

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

The Manager of the Manufactured Homes)
and Modular Units Program of the)
Missouri Public Service Commission,)
)
Complainant,)
)
v.)
)
Your Home Center, LLC)
)
Respondent)

Case No. MC-2019-0037

**MOTION FOR DEFAULT JUDGMENT AND
FOR AUTHORITY TO SEEK PENALTIES**

COMES NOW the Director of the Manufactured Housing and Modular Units Program (Manager) of the Missouri Public Service Commission (Commission), by and through counsel, and pursuant to 4 CSR 240-2.070(9) and (10) moves for a default judgment in the above-referenced case and for authorization of the Commission's General Counsel to seek penalties in circuit court hereafter, and in support of this *Motion for Default Judgment and for Authority to Seek Penalties* (Motion)¹ hereby states:

¹ Staff Counsel notes that Timothy DeVine and his spouse filed a petition for bankruptcy on August 8, 2018. Per Your Home Center LLC's Articles of Organization, as publicly available from the Missouri Secretary of State's website, Timothy DeVine is identified as the initial managing member of the company. Although in his Bankruptcy Form 309A Mr. DeVine identified Your Home Center, LLC as a name he has used in the last eight (8) years, Your Home Center, LLC did not file a petition for bankruptcy. However, to the extent there remains a question of the applicability of the automatic bankruptcy stay for Your Home Center, LLC, 11 U.S.C. § 362(b)(2)(4) provides an exception to the automatic stay and states:

[t]he filing of a petition under Section 301, 302, or 303 of this title...does not operate as a stay-- ... under subsection (a) - - ...under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit's...police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's ... police or regulatory power.

1. On August 9, 2018, the Manager filed a *Complaint* against Your Home Center, LLC, a new manufactured homes or new modular units registered dealer, in which the Manager asserts numerous allegations related to the installation of three (3) modular units.²

2. On August 14, 2018, the Commission issued its *Notice of Contested Case and Order Directing Filings*, ordering Your Home Center, LLC, to file an answer to the *Complaint* no later than September 13, 2018.

3. Also on August 14, 2018, the Commission issued its *Amended Notice of Contested Case and Order Directing Filings*, ordering Your Home Center, LLC, to file an answer to the *Complaint* no later than September 13, 2018, and directing the Data Center of the Missouri Public Service Commission to serve the Complaint and Notice on Respondent by certified mail as follows:

Registered Agent:
Timothy L. DeVine
29886 Vixen Avenue
Warsaw, MO 65355

4. On September 14, 2018, the Commission issued an *Order Directing Filing*, in which it was stated that “[a]s of September 14, 2018, the Commission’s file did not reflect that the United States Postal Service had either delivered or had unsuccessfully endeavored to deliver the Notice as directed by Commission” and ordering “the Staff of

² Staff Counsel also notes that the individuals whose modular units are the subject of the Complaint have been identified as creditors with general unsecured claims of an unknown amount in the DeVines’ bankruptcy case.

the Missouri Public Service Commission to make recommendations to the Commission with respect to sufficient notice to the Company.”

5. On September 18, 2018, the Data Center’s mailing (Returned Mailing) was returned as undeliverable; the address on the Returned Mailing was:

Your Home Center L.L.C.
Legal Department
20821 Highway 65
Lincoln, MO 65338

6. In Staff’s Response to Order Directing Filing Regarding Recommendations with Respect to Sufficient Notice to the Company, filed on September 19, 2018, it was noted that per records of the Missouri Secretary of State, Your Home Center, LLC, filed on August 31, 2018, a Notice of Winding Up for Limited Liability Company (Notice of Winding Up) in which persons with claims against the limited liability company should mail those claims to:

Your Home Center LLC
2441-Q Old Fort Pkwy #309
Murfreesboro, TN 37128-4162

7. On September 19, 2018, the Commission issued its Second Notice of Contested Case and Order Directing Service of Notice and Filings (Second Notice), which directed the Data Center to serve the Complaint and Notice on Respondent (Service Documents) at the following addresses:

Registered Agent:
Timothy L. DeVine
29886 Vixen Avenue
Warsaw, MO 65355

And

Your Home Center LLC
2441-Q Old Fort Pkwy #309
Murfreesboro, TN 37128-4162

8. The Second Notice also ordered Your Home Center, LLC, to file an Answer to the Complaint no later than October 19, 2018.

9. On September 21, 2018, the Service Documents addressed to Registered Agent Timothy L. Devine were returned to the Commission, with a postal notation stating:

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

10. On September 25, 2018, the Service Documents addressed to the following address were returned to the Commission:

Your Home Center L.L.C.
Legal Department
20821 Highway 65
Lincoln, MO [zip code covered by postal notation]

11. The returned Service Documents referenced in Paragraph 10 above included a postal notation stating:

RETURN TO SENDER
YOUR HOME CENTER
MOVED LEFT NO ADDRESS
UNABLE TO FORWARD
RETURN TO SENDER

12. On October 3, 2018, the Commission received a Certified Mail Receipt with respect to the Service Documents sent to the address provided in the Notice of Winding Up; this Certified Mail Receipt was signed by an agent of Your Home Center, LLC, and the date of delivery was September 24, 2018.

13. Commission Rule 4 CSR 240-2.070(9) provides that “[t]he respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an

allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground.”

14. Commission Rule 4 CSR 240-2.070(10) states that “[i]f the respondent in a complaint case fails to file a timely answer, the complainant’s averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause.”

15. As of the date of the filing of this motion, the respondent Your Home Center, LLC, has failed to file an Answer in this matter.

WHEREFORE, the Manager moves that pursuant to 4 CSR 240-2.070(9) and (10) the Commission deem admitted the averments originally raised in the Manager’s *Complaint* and specifically find:

1. That Your Home Center, LLC, violated Section 700.100.3(6) by failing to arrange for the proper initial setup of the Burwell, Stuedle, and Dodds units.

2. That Your Home Center, LLC, committed a misdemeanor under Section 700.045(5), RSMo., when it failed to “correct within a reasonable time not to exceed ninety days after being ordered to do so in writing by an authorized representative of the commission a code violation in a ... modular unit...”.

3. That the Commission immediately revoke Your Home Center, LLC’s license pursuant to Rule 4 CSR 240-123.065(1)(C) and Section 700.100, RSMo.

The Manager further prays that the Commission authorize the General Counsel to proceed to circuit court to seek penalties against Your Home Center, LLC, for these

violations of Chapter 700 and the Commission's rules and for such other relief as the Commission deem just and proper.

Respectfully submitted,

/s/ Alexandra L. Klaus

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 8th day of November, 2018.

/s/ Alexandra L. Klaus