

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

Complainant,

v.

**Omega Sales, Inc., d/b/a Quality Preowned
Homes, Columbia Discount Homes, Mark
Twain Mobile Home Sales, and Chateau Homes**

Respondent.

V.

COMES NOW Respondent Amega Sales, Inc., d/b/a Quality Preowned Homes, Columbia Discount Homes, Mark Twain Mobile Home Sales, and Chateau Homes (collectively “Amega”) and moves to dismiss Count VII of the Complaint in this cause for the following reasons and on the following grounds:

1. Count VII asks the Public Service Commission of Missouri (the “Commission”) to interpret and find a violation of the Commission Approved Stipulation and Agreement (“Stipulation”) from Case No. MC-2004-0079. The Commission is only vested with the powers conferred on it by statute. *See Public Service Commission of Missouri v. St. Louis-San Francisco Railway Co.*, 256 S.W. 226 (Mo. banc 1923). In fact, “[n]either convenience, expediency, or necessity are proper matters for consideration in determination of the issue here submitted. Either or all of these can only be urged in support of an act of the Commission clearly authorized by the statute. We say clearly authorized because the statutory origin and administrative character of the

Commission render it necessary that its power be warranted by the letter of the law or such a clear implication flowing therefrom as is necessary to render the power conferred effective.” *State ex rel. Kansas City v. Public Service Commission of Missouri*, 257 S.W. 462, 462-63 (Mo. banc 1923). Additionally, “the Public Service Commission is not a court . . . it has no power to construe or enforce contracts [and] . . . [t]he orders of the Commission are not judgments or adjudications.” *Gains v. Gibbs*, 709 S.W.2d 541, 543 (Mo. Ct. App. 1986). Therefore, the Commission does not have authority to interpret or construe the Stipulation to determine if the actions alleged in the Complaint constitute a violation of the Stipulation. To make such a finding, the Commission would have to engage in judicial acts. The Commission is not part of the judiciary and cannot interpret the Stipulation to find a violation. The Commission does not have the power or authority to do what the Complaint is asking it to do.

The Commission has not been authorized by statute to interpret contracts, including the Stipulation. Therefore, the Commission is without authority to rule on the alleged violation, and any action by the Commission on such matter would be unlawful, arbitrary and capricious.

2. The Director purports to be employed by, part of and a subdivision of the Commission. The finder of fact in this case is the Commission itself. Therefore, both the complaining party and the trier of fact in this cause are essentially one and the same entity and are part of the same governmental agency. If this case is allowed to continue, the same governmental entity or agency will be acting as prosecutor, finder of fact and jury. These facts and these circumstances violate the substantive and procedural due process clauses of the United States Constitution and Missouri Constitution, the equal protection clauses of the Missouri Constitution

and the United States Constitution, and the Doctrine of Separation of Powers found in the United States Constitution and the Missouri Constitution.

3. All prior defenses, claims, motions to dismiss, motions to strike and all other motions previously or contemporaneously filed in this cause by Respondent are incorporated herein by reference and are not waived or abandoned by the filing of this Motion. By filing this Motion, Respondent does not waive or abandon any defense, claim or other matter previously asserted by Respondent in this cause.

WHEREFORE, Respondent prays that Count VII of the Complaint in this cause be dismissed, that costs in this cause be taxed to Complainant, and for such other and further relief as the Commission deems just and proper.

/s/ Thomas M. Harrison

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The undersigned certifies that a complete and conformed copy of the foregoing document was faxed and 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: January 18, 2008