

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 17th day of  
October, 2006.

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 APPROVING STIPULATION AND AGREEMENT**

Issue Date: October 17, 2006

Effective Date: October 17, 2006

**Syllabus:** This order approves the Stipulation and Agreement entered into between the Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") and A & G Commercial Trucking, Inc. ("A & G") with regard to the Director's August 5, 2003 Complaint against A & G.

**Background**

A & G is a Missouri corporation, with its principal place of business at 111 Eastside Drive, Ashland, Missouri. A & G is owned by Greg DeLine, Kelly DeLine, and Rose Grant, with Greg DeLine serving as the corporation's president. On August 5, 2003, the Director filed a Complaint against A & G alleging that A & G offered four manufactured homes it

owned for sale at retail while not being registered with the Missouri Public Service Commission (“Commission”) as a manufactured home dealer, as required by law.

Additional allegations included the improper removal of restrictive sale notices (known as “red tags”) on the four homes without authorization by the Director, and the sale of two of those homes, which did not comply with the code and did not bear the proper seal. The Director requested that the Commission find that A & G violated the provisions of sections 700.015, 700.090, and 700.045, RSMo 2000, and authorize the Director to seek civil penalties pursuant to Section 700.115.<sup>1</sup> After the Director filed its complaint, it discovered that three additional homes had been sold under the same circumstances as the four named in the complaint. The sales of all seven homes are the subject homes to this dispute.

The parties submitted the case to mediation and executed a Stipulation and Agreement that the Commission rejected on May 25, 2004, stating that “it would not be appropriate to approve a settlement, which encourages A & G to function as a dealer of manufactured homes.” The case was set for an evidentiary hearing to be held on June 1, 2004; however, the Cole County Circuit Court issued a writ of prohibition barring the Commission from conducting the hearing. Ultimately, the writ was appealed to the Missouri Supreme Court, and after remand, the circuit court dismissed the writ returning jurisdiction of this matter to the Commission.

On September 29, 2006, the Director and A & G executed and filed with the Commission another Stipulation and Agreement (“Agreement”) to resolve all issues in this case.

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<sup>1</sup> All statutory citations are to RSMo 2000, unless otherwise noted.

## **The Agreement**

The signatories to the Stipulation and Agreement agreed on the following:

- A & G shall remedy any defects existing in the four manufactured homes the Director identified in the Complaint and any defects that remain in the three other homes that A & G sold. The Director will inspect these homes, upon consent of the owners, to confirm that the defects have been repaired, and will issue a Housing and Urban Development (“HUD”) label, if appropriate. A & G shall reimburse the Director for any costs associated with these inspections.
- Should A & G ever desire to sell any new or used manufactured home for the purpose of habitation it must first notify the Director allowing the Director to inspect the home, and then must comply with any corrective action ordered by the Director to bring the home into compliance with the HUD code prior to selling any home at retail. A & G shall again reimburse the Director for the cost of the inspections.
- A & G, so long as Greg DeLine owns an interest in A & G, shall not act as a dealer of manufactured homes, and will not seek registration as a dealer of manufactured homes pursuant to Chapter 700.4 .
- A & G shall pay a civil penalty in the amount of \$14,000 to the school fund.

## **Staff’s Memorandum in Support**

In its Memorandum in support of the Agreement, filed on October 2, 2006, the Director notes that Section 700.115 authorizes the circuit court to impose penalties of up to \$1,000 for each violation of Chapter 700. In the Agreement, A & G has agreed to pay a civil penalty in the amount of \$14,000, resulting in penalties averaging \$2,000 for each of the seven homes at issue. The Director believes this is a substantial penalty, serving as a deterrent to future misconduct by A & G or by others who are similarly situated. While the penalty per home exceeds the amount sanctioned in Section 700.115, the Director believes that a circuit court would be authorized to impose this penalty if it found that A & G had committed more than one violation per home.

