

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 25th day of July, 2018.

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

Complainant,

v.

Thomas Smith

Respondent.

File No. MC-2018-0233

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: July 25, 2018

Effective Date: August 4, 2018

On February 26, 2018, the Manager of the Manufactured Housing and Modular Units Program of the Public Service Commission (Manager) filed a complaint against Thomas Smith, a licensed manufactured home installer. Among other allegations, the Manager alleged that Smith improperly installed a manufactured home in Foley, Missouri. After participating in a mediation session, the Manager and Smith reached an agreement for the resolution of the complaint.

The stipulation and agreement has five main provisions that are summarized here. First, Smith will improve his communication with the Manager regarding events that may cause more than a 30-day delay in Smith's ability to perform installation obligations. Second, Smith will perform future installations in a timely manner. Third, for ten months after the approval of this agreement, the Manager will issue no more than five decals at a time to Smith. Fourth, the Manager accepts Smith's representation

that the manufacturer will correct a bent beam deficiency within 60 days of the approval of this agreement and, if not corrected, the Manager will proceed with the complaint. And fifth, upon proof of the correction of the bent beam deficiency, the Manager will dismiss this complaint.

After reviewing the stipulation and agreement, the Commission independently finds and concludes that the stipulation and agreement is a reasonable resolution of the complaint and that it should be approved.

THE COMMISSION ORDERS THAT:

1. The stipulation and agreement filed on July 13, 2018, is approved. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order.

2. If the Manager of the Manufactured Housing and Modular Units Program of the Public Service Commission has not dismissed its complaint in compliance with the stipulation and agreement, he shall file a status report no later than December 4, 2018.

3. This order is effective on August 4, 2018.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

Dippell, Senior Regulatory Law Judge

onto a crawlspace and no sign of a vapor barrier, incorrect footings/piers, incorrect bolting of floors and walls, incomplete installation of siding and soffits, exposed electric crossover, unprotected water line, incorrect slope on a section of sewer line, incorrect anchors, bent steel I-beams under the back door side of the home, and water heater drain pan not exiting past the perimeter of the home.

4. On August 3, 2017, Manager notified Smith by letter indicating that the Kaemmerer home had not been installed according to the manufacturer's instructions and further notifying Smith that he had thirty (30) days in which to correct the deficiencies.
5. With respect to the deficiency relating to the bent steel I-beams under the back door side of the home ("Bent Beam"), Smith represents to Manager that the Dealer that sold the home has indicated the Dealer will correct that deficiency.

THE PARTIES' AGREEMENT

As a result of a mediation conference held on June 27, 2018, the Parties have reached the following agreement to resolve this case:

1. **Communication:** Parties recognize the need for improved communication from Smith to Manager. Smith agrees to improve communication with the Manager and/or employees of the Manufactured Housing and Modular Units Program of the Public Service Commission. For example, Smith agrees to inform Manager of events such as weather, health, or other similar occurrences which will cause more than a 30-day delay in Smith's ability to perform installation obligations.
2. **Compliant Installations:** Smith agrees to perform installation obligations in a timely manner. To the extent installation cannot be performed in the time allowed by law, Smith agrees to communicate with Manager as set forth in Paragraph 1 of this Section.
3. **Limitation on Issuance of Decals:** Smith agrees that for a period of ten (10) months from the date the Commission approves this Agreement, Manager will only issue up to five (5) decals at any given time. Upon proof of compliant installation or upon proof of correction of installation deficiencies, as the case may be, Manager may issue additional decals to Smith, but no more than five (5) decals will be issued at any given time.
4. **Correction of Bent Beam:** Manager agrees, in reliance on Smith's representation that the Dealer of the home has indicated the Dealer will correct the Bent Beam deficiency, to allow additional time for the Dealer to correct the Bent Beam. The additional time allowed shall be sixty (60) days from the date the Commission approves this Agreement ("Additional Time Allowed"). Manager agrees to send one (1) letter, notification, or other similar correspondence to Dealer regarding this deficiency and the time in which Dealer has to correct said

deficiency. Smith agrees that if Dealer does not correct the Bent Beam within sixty (60) days from the date that the Commission approves this Agreement that Manager may consider the non-correction a violation of this Agreement and seek penalties allowed by law against Smith. However, Manager agrees not to re-open or otherwise continue prosecution of this claim against Smith so long as the Bent Beam deficiency is corrected in the Additional Time Allowed.

