



ATTORNEY GENERAL OF MISSOURI

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65102

JAY NIXON
ATTORNEY GENERAL

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May 13, 2004

FILED

MAY 13 2004

Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Adjudication Division - Data Center
P.O. Box 360
Jefferson City, Missouri 65102-0360

Re: Case No. MC-2004-0078

*Director of the Manufactured Housing and Modular Units Program of the
Public Service Commission v. A & G Commercial Trucking, Inc.*

Dear Secretary Roberts:

Enclosed please find an original and eight copies of a Memorandum in Support of the Attorney General's Motion for an Order of the Commission removing the Attorney General as a Party to the above-styled matter.

Thank you for your courtesies in this matter.

Respectfully submitted,

JEREMIAH W. (Jay) NIXON
Attorney General of Missouri

LAURA KRASSER
Chief Counsel
Consumer Protection Division
(573) 751-7007

Enc.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

MAY 13 2004

Missouri Public
Service Commission

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

Complainant,)

Case No. MC-2004-0078

v.)

A & G Commercial Trucking, Inc.,)

Respondent.)

MEMORANDUM IN SUPPORT OF THE ATTORNEY GENERAL'S MOTION
FOR AN ORDER OF THE COMMISSION REMOVING
THE ATTORNEY GENERAL AS A PARTY

On March 25, 2004, by order of the Commission, the Missouri Attorney General was made a party to this matter (order attached as Exhibit A). On April 8, 2004, the Attorney General filed with the Commission a motion to remove the Attorney General as a party (motion attached as Exhibit B). On April 13, 2004, an on-the-record presentation was held regarding a proposed Stipulation and Agreement filed by the parties. Following that presentation, on motion of Respondent, the Commission ordered the matter continued until June 1, 2004, at which time an evidentiary hearing is to be held (order attached as Exhibit C). The Attorney General's motion to be removed as a party has not yet been ruled on by the Commission.

Based on the following, the Attorney General should be removed as a party to this proceeding.

The Attorney General is not a necessary party to this proceeding.

The Commission's order making the Attorney General a party notes that "the Missouri Attorney General is vested with power to enforce Section 407.020, relating to consumer

protection.” Exhibit A, p. 2. This power, however, is not exclusive to the Attorney General. Indeed, private individuals have used Chapter 407 (the “Merchandising Practices Act”) to recover damages.¹ The purpose of the Merchandising Practices Act is “to supplement the definitions of common law fraud in an attempt to preserve fundamental honesty, fair play and right dealings in public transactions.” *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 368 (Mo.App. 1973). Nowhere is it suggested that this purpose may only be fulfilled through actions by the Attorney General. The Commission need not have the Attorney General before it in order to determine that a violation of § 407.020 has occurred.

The Commission may use a violation of § 407.020 as the basis for adverse action on a dealer’s or manufacturer’s registration. This authority is found in § 700.100.3², which specifies the grounds that support the Commission’s imposition of suspension, revocation, or probation on a manufacturer’s or dealer’s registration. That section includes as a basis for any of these actions “[e]ngaging in any conduct which constitutes a violation of the provisions of section 407.020, RSMo.” § 700.100.3(4) RSMo 2000.

The inclusion of violations of § 407.020 as a basis for action against a registration certificate is revealing of the Legislature’s intent. The Legislature gave the Commission the

¹*Sunset Pools of St. Louis, Inc. v. Schaefer*, 869 S.W.2d 883 (Mo.App. E.D. 1994); *Bauer v. Southwestern Bell Telephone Co.*, 958 S.W.2d 568 (Mo.App. E.D. 1997), transfer denied; *Fiedler v. Credit Acceptance Corp.*, W.D.Mo.1998, 19 F.Supp.2d 966, vacated in part 188 F.3d 1031, on remand 98 F.Supp.2d 1104; *Kiechle v. Drago* 694 S.W.2d 292 (Mo.App. W.D. 1985); *Morehouse v. Behlmann Pontiac-GMC Truck Service, Inc.*, 31 S.W.3d 55 (Mo.App. E.D. 2000), rehearing and/or transfer denied; *Pointer v. Edward L. Kuhs Co.*, 678 S.W.2d 836 (Mo.App. E.D. 1984); *Williams v. Regency Financial Corp.*, C.A.8 (Mo.)2002, 309 F.3d 1045, rehearing and rehearing en banc denied; *Viene v. Concours Auto Sales, Inc.* 787 S.W.2d 814 (Mo.App. E.D. 1990); *Bird v. John Chezik Homerun, Inc.*, C.A.8 (Mo.)1998, 152 F.3d 1014, rehearing and suggestions for rehearing en banc denied, on remand 2000 WL 49333, vacated.

