

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

Director of the Manufactured Housing and)
Modular Units Program of the Missouri)
Public Service Commission,)
)
Complainant,)
)
v.)
)
Brookside Homes, Inc.,)
)
And)
)
Steven D. Warren, an individual,)
)
Respondents.)

Case No. MC-2009-0020

**DIRECTOR’S MOTION FOR SUMMARY DETERMINATION
ON COUNTS V, VII, AND IX AND STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT THEREOF**

COMES NOW the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission (“the Director”) and respectfully moves for summary determination of the above-captioned case pursuant to Commission Rule 4 CSR 240-2.117. As required by Commission Rule 4 CSR 240-2.117(1)(B), the Director consolidates this motion with a statement of undisputed material facts and submits in conjunction therewith a legal memorandum¹ in support of his position.

BACKGROUND AND PROCEDURAL HISTORY

In January 2007, upon application by Brookside Homes, Inc. (“Brookside”), the Director issued to Brookside a certificate of dealer registration. In December 2007, Brookside applied to

¹ A Memorandum in Support of Director’s Motion for Summary Determination on Counts V, VII and IX (“Memorandum”) is being filed contemporaneously with the Director’s Motion for Summary Determination on Counts V, VII, and IX and Statement of Undisputed Material Facts in Support Thereof (“Motion”) and is incorporated herein by reference. Any reference to an exhibit made by the Director in his Motion is in reference to those exhibits attached to the Director’s Memorandum.

renew its dealership registration. In January 2008, the Director notified Brookside that he could neither process nor approve Brookside's renewal application because the Director had deemed that Brookside (1) had failed to arrange for the proper initial setup of three manufactured homes² in violation of Section 700.100.3(6)³ and (2) engaged in conduct in violation of Section 700.045(5) by failing to correct code violations in three manufactured homes within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.100.3(9).

On July 8, 2008, the Director filed a Complaint, designated by the Missouri Public Service Commission ("the Commission") as Case No. MC-2009-0020, reaffirming his allegations concerning Brookside's conduct and requesting both that the Commission formally reaffirm the Director's allegations and actions and authorize the General Counsel to seek statutory penalties in Circuit Court.

On March 3, 2009, the Director filed the Director's First Amended Complaint, in which complaint the Director added seven (7) counts to the three (3) counts contained in the Director's original Complaint. Following a prehearing conference, the Commission ordered the parties to file any dispositive motions by July 31, 2009. Upon joint motion by the parties the deadline by which to file dispositive motions was extended by the Commission to August 31, 2009.

On August 25, 2009, the Director filed the Director's Notice of Dismissal of Counts I, II, III, IV, VI, VIII and X ("Notice of Dismissal"), dismissing seven (7) of the ten (10) counts contained in the Director's First Amended Complaint. To date, the Director's Notice of Dismissal has not been acknowledged or otherwise ruled upon by the Commission.

² Two of these homes, the Cook and Dement homes, are the subject of allegations contained in the Director's First Amended Complaint.

³ Unless otherwise noted, all references to statute will refer to the Missouri Revised Statutes 2000, as currently supplemented.

As evidenced by the Director's Notice of Dismissal, the Director intends to proceed on Count V (The Cook Home), Count VII (The Dement Home), and Count IX (The Schmidt Home). These counts are the subject of Director's motion for summary determination. For the Commission's information, Count V and Count VII were contained in the Director's original Complaint and in part provided the basis for the Director's initial refusal to approve Brookside's renewal application. Count IX was not contained in the Director's original Complaint.

GENERAL FACTS

1. The Commission has jurisdiction over manufactured homes, manufactured home dealers, and manufactured home installers pursuant to Chapter 700 RSMo. (Defendant Brookside Homes, Inc. Answer to Director's First Amended Complaint and Defendant Steven D. Warren's Answer to Director's First Amended Complaint (collectively referred to as "Answer"), ¶ 1).

2. At all times alleged in the Director's First Amended Complaint Brookside Homes, Inc. was a "manufactured home dealer" as that term is defined in Section 700.010(4). (Answer, ¶ 2).

