

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,)
v.)
5 Star Homes and Development Company,)
Inc.,)
Respondent.)

File No. MC-2010-0311

REPORT AND ORDER

Issue Date: December 22, 2010

Effective Date: January 1, 2011

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Modular Units Program of the Public)	
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Complainant,)	
v.)	<u>File No. MC-2010-0311</u>
)	
5 Star Homes and Development Company,)	
Inc.,)	
Respondent.)	

Appearances

Robert S. Berlin, Deputy General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Complainant, Staff Counsel, Independent of the Commission

JUDGE: Kennard Jones, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus: Through this Report and Order, the Commission finds in favor of the Director of the Manufactured Housing and Modular Units Program of the Public Service Commission and grants to the Director the requested relief, which includes formal non-renewal of the dealer's registration and authorization to seek penalties in Circuit Court.

Background

On May 5, 2010, Staff Counsel filed a complaint against 5 Star Homes and Development Company, Inc. In its complaint, the Director alleged that 5 Star failed to correct code violations on a home, failed to arrange for setup on several homes, and failed to pay a re-inspection fee. For its relief, the Director seeks a formal non-renewal of the company's dealer registration and authorization to seek penalties in Circuit Court.

Although not represented, the company filed a timely response to the complaint. Thereupon, the Commission notified¹ the company that an attorney would have to file an answer. The Commission allowed a considerable amount of time to elapse. Then, on August 31, 2010, Derek Thrasher, an attorney licensed to practice law in the state of Missouri, filed an entry of appearance and was granted² additional time to file an answer.

The company filed its answer on September 7, generally asserting its 5th Amendment right against self-incrimination. On September 29, however, Mr. Thrasher filed an uncontested Motion to Withdraw. Soon thereafter, the Director of Manufactured Housing responded to Mr. Thrasher's motion and moved the Commission to determine this matter on the pleadings. The Commission then granted the motion to withdraw and set an evidentiary hearing, which was held on November 9. Twelve exhibits were received into evidence. The president of 5 Star Homes, Jeffrey Kasten, was present without an attorney and stated that he is no longer seeking a license to be in the modular homes business. The Director pointed out that Mr. Kasten was representing himself and not 5 Star.

Findings of Fact

1. 5 Star Homes and Development Company, Inc., is a modular unit dealer as defined in Section 700.010(4).³

2. 5 Star Homes was, until December 31, 2009, registered as a licensed Manufactured Home or Modular Unit Dealer.⁴

¹ *Notice of Deficiency* issued by the Commission on June 28.

² *Order Granting Additional Time* issued by the Commission on August 31.

³ Exhibit 12, *Complaint*.

⁴ *Answer to Complaint*, paragraph 3.

3. The Director inspected the home of Jeff and Ann Grady on November 24, 2009.⁵

4. The Director conducted a re-inspection of the home of Jeff and Ann Grady on January 5, 2010.⁶

5. The Director made a second re-inspection of the Grady Home of March 19, 2010.⁷

6. Code violations, discovered by the Director during inspection, were not corrected by 5 Star.⁸

7. The Director sent a final notice, dated March 11, 2010, to 5 Star in an attempt to get a response concerning four consumer complaint received by the Director.⁹

8. On November 3, 2009, the Director sent a letter to 5 Star notifying the company of a consumer complaint from Timothy and Donna Gordon, urging the company to correct the problems.¹⁰

9. 5 Star failed to effect delivery and setup of the Gordon Family Home.¹¹

10. On November 3, 2009, the Director sent a letter to 5 Star notifying the company as a consumer complaint from Kenneth White, urging the company to correct the problems.¹²

⁵ Transcript, page 13, lines 5-11, Exhibit 1.

⁶ Transcript, page 15, line 4-14., Exhibit 2.

⁷ Transcript, page 18, line 9 – page 19, line 16. Exhibit 3A.

⁸ Transcript, page 15-19.

⁹ Transcript, page 19, line 17– page 20, line 7. Exhibit 3.

