

**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, )

Case No. MC-2004-0079

v. )

Amega Sales, Inc., )

Respondent. )

**COMPLAINANT'S SUGGESTIONS  
IN SUPPORT OF STIPULATION AND AGREEMENT**

**COMES NOW** the Complainant, Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") and, for his Suggestions in Support of Stipulation and Agreement, states to the Missouri Public Service Commission as follows:

**PROCEDURAL BACKGROUND**

The Director filed a Complaint against Respondent Amega Sales, Inc. on August 5, 2003, alleging that the Director had placed a prohibitive sale notice on a 2000 Skyline Corporation manufactured home, which was located on Amega's sales lot in Ashland, Missouri, and that he had informed Amega that the home could not be sold as a new manufactured home. He also alleged that Amega nonetheless sold the home to Don Higginbotham as a new home, for habitation, in violation of the prohibitive sale notice. The Director requested that the Commission find that Amega had violated provisions of Chapters 700 and 407, RSMo, and that the Commission suspend Amega's registration and authorize the Director to seek civil penalties in circuit court.

The parties submitted the case to mediation and eventually executed a Stipulation and Agreement, which they filed with the Commission on March 19, 2004. The Commission never approved or rejected the Stipulation and Agreement, but scheduled a bifurcated hearing. The Commission conducted the first phase of the evidentiary hearing, and on September 2, 2004, issued a Report and Order, in which it found that Amega violated Section 700.045 by selling a home without a seal and that Amega violated Section 407.020 by misrepresenting to Mr. Higginbotham that the home he purchased was a new home.

Amega then sought and obtained, from the Cole County Circuit Court, a writ of prohibition, to prohibit the Commission from conducting the second phase of the evidentiary hearing. The writ of prohibition was appealed to the Supreme Court, and ultimately the circuit court dismissed the petition for writ of prohibition. Jurisdiction of the case then returned to the Commission.

The Director and Amega executed a new Stipulation and Agreement, to resolve all issues in this case, on September 29, 2006, and filed it with the Commission the same day.

### **THE AGREEMENT**

The Stipulation and Agreement includes four main elements, which address: the suspension of Amega's registration as a dealer for 20 days; the payment of a penalty, in the amount of \$10,000; Amega's covenants regarding its future conduct; and a liquidated damages clause.

The Agreement requires Amega to suspend all sales activity at its sales lot in Ashland for a period of 20 days. During this suspension period, Amega may do what is necessary to complete the performance of existing agreements, and may conduct certain other "back office" activities, but it may not have contact with potential customers at the Ashland Lot. It must post a

clear notice that the Ashland Lot will be closed for the specified period. The Agreement also prohibits Amega from steering potential customers to other sales lots owned or maintained by Greg DeLine (Amega's principal owner) or by any of Amega's affiliates. The intention of the Agreement is to prevent Amega and its affiliates from receiving any economic benefit from its Ashland Lot for 20 days.

The Agreement requires Amega to pay a civil penalty in the amount of \$10,000. Section 700.115.2 authorizes civil penalties for violations of Chapter 700, but limits the amount of such penalties to \$1,000 for each such violation.

The Agreement prohibits Amega and its affiliates from selling any manufactured home that does not have a HUD data plate or label or modular seal, as required by law. It also requires Amega and its affiliates to notify the Director whenever it receives title to any manufactured home that does not have the data plate or seal that is required for the home to be resold.

The Agreement further provides that if Amega violates any provision of Paragraph 6 of the Agreement, it will pay a civil penalty in the amount of \$10,000 for each occurrence. It gives the Commission authority to determine whether Amega or one of its affiliates has violated the provisions of Paragraph 6.

### **SUPPORT FOR AGREEMENT**

*Significant Punishment.* The Agreement essentially puts the Ashland Lot out of business for a period of 20 days. Amega will not be able to close any transactions during this time, nor will it be able to initiate contact with, or negotiate with, potential customers at its lot. Amega will not only lose the profits that it would have realized from sales for most of a month, but will also be prevented from the activity that might lead to sales after the suspension period ends. The effect will thus be felt for more than the actual 20-day suspension period.

Amega must also advertise the suspension by placing a prominent sign at the main front entrance to the Ashland Lot. This will serve to prevent customers from coming on the lot in violation of the Agreement, warn them that they may not do business with Amega during the suspension period, and advertise the fact of the suspension to members of the general public who happen to pass by the sales lot, thereby serving a valuable public relations function.

Amega does business at locations other than the Ashland Lot, using other fictitious names, and holds several registrations with the Commission as a dealer in manufactured housing. This Agreement will restrict activity only on the Ashland Lot, in accordance with current law. The Director intends, however, to prevent Amega and its affiliate from merely steering business from the Ashland Lot to other lots owned or maintained by Amega and its affiliates. The Director does not want Amega to merely move its economic activity elsewhere, but wants the Agreement to result in an actual economic consequence by preventing sales activity.

The Agreement therefore prohibits Amega from taking any action, directly or indirectly to refer potential customers to any of Amega's affiliates or other lots. This will not, of course, prevent a potential customer from going to another of Amega's lots; but it will prevent them from going there because Amega has influenced their decision to do so. The Director believes that this will prevent Amega from merely moving the sales activity from the Ashland Lot to another lot.