3. David Freeman and Tim Haden are Inspectors for the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission. (See Affidavit of David Freeman, p. 1. A true and accurate copy of this affidavit is attached hereto as Exhibit A and is incorporated by reference. See also Affidavit of Tim Haden, p. 1. A true and accurate copy of the affidavit is attached hereto as Exhibit B and is incorporated by reference.).

4. In the scope of their employment as Inspectors, David Freeman and Tim Haden serve as representatives of the Director. (Exhibit A, p. 1; Exhibit B, p. 1).

5. In the scope of their employment as Inspectors, David Freeman and Tim Haden regularly conduct inspections of manufactured homes and modular units, and of manufactured home dealers, in order to determine compliance with the HUD code and state licensing requirements. (Exhibit A, p. 2; Exhibit B, p. 2).

6. David Freeman and Tim Haden are familiar with the requirements of “the code” as that term is applied to manufactured homes and modular units. (Exhibit A, p. 3; Exhibit B, p. 3).

UNDISPUTED MATERIAL FACTS REGARDING STEVEN D. WARREN

7. At times alleged in the Director’s First Amended Complaint Steven D. Warren was the owner of Brookside Homes, Inc. (Deposition of Steven D. Warren, p. 7, lns 7-8. A true and accurate copy of this deposition is attached hereto as Exhibit C and is incorporated by reference).

8. At all times alleged in the Directors First Amended Complaint Steven D. Warren was the President and Secretary of Brookside Homes, Inc. (Exhibit C, p. 13, lns. 1-3.).

9. At all times alleged in the Directors First Amended Complaint Steven D. Warren was the sole Director of Brookside Homes, Inc. (Exhibit C, p. 13, lns. 4-5).

10. At all times alleged in the Directors First Amended Complaint Steven D. Warren was the sole shareholder of Brookside Homes, Inc. (Exhibit C, p. 13, lns. 6-7).

UNDISPUTED MATERIAL FACTS SUPPORTING COUNT V

11. On June 29, 2007, Staff inspected a new manufactured home owned by Billy Cook (“the Cook Home”). (Exhibit A, p. 5).

12. The Cook Home was manufactured by Four Seasons. (Exhibit A, p. 5).

13. The Cook Home was sold by Brookside, a Commission-registered dealer. (Exhibit A, p. 5).

14. The June 29, 2007 inspection revealed several code violations and setup deficiencies. Staff assigned the responsibility for these dealer-related violations and/or deficiencies to Brookside. (Exhibit A, p. 5).

15. On July 6, 2007, Staff mailed Brookside a letter in which Staff instructed the Company to repair the Cook Home pursuant to Section 700.045(5). (Exhibit A, p. 5).

16. On December 18, 2007, Staff mailed another letter to Brookside in which Staff again instructed the Company to repair the Cook Home. (Exhibit A, p. 5).

17. On February 20, 2008 Staff re-inspected the Cook Home and noted several code violations and setup deficiencies which remained from Staff's June 29, 2007 inspection. (Exhibit A, p. 6).

18. On February 22, 2008, Staff mailed another letter to Brookside in which Staff again instructed the Company to repair the Cook Home. (Exhibit A, p. 6).

19. On March 28, 2008 Staff mailed another letter to Brookside in which Staff again instructed the Company to repair the Cook Home. (Exhibit A, p. 6).

20. As of February 20, 2008, the date of Staff's re-inspection, Brookside had not repaired the following code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer:

- A. A/C electrical wire under the home is not placed in conduit nor is it affixed to the home as required. This deficiency is in violation of Section 3280.808(k) of the Manufactured Home Construction and Safety Standards; and

B. The water tank or pump electric wire under the home is not placed in conduit nor is it affixed to the home as required. This deficiency is in violation of Section 3280.808(k)(3) of the Manufactured Home Construction and Safety Standards. (Exhibit A, p. 6).

21. Brookside agrees that these items are dealer setup deficiencies. (Exhibit C, p. 44, Ins. 4-6).

22. More than ninety (90) days have elapsed since Brookside was first instructed to make repairs to the Cook home. (Exhibit A, p. 7).

