



4. In answer to paragraph 4 of the Complaint, Respondent states that the rule cited therein speaks for itself. By way of further answer and affirmative defense, Respondent affirmatively states that any delegation described in paragraph 4 of the Complaint constitutes an illegal and unconstitutional delegation of powers. All allegations of paragraph 4 not admitted above are denied.

5. In answer to paragraph 5 of the Complaint, Respondent states that the cited statute speaks for itself and further states that the Commission lacks authority or jurisdiction to revoke, suspend or place Respondent's dealer registration on probation.

6. In answer to paragraph 6 of the Complaint, Respondent states that the cited statute speaks for itself. By way of further answer and affirmative defense, Respondent affirmatively states that the allegations contained in paragraph 6 are immaterial and irrelevant to this cause.

7. In answer to paragraph 7 of the Complaint, Respondent states that the cited statute speaks for itself. All other allegations of paragraph 7 are denied.

8. Respondent denies the allegations of paragraph 8 of the Complaint.

9. Respondent denies the allegations of paragraph 9 of the Complaint.

10. Respondent is without knowledge to admit or deny the allegations of paragraph 10 of the Complaint and therefore denies the same.

11. Respondent is without knowledge to admit or deny the allegations of paragraph 11 and therefore denies the same. Respondent denies that it caused any unauthorized alteration of the home to occur and that any setup deficiencies in the home exist.

12. Respondent denies the allegations of paragraphs 12, 14, 17 and 18.

13. Respondent is without knowledge to admit or deny the allegations of paragraph 13 and therefore denies the same. Respondent denies that there are or were any setup deficiencies or alterations with the home.

14. Any allegation contained in the Complaint not expressly admitted above is hereby denied by Respondent.

15. Given that Chapter 700 of the Missouri Revised Statutes Fails to set forth any procedure for a proceeding of this nature (if any proceeding exists), Respondent demands trial by jury of all issues in this cause.

16. By way of further answer, Respondent states the following affirmative defenses:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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 violates Article I, Section 31 of the Constitution of the State of Missouri.

g. The relief sought by Complainant against Respondent is overbroad and not warranted in that Respondent operates several mobile home sales lots pursuant to several certificates of registration, 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.

h. 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.

i. Both the authority of the Missouri General Assembly to establish and the authority of the Complainant or the Commission to enforce Chapter 700 RSMo., and to proceed in this case generally are preempted by 42 USC Section 5403(d). Section 5403 of Title 42 of the United States Code establishes that any and all federal statutes and regulations concerning mobile home safety and construction are supreme and supersede any state or local law which is not identical to the federal standards. The provisions of Chapter 700 RSMo. Which the Complainant is attempting to enforce in this case are beyond the scope of and are not identical to the provisions contained in 42 USC Section 5401 et. seq. and the regulations promulgated thereunder and therefore pre-empted by such Federal statutes and regulations.

j. Neither Complainant nor the Commission have the jurisdiction or authority to revoke or suspend Respondent's dealer registration. Accordingly, any attempt by Complainant or Commission to suspend or revoke such dealer registration is made without authority.

k. The statute at issue in this case (i.e., Chapter 700) as applied in these circumstances is unconstitutionally overbroad. The purpose sought to be achieved by the applicable federal regulations and Chapter 700, to the extent, if any, that Chapter 700 is not preempted by federal law, is to insure compliance with applicable codes for the construction of manufactured homes and hence to promote safety. Given that there is no requirement of a showing of noncompliance with those codes the statute creates a crime without a victim.

l. The prosecution of this matter is both selective and vindictive and therefore the pleadings of the Director of the Division of Manufactured Homes should be struck.

m. Respondent denies and continues to deny that there are any deficiencies or defects with the manufactured home in issue in this case and that said home has been altered in any way. Respondent continues to deny that there are set-up deficiencies or defects with said home. Nevertheless, Respondent has attempted on several occasions to obtain permission from the owners of the home to enter upon their property and to get access to the home in order to make repairs and otherwise perform work as requested and directed by complainant. However, the owners of the home have refused at all times to allow Respondent to have access to said home and have refused to allow Respondent's contractors to have access to said home. Therefore, Respondent has been unable to perform any work or repairs on the said home. Accordingly, the affirmative defenses of impossibility, impracticability and hindrance are hereby raised.

WHEREFORE, Respondent prays that the Complaint in this cause be dismissed, or in the alternative that Commission find all issues in favor of Respondent and that any taxable costs be taxed to the Complainant and that Respondent be awarded its attorney's fees 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: December 29, 2004