²Chapter 700 RSMo 2000 is hereinafter generally referred to as the “Manufactured Homes Act.”

power and authority to regulate manufactured housing practices through administering registration certificates of manufacturers and dealers. The Legislature then provided a list, in § 700.100.3 RSMo, of the grounds for action against those registrations. For example, the Commission may suspend, revoke, or place on probation a registration for failure of the licensee to comply with franchise tax or sales tax laws. § 700.100.3(3) RSMo 2000. But the Commission is not required to have the Secretary of State or the Commissioner of Revenue before it to report noncompliance. Additionally, the Commission may suspend, revoke, or place on probation a registration for requiring a person to purchase insurance from a particular registrant as a condition to the sale. § 700.100.3(7) RSMo 2000. But the Commission is not required to have the Commissioner of Insurance file a complaint and participate in the proceeding. Similarly, there is no requirement that the Commission make the Attorney General a party just so that a violation of § 407.020 can be established.

In its motions in the Boone County suit, Respondent has cited the fact that the Attorney General is also seeking revocation of Respondent's registration certificates in circuit court. Respondent seeks to use this fact to preclude the Attorney General's action in Boone County. During the on-the-record presentation, counsel for Respondent made the following argument:

[Mr. Miller:] Basically, my view of the world is as follows: In Circuit Court, you can seek penalties. The only thing that a Circuit Court can do with regard to license revocation is act on an action by the Commission, because the court is not the licensing agency. Transcript, p. 22, lines 19-24.

This may be true in some other licensing contexts. However, the Manufactured Homes Act expressly gives the Attorney General the option of seeking license revocation in circuit court where a licensee is believed to have violated § 407.020. § 700.115.1 RSMo 2000. That section

does so without disturbing the Commission's authority to suspend, revoke, or place under probation a license under §700.100.

When all three sections, 407.020, 700.100, and 700.115, are read together, there is no support for the proposition that the Commission must make the Attorney General a party any time it wishes to suspend, revoke, or place on probation a license pursuant to a violation of § 407.020. To require the Commission to make the Attorney General a party every time the Commission believes a violation of § 407.020 has occurred would hamper its ability to carry out its licensing function under the Manufactured Homes Act. Further, such a requirement would force the Director of Manufactured Housing and Modular Units Program to consult with the Attorney General every time a violation of § 407.020 is alleged. The Commission's Office of General Counsel is amply qualified to show to the Commission that a § 407.020 violation has occurred, and the General Counsel's case (and the Commission's actions thereupon) is not given greater credence merely through ratification by the Attorney General.

Dealers and manufacturers in violation of other provisions of law should not be allowed to use pending licensure actions to preclude actions against them in other venues. If a physician licensed by the Board of Registration for the Healing Arts were to criminally assault a patient, certainly the Board would wish to take action against his license. Additionally, the County Prosecutor would file criminal charges. The prosecutor, however, would not be a party to the Board's proceeding, and the physician should not be entitled to use the licensing proceeding to preclude the criminal proceeding.

The Attorney General's action against Respondent and others in Boone County seeks restitution, injunctive relief, and the civil penalties described in § 407.100.6 RSMo. These remedies are unavailable in a proceeding before the Commission. The Defendants in the Boone

County action are now using this proceeding as a basis for dismissal of the Attorney General's action, citing the Commission's order making the Attorney General a party. In view of the foregoing, the Attorney General should be removed as a party to this proceeding.

Justice requires removal of the Attorney General as a party.

The Attorney General has not participated in this proceeding, other than to request that he be removed as a party. The Attorney General did not receive the complaint filed by the consumer with the Director; the Attorney General was not named as Complainant along with the Director; the Attorney General did not participate in the negotiation or drafting of the proposed stipulation; the Attorney General was not afforded the opportunity to argue for or against the proposed stipulation; the Attorney General was not included in the caption of the proposed stipulation, and was not a signatory to the proposed stipulation; the Attorney General was not made a party until the on-the-record hearing on the proposed stipulation was already scheduled.³ All of these facts indicate that the Attorney General was and has been a party in name only.

The Attorney General is willing and able to assist the Commission in any appropriate fashion. However, it is evident that the Commission did not require the Attorney General's participation in this proceeding, which is perfectly appropriate given the nature of the complaint received by the Commission and the statutory authority enabling the Commission to act on that complaint. To add the Attorney General late in the process, when a stipulation has already been negotiated to resolve the matter, however, places the Attorney General in an awkward position. The Attorney General was not at any point invited to participate or received as a party. Yet in Boone County Circuit Court, the Attorney General's suit against Respondent and others is being

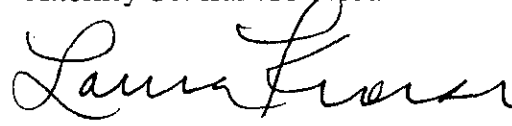
³The Commission's order of March 24, 2004 set the hearing for April 13, 2004; the Commission's order making the Attorney General a party was issued on March 25, 2004.

subjected to various motions by Respondent calling for dismissal, joinder of the Public Service Commission as a necessary party, and injunction against the suit's going forward, all of which stem from the Attorney General's inappropriate and phantom role as a party to this proceeding.

The suit in Boone County is based on the complaints by approximately 65 consumers against Respondent and other companies owned or operated by Greg DeLine . If the Commission so desires, a representative of the Attorney General will appear as a witness in this proceeding to testify to what the Attorney General believes are violations of § 407.020 RSMo and what violations form the basis for the Attorney General's request for revocation under § 700.115.1 RSMo. Additionally, if the Commission so desires, the Attorney General will provide the Commission or the General Counsel with copies of the complaints and supporting documents received by the Attorney General. The Attorney General is ready to assist as a witness. In view of the foregoing, however, the Attorney General should not be a party to this action, and should be removed.

Respectfully Submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

A handwritten signature in cursive script, appearing to read "Laura Krasser", written in dark ink.

LAURA KRASSER
Mo. Bar No. 47704
Chief Counsel
Consumer Protection Division
1530 Rax Court
Jefferson City, MO 65109
(573) 751-7007
(573) 751-2041 (facsimile)
Laura.Krasser@ago.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, via U.S. mail, postage paid, on this 13th day of May, 2004, to:

Dana K. Joyce
General Counsel
Missouri Public Service Commission
P.O. Box 360
200 Madison St., Ste. 800
Jefferson City, MO 65102

ATTORNEY FOR COMPLAINANT

Thomas M. Harrison
1103 East Broadway, Ste. 101
P.O. Box 1017
Columbia, MO 65205

Michael G. Berry
221 Bolivar Street, Suite 100
Jefferson City, MO 65101

Daniel H. Miller
10 Southampton, Suite B
Columbia, MO 65203

ATTORNEYS FOR RESPONDENT

A handwritten signature in black ink, appearing to read "Liana Prasse", written over a horizontal line.

Assistant Attorney General

MAR 26 2004
MO. ATTORNEY GENERAL

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

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

Complainant,

v.

A&G Commercial Trucking, Inc

Respondent.

Case No. MC-2004-0078

**ORDER DIRECTING NOTICE OF ON-THE-RECORD PRESENTATION
AND MAKING THE MISSOURI ATTORNEY GENERAL A PARTY**

On August 5, 2003, the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission filed, under Chapters 700 and 407, RSMo 2000, a complaint with the Commission against A&G Commercial Trucking, Inc. Thereafter, the matter was referred to a third-party, neutral mediator. Subsequently, the parties filed a Stipulation and Agreement, possibly resolving all of the issues in this case.

On March 24, 2004 the Commission issued an order setting this matter for an on-the-record presentation regarding the Stipulation and Agreement filed by the parties. The presentation is to be held on Tuesday, April 13, 2004, commencing at 1:30 p.m. at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, in Room 310, a facility that meets accessibility standards required by the Americans with Disabilities Act (ADA).

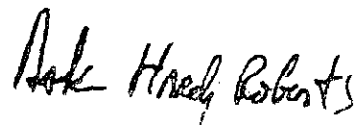


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 25th day of Mar. 2004 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

MISSOURI PUBLIC SERVICE COMMISSION

March 25, 2004

Case No. MC-2004-0078

Dana K Joyce
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

John B Coffman
P.O. Box 7800
200 Madison Street, Suite 640
Jefferson City, MO 65102

A & G Commercial Trucking, Inc.
Thomas Harrison
1103 East Broadway Suite 101
P.O. Box 1017
Columbia, MO 65205

Attorney General's Office
Jeremiah Nixon
Supreme Court Bldg.
P.O. Box 899
Jefferson City, MO 65102

Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

APR 08 2004

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

Complainant,

v.

A & G Commercial Trucking, Inc.,

Respondent.

Missouri Public
Service Commission

Case No. MC-2004-0078

**MOTION FOR ORDER OF THE COMMISSION
REMOVING THE MISSOURI ATTORNEY GENERAL AS A PARTY**

Jeremiah W. (Jay) Nixon, Attorney General, through his assistant Laura Krasser, respectfully moves for an order of the Commission removing him as a party to the above-styled action. In support of his motion, the Attorney General states the following:

On March 8, 2004, the Attorney General filed a civil suit pursuant to Chapter 407, RSMo, for preliminary and permanent injunctions, restitution, and other penalties against, among others, Greg DeLine, the owner of the Respondent company in the present action. In his civil suit, the Attorney General also seeks revocation of the manufactured housing dealer license issued by the Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") to Amega Sales, Inc., pursuant to Chapter 700, RSMo. The style of the Attorney General's case is *State of Missouri v. Greg DeLine et al.*, Case No. 04CV165070.

On March 25, 2004, this Commission entered an order making the Attorney General a party to the present action, citing the Attorney General's authority to enforce § 407.020, RSMo, under the provisions of § 700.115(1), RSMo. The Attorney General respects the Commission's order and is glad for the opportunity to be heard.

On April 7, 2004, the defendants in the Attorney General's suit filed a Motion to Dismiss. One of the grounds cited is the Attorney General's party status in the present action. While some of the issues in both the Attorney General's action and the Director's action overlap, Chapter 407 provides unique authority for the Attorney General to pursue remedies unavailable to the Director. The Attorney General believes that it is in the best



interest of Missouri consumers for him to pursue all available remedies through his civil suit rather than also being a party to the Director's action.

Therefore, the Attorney General respectfully requests that the Commission issue an order removing him as a party.

Respectfully submitted,

JEREMIAH W. (Jay) NIXON
Attorney General of Missouri



LAURA KRASSER
Chief Counsel
Consumer Protection Division

1530 Rax Court
Jefferson City, MO 65109
Phone: (573) 751-7007
Fax: (573) 751-2041

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, via U.S. mail, postage paid, on this 8th day of April, 2004, to:

Dana K. Joyce
General Counsel
P.O. Box 360
200 Madison St., Ste. 800
Jefferson City, MO 65102

Amega Sales, Inc.
Thomas Harrison
1103 East Broadway, Ste. 101
P.O. Box 1017
Columbia, MO 65205



Chief Counsel, Consumer Protection

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

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

Complainant,

v.

A&G Commercial Trucking, Inc.,

Respondent.

Case No. MC-2004-0078

ORDER GRANTING MOTION FOR CONTINUANCE **AND SETTING MATTER FOR EVIDENTIARY HEARING**

On March 19, 2004, the Missouri Public Service Commission set an evidentiary hearing to be held in this matter on April 26, 2004. On April 19, 2004, Respondent filed a motion for continuance. Respondent notes that the parties have entered into a stipulation, which is before the Commission. Additionally, Respondent states that because the parties have entered into an agreement, there has been no discovery conducted in preparation for hearing. The Commission finds that that motion is reasonable and will continue the evidentiary hearing until a later date. The parties are notified that the Commission will not require the parties to prefile testimony in this matter.

IT IS THEREFORE ORDERED:

1. That the evidentiary hearing scheduled in this matter for April 26, 2004, is continued until June 1, 2004, at 8:30 a.m.
2. That the hearing will be held at the Commission's offices in the Governor Office Building, Room 305, 200 Madison Street, Jefferson City, Missouri, a facility which meets the accessibility standards of the Americans with Disabilities Act (ADA). If any person needs additional accommodations to participate in these hearings, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 prior to the hearing.



3. That this order shall become effective on April 21, 2004.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Kennard L. Jones, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of April, 2004.