UNDISPUTED MATERIAL FACTS SUPPORTING COUNT VII

23. On July 26, 2007, Staff inspected a new manufactured home owned by Jeremy and Casey Dement (“the Dement Home”). (Exhibit A, p. 7).

24. The Dement Home was manufactured by Fleetwood Homes. (Exhibit A, p. 7).

25. The Dement Home was sold by Brookside, a Commission-registered dealer. (Exhibit A, p. 7).

26. Brookside Homes Inc. hired Lou Theiss to deliver the Dement Home to the customer site. (Exhibit C, p. 41, Ins. 1-3).

27. The Dement Home was delivered to the site by Lou Theiss. (Exhibit C, p. 41, Ins. 1-7).

28. The Dement Home was damaged by Lou Theiss in the course of its delivery to the site. (Exhibit C, p. 41, Ins. 4-7).

29. The July 26, 2007 inspection revealed several code violations and setup deficiencies. Staff assigned the responsibility for these dealer-related violations and/or deficiencies to Brookside. (Exhibit A, p. 7).

30. On August 13, 2007, Staff mailed Brookside a letter in which Staff instructed the Company to repair the Dement Home pursuant to Section 700.045(5). (Exhibit A, p. 7).

31. On September 25, 2007, Staff re-inspected the Dement Home and again noted several code violations and setup deficiencies which remained from Staff's July 26, 2007 inspection. (Exhibit A, p. 7).

32. On October 2, 2007, Staff mailed a letter to Brookside in which Staff again instructed the Company to repair the Dement Home pursuant to Section 700.045(5). (Exhibit A, p. 7).

33. On December 18, 2007, Staff mailed another letter to Brookside in which Staff again instructed the Company to repair the Dement Home. (Exhibit A, p. 8).

34. On March 25, 2008 Staff re-inspected the Dement Home and again noted several code violations and setup deficiencies remaining from Staff's July 26, 2007 inspection. (Exhibit A, p. 8).

35. On March 28, 2008, Staff mailed a letter to Brookside in which Staff again instructed the Company to repair the Dement Home. (Exhibit A, p. 8).

36. On April 9, 2008, Staff again re-inspected the Dement Home and again noted several code violations and setup deficiencies remaining from Staff's July 26, 2007 inspection. (Exhibit A, p. 8).

37. On April 28, 2008, Staff sent another letter to Brookside in which Staff again instructed Brookside to repair the Dement Home. (Exhibit A, p. 8).

38. As of April 9, 2008, the date of Staff's final re-inspection, Brookside had not repaired the following code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer:

- A. The hitch end at the walk out basement side the end wall at the bottom there is a damaged rim joist that needs to be fixed per DAPIA approval. This deficiency is in violation of Sections 3280.305(f) and 3280.305(g) of the Manufactured Home Construction and Safety Standards; and
- B. On the roof at the peak on the hitch end the roof decking has been damaged, there is a large gap, and roof decking is missing. This deficiency is in violation of Section 3280.307(a) of the Manufactured Home Construction and Safety Standards. (Exhibit A, pp. 8-9).

39. As of the date of the deposition of Steven D. Warren, January 22, 2009, the above-listed dealer deficiencies had not been corrected by Brookside. (Exhibit C, p. 46, lns. 21-24).

40. More than ninety (90) days have elapsed since Brookside was first instructed to make the repairs to the Dement home. (Exhibit A, p. 9).

UNDISPUTED MATERIAL FACTS SUPPORTING COUNT IX

41. On December 4, 2007, Staff inspected a new manufactured home owned by Steve Schmidt (“the Schmidt Home”). (Exhibit B, p. 5).

42. The Schmidt Home was manufactured by Champion Homes. (Exhibit B, p. 5).

43. The Schmidt Home was sold by Brookside, a Commission-registered dealer. (Exhibit B, p. 5).

44. The Schmidt Home was delivered to the site by Lou Theiss. (Exhibit B, p. 5).

45. At the time of the delivery of the Home, Lou Theiss was not licensed by the Commission as an installer. (Exhibit B, p. 5).

