

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
December, 2011.

Director of the Manufactured Housing)
and Modular Units Program of the)
Missouri Public Service Commission,)

Complainant,)

v.)

Burkhart Mobile Homes, Inc.,)

Respondent,)

File No. MC-2011-0319

**ORDER GRANTING SUMMARY DETERMINATION
AND AUTHORIZING AN ACTION FOR PENALTIES**

Issue Date: December 7, 2011

Effective Date: December 19, 2011

The Missouri Public Service Commission is granting the *Director's Motion for Summary Determination* ("motion"), and authorizing the Commission's General Counsel to seek penalties in circuit court against Burkhart Mobile Homes, Inc., ("Burkhart"). Burkhart made unauthorized sales of mobile homes and sales of unauthorized ("red-tagged") mobile homes. This order constitutes the Commission's final decision subject to rehearing under Section 386.500, RSMo 2000.¹

Procedure

The Director of Manufactured Housing and Modular Units Program of the Missouri Public Service Commission ("Director") initiated this action by filing a complaint.² The

¹ 4 CSR 240.2-070(13).

² On March 31, 2011.

Director filed a *First Amended Complaint*.³ Burkhart filed an answer to the *First Amended Complaint*.⁴ The Director filed the motion.⁵ Burkhart filed a response.⁶

The Commission may grant a motion for summary determination:

. . . if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case and the Commission determines that it is in the public interest [. ⁷]

The Director prevails by establishing, without genuine dispute, the facts material to the Director's claim.⁸ Burkhart's response admits all allegations in the motion, and does not ask for any hearing, so the response waives hearing.⁹

The Director has established, and Burkhart has raised no dispute as to, the following facts.

Findings of Fact

1. Burkhart is a domestic general business corporation administratively dissolved on August 25, 2010, and not since reinstated. Burkhart's principal place of business is at 8700 E. 70 Highway, Kansas City, Jackson County, Missouri.

2. Burkhart is in the business of selling manufactured homes and modular units. Burkhart held a registration as a dealer of manufactured homes and modular units until

³ On October 14, 2011, as provided by the order issued on that date.

⁴ *Respondent's Answer to Director's First Amended Complaint*, filed on October 21, 2011.

⁵ On November 2, 2011.

⁶ *Respondent's Response in Opposition to Director's Motion for and Suggestions in Support of His Motion for Summary Determination* filed on December 1, 2011.

⁷ 4 CSR 240-2.117(1)(E) (emphasis added).

⁸ *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993). That case discusses Missouri Supreme Court Rule 74.04, which is sufficiently similar to the Commission's regulation to make cases interpreting the rule helpful in understanding the regulation. *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

⁹ Sections 536.060 and 536.063(3), RSMo 2000.

February 23, 2010. On February 23, 2010, Burkhart's registration expired and the Commission has not since reinstated or renewed Burkhart's registration.

3. At all relevant times, Burkhart knew and understood that it was not authorized to sell manufactured homes while its dealer registration was not in effect. At all relevant times, Burkhart knew and understood that it was prohibited from selling a new manufactured home marked as non-compliant with legal standards ("red-tagged," as further explained below). Each new manufactured home at issue was manufactured after January 1, 1974.

4. On May 20, 2010, the Director red-tagged a new Champion I manufactured home, which Burkhart sold to William and Wanda Smith of Lansing, Kansas on June 14, 2010.

5. Also on May 20, 2010, the Director red-tagged a new Clayton manufactured home, which Burkhart later sold to Milton Kutzil of Excelsior Springs, Missouri, not later than September 10, 2010.

6. In September 2010, Burkhart sold a used manufactured home to Delbert Scott of Overland Park, Kansas.

7. On November 23, 2010, the Director red-tagged a new Champion II manufactured home, which Burkhart later sold to John R. Wilder of Blue Springs, Missouri, not later than December 30, 2010.