The Director also states that its principal objective in negotiating this Agreement was to ensure that the disputed homes that A & G sold were brought into compliance with the HUD code and other regulatory standards and that the homes are safe and suitable for habitation. The Agreement gives the home owners the opportunity to receive such assurances and to remedy any existing defects in their homes at no cost to the homeowner. A & G will bear all costs of inspection and of any necessary corrective work.

A & G would also not be permitted to register with the Commission as a manufactured housing dealer. Under current law, however, A & G may sell used manufactured homes and up to three new manufactured homes without registering as a dealer. The Agreement requires A & G to notify the Director prior to selling any home and allows the Director or a third party to inspect the home and identify any corrective action needed to bring the home into compliance with the HUD code. A & G would then have to bring the home up to code and allow a reinspection of the home prior to any sale. The Director would issue a HUD label for the home, if appropriate. The Director believes that these provisions provide a strong deterrent to prevent A & G and its affiliates from selling manufactured homes that do not comply with the code.

While neither A & G nor Mr. DeLine admits any liability to another party nor to any third party, it does admit, in Paragraph 9 of the Agreement, that it violated three provisions of the Manufactured Housing Law, specifically sections 700.015, 700.090, and 700.045. The Commission has not yet had an opportunity to determine whether A & G had violated any of these statutes. The Director points out, however, that except for the imposition of a civil penalty, this acknowledgment is the only relief that the Director sought in this case.

The Director believes that the Agreement achieves all of its objectives without the risk and expense of additional litigation.

## **Discussion**

The Commission has jurisdiction over manufactured home manufacturers and dealers pursuant to Chapter 700, RSMo. By Commission Rule 4 CSR 240-120.031, the Commission delegated to the Director all of its powers pertaining to manufactured homes under Chapter 700, RSMo, "except the powers to revoke, deny, refuse to renew or place on probation a registration under section 700.090, RSMo," which are retained by the Commission.

The Commission has the legal authority to accept a stipulation and agreement to resolve a case.<sup>2</sup> The Commission notes that "[e]very decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement . . . shall include . . . findings of fact and conclusions of law."<sup>3</sup> Consequently, the Commission need not make findings of fact or conclusions of law in this order. Additionally, any requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.<sup>4</sup> No party has requested a hearing in this case, and the Commission may grant the relief requested based on the Stipulation and Agreement.

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<sup>2</sup> See Section 536.060, RSMo 2000.

<sup>3</sup> Section 536.090, RSMo 2000.

<sup>4</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

If no party objects to a stipulation and agreement, the Commission may treat the Agreement as being unanimous.<sup>5</sup> The Director and Greg DeLine, the president of A & G, have both signed the Agreement. Although the Office of the Public Counsel is a party to this action, it has not filed anything in this matter or participated in any way. Pursuant to Commission Rule 4 CSR 240-2.115(2)(C) “if no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation.” Commission Rule 4 CSR 240-2.115(2)(B) allows each party seven days to file an objection to a nonunanimous stipulation and agreement. Because all parties have either signed the Agreement filed on September 29, 2006, or have not opposed the Agreement within the time period allowed, the Commission will treat the Agreement as unanimous.

### **Conclusion**

The Commission has reviewed the Stipulation and Agreement, and the Director’s memorandum in support of the Stipulation and Agreement, and having considered these verified pleadings, which are admitted into evidence, finds that the resolution of the Director’s complaint by the terms of the Agreement is not detrimental to the public interest and shall be approved. Furthermore, no party objects to the Stipulation and Agreement. Therefore, under Commission Rule 4 CSR 240-2.115(2)(C), the Commission will treat it as unanimous.

### **IT IS ORDERED THAT:**

1. The Unanimous Stipulation and Agreement filed by the signatories in this matter is approved.

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<sup>5</sup> 4 CSR 240-20115(2)(C).

2. A & G Commercial Trucking, Inc., shall comply with the terms and conditions contained in the Stipulation and Agreement.

3. This order shall become effective on October 17, 2006.

4. This case may be closed on October 18, 2006.

**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

Stearley, Regulatory Law Judge