

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

**Director of the Manufactured Housing
and Modular Units Program of the
Public Service Commission,**)
)
)
)
Complainant,)
)
v.)
)
**Amega Sales, Inc., d/b/a Quality Preowned
Homes, Columbia Discount Homes, Mark
Twain Mobile Home Sales, and Chateau Homes**)
)
Respondent.)

Case No. MC-2008-0071

**RESPONDENT’S REPLY TO DIRECTOR’S RESPONSE
TO RESPONDENT’S MOTION TO DISMISS COUNTS I, III, AND V**

COMES NOW Respondent, by and through its undersigned attorneys, and for its Reply To the Director’s Response to Respondent’s Motion to Dismiss Counts I, III, and V of the Complaint, does hereby state as follows:

The Director misconstrues Respondent’s claims in paragraph 1 of its Motion to Dismiss. Respondent is not arguing that the Commission does not have the authority to authorize its general counsel to pursue civil penalties under Section 700.115. Rather, paragraph 1 of Respondent’s Motion to Dismiss Counts I, III, and V asserts that the Commission is not authorized to find a violation of Section 407.020. Violations of Section 407.020 can only be determined by courts in the State of Missouri. *See* Section 407.020, RSMo. Section 700.115.1 states that violations of Sections 700.010 to 700.115, shall constitute a violation of Section 407.020. However, Section 700.115.1 does not grant the Commission the authority to determine that Section 407.020 has been violated. Instead, Section 700.115.1 allows the Attorney General, prosecuting attorney or circuit attorney, whoever is properly bringing the Section 407.020 action, to show that a party violated Section 407.020 by showing such party violated Section 700.010 to Section 700.115.

The Director states on page 2 of his Response to Motion to Dismiss Counts I, III, and V, that, “References in paragraphs 14, 26, and 38 the violations of 700.015 being tantamount to a violation of Section 407.020 are additional or alternative allegations that may or may not support the

imposition of penalties; they make no difference in the authority of the Commission to authorize its counsel to seek penalties against Amega for violating Section 700.015.” It is true that the Commission may authorize civil penalties against Respondent for a violation of Section 700.015 under Section 700.115. However, what the Director is attempting to do by his pleading before the Commission is bootstrap a violation of Section 700.015 into a violation of Section 407.020 such that the Commission may revoke Respondent’s registrations under Section 700.100.3(4). As discussed in detail in Respondent’s Motion to Dismiss Counts I, III and V (and also Respondent’s Motion to Dismiss Counts II, IV and VI which has also been filed with the Commission), this bootstrapping is inappropriate and is not allowed under the law. *See State ex rel. Mobile Home Estates, Inc. v. Public Service Commission of Missouri*, 921 S.W.2d 5 (Mo. Ct. App. 1996).

Paragraph 2 of the Director’s Response to Motion to Dismiss Counts I, III, and V states that Section 700.100.3(4) explicitly provides that the Commission can determine whether Amega engaged in conduct constituting a violation of Section 407.020. This reading of the statute is incorrect. Section 700.100.3(4) merely gives the Commission the authority to revoke or suspend a registration for a violation of Section 407.020. No language in Section 700.100.3(4) or in any other provision of law gives the Commission the authority to determine what actions constitute a violation of Section 407.020. The threshold finding of a violation of Section 407.020 must be made by a court.

/s/ Thomas M. Harrison

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CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that on February 4, 2008, he electronically filed the foregoing with the Missouri Public Service Commission using the EFIS system which sent notification of such filing to the following:

Steven C. Reed
Sarah L. Kliethermes
Missouri Public Service Commission
P.O. Box 360
Jefferson City MO 65102

The undersigned further certifies that he faxed and mailed the foregoing document to the above-referenced parties on February 4, 2008.

/s/ Thomas M. Harrison
Thomas M. Harrison