

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

**Case No. MC-2004-0079**

COMES NOW Respondent Amega Sales, Inc., by and through its undersigned attorneys, and for its Motion to Dismiss Complaint or Alternative Motion to Strike states the following:

3. The "seal" requirements of Chapter 700 RSMo., and the enforcement/penalty provisions contained in Section 700.045 RSMo., are preempted by 42 USC Section 5403(d), which states that any federal manufactured home construction or safety standard supersedes any state construction or safety standard which is not "identical" to the Federal standard. The Federal standards contain no provision concerning a "seal." Section 700.010(11) RSMo., does refer to a seal which can be issued by the Commission. Because Section 700.010(11) is not identical to the Federal standards with respect to labels and seals, it is preempted by 42 USC Section 5403(d). In addition, the Federal standards do not contain

any provision for conviction of a manufactured home dealer for a misdemeanor for selling a manufactured home without a seal required by Section 700.010(11). Accordingly, Section 700.045 RSMo., which declares certain acts to be misdemeanors, is superseded by the Federal standards, including but not limited to 42 USC Section 5403(d).

4. For the above-stated reasons, the Complaint filed in this cause should be dismissed.

5. The Commission has no jurisdiction to consider this cause or to grant the relief sought by Complainant in this cause, and the Commission's consideration of this cause is beyond the scope of its powers because the Missouri General Assembly has not authorized the Commission to impose the penalties sought by Complainant in this cause.

6. Any civil penalty, criminal penalty or suspension imposed by the Commission in this cause would constitute a taking of property without just compensation in violation of the Missouri Constitution and the Fifth Amendment and Fourteenth Amendment of the United States Constitution.

7. This proceeding violates the Fourth Amendment, Fifth Amendment, and Sixth Amendment to the United States Constitution, and the due process clauses contained in the Fifth and Fourteenth Amendments to the United States Constitution and in Article I, Section 10 of the Constitution of the State of Missouri.

8. The Commission has no jurisdiction or legal authority to consider this cause as any purported delegation to the Commission of the power, right, or authority to consider or preside over this cause constitutes an illegal and unconstitutional delegation of powers to the Commission.

9. The civil penalties sought by Complainant in this cause are actually penal in nature and therefore constitute criminal penalties, which the Commission is not authorized to impose. Accordingly, the Commission has no jurisdiction to consider this cause, and this cause violates the Fourth Amendment, Fifth Amendment, and Sixth Amendment to the United States Constitution as well as Article I, Section 10 of the Constitution of the State of Missouri.

10. Article I, Section 31 of the Constitution of the State of Missouri states that an administrative agency may not establish a rule which fixes a fine for violation of that rule. Complainant is an administrative agency which according to the Complainant's Complaint created the administrative rule on which

Complainant is relying, and Complainant is now purporting to sit in the position of both prosecutor and finder of fact, which procedure and imposition of sanctions violates Article I, Section 31 of the Constitution of the State of Missouri.

11. The relief sought by Complainant against Respondent is overbroad and not warranted in that Respondent operates several mobile home sales lots and if the Commission suspends Plaintiff's registrations in all of its lots, as prayed for by Complainant, such penalties will be overbroad and penal in nature.

12. Chapter 700 of the Missouri Revised Statutes does not empower the Commission to hold the proceedings sought to be had herein which are hence beyond the scope of those powers delegated to the Commission by the Missouri General Assembly.

13. Complainant and Respondent have settled completely and fully all claims and controversies in this case pursuant to a written settlement stipulation. Respondent, therefore, pleads the affirmative defenses of settlement, release, waiver, and accord and satisfaction.

14. Respondent requests oral argument and a hearing on this motion to dismiss and alternative motion to strike.

WHEREFORE, Respondent prays that the Commission dismiss the Complaint with prejudice and tax any taxable costs in this matter to Complainant.

### **Alternative Motion to Strike**

For its Motion to Strike, which is made in the alternative to the Motion to Dismiss stated above and in the event the Commission overrules the above Motion to Dismiss, Respondent states the following:

1. The basis of the Complaint in this case is an allegation that Respondent sold the subject manufactured home without a HUD label in violation of law, which violation is denied by Respondent.

2. The Complaint in this cause contains numerous allegations which are irrelevant, immaterial, and superfluous to the matters at issue before the Commission. Specifically, the allegations made in paragraphs 6, 7, 8, 10 and 11 are immaterial and irrelevant and are made only in an effort to prejudice the trier of fact.

3. Pursuant to Commission Rule 4 CSR 240-2.070(6), the Commission may strike irrelevant allegations in a Complaint.

WHEREFORE, in the alternative to the Motion to Dismiss stated above, Respondent prays that the Commission strike the allegations contained in paragraphs 6, 7, 8, 10 and 11 of the Complaint filed in this cause.

/s/ Thomas M. Harrison

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The undersigned certifies that a complete and conformed copy of the foregoing document was mailed to each attorney who represents any party to the foregoing action, by U.S. Mail, postage prepaid in the proper amount, at said attorney's business address.

/s/ Thomas M. Harrison

Dated: March 25, 2004