8. In January or February 2011, Burkhart sold a manufactured home to Ron and Jacqueline Goddard of Blue Springs, Missouri.

Conclusions of Law

The Commission has jurisdiction to hear the Director's complaint,¹⁰ because the Commission has jurisdiction to enforce manufactured housing standards,¹¹ and Burkhart is a manufactured home dealer.¹²

The *First Amended Complaint* sets forth three counts. In Count III, the Director cites Section 700.115.2,¹³ which authorizes a penalty up to \$1,000 for each violation of chapter 700, RSMo:

[W]hoever violates any provision of this chapter [700, RSMo] shall be liable to the state of Missouri for a civil penalty in an amount which shall not exceed one thousand dollars for each such violation. If, after a hearing, the commission finds that the person has violated any provision of this chapter [700, RSMo], it may direct its general counsel to enforce the provisions of this section by filing a petition in circuit court for such civil penalties. Each violation of this chapter shall constitute a separate violation with respect to each manufactured home or modular unit or with respect to each failure or refusal to allow or perform an act required by this chapter; except that, the maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

The Director charges violations of chapter 700, RSMo, as follows in Counts I and II.

In Count I, the Director cites Section 700.045(1):¹⁴

It shall be a misdemeanor:

(1) For a . . . dealer to manufacture, rent, lease, sell or offer to sell any manufactured home or modular unit after January 1, 1977, unless there is in effect a registration with the commission [.]

¹⁰ Section 386.390.1, RSMo 2000; 4 CSR 240-123.090(1); 4 CSR 240-123.020(1); 4 CSR 240-123.090(1); 4 CSR 240-2.070(1).

¹¹ Section 700.040.1, RSMo Supp. 2010.

¹² Section 700.010(4), RSMo Supp. 2010.

¹³ Supp. 2010.

¹⁴ Supp. 2010.

Over the course of about a year Burkhart knowingly sold mobile homes to Smith, Kutzil, Wilder, Goddard, and Scott without a registration in effect. Therefore, the Commission concludes that Burkhart committed five violations of Section 700.045(1) and enters a decision in the Director's favor on Count I.

In Count II, the Director cites Section 700.015.1:¹⁵

No person shall rent, lease, sell or offer for sale any new manufactured home manufactured after January 1, 1974, unless such manufactured home complies with the code and bears the proper seal.

The "code" includes:

. . . the standards relating to manufactured homes . . . as adopted by the commission. The commission, in its discretion, may incorporate, in whole or in part, the standards codes promulgated by . . . the United States Department of Housing and Urban Development [(“HUD”).¹⁶]

The Commission has incorporated HUD standards.¹⁷ Those standards include 24 CFR § 3282.7(cc), which provides:

To red tag means to affix a notice to a manufactured home which has been found to contain an imminent safety hazard or a failure to conform with any applicable standard. A red tag is the notice so affixed to the manufactured home.

Burkhart knowingly sold red-tagged mobile homes sold to Smith, Kutzil, and Wilder. Therefore, the Commission concludes that Burkhart committed three violations of Section 700.015.1.

The Director has shown that Burkhart committed eight violations of Sections 700.010 through 700.115 and the Commission concludes that granting the motion is in the public interest. Therefore, the Commission will grant the motion and authorize the Commission's

¹⁵ Supp. 2010.

¹⁶ Section 700.010(2), RSMo Supp. 2010.

¹⁷ 4 CSR 240-123.080(1).

General Counsel to file an action in circuit court seeking penalties under Section 700.115.2. This order addresses all charges in all counts of the *First Amended Complaint*, so the Commission will close this file.

THE COMMISSION ORDERS THAT:

1. The *Director's Motion for Summary Determination* is granted and the Commission's General Counsel is authorized to file an action in circuit court seeking penalties for eight violations of chapter 700, RSMo.
2. This order is effective on December 19, 2011.
3. This file shall close on December 20, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett and
Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge