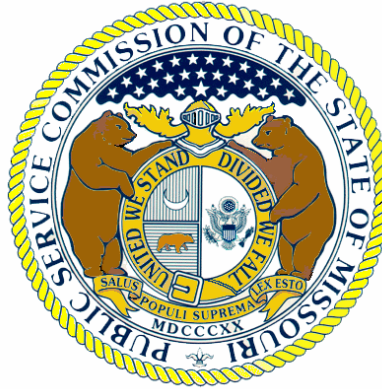


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

Complainant,

v.

Blakely Manufactured Homes,

Respondent.

Case No. MC-2006-0389

REPORT AND ORDER

Issue Date: February 27, 2007

Effective Date: March 9, 2007

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

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

Complainant,

v.

Blakely Manufactured Homes,

Respondent.

APPEARANCES

Sue Crane, Attorney at Law, Brady & Crane, L.L.C., 411 Court Street, Fulton, Missouri 65251, for Blakely Manufactured Homes.

Eric Krauss, Attorney at Law, Wuestling & James, L.L.C., 720 Olive Street, Suite 2020, St. Louis, Missouri 63101, for Blakely Manufactured Homes.

Robert S. Berlin, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Manager of the Housing and Modular Units Program of the Missouri Public Service Commission.

Blaine Baker, Associate Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Manager of the Housing and Modular Units Program of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Cherlyn D. Voss.

REPORT AND ORDER

Summary

The Missouri Public Service Commission finds that Blakely Manufactured Homes violated the Commission rules alleged in counts 1 through 9 of the Complaint filed by the Manager of the Manufactured Housing and Modular Units Program of the Commission (“Manager”) on April 7, 2006, and thereby failed to meet its statutory duty pursuant to § 700.100.3(6) RSMo 2000¹ to properly set up and install a modular unit. This order further authorizes the Commission’s General Counsel to seek civil penalties from Blakely Manufactured Homes pursuant to § 700.115.2 RSMo.

Background

This complaint is based upon a Modular Unit Site Inspection Report of a new modular unit home bearing modular unit identification number M3264-01 (“the Modular Home”) that was purchased from and set up by Blakely Manufactured Homes (“Blakely”). The Manager alleges Blakely failed to properly set up the Modular Home in violation of § 700.100.3(6) RSMo and various Commission Rules. The Manager further alleges that Blakely’s failure to properly set up the Modular Home resulted in significant damage to the Modular Home and injury to its owners during a storm. Blakely claims it fully complied with all statutory and regulatory obligations related to setting up the Modular Home, because it set up the Modular Home in compliance with instructions received from the manufacturer of the Modular Home.

¹ All references to the Revised Statutes of Missouri are to the 2000 edition unless otherwise stated.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On April 7, 2006, the Manager filed a complaint against Blakely. The Manager's complaint alleges that Blakely sold to Lawrence and Joyce King ("the Kings") a modular home bearing unit identification number M3264-01, the Modular Home. The Manager's Complaint further alleges that Blakely failed to properly set up and install the Modular Home in violation of § 700.100.3(6) RSMo and Commission Rules 4 CSR 240-123.065 and .080. Blakely filed a verified Answer on May 10, 2006, denying it had committed any of the violations alleged by the Manager.

On July 17, 2007, the Commission issued an order adopting a procedural schedule. At the request of the parties, that procedural schedule did not call for prefiled testimony, but instead anticipated all testimony would be presented live at an evidentiary hearing. The Manager and Blakely each timely filed their witness lists on October 18, 2007. After 3:00 p.m. on October 31, 2006, the day before the evidentiary hearing was scheduled to begin; Blakely filed a First Amended List of Witnesses from which the name Mr. Clarence Blakely, the owner of Blakely, had been removed.

The evidentiary hearing was conducted on November 1, 2006. At the hearing, the Manager called Lawrence and Joyce King, the owners of the Home, Ronald Pleus, the manager of the Commission's manufactured housing and modular units program, field inspector supervisor Silas Eugene Winn, and field inspector Tim Haden. Blakely participated in the hearing through counsel, but Mr. Blakely did not appear and Blakely did not call any witnesses. The parties filed a single round of posthearing briefs.

Blakely's Certificate

On December 12, 2005, Blakely completed an Application for a Manufactured Home or Modular Unit Certificate of Dealer Registration with the Missouri Public Service Commission, which the Manager received on December 28, 2005.² On December 29, 2005, the Missouri Public Service Commission issued a Certificate of Dealer Registration to Blakely Manufactured Homes.³ From that date through the events at issue, Blakely was a licensed manufactured and modular unit home dealer in the state of Missouri.⁴ Blakely's Certificate of Dealer Registration expired on December 31, 2006, and Blakely has not submitted a request to renew that certificate for 2007.⁵

² Exhibit 2 HC.

³ Exhibit 1.

⁴ Tr. 37, lines 12-16.

⁵ The Manufactured and Modular Units Program of the Missouri Public Service Commission Licensed Dealers List at www.psc.mo.gov/manhouse/Attachments/Licensed.Dealers.pfd.

Blakely's Contractual Obligations to the Kings

On October 18, 2005, a modular home sales agreement was executed between Larry and Joyce King and Blakely.⁶ This was the first modular home ever sold by Blakely.⁷ On the "Remarks" section of the Sales Agreement, Exhibit 3, the following is clearly stated, "All option on attached order sheet includes delivery, complete set-up including air conditioning." The Kings further testified, and Blakely did not dispute, that the sale of the Modular Home included set-up and installation and that the set-up and installation were not waived in any manner.⁸

Set-up Status of the Modular Home on March 10, 2006

The Kings testified that they had several telephone conversations with Mr. Blakely regarding when the Modular Home would be ready for them to move in, because they did not want to leave their home in the State of California until the Modular Home was ready.⁹ Mr. Blakely informed the Kings that the Modular Home would be ready for them to move into when they arrived in Fulton.¹⁰

The Kings arrived at the site of their new Modular Home around noon on Friday, March 10, 2006, and started to move furniture into the home.¹¹ Mr. Blakely was at the home site when the Kings arrived.¹² Mr. Blakely gave no indication that the Modular Home

⁶ Exhibit 3 HC.

⁷ Tr. 128, lines 3-6.

⁸ Tr. 43, line 25, and Tr. 44, lines 1-5; Tr. 71, lines 14-20.

⁹ Tr. 44, lines 16-25, and Tr. 45, lines 1-12.

¹⁰ Tr. 44, lines 16-25, and Tr. 45, lines 1-12; Tr. 74, lines 9-17; Tr. 78, lines 7-12.

¹¹ Tr. 44, lines 6-11.

¹² Tr. 45, lines 13-18.

was not ready for the Kings to move into and made no effort to stop them from moving in.¹³

Mr. Blakely not only helped the Kings begin the moving-in process by helping them line up their moving van with a door of the Modular Home, but also had his son place the ramp of the moving van into the doorway to further facilitate the unloading of the van's contents into the Modular Home.¹⁴

The Kings testified that, based upon their earlier phone conversations with Mr. Blakely and his actions when they arrived at the Modular Home site, they believed the Modular Home was ready for them to move into and that the only thing remaining to be completed was some duct work in the basement.¹⁵ The Commission finds that Blakely had completed its set-up of the Modular Home prior to Mr. Blakely and his son assisting the Kings to move into that home on March 10th.

The March 13th Storm

Sometime after midnight, in the early morning hours of March 13, 2006, a storm struck the Fulton area. During the storm, as the Kings were making their way toward the basement of the Modular Home to take shelter, the Modular Home was partially dislodged from its foundation, thereby destroying the Modular Home and causing serious injuries to the Kings.¹⁶ The storm moved the Modular Home roughly 14 feet from its original

¹³ Tr. 45, lines 19-24.

¹⁴ Tr. 45, line 25, and Tr. 46, lines 4-15.

¹⁵ Tr. 45, lines 19-24; Tr. 56, lines 11-25; Tr. 57, lines 1-2; Tr. 60, lines 8-12; Tr. 66, lines 10-21; Tr. 73, lines 4-6.

¹⁶ Tr. 54, lines 1-12; Tr. 55, lines 18-25; Tr. 56, lines 1-10; Tr. 58, lines 11-25; Tr. 59, lines 1-20; Tr. 87, lines 11-22.

location.¹⁷ The King's motor home that was sitting approximately 15 feet from the Modular Home during the storm was not overturned or seriously damaged.¹⁸

Set-up and Construction Deficiencies

Based upon the uncontroverted testimony of the Manager's witnesses, the Commission finds the following facts to be true.

Count 1: Blakely failed to properly attach the Modular Home onto the basement foundation in accordance with either the manufacturer's instructions or the Generic HUD manual that Blakely contends Mr. Blakely received from the manufacturer.¹⁹ Specifically:

1. The Modular Home was resting on concrete walls on the ends and backside and improperly fastened to the walls using "Minute Man" frame straps that were embedded in the top of the concrete walls and fastened to the inside of the home's perimeter rim joist using (1) ¼" x 1 1/2" lag bolt per strap;
2. The "Minute Man" straps were improperly spaced approximately 2-feet to 4-feet from the corners, and up to approximately 6-feet to 7-feet apart along the walls;
3. Neither the manufacturer nor the Minute Man company approve Blakely's method of using "Minute Man" straps to fasten a modular home to a foundation;
4. The front side of the home was resting on a wood framed walkout wall;
5. There was no visible fastening of the home to the wood framed walkout wall;

¹⁷Tr. 176, lines 6-8.

¹⁸ Tr. 64, lines 5 -16.

¹⁹ Tr. 99, lines 9-20; Tr. 101, line 18 through Tr. 103, line 7; Tr. 159, lines 19-22; Tr. 175, lines 3-7; Tr. 176, lines 6-8; Exhibit 4, p. 2; and Exhibit 6, page 6.

6. The wood framed walkout wall was improperly fastened to the basement floor with anchor bolts, 1-inch washer and nut, spaced up to 17" apart;
7. The manufacturer's set up instructions require a 2" x 6" treated sill plate fastened to the top of the basement wall using 5/8" x 7" minimum embedment anchor bolts with nut and 2/9 inch washer, spaced at 6-feet a part maximum and within 1-foot from the ends of each plate, but Blakely failed to install any sill plate on top of the basement walls;
8. Blakely did not use an approved "Simpson Tie" installed according to the manufacturers installation instructions to attach the sill plate to the foundation; and
9. The home's perimeter rim joist was not fastened to the basement sill plate using the required 16d nails spaced a maximum of 6-inches apart.²⁰

Blakely's failure to properly attach the Modular Home onto the Basement foundation resulted in the home being shifted 14 feet during the March 13th storm.²¹

Count 2: Blakely failed to properly support the centerline of the Modular Home with the necessary number of jack posts as per the manufacturer's instructions, which left the center of the Modular Home, where the two sections meet, insufficiently supported.²² The Manufacturer's set-up instructions called for 12 jack posts along the Modular Home's center

²⁰ Exhibit 4, pp. 2 and 3; See also: Tr. 101, line 10 through 103, line 18.

²¹ *Id.*

²² Tr. 104, lines 7-20; Tr. 105, lines 10-15. Exhibit 4, p. 2; and Exhibit 6, page 7.

line and the Generic HUD Manual required 9, but Blakely only installed 6 or 7 spaced approximately nine feet apart along the homes center line.²³

Count 3: Blakely failed to follow the manufacturer's instructions by neglecting to properly attach the supporting jack posts to the center beam of the Modular Home, as well as to the concrete footing.²⁴ The manufacturer requires the top of each jack post to be fastened on two sides at the center beam using two number 10 x 2" screws minimum, but Blakely only fastened one side of each jack post to the center beam with a lag bolt.²⁵ Additionally, the manufacturer requires the base of each jack post to be fastened using a (4) 5/8" x 8" anchor bolt, but Blakely did not fasten the Modular Home's jack posts at their base.²⁶

Count 4: Blakely failed to fasten the hinged roof of the Modular Home to the king post stubs as required by the directions contained in the manufacturer's instructions, which caused the king posts to shift off the stubbed king posts during the March 13th storm.²⁷ The manufacturer requires the Modular Home's 2" and 3" bottom rail to be fastened to the stubbed kingpost using 2 number 8 x 3" wood screws, two –screwed at each truss, but:

1. There was no visible fastening between the Modular Home's hinged king posts and the stubbed kingposts; and

²³ Exhibit 4, pp. 2 and 4; See also: Tr. 104, line 7 through Tr. 106, line 13 and Tr. 127, line 16 through Tr. 128 line 2.

²⁴ Tr. 106, lines 14-25; Tr. 107, lines 1-25; Tr. 108, lines 1-3; Exhibit 4, p. 2; and Exhibit 6, page 8.

²⁵ Exhibit 4, pp. 2 and 5; See also: Tr. 106, line 14 through Tr. 108, line 3.

²⁶ *Id.*

²⁷ Tr. 108, lines 9-22; Tr. 109, lines 1-15; Exhibit 4, p. 2; and Exhibit 6, page 9.

2. The Modular Home's 2" and 3" bottom rail was not fastened to the stubbed kingposts.²⁸

Count 5: Blakely failed to properly fasten in place the drop-in roof ridge sections of the Modular Home in accordance with the manufacturer installation instructions, which caused the peak section of the Modular Home to come loose when the Modular Home was moved from its foundation during the March 13th storm.²⁹ The manufacturer's installation instructions require that the bottom rails of the ridge sections to be fastened to the top rails of the roof sections using two number 8 x 3-inch screws per bay, but:

1. The Modular Home's ridge sections were improperly shimmed between the ridge rails and roof rails with lumber up to approximately 5-inches; and
2. The Modular Home's ridge sections were only held in place with nails.³⁰

Count 6: Blakely failed to properly fasten together the two end walls of the home sections as per the directions in the manufacturer's instructions.³¹ The manufacturer requires that the end walls of the two sections be fastened together using number 8 x 3" screws spaced a maximum of 12-inches apart,³² but:

1. The Modular Home's end walls were fastened with just two metal straps held on by small screws,³³ and

²⁸ Exhibit 4, pp. 2, 6 and 7. See also: Tr. 108, line 4 through 109, line 15.

²⁹ Tr. 109, line 22 through Tr. 111, line 5; Exhibit 4, p. 2; and Exhibit 6, page 10.

³⁰ Exhibit 4, pp. 2 and 8. See also: Tr. 109, line 16 through 111, line 5.

³¹ Tr. 111, line 13 through 112 line 11, Exhibit 4, p. 2; and Exhibit 6, page 11.

³² Exhibit 4, pp. 2 and 9. See also: Tr. 111, lines 6 – 25.

³³ Tr. 112, lines 1 – 7.

2. The metal straps Blakely used were not approved for securing home sections together.³⁴

Count 7: Blakely failed to properly construct the stairway to the basement of the Modular Home in accordance with the International Residential Code-2000.³⁵ Blakely installed stairs in the Modular Home that were enclosed from the back which require a minimum ten-inch tread and ¾-inch nosing, but the Modular Home stairs only had a nine-inch tread and lacked the requisite ¾-inch nosing.³⁶

Count 8: Blakely did not install guard rails on the sides of the stairway to the basement of the Modular Home in accordance with the International Residential Code-2000.³⁷ Although Blakely built a stairway to the basement of the Modular Home that was over 30" above the floor or grade and thus required guard rails, Blakely did not install any guard rails on that stairway.³⁸

Count 9: Blakely did not install a handrail on either side of the stairway to the basement of the Modular Home in accordance with the International Residential Code-2000.³⁹ Stairs installed in modular homes must have at least one handrail on one side of the stairway, but Blakely failed to install a handrail on either side of the stairway to the basement of the Modular Home.⁴⁰

³⁴ Tr. 112, lines 8 – 11.

³⁵ Tr. 112, line 12 through 113, line 11; Exhibit 4, p. 2; and Exhibit 6, page 12.

³⁶ *Id.*

³⁷ Tr. 114, line 7 through Tr. 115, line 2; Exhibit 4, p. 2; and Exhibit 6, pages 13-14.

³⁸ *Id.*

³⁹ Tr. 115, lines 3-16; Exhibit 4, p. 2; and Exhibit 6, pages 13-14.

⁴⁰ *Id.*

Set-up Instructions Received by Blakely

Blakely did not offer any evidence or argument suggesting that the specific violations and specific problems listed in the “Summary of Problems” section of the Site Inspection Report, items numbered 5 through 13, were inaccurate.⁴¹ Instead, Blakely argues that Mr. Blakely received the wrong set-up manual from Four Season’s Manufacturing, Inc., d/b/a Four Seasons Housing (“Four Seasons”), the manufacturer of the Modular Home, and that Blakely set up the Modular Home in accordance with that manual. The only evidence in the record supporting Blakely’s contention that it did not receive the appropriate set-up manual is a single statement Mr. Blakely made to field inspector, Tim Haden. Mr. Haden testified that during a visit to Blakely, Mr. Blakely “held up an installation instruction manual for a Four Seasons HUD house⁴² and he said, this is what I got with the home.”⁴³ Since Mr. Blakely declined to testify at the evidentiary hearing, the Commission could not ask him what, if any, other information he received from Four Seasons or whether Four Seasons made any assertions to him regarding what instructions to use in setting up the Modular Home. There is insufficient evidence in the record to support a finding that Mr. Blakely did not receive the appropriate set-up manual from Four Seasons.

Set-up Violations Irrespective of Manual Used

Inspection Supervisor Winn testified that he had compared the Generic HUD Manual Blakely’s counsel contends Four Seasons sent to Mr. Blakely with the instructions that Four

⁴¹ The Site Inspection Report was marked Exhibit 4 and admitted into evidence during the November 1, 2007 evidentiary hearing without objection.

⁴² The installation instruction manual for a Four Seasons HUD house will hereinafter be referred to as the “Generic HUD manual”.

⁴³ Tr. 125, lines 12-20.

Seasons provided to the Manager.⁴⁴ Winn testified that the two manuals are “basically the same, following the same guidelines as to the fastening, the bolts, things like that.”⁴⁵ Mr. Pleus and Mr. Winn each testified, and Blakely offered no evidence to dispute, that the Modular Home was also not set up in compliance with the Generic HUD Manual.⁴⁶

Blakely did identify one difference between the set-up and installation requirements in the Generic HUD Manual and the manufacturer’s instructions, the number of jack posts required. The manufacturer’s instructions called for 12 jack posts along the center line of the home,⁴⁷ while the Generic HUD Manual only required 9.⁴⁸ However, since Mr. Blakely only used 6 or 7 jack posts along the center line, this too would be the set-up violation irrespective of which instruction manual was used.⁴⁹

Furthermore, Mr. Pleus and Mr. Winn both testified that even if Blakely’s set-up of the Modular Home was reviewed based upon the Generic HUD Manual, while the specific details might have been different, Blakely would still have committed each of the violations alleged in the Manager’s complaint.⁵⁰

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

⁴⁴ Tr. 169, line 18 through 170, line 3;

⁴⁵ *Id.*

⁴⁶ Tr. 170, line 24 through 171 line 11; Tr. 175, lines 3-7; and Tr. 186, line 8 through 188 line 9.

⁴⁷ Tr. 105, lines 10-15.

⁴⁸ Tr. 127, line 16 through 128 line 2.

⁴⁹ Tr. 106, lines 2-6.

⁵⁰ *Id.*

1. Blakely is a registered dealer of modular units as defined by § 700.090 RSMo Cum. Supp. 2005. As such, Blakely is subject to the Commission's jurisdiction pursuant to Chapter 700 RSMo.

2. The Commission has jurisdiction to consider the Manager's complaint against Blakely.⁵¹

3. A registered dealer who sells a modular unit is responsible for completing the proper initial set-up and installation of that unit unless the purchaser expressly releases the dealer from that obligation.⁵²

4. If the Commission finds Blakely failed to meet its statutory duty pursuant to § 700.100.3(6) RSMo to properly set up and install the Modular Home, the Commission may direct its General Counsel to seek penalties in civil court as authorized by § 700.115.2 RSMo. That section provides in pertinent part as follows:

2. Notwithstanding any provisions of subsection 1 of this section to the contrary, whoever violates any provision of this chapter 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. Each violation of this chapter shall constitute a separate violation with respect to . . . or with respect to each failure or refusal to allow or perform an act required by this chapter; . . .

5. The Commission has adopted minimum standards for the manufacture and installation of tiedowns and anchors for modular units pursuant to its authority under § 700.076(2) RSMo. Those standards are contained in 4 CSR 240-123.065 and 4 CSR 240-123.080. Section 4 CSR 240-123.065(1) provides as follows:

(1) A dealer who sells a modular unit shall arrange for the proper initial set up of the modular unit unless the dealer obtains from the purchaser or the purchaser's authorized agent a written waiver of that service as described in section 700.100.3(6), RSMo.

⁵¹ § 700.100.2, RSMo Cum. Supp. 2005.

⁵² 4 CSR 240-123.065(1)

Section 4 CSR 240-123.065(2) defines “proper initial set up” as follows:

- (2) As used in this rule, “proper initial set up” means installation and set up of the modular unit in accordance with the installation manual provided by the manufacturer of the modular unit and in complete compliance with the code and with all of the provisions regarding set up in sections 700.010 to 700.115, RSMo.

Section 4 CSR 240-123.080(7) reads as follows:

- (7) All modular units manufactured on or after July 1, 1976, shall be set up or installed according to the manufacturer’s installation manual.

6. Commission rules 4 CSR 240-123.065(1) and (2) and 4 CSR 240-123.080(7) taken together require a dealer to set up and install each modular unit it orders and sells in accord with the installation instructions for that specific modular unit provided by that modular unit’s manufacturer. As used above, “provided by” means the instructions generated or published by the manufacturer for a specific unit. It does not mean physically handed or mailed to any individual dealer.

Further, before a person or company can sell modular units in the State of Missouri, they must obtain a dealers’ registration certificate from the Commission.⁵³ A dealer holding such a registration certificate is expected to know the model type of each modular unit it orders and to verify that it receives the correct set-up and installation manual for each unit.

7. Blakely was required to construct the stairway to the basement of the Modular Home, including installation of hand rails and guardrails, in accordance with the International Residential Code-2000 (“2000 IRC”). Section 4 CSR 240-123.080(3) provides that modular units “shall be manufactured in accordance with and meet the requirements of the following building codes: . . . ; *International Residential Code-2000*” Further more,

⁵³ § 700.090 RSMo.

4 CSR 240-123.080(4) incorporates into the rule the full text of the material listed in section 4 CSR 240-123.080(3), including the International Residential Code-2000.⁵⁴

8. R314.2 2000 IRC requires a minimum tread depth of ten inches and a $\frac{3}{4}$ -inch nosing if the back of the stairs are enclosed.⁵⁵

9. R315.1 2000 IRC requires at least one handrail to be placed upon a staircase constructed in a modular unit, such as the Modular Home.⁵⁶

10. R316.2 2000 IRC requires guards “not less than 34 inches in height” on the “open sides of stairs with a total rise of more than 30 inches (762 mm) above the floor . . .”⁵⁷

DECISION

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions on the issues framed or raised by the parties:

Issue 1: If a manufacturer fails to send a dealer the appropriate set-up and installation instructions for a modular unit, does it release the dealer from its obligation to properly set up and install that modular unit under § 700.1003(6) RSMo, 4 CSR 240-123.065(1) and (2), and/or 4 CSR 240-123.080(7)?

A dealer is not released from its obligation to properly set up that home under § 700.100.3(6) RSMo, 4 CSR 240-123.065(1) and (2), and/or 4 CSR 240-123.080(7), when it does not receive the appropriate set-up and installation instructions for that modular unit

⁵⁴ 4 CSR 240-123.080(4).

⁵⁵ R314.2 2000 International Residential Code.

⁵⁶ R315.1 2000 International Residential Code.

⁵⁷ R315.2 2000 International Residential Code.

from the manufacturer. As set out above, Blakely's interpretation of 4 CSR 240-123.080(7), which is that a licensed modular unit dealer has no duty to verify that it receives the appropriate set-up and installation manuals for the modular units it orders and sells, is incorrect. The Commission finds that a licensed dealer, such as Blakely, has a duty to obtain from the manufacturer the appropriate installation and set-up instructions for the specific modular units ordered and to install and set up the units in accordance with those instructions.

While a manufacturer clearly has a duty to provide to the dealer the appropriate set-up and installation instructions for each unit it sends to that dealer, its failure to carry out that duty does not release a dealer from its independent responsibility to verify it received the appropriate instructions. Blakely's interpretation of 4 CSR 240-123.065 and .080 could discourage dealers from taking any steps to ensure they have the correct set-up and installation instructions for the units they sell, and thereby place their customers at unreasonable risk. Further, because it would be difficult, if not impossible, to prove what manual a dealer did or did not receive, Blakely's interpretation could allow a dealer that received the appropriate set-up and installation manual to claim otherwise.

Issue 2: Was the set-up and installation of the Modular Home in compliance with the instructions Blakely claims it received from the Modular Home's manufacturer?

It is not necessary for the Commission to reach a decision on this issue, because the Commission found Blakely had a duty to obtain from the manufacturer the appropriate installation and set-up instructions for the specific model ordered and to install and set up the Modular Home in accordance with those instructions. However, all of the evidence presented in this case indicates that if Blakely's installation and set-up of the Modular Home had been reviewed under the Generic HUD Manual, the specific details of the

violations might have been slightly different, but Blakely would still have committed each of the violations alleged in the Manager's complaint.⁵⁸

Issue 3: Was the set-up and installation of the Modular Home completed on March 10, 2006, when the owners began moving into the Modular Home?

The set-up and installation of the Modular Home was completed on March 10, 2006, at or before the time the Kings, assisted by Mr. Blakely and his son, began moving into the Modular Home.

Issue 4: Did Blakely meet its statutory duty pursuant to § 700.100.3(6) RSMo to properly set up and install the Modular Home according to the manufacturer's instructions and in accordance with Commission rules?

Blakely did not meet its statutory duty pursuant to § 700.100.3(6) RSMo to properly set up and install the Modular Home according to the manufacturer's instructions and in accordance with Commission rules as alleged in the Manager's Complaint, Counts 1 through 9.

(a) Count 1: Did Blakely fail to properly attach the Modular Unit onto the basement foundation in accordance with manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7)?

Blakely failed to properly attach the Modular Unit onto the basement foundation in accordance with manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7).

(b) Count 2: Did Blakely fail to properly support the centerline of the Modular Home with necessary jack posts according to manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7)?

Blakely failed to properly support the centerline of the Modular Home with necessary jack posts according to manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7).

⁵⁸ Tr. 170, line 24 through 171 line 11; Tr. 175, lines 3-7; and Tr. 186, line 8 through 188 line 9.

- (c) **Count 3: Did Blakely fail to properly attach the supporting jack posts to the Modular Home's center beam and to the concrete footing according to the manufacturer's foundation drawing in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7)?**

Blakely failed to properly attach the supporting jack posts to the Modular Home's center beam and to the concrete footing according to the manufacturer's foundation drawing in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7).

- (d) **Count 4: Did Blakely fail to properly fasten the Modular Home's hinged roof according to manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7)?**

Blakely failed to properly fasten the Modular Home's hinged roof according to manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7).

- (e) **Count 5: Did Blakely fail to properly fasten in place the drop-in roof ridge sections of the Modular Home in accordance with manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7)?**

Blakely failed to properly fasten in place the drop-in roof ridge sections of the Modular Home in accordance with manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7).

- (f) **Count 6: Did Blakely fail to properly fasten together the end walls of both Modular Home sections in accordance with manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7)?**

Blakely failed to properly fasten together the end walls of both Modular Home sections in accordance with manufacturer instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7).

- (g) **Count 7: Did Blakely fail to properly construct the Modular Home stairway to the basement in accordance with the International Residential Code-2000 in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7)?**

Blakely failed to properly construct the Modular Home's stairway to the basement in accordance with the International Residential Code-2000 in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7).

- (h) **Count 8: Did Blakely fail to install guards on the sides of the Modular Home's stairway in accordance with International Residential Code-2000 in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7)?**

Blakely failed to install guards on the sides of the Modular Home's stairway in accordance with International Residential Code-2000 in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7).

- (i) **Count 9: Did Blakely fail to install a handrail on the Modular Home's basement stairway in accordance with International Residential Code-2000 in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7)?**

Blakely failed to install a handrail on the Modular Home's basement stairway in accordance with International Residential Code-2000 in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7).

Issue 5: Should the Commission authorize its General Counsel to seek civil penalties from Blakely pursuant to § 700.115.2?

Blakely failed to meet its statutory duty pursuant to § 700.100.3(6) RSMo to properly set up and install the Modular Home, the Commission will direct its General Counsel to seek penalties in civil court as authorized by § 700.115.2 RSMo.

CONCLUSION

Blakely Manufactured Homes clearly violated the Commission rules alleged in counts 1 through 9 of the Complaint filed by the Manager on April 7, 2006, and thereby failed to meet its statutory duty pursuant to § 700.100.3(6) RSMo to properly set up and install a modular unit. The Commission will authorize its General Counsel to seek civil penalties from Blakely Manufactured Homes pursuant to § 700.115.2 RSMo. If Blakely, or any entity controlled by Mr. Blakely,⁵⁹ seeks a Certificate of Dealer Registration from the Commission or renewal of an existing certificate the Manager shall advise the Commission of that request. The Commission will determine whether to grant or renew any such certification request.

IT IS ORDERED THAT:

1. The General Counsel of the Missouri Public Service Commission is directed to seek civil penalties from Blakely Manufactured Homes pursuant to § 700.115.2 RSMo.
2. The Manager of the Manufactured Housing and Modular Units Department of the Missouri Public Service Commission shall advise the Commission of any request for a Certificate of Dealer Registration or to renew a Certificate of Dealer Registration submitted by Blakely Manufactured Homes, or any entity controlled by Mr. Clarence Blakely.⁶⁰ The Commission will determine whether to grant or renew any such certification request.

⁵⁹ Mr. Blakely will be deemed to “control” a company if he serves as director, officer or partner or owns more than 10% of the company.

⁶⁰ *Id.*

3. This Report and Order shall become effective on March 9, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur, and
certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 27th day of February, 2007.