46. Lou Theiss installed the Schmidt Home. (Exhibit B, p. 5).

47. Brookside did not initially arrange for a Commission-licensed installer to install the Schmidt Home. (Exhibit B, p. 6).

48. The December 4, 2007 inspection revealed several code violations and setup deficiencies, the responsibility for which Staff assigned to the Commission-registered dealer (Brookside). (Exhibit B, p. 6).

49. On December 12, 2007, Staff mailed Brookside a letter in which Staff instructed Brookside to repair the Schmidt Home pursuant to Section 700.045(5). (Exhibit B, p. 6).

50. On March 7, 2008, Staff mailed Brookside another letter in which Staff again instructed the Company to repair the Schmidt Home. (Exhibit B, p. 6).

51. On March 11, 2008 Staff re-inspected the Schmidt Home and noted code several violations and setup deficiencies which remained from Staff's December 4, 2007 inspection, as well as several additional code violations and/or setup deficiencies which were not noted in Staff's December 4, 2007 inspection. (Exhibit B, p. 6).

52. On March 18, 2008, Staff mailed Brookside another letter in which Staff again instructed Brookside in writing to repair the Schmidt Home. (Exhibit B, p. 6).

53. As of March 11, 2008, the date of Staff's re-inspection, Brookside had not repaired the following code violations and/or setup deficiencies that were originally assigned by Staff to Brookside as a Commission-registered dealer:

- A. Brookside failed to have the home installed by a Commission-licensed installer. This deficiency is in violation of Section 700.650 through Section 700.692. This deficiency was noted as dealer item Number 1 in Staff's March 11, 2008 re-inspection report;

- B. The basement foundation installed by Brookside is not in compliance with Champion Homes' approved design. This deficiency is in violation of page 14 of the manufacturer's installation instructions and Commission Rules 4 CSR 240-120.065(1) and 4 CSR 240-120.065(2). This deficiency was noted as dealer item Number 2 in Staff's March 11, 2008 re-inspection report;
- C. During the installation of this home on the basement foundation there were three of the frame cross members and one outrigger cut and removed to allow placement of the home on the foundation. A dealer must apply for an application to alter and submit all necessary documents for the removal and or repair method, which Brookside did not do. This deficiency is in violation of Section 700.025. This deficiency was noted as dealer item Number 3 in Staff's March 11, 2008 re-inspection report;
- D. Brookside failed to provide a fire separation between the garage and the home and the electrical outlets and lighting required for the garage according to the local codes. This deficiency is in violation of Section 3280.303(A) of the Manufactured Home Construction and Safety Standards. This deficiency was noted as dealer item Number 4 in Staff's March 11, 2008 re-inspection report;
- E. The vent pipe and flashing for the master bath exhaust fan is pulled loose from the roof. This appears to be due to transit damage. This deficiency is in violation of Section 3280.307(b) of the Manufactured Home

Construction and Safety Standards. This deficiency was noted as dealer item Number 5 in my March 11, 2008 re-inspection report;

F. The OSB underlayment on the ends of the home is exposed and there appears to be water damage to the underlayment. This deficiency is in violation of Section 3280.307(a) of the Manufactured Home Construction and Safety Standards. This deficiency was noted as dealer item Number 6 in Staff's March 11, 2008 re-inspection report; and

G. The exterior vinyl siding on the front and back sides of the home is loose or has been removed in several areas. This deficiency is in violation of Section 3280.307(a) of the Manufactured Home Construction and Safety Standards. This deficiency was noted as dealer item Number 7 in Staff's March 11, 2008 re-inspection report. (Exhibit B, pp. 6-8).

54. More than ninety (90) days have elapsed since Brookside was first instructed to make the repairs to the Schmidt Home. (Exhibit B, p. 8).

WHEREFORE, the Director submits his Director's Motion for Summary Determination on Counts V, VII, and IX and Statement of Undisputed Material Facts in Support Thereof for the Commission's information and consideration in this matter.

Respectfully submitted,

/s/ Eric Dearmont

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31st day of August, 2009.

/s/ Eric Dearmont