5. **Dismissal of Complaint:** Upon correction of the Bent Beam deficiency and proof regarding the same, Manager agrees to dismiss the complaint in Case No. MC-2018-0233. Despite any complaint dismissal, Smith agrees the provisions of Paragraph 3 of this Section will remain in effect for ten (10) months from the time in which the Commission approves this Agreement. Smith further agrees the provisions of Paragraphs 1 and 2 of this Section constitute and remain on-going obligations to communicate with Manager.

MISCELLANEOUS PROVISIONS

1. Manager enters this Agreement in reliance upon information and assurances provided by Smith. In the event Manager or the Commission find that Smith failed to provide Manager or the Commission with material information within his control or possession regarding any controversies comprehended by this Agreement which should have been available to Smith through reasonable efforts, or if Manager or the Commission find that Smith misrepresented material facts relevant to this Agreement, then Smith shall have violated this Agreement and shall be subject to discipline and/or penalties as allowed by law.
2. Upon Manager's reasonable belief that a violation of any of the above conditions has occurred, Manager may file a motion with the Commission seeking disciplinary action (for example, suspension or revocation of installation license) and penalties as Manager deems appropriate. The Commission may thereupon set the matter for hearing to determine whether a violation of the terms of this Agreement has taken place and, if so, the Parties agree that the Commission may enter an order regarding discipline and penalties that the Commission deems just and proper.
3. This Agreement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof, except as expressly provided herein.
4. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, and notwithstanding the provision herein that it shall become void, neither this Stipulation and Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in

accordance with § 536.080, RSMo. 2000, or Article V, Section 18 of the Missouri Constitution, and the Parties shall each retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

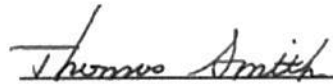
5. In the event the Commission unconditionally accepts the terms of this Stipulation and Agreement without modification, the Parties waive their respective rights: (1) to present testimony, to cross-examine witnesses, to present oral argument and written briefs pursuant to § 536.080.1; (2) to the reading of the transcript by the Commission pursuant to § 536.080.2, (3) to seek rehearing pursuant to § 386.500, and; (4) to judicial review of the Commission's Report and Order in this matter pursuant to § 386.510. These waivers apply only to the issues that are resolved hereby, and specifically do not apply to any matters raised in any prior or subsequent Commission proceeding or any matters not explicitly addressed by this Stipulation and Agreement.
6. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original instrument, but all of which together will constitute for all purposes one and the same instrument.
7. This Agreement was prepared by the Office of Staff Counsel. The Parties acknowledge that no provision of this Agreement will be interpreted in favor of, or against, any of the Parties hereto because any such Party or its counsel participated in the drafting thereof or because any such provision is inconsistent with any prior draft hereof or thereof. Each Party acknowledges such Party has participated in the negotiation of this Agreement and had an opportunity to participate in the drafting and preparation of this Agreement, and the Parties represent and warrant that they have not been coerced into entering into this Agreement, nor has any person or entity exercised any pressure or undue influence on such Party to enter into this Agreement.
8. Each of the Parties hereto further states and represents that he or it has carefully read the foregoing Agreement and knows the contents thereof, and that he or it has executed the same as his or its own free act and deed. Smith further acknowledges that he has been and is hereby advised to consult with an attorney concerning this Agreement and that he had adequate opportunity to seek the advice of legal counsel in connection with this Agreement. Smith also acknowledges that he has had the opportunity to ask questions about each and every provision of this Agreement and that he fully understands the effect of the provisions contained herein upon his legal rights.

WHEREFORE, the Parties respectfully request that the Commission approve this Stipulation and Agreement and issue its Order approving all of the specific terms and conditions of this Agreement.

Respectfully Submitted,



Justin Smith
Manager, Manufactured Housing
and Modular Units Program for
the Missouri Public Service
Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 526-2833 (Telephone)
(573) 522-2509 (Fax)
Justin.smith@psc.mo.gov



Thomas Smith
7491 HWY VV
Columbia, MO 65202

APPROVED AS TO FORM:

/s/ Mark Johnson

Mark Johnson
Senior Counsel
Missouri Bar No. 64940
Attorney for the Staff of the
Missouri Public Service
Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)
mark.johnson@psc.mo.gov

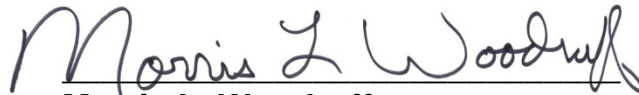
STATE OF MISSOURI

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 July 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 25, 2018

File/Case No. MC-2018-0233

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@ded.mo.gov

**Missouri Public Service
Commission**

Mark Johnson
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
mark.johnson@psc.mo.gov

Thomas Smith

Thomas Smith
7491 Highway V V
Columbia, MO 65202
astransport123@yahoo.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.