtain a warranty work authorization number before the work is done. It may also be necessary to provide the Product Name, Model and Serial Number along with the description of the problem and part needed, plus shipping instructions.³¹

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³² Additionally, the warranty expressly excludes certain items supplied by third parties.

³¹ Complainant’s Ex. 1, Warranty.

³² Courts have affirmed that warranty language covering “defects in material or workmanship” do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 (“The manufacturer’s express warranty in the case sub judice provides: ‘Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship’ The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty.”);

1. Leak at Bathroom

The evidence shows that the leak at the bathroom last occurred when returning from a trip on the Monday after Labor Day weekend of 2020. The record does not indicate whether the leak continued after repairs. However, repurchase/replacement and repair relief require the nonconformity to continue to exist.

2. Roof

The evidence shows that a third party, Dicor, supplied and warranted the roof material. Further, Dicor, along with the Respondent, determined that the roofing material was defective. Accordingly, the Respondent's warranty excludes the Dicor roof from coverage so that a defect in the roof cannot support any relief.

3. Awning

The testimony reflects the awning last leaked during Labor Day weekend of 2020. The record contains no evidence that the awning continued to leak after the last repair. However, repurchase/replacement and repair relief require the nonconformity to continue to exist.

4. Cabinet Door

Testimony indicates that the dealer successfully repaired the cabinet door. However, the defect must currently exist to support any relief.

5. Shower Surround

The complaint did not include the shower surround issue but the Complainant raised the issue at the hearing without any objections from the Respondent, so this issue may be considered here. However, as a condition for repurchase/replacement relief, the Lemon Law requires written notice of the defect provided to the Respondent, not the dealer. In this case, the record has no evidence of the required written notice of the shower surround issue. Consequently, this issue cannot support repurchase or replacement. Further, repair relief under the Warranty Performance Law requires the complaint to specify the defect. However, the complaint did not include shower surround issue, making repair relief inapplicable.

see GT & MC, Inc. v. Texas City Refining, Inc., 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) (“the language in the contract of May 12, 1980, expressly limited TCR’s recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.”).

III. Findings of Fact

1. On July 31, 2020, the Complainants, purchased a new 2020 Freedom 195RBS from Campers RV Center, an authorized dealer of the Respondent, in Shreveport, Louisiana.
2. The vehicle's limited warranty states as follows:

WARRANTY COVERAGE SUMMARY OF WARRANTY: Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.

EXCLUSIONS FROM THIS WARRANTY: Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer.

....

OTHER WARRANTIES: As indicated in the paragraph above, entitled 'Exclusions From This Warranty', certain items that are not covered by this Warranty may be warranted separately by their manufacturers or suppliers. In order to validate those warranties, you may also be required to complete and return to the appropriate manufacturer the warranty forms included with the information package. See these warranties with respect to their terms and conditions. These other warranties may cover such items as chassis, tires, tubes, batteries, optional generators, and appliances, which are not covered by this Limited Warranty. For service or parts required for these products, it may be necessary to write or call the product manufacturer to obtain the nearest authorized service center location. In requesting parts for separately warranted products from the manufacturer of the product or its authorized service center, it may also be necessary to first obtain a warranty work authorization number before the work is done. It may also be necessary to provide the Product Name, Model and Serial Number along with the description of the problem and part needed, plus shipping instructions.

3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
September 11, 2020	Leak in bathroom; soft spots on roof; awning leak; shower leak (shower surround not connected to the wall); cabinet needs adjusting

4. On November 6, 2020, the Complainants provided a written notice of defect to the Respondent. The notice did not address the shower surround issue.
5. On November 6, 2020, the Complainants filed a complaint with the Department alleging that their RV had a leak in the bathroom, bubbles/soft spots on the roof, an awning leak, and a loose cabinet door. The complaint did not include the shower surround issue.
6. On December 4, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.
7. The hearing in this case convened on January 22, 2021, by videoconference/telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented themselves. Michael Locke, Owner Relations Manager, represented the Respondent.
8. The vehicle's warranty was in effect at the time of the hearing.
9. The leak at the bathroom and the leak at the awning did not reoccur after repair.
10. The loose cabinet door was successfully repaired.
11. Dicor, a third-party supplier, manufactured and warranted the roof material.

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 bears 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 has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
 7. The Complainants does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
 8. 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.
 9. The shower surround issue does not support replacement or repurchase. The Complainant or a person on behalf of the Complainant did not provide sufficient notice of the shower surround defect to the Respondent. This Order may not require repurchase or replacement of the vehicle without written notice of the defect/nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
 10. The shower surround issue does not support warranty repair. The Complainant did not specify the alleged shower surround defect in the complaint. TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
 11. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

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

SIGNED March 24, 2021



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