

**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,)

Case No. MC-2005-0145

v.)

Amega Sales, Inc., d/b/a Columbia)
Discount Homes)

Respondent.)

Dissenting Opinion of Commissioner Steve Gaw

By its Order in the above-captioned docket, the Commission approved a Stipulated Agreement which provides for a resolution to this proceeding. I appreciate the fact that the consumers have expressed satisfaction with the resolution of this matter with a \$50,000 damages payment for the Palmer family. However, I do not believe that this Stipulation does enough to address the continuing complaints about the dealership practices of lots under Amega Sales, Inc. ("Amega"). As such, I respectfully dissent.

Although the Stipulation in this matter provided that Columbia Discount Homes would be placed on probation for two years, it was limited solely to that specific dealer lot (Columbia Discount Homes) and did not extend to the additional lot locations operated by the same corporate entity (Amega). Columbia Discount Homes is a fictitious name used by Amega at Amega's Columbia, Missouri location. Amega has been before this Commission recently where the PSC found that Amega

had violated §§700.100(4) and 700.045. Prior to a Commission determination regarding an appropriate punishment for those violations, a writ of prohibition was issued by the Cole County Circuit Court. In its writ, the Court determined that the Commission was barred from further consideration of this matter. That Circuit Court decision is now on appeal.¹ In addition, Amega has also been sued by the Missouri Attorney General in Boone County in a multiple count petition alleging numerous violations of Missouri's Merchandising Practices Law. One of the prayers for relief in that case is the revocation of Amega's dealer registration. Allegations are not determinations of wrongdoing. However, the multitude of allegations should warrant intensified scrutiny of this company. Yet the Stipulation in this case limits the repercussions to the Columbia location and protects the remainder of Amega.

Amega, not the Columbia Discount Homes location, is the responsible party in this case. What would happen if Columbia Discount's registration is revoked in the future? Could Amega simply change the location's name at the site of Columbia Discount and continue to operate? Could Amega get a new dealer's license in another name and operate it at the same location? If this Commission cannot control the outcome under those scenarios then placing Columbia Discount on probation is meaningless. If so, that leaves the only penalty in this case an arguably small \$2000 fine.

The restriction on the Commission doing more than provided in the Stipulation may have been due in part to an interpretation by the Manufactured Housing and Modular Units Division. Evidently, the Director has interpreted Section 700.090.3 as requiring a separate dealer registration for each separate lot location. While this

¹ Western District Court of Appeals Case No. WD64880.

might enhance the revenues of the Manufactured Housing division, it hamstrings this Commission in addressing multiple complaints against one corporation or one entity operating multiple lots under multiple registrations.

Section 700.010(4) defines a "Dealer" as "any person, other than a manufacturer, who sells or offers for sale four or more manufactured homes, or modular units in any consecutive twelve-month period". (Emphasis added). Section 700.010(9) then defines a "Person" as "an individual, partnership, corporation or other legal entity".

As provided by these statutory definitions, the dealer is the individual, partnership, corporation or other legal entity which sells, or offers for sale, manufactured homes at those lot locations.

Section 700.090.3 provides that:

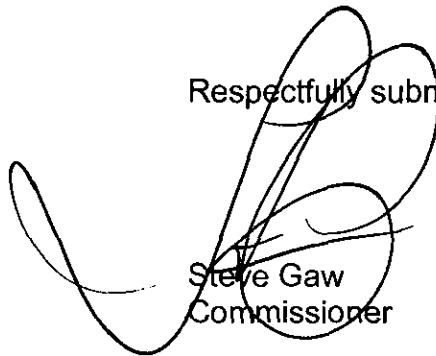
The commission shall issue a certificate of registration to a dealer who:
(1) Completes and files with the commission an application for registration which contains the following information: (a) The name of the dealer; (b) The business address of the dealer and addresses of each separate facility owned and operated by the dealer from which manufactured homes or modular units are offered for sale if different from the business address of the dealer.

This statute contemplates a dealer having separate facilities. However, Staff has either encouraged or required separate locations to have separate dealer registrations. Such an interpretation seems contrary to the intent of the law. Furthermore, it restricts the Commission's ability to effectively stop bad conduct by a company operating in multiple locations.

In order to avoid this problem going forward and in order to allow the Commission to take action against each lot location of the corporate entity, I maintain

that the Director should consider granting only one dealer certificate to a legal entity and require that the legal entity disclose each lot location. In this way, in the event of subsequent regulatory problems, the Commission may take action against that legal entity in a way which will be effective in all underlying lot locations.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left.

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 18th day of May, 2005.

19