

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

The Director of the Manufactured Homes )  
and Modular Units Program of the )  
Missouri Public Service Commission, )  
 )  
Complainant, )  
 )  
v. )  
 )  
Michael Goodwin )  
 )  
Respondent. )

**Case No. MC-2018-0236**

**MANAGER’S SUGGESTIONS IN SUPPORT OF  
MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Manager of the Manufactured Housing and Modular Units Program (Manager or Staff), by and through counsel, and for its *Suggestions in Support of its Motion for Summary Determination* pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

**Introduction:**

Manager filed his *Complaint* on February 28, 2018, alleging that Respondent Michael Goodwin (Mr. Goodwin or Goodwin) improperly installed thirteen (13) manufactured homes, and, despite notice and ample opportunity to correct the defects, Mr. Goodwin failed to do so in violation of Missouri statutes and Commission rules. Mr. Goodwin, through his attorney Mr. Andrew Westerfeld, provided an Answer to the Complaint on April 2, 2018. The Commission ordered a prehearing conference on June 11, 2018. Neither Mr. Goodwin nor his counsel appeared; the conference was rescheduled to July 2, 2018. As a result of the conference and contemplated settlement, the Manager requested to suspend the procedural schedule; however, that contemplated

settlement did not come to fruition and Manager moved the Commission to set the matter for evidentiary hearing. A little over a week later, the contemplated settlement was entered into and the Commission approved the Stipulation and Agreement on September 27, 2018. The Order became effective October 27, 2018.

Under the terms of the Stipulation and Agreement, Mr. Goodwin had until February 25, 2019, to make the agreed-upon and ordered amount to the Public School Fund and provide proof of payment to the Manager. Payment was not made and Manager filed a Motion for Penalties for Mr. Goodwin's violation of the Stipulation and Agreement. Mr. Goodwin was ordered to respond to Manager's Motion for Penalties and did not respond. A show cause order was not issued and the Commission set the matter for an evidentiary hearing to determine whether a violation of the terms of the Stipulation and Agreement has taken place.

### **Argument**

Commission Rule 4 CSR 240-2.117(1)(E) authorizes summary determination "if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest." Filed simultaneously herewith are Staff's motion(s) and affidavits; these *Suggestions* constitute the "separate legal memorandum" that must be "attached" to a motion for summary determination pursuant to Rule 4 CSR 240-2.117(1)(B).<sup>1</sup> Staff suggests that its motion, affidavits and suggestions demonstrate that there is no

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<sup>1</sup> Rule 4 CSR 240-2.117(1) states certain other requirements for summary determination, all of which are met here as detailed in Staff's Counsel's accompanying motion.

dispute of material fact, that Staff is entitled to relief as a matter of law and that the public interest demands that Manager's Motion for Penalties be sustained.

The sole question presented is whether Mr. Goodwin violated the Stipulation and Agreement by not making payment to the Public School Fund and providing Manager proof of the same. Under the terms of the Stipulation and Agreement, Mr. Goodwin was to make payment to the Public School Fund as follows:

**Payment to Public School Fund:** Goodwin agrees to pay to the Public School Fund a total of Two Thousand Five Hundred Dollars (\$2,500.00). Payments may be made in monthly installments, but payment of the total amount of \$2,500.00 ("Total Amount") shall occur within one hundred and twenty (120) days from the date on which the Commission approves this Agreement. Checks for payment shall be made payable to the Director of Revenue and mailed to:

Missouri Public Service Commission  
Attn: Helen Davis, Budget and Fiscal Services  
P.O. Box 360  
Jefferson City, MO 65102

Once payment of the Total Amount has been made to the Public School Fund, Goodwin shall provide to Manager proof of said payment of the Total Amount.

Mr. Goodwin neither provided payment to the attention of Helen Davis nor provided proof of payment to Manager. In fact, Ms. Davis notified Manager the day after Mr. Goodwin's deadline to make payment to inform Manager that no payment had been received. Both Manager and Ms. Davis have executed sworn statements that Mr. Goodwin did not make the payment, or proof thereof, described above. Therefore, based on the motion(s), affidavits, and these suggestions, there can be no dispute that Mr. Goodwin violated the Stipulation and Agreement by not making payment to the Public School Fund and providing Manager proof of the same. Further, Manager is entitled to relief as a matter of law as this is not a case that seeks a rate increase or a case that is subject to an operation of law date, and "to grant summary determination in this case will not be 'otherwise

contrary to law' since no genuine factual dispute [can remain] for hearing."<sup>2</sup> "Moreover, the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing in as much as '[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest."<sup>3</sup> "Therefore, the Commission may finally dispose of this case on the basis of the law and the undisputed material facts before it."<sup>4</sup>

### **Conclusion**

Staff has shown that there are no material facts in dispute; that it is entitled to a favorable determination as a matter of law; and that the public interest favors granting summary determination. For these reasons, the Commission should grant *Staff's Motion for Summary Determination* herein.

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<sup>2</sup> *The Staff of the Missouri Pub. Serv. Comm'n, Complainant*, No. GC-2011-0006, 2011 WL 490945, at \*8 (Feb. 4, 2011). See also Commission Rule 4 CSR 240-2.117:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

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(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

<sup>3</sup> *The Staff of the Missouri Pub. Serv. Comm'n, Complainant*, No. GC-2011-0006, 2011 WL 490945, at \*8 (Feb. 4, 2011)(citation omitted).

<sup>4</sup> *Id.*

**WHEREFORE**, Staff prays that the Commission will grant summary determination and enter its order finding that (1) Mr. Goodwin violated the Stipulation and Agreement, (2) authorizing its General Counsel to seek penalties in the appropriate circuit court, and (3) granting such other and further relief as the Commission deems just.

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 26<sup>th</sup> day of March, 2019.

**/s/ Alexandra L. Klaus**