¹⁰ Transcript, page 20, line 15– page 21, line 5. Exhibit 4.

¹¹ Transcript, page 21, line 22- page 22, line 9. Exhibit 5.

¹² Exhibit 6.

11. 5 Star failed to effect delivery and setup of the Kenneth White Home.¹³
12. On February 1, 2010, the Director notified 5 Star of a consumer complaint from Michelle and Hans Mugler.¹⁴
13. 5 Star failed to effect delivery and setup of the Mugler Home.¹⁵
14. The Director sent 5 Star an invoice, dated January 11, 2010, in the amount of \$200 for the re-inspection of the Grady home.¹⁶
15. 5 Star did not pay the re-inspection fee of \$200.¹⁷
16. On January 25, 2010 the Director received an application for renewal of 5 Star's dealer registration.¹⁸
17. Because of multiple outstanding consumer complaints and the inability to contact 5 Star to verify the company's primary business address, the Director did not renew 5 Star's license.¹⁹

Conclusions of Law

1. The Commission has jurisdiction over manufactured and modular unit homes dealers under Chapter 700, RSMo.
2. Because 5 Star is a modular unit home dealer, the Commission has jurisdiction over 5 Star.

¹³ Transcript, page 23, line 3-12. Exhibits 6 and 7.

¹⁴ Exhibit 8.

¹⁵ Transcript, page 24, lines 16-22. Exhibits 8 and 9.

¹⁶ Exhibit 10.

¹⁷ Transcript, page 29, lines 2-12.

¹⁸ Exhibit 11.

¹⁹ Transcript, page 30, lines 5-11.

3. Under Section 700.100.2, RSMo, the Commission may consider a complaint charging a registered dealer with failure to arrange for proper initial setup of any new or used unit sold. Because the Director has alleged such failure with regard to 5 Star, the Commission has jurisdiction over this subject matter.

4. Through Commission rule 4 CSR 240-123.020, the Commission has delegated its authority under Chapter 700, RSMo, to the Director through Commission rule 4 CSR 240-123.020.

5. Under Commission rule 4 CSR 230-123.095 the Commission may assess to 5 Star a re-inspection fee associated with the Grady Home. The Director, by its delegated powers, assessed to 5 Star a fee of \$200, as authorized by 4 CSR 240.123.095(9), for the re-inspection.

6. Under Commission rule 4 CSR 240-123.095(11), failure to pay a re-inspection fee constitutes grounds for the denial, suspension or revocation, or placing on probation of a dealer's certificate of registration. Because 5 Star has failed to pay the re-inspection fee associated with the Grady Home, the Commission will not renew the company's dealer registration.

7. For its failure to correct code violations with regard to the Grady Home, 5 Star has violated Section 700.045(5).

8. Under Section 700.100.3(6) failure to arrange for proper initial setup of a modular home, constitutes grounds the suspension, revocation or placing on probation of a manufacturers dealer registration.

9. Under Section 700.115.2 RSMo, whoever violates any provision of Chapter 700 shall be liable to the state of Missouri for a civil penalty in an amount which

shall not to exceed one thousand dollars for each such violation. 5 Star has violated Section 700.100.3(6), and 700.045(5) of Chapter 700 and is liable for civil penalties consistent with the facts of this case.

Decision

The Commission will rule in favor of the Director. Because 5 Star has not complied with the relevant Missouri Statutes and Commission rules, the Commission will not renew the company's registration. Further, the Commission will authorize its General Counsel to seek penalties in Circuit Court, consistent with the facts of this case and the relevant law.

THE COMMISSION ORDERS THAT:

1. The dealer registration of 5 Star Homes and Development Company, Inc. shall not be renewed.
2. The General Counsel of the Missouri Public Service Commission is authorized to seek penalties in Circuit Court, consistent with the facts of this case and the controlling law.
3. This order shall become effective on January 1, 2011.
4. This case shall be closed on January 2, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
Gunn, and Kenney, CC., concur and
certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 22nd day of December, 2010.