The goal of this Agreement is to prevent sales activity, but not to prevent Amega from performing other functions that are necessary and appropriate for serving its customers. The Agreement therefore permits Amega to deliver homes to customers who have agreed before the suspension period to purchase them, and to do other activities necessary to discharge its obligations to its customers.

Complaint Pertains to only the Higginbotham Home. It is important to note that the Complaint in this case pertained to Amega's sale of a single manufactured home, specifically the 2000 Skyline Corporation manufactured home that was referred to throughout this case as the "Higginbotham Home." The Director alleged that there were two violations in connection with the sale of this home. They were that the home was sold without a HUD label as required by law, and that the home was represented to Mr. Higginbotham as, and was sold as, a new home, even though Amega had represented to the Director that the home would only be sold as a used home. There is no evidence in the record in this case that Amega or its affiliates have committed any other violations of the Manufactured Housing Law. The Director and Amega intend that the punishment in this case pertains to activities in connection with the Higginbotham Home only, and is neither enhanced nor diminished by any other activities of Amega or its affiliates.

It is also worth noting that Mr. Higginbotham, the customer who bought the subject manufactured home, has settled his claim against Amega by executing a Stipulation of Agreement with Amega in March 2003. This stipulation provided, among other things, that Amega would pay \$38,321.63 in full satisfaction of Mr. Higginbotham's claims, and that Mr. Higginbotham would release his claims against Amega. Mr. Higginbotham also testified in the hearing in this case that he was satisfied with this settlement. There is no unresolved civil litigation as a result of the subject transaction.

Deterring Future Misconduct. Amega promised in the Agreement that it will not sell or convey any manufactured home that is "red tagged" at the time of the sale, and will not sell any new manufactured home unless all required HUD labels and certificates are properly affixed to the home. By themselves, these are merely promises by Amega that it will do what it was already obligated by law to do. However the Agreement puts additional teeth into this obligation

by providing that if Amega violates either of these provisions, it will pay a penalty of \$10,000 per occurrence, which is far more than would be authorized by Section 700.115 alone.

The Agreement also requires that if Amega or any of its affiliates even receives title to a manufactured home that does not have a proper data plate or seal affixed to it, Amega or its affiliate must notify the Director that it has received such home. That is, it must notify the Director that it has title to such home, even if it never enters into any agreement to sell that home. And again, if Amega violates this provision, it will must also a penalty of \$10,000 per occurrence.

These provisions provide a strong deterrent to prevent Amega and its affiliates from selling manufactured homes that do not comply with the code. Furthermore, they enable the Director to obtain prompt and timely notice that Amega has acquired such noncompliant homes, thereby facilitating the Director's ability to ensure that Amega does not sell defective homes to other customers.

*Fault / Wrongdoing.* The Agreement does not contain any statement regarding the guilt or fault of Amega, nor any admission of liability by Amega. The Agreement is silent on these matters.

The Agreement does provide, however, that, if this Agreement is approved, Amega will not seek judicial review or otherwise challenge the findings of fact or conclusions of law that are included in the Report and Order that the Commission issued in this case on September 2, 2004. This is not an admission of liability. But it does prohibit Amega from challenging the Commission's finding that Amega violated the law when it sold the Higginbotham Home.

Furthermore, as noted above, Amega did agree to pay – and did pay – Mr. Higginbotham more than \$38,000 to settle his dispute with Amega. This is not an admission of liability, either.

But it did give Mr. Higginbotham something that was probably of more value to him – a cash payment in settlement of the dispute.

### **CONCLUSION**

The Agreement is a reasonable settlement of the dispute between the parties in this case. It grants the Director the relief that he requested – a suspension of Amega’s registration with the Commission and the payment of a civil penalty – thereby achieving the Director’s objectives without the risk and expense of additional litigation.

The agreed-upon 20-day suspension is a significant penalty that will have a real economic impact on Amega and will serve as a deterrent to future misconduct by Amega, its affiliates or others. The agreed-upon \$10,000 penalty is more than the Commission would be able to obtain by invoking the provisions of Section 700.115 in a circuit court penalty proceeding, and will be obtained without the delay that would result from a circuit court action and a possible appeal.

Furthermore, the Agreement provides a strong deterrent to future misconduct by Amega, by providing that any future violations will be subject to a penalty of \$10,000 per occurrence.

The civil dispute that arose from the case has been resolved, and Mr. Higginbotham has been “made whole.”

Implementation of the Agreement is in the public interest, and the Commission should approve it.

**WHEREFORE**, Complainant requests that the Commission approve the Stipulation and Agreement and order the parties to comply with the terms thereof.

Respectfully submitted,

/s/ Keith R. Krueger

Keith R. Krueger  
Deputy General Counsel  
Missouri Bar No. 23857

Attorney for the Director of the  
Manufactured Housing and Modular Units  
Program of the Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-4140 (Telephone)  
(573) 751-9285 (Fax)  
[keith.krueger@psc.mo.gov](mailto:keith.krueger@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2nd day of October, 2006.

/s/ Keith R. Krueger