

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

**FILED<sup>3</sup>**

JAN 8 2007

Missouri Public  
Service Commission

**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**

**POST-HEARING BRIEF OF RESPONDENT BLAKELY**

COMES NOW, Respondent and submits the following post-hearing brief pursuant to the Commission's Order Granting Extension of Time to File Brief issued on December 14<sup>th</sup>.

**INTRODUCTION**

Before the Commission today is a nine count complaint filed against Blakely Manufactured Homes, a dealer licensed in the state of Missouri. This complaint focuses on the installation and set up of a modular home sold by Blakely to Larry and Joyce King in the fall of 2005. Blakely has a duty under his license to follow applicable code and regulations regarding the installation and set up of any home he sells. This duty is imposed upon him whether he is the actual participant in the set up or contracts out for others to do it. The important question here however, is how this duty is imposed because of the language of 4CSR 240-123.065(1); 4CSR 240-123.065(2) and 4CSR 240-123.080(7) which requires the dealer to follow the instruction manual "provided by the manufacturer." This fundamental question must be answered before the Commission can

even get to the alleged violations in this complaint because the burden of proving this case to the Commission is on the Staff. The Respondent maintains that the plain language of "provided by the manufacturer" is critical because it allocates the duty between dealer and manufacturer by placing responsibility on the manufacturer, the entity who is in the best position to know the intimate details of its own product. Staff cannot ignore the fact the language exists.

**I. Treatment of the language "provided by the manufacturer."**

A dealer is a customer of the manufacturer. The dealer relies upon the representations and guidance of the manufacturer when he purchases a modular or manufactured home, the manufacturer's product. Consider, for example, this exchange from the record of the November 1<sup>st</sup> hearing between Commissioner Gaw and the Director:

**Q. All right. And now what are the expectations, if you know, that this... that Staff has for dealers who have homes with ... that have plans that have expired, as far as approval is concerned?**

A. If a dealer has a home that was built under the approval and the plans expire, there's nothing for the dealer. As long as the plan was approved when the dealer bought the house, then the model is still approved. It's fine.

**Q. Is that the case in this matter?**

A. No, in this matter, the model wasn't approved when the dealer bought the house.

**Q. So in that case, what is the dealer supposed to do?**

A. Well, that would not go against the dealer in that case, even though the dealer should have been sent proper instruction and should have set it up according to the installation instructions, we wouldn't file anything against the dealer because the manufacturer hadn't gotten the plan approved. We'd go back to the manufacturer.

**Q. That's not my question. And what I'm asking you is, what is a dealer supposed to do in that event? What is the dealer supposed to.. what's the duty of the dealer as far as the..**

A. If the dealer knows the model..

**Q. the Staff is concerned in those circumstances?**

A. Well, if a dealer knew the plan wasn't approved, he should contact our department or not buy the house, for one thing. But if he doesn't know the plan's not approved, the dealer probably wouldn't know unless he contacted us. **Transcript pg 178**

The Staff acknowledges in the above instance that the duties lie with the manufacturer. Because the language in the Code regarding installation states "provided by the manufacturer," the same procedure should be applied here and Staff should be looking at Four Seasons on what was communicated to Blakely. Is there not a problem with a manufacturer sending the wrong material, perhaps especially in the face of knowing it was selling a product that wasn't yet approved; that, when shipped, was absent the proper identifying seal and data plate?

## **II. Evidence before the Commission.**

Since Blakely did not testify on his own behalf there might be argument that no evidence exists as to Four Season's impropriety. Respondent asserts there is enough evidence that the wrong manual was sent and because of this, Staff fails to meet its burden.

The facts that are not in dispute are that Blakely sold a Modular home to Larry and Joyce King in the fall of 2005. This was the first modular unit that Blakely had sold. He purchased the home from Four Seasons. The home was set up in February/March 2006. The Kings relocated from the state of California to Missouri, arriving in Missouri on March 10<sup>th</sup>. On March 13<sup>th</sup> a storm hit the area and the home was damaged. After this storm, Staff inspectors made an inspection of the site and this complaint ensued.

