

**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

MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS

COMES NOW, Respondent A & G Commercial Trucking, Inc.(hereinafter “A&G”), by and through its undersigned attorneys of record, and for its Memorandum in Support of its Motion to Dismiss, states to the Commission the following:

The Public Service Commission has no jurisdiction to hear the claim brought against A&G, as the Public Service Commission is without jurisdiction to hear any matter against an alleged non-registered dealer.

The Public Service Commission is an administrative body created by statute and has only such powers as are expressly conferred by statute. Union Electric Co. v. Public Service Comm’n, 591 S.W.2d 134, 137 (Mo. App. W.D. 1979). In the case at hand, the Director alleges in paragraph 2 of the Complaint that “The Commission has jurisdiction over manufactured home manufacturers and dealers pursuant to Chapter 700, RSMo.” However, Chapter 700 only grants the Commission the jurisdiction to hear a complaint filed with it charging a *registered* manufacturer or dealer with violations. As Relator is not a registered dealer of manufactured homes with the state of Missouri, the Commission has no jurisdiction over Relator and the Commission must dismiss the Complaint.

As the Public Service Commission is a creature of statute, we must turn to the statutes in order to determine if the Commission does indeed have jurisdiction to hear the Complaint. The Director brought

this complaint against Relator pursuant to Section 700.100, RSMo. (Supp. 2002). Section 700.100.2, RSMo. (Supp. 2002) states that “the Commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of the provisions of this section, which charges, if true, shall constitute grounds for revocation or suspension of his registration, or the placing of the registered manufacturer or dealer on probation.” This section grants the Commission jurisdiction only to consider a complaint filed against a registered manufacturer or dealer. The term “manufacturer” is defined in Section 700.010.6 RSMo. (Supp.2002), as “any person who manufactures manufactured homes, or modular units, including persons who engage in importing manufactured homes, or modular units for resale.” The term “dealer” is defined in Section 700.010.4, RSMo. (Supp. 2002), 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.” The term “registered dealer” is not defined under Chapter 700, RSMo. Also, the term “registered manufacturer” is not defined under Chapter 700, RSMo. And, the term “registered” is not defined under Chapter 700, RSMo. Accordingly, the phrase in section 700.100, that “the Commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of provisions of the section,” (emphasis added) can only be interpreted to mean that the person or entity against which a complaint has been filed by the Director must first be registered with the Commission prior to the Commission considering the complaint.

“The Legislature is presumed not to have enacted meaningless provisions”, State ex rel. Mobile Home Estates, Inc. v. Public Service Comm’n, 921 S.W.2d 5, 11 (Mo. App. W.D. 1996), and “in construing a statute, words used in the statute are to be considered in their plain and ordinary meaning in order to ascertain intent of lawmakers.” Wollard v. City of Kansas City, 831 S.W.2d 200, 203 (Mo. banc 1992). Therefore, as the Legislature clearly set forth in section 700.100, RSMo., that “the commission may consider a complaint filed with it charging a *registered* manufacturer or dealer with a violation of the provisions of this section” (emphasis added), the Commission is not vested with the authority to obtain jurisdiction over Relator, and the Commission must dismiss the Complaint.

The relief sought by the Director may potentially be obtained, if the allegations are proven, in Boone County Circuit Court Case No. 04CV165070, in which both Relator and the Commission are parties.

Relator is currently a party to, and a defendant in, Boone County Circuit Court Case Number 04CV165070 (hereinafter "Lawsuit") filed by the State of Missouri Attorney General's Office. A copy of the Attorney General's First Amended Petition naming Relator as a party is attached as Exhibit A to Respondent's Motion to Dismiss. On May 20, 2004, the Commission was made a party to the Lawsuit pursuant to the Order entered by Honorable Judge Ellen S. Roper. A copy of said Order is attached hereto as **Exhibit A**, and incorporated herein by reference. Accordingly, if the allegations in the Complaint are proven against Relator, all relief requested by the Director in the Complaint may be obtained in the Lawsuit. If the Commission is allowed to hear the Complaint filed against Relator, then Relator may potentially be liable for damages arising from the same set of facts and legal theories in which the Director can recover in the Lawsuit. This would violate the doctrine of res judicata. "If separate actions brought arise out of same act, contract, or transaction, or if parties, subject matter, and evidence necessary to sustain claim are same in both actions, cause of action is single and cannot be split." Geringer v. Union Electric Co., 731 S.W.2d 859, 865 (Mo. App. E.D. 1987). Accordingly, this Commission must dismiss the Complaint.

_____/s/_____

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CERTIFICATE OF MAILING

The undersigned certifies that a complete and conformed copy of the foregoing document was mailed to each attorney who represents any party to the foregoing action, by U.S. Mail, postage prepaid

in the proper amount, at said attorney's business address.

 /s/ Thomas M. Harrison
Dated: May 24, 2004

Exhibit A

NOTICE OF ENTRY
(SUPREME COURT RULE 74.03)

In The 13TH JUDICIAL CIRCUIT Court Within
And For The Court of Boone County, State of Missouri

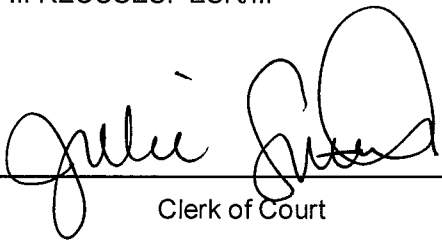
STATE OF MISSOURI V GREG DELINE ET AL

CASE NO : 04CV165070

To: THOMAS M. HARRISON
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COLUMBIA, MO 65205-1017

YOU ARE HEREBY NOTIFIED that the court duly entered the following:

<u>Filing Date</u>	<u>Description</u>
20-May-2004	Order MOTION TO JOIN PSC IS SUSTAINED. DIVISION III RECUSES. ESR/III


Clerk of Court

CC: THOMAS M. HARRISON
Date Printed : 21-May-2004