Both Tim Hayden and Gene Winn, Staff inspectors testified that the installation manual used to generate their report, the foundation for the nine count complaint, came from the manufacturer, Four Seasons directly and not from Blakely. Tr. Pg 125 line 3. This, despite the fact that Blakely told them he had been provided a HUD manual. Tr. Pf 125 line 9; pg 166 line 4-9. Tim Hayden testified specifically;

"I actually have no direct knowledge of what Mr. Blakely was supplied with by the manufacturer. Tr. Pg 130 line 4. This, despite the objection of Judge Voss is exactly why counsel asked the Director what should have been done in that event. The question asked was as follows: **"And when your inspectors were communicating with Blakely and heard from him that he was provided one set of manuals different from what they saw were the correct manuals, why didn't they follow up the manufacturer on that?"** Pg. 196. When other questions were allowed, the Director admitted he did not have any information from Four Seasons on what manual they did send Blakely. Pg. 199 and then further questioning by Commissioner Murray of Director Pleus revealed the following:

**Q. Under the rules does it not say that proper installation... proper initial setup means installation and setup of the modular unit in accordance with the installation manual provided by the manufacturer?**

A. That's correct.

**Q. So it is in accordance with the manual that was provided by the manufacturer?**

A. That's correct

And by Commissioner Gaw:

**Q. And, Mr. Pleus , is it your understanding that he was provided by the manufacturer with a different manual.**

A. It's my understanding.

**Q. Do you know whether he was provided with a different manual than what was supposed to be provided to him?**

A. Do I know? No sir. What I was told.. Transcript pg.189 lines 5-21

Further by Commissioner Murray of Tim Hayden:

**Q. And when you asked for that, did you request from Four Seasons a copy of that specific manual that they had supplied to Blakely for that particular home?**

A. No, I did not.

**Q. What did you request from Four Seasons?**

A. I asked them for a copy of their modular and installation instructions that pertained to this home.

**Q. And do you know the date that that manual was compiled?**

A. The one I received?

**Q. Yes**

A. I don't think I know the exact date of that.

**Q. So you don't really know whether it was available at the time of this particular installation?**

A. I don't guess I personally know that, no.

Accordingly, the Staff's case before the Commission specifically shows evidence that the complaint is based upon an instruction manual obtained directly from the manufacturer, not the dealer. Staff presented evidence that no one from Staff had direct knowledge of whether this particular manual was provided to the dealer and further that Staff's inspector's were told by the dealer that Four Seasons had sent him a different manual. This creates a presumption in favor of Respondent which Staff provided no evidence to the contrary.

### **III. Importance of the allocation of duty.**

It is particularly disturbing that Staff presents a case based upon the above process. It is disturbing because Four Seasons is not without fault in this transaction and Respondent would further assert, if Staff had done its job, more egregious fault would have been found. Four Seasons sold a home that was not approved in Missouri. In addition, Four Seasons delivered a home without the proper seal on the home. This seal as Mr. Hayden stated was the seal that identified what codes and regulations as to how the home should be installed. So Blakely, the dealer was sent the wrong manuals for a home that was not approved and improperly identified at the time of the delivery. But for these violations by Four Seasons, Blakely might not be in front of the Commission today. In Case No. MC-2006-0388, Four Seasons entered into a stipulated agreement. The original complaint contained the following:

- 1.) offered for sale a new modular unit home in Missouri without the required Missouri "Seal" as is required under Section 700.015(4), RSMo 2000 and Commission Rule 4 CSR 240-123.030(1);
- 2.) failed to affix a manufactured "Data Plate" to a new modular unit home; and, failed to list, on a copy of the manufacturer "Data Plate" sent to the Commission, the codes to which the home in question was built as is required by Commission Rule 4 CSR 240-123.080(6); and
- 3.) shipped the home in question into Missouri without current approval from the Commission for that modular unit in violation 4 CSR 240-123.040(11)

Four Seasons was allowed to make no admissions as to the above and never was compelled to address whether it or its representatives had engaged in improper communications with the dealer and provided the dealer the wrong manual concerning this home.

#### **IV. Individual Violations**

Respondent believes determination of the above need first be made before individual violations can be addressed. Individually, the evidence before the Commission suggests that Blakely might be in violation on at least some of the counts even with use of the HUD manual. Might is not the same as certainty. Tim Hayden admitted that the number of jack posts he found in the home was consistent with the HUD instructions Blakely claimed he used and Director Pleus when asked to compare the instructions stated he was "**relatively sure, 100 percent, no I can't say 100 percent.**" regarding accordance with the HUD

manual. Pg. 186. Furthermore, evidence from the Kings, the buyers suggests that completion of the home was at least, still in question because no walkthrough had been made.

**V. Conclusion**

For these reasons, Respondent argues the Commission should address the issue of the language "provided by the manufacturer" to determine where responsibility lies in the industry; require Staff to complete further investigation of the actions of Four Seasons in this regards and to find in favor of Respondent or set for further hearing if the need be determined.

Respectfully Submitted,

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Proof of Service:

The Undersigned certifies that a complete copy of this instrument was mailed or sent by electronic mail to the person listed below on this 3<sup>rd</sup> day of January, 2007.

s/ Sue Crane

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