

2. Staff and the Brunes entered into a *Stipulation and Agreement* (“Stipulation”) resolving all issues in this case. The Stipulation was filed on July 23, 2020, and on October 21, 2020 the Commission ordered the parties to comply with its terms.

3. In paragraph 12 of the Stipulation, the Brunes agreed to the following:

12. **Hiring of Licensed Civil Engineer:** Respondents shall investigate hiring a licensed civil engineer to inspect the foundations of the Schemel/Fox and Thomas homes. If Respondents hire a licensed civil engineer to inspect the homes, the Manager will not pursue payment to the public school fund as allowed pursuant to § 386.600, RSMo. If Respondents hire a civil engineer who states in a stamped

cap blocks or not a 4” cap block. Piers need to be installed per the manufactured installation instructions.

3. There are door piers missing on the back door. Refer to manufacturers installation instructions.

Complaint, Appendix J (Nov 15, 2019).

The Program stated the following in its deficiency reports regarding the foundation at the Thomas home:

Site Prep: Incorrect The area under the home needs to be crowned so water cannot pond under the home. The site is not properly sloped so surface drainage water is directed away from the home. Crown the soil under the home to prevent water from ponding. Then from the perimeter of the home the ground needs to slope away from the home for the first 10’ with a minimum slope of ½” per foot. Refer to manufactures installation instructions.

Footings/Piers: Incorrect 1. The concrete pad is not 6” thick as required nor is there a frost grade footer installed. A concrete pad needs to be 6” thick with a 12” frost grade footer installed around the perimeter at this location. Also a pad needs to be back filled to get the proper frost depth and slope away from a home.

2. There are no door piers installed. Refer to manufactures installation instructions.

3. Wedges are installed wrong, wedges need to be used in pairs and installed on both sides of the I-beam. Also wedges are not to exceed one inch of space between the cap block and the I-beam. Filler wood should be the same size of the piers, not smaller. Refer to manufactures installation instructions.

4. Cap Blocks need to be solid masonry (nominal 4” x 8” x 16” pre-cast concrete without reinforcement), lumber (nominal 2” x 8” x 16”), or steel (minimum ½” thick, corrosion protected by a min. of a 10 mil coating of an exterior paint or equivalent) and filler wood needs to be nominal 2” thick hardwood boards or nominal 2” or 4” thick concrete blocks. Shims need to be nominal 4-inch by 6-inch by 1-inch (max. vertical height) hardwood wood shims used in pairs. Refer to manufactures installation instructions.

5. There are several frame piers that are out of plum. The maximum a single stack pier can be out of plumb is ½” and the maximum a double stack pier can be out of plumb is 1”. Refer to manufactures installation instructions.

Complaint, Appendix L (Nov 15, 2019).

engineering report that the foundations of the Schemel/Fox and Thomas houses are sound, the Signatories shall take no further action regarding the foundations. If Respondents do not hire a licensed civil engineer or a licensed civil engineer states that the foundations are not sound, the Signatories shall further discuss responsibilities and repairs.

4. In paragraph 22 of the Stipulation, the Brunes agreed to the following:

22. Upon the Manager's reasonable belief that a violation of any of the above conditions has occurred, the Manager may file a motion with the Commission seeking disciplinary action (for example, suspension or revocation of dealer registration) and penalties as the Manager deems appropriate. The Commission may thereupon set the matter for hearing to determine whether a violation of the terms of this Agreement has taken place and, if so, the Signatories agree that the Commission may enter an order regarding discipline and penalties that the Commission deems just and proper.

5. Before the Stipulation was approved and without consulting with the Manager, respondents hired a licensed civil engineer, Mark A. Lester, P.E., to inspect the foundations. Mr. Lester, writes in his reports, dated June 30, 2020, that the homes' foundations comply with the U.S. Department of Housing and Urban Development's *Permanent Foundations Guide for Manufactured Housing* (1996 ed.). The engineering reports are attached hereto as Appendices A and B.

6. The Brunes stated in paragraph 14 of the Stipulation that they "are committed to resolving all outstanding deficiencies in the Schemel/Fox and Thomas homes to be in compliance with state law." Missouri law § 700.683.1. states:

The Commission shall require installers to install homes in accordance with the installation instructions provided by the manufacturer of the manufactured home. The instructions shall have been approved by the United States Department of Housing and Urban Development or one of its authorized agents pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.

The Brunes may rely on this provision to claim that the foundations are sound, because Mr. Lester stated that they comply with a HUD guideline. Compliance with HUD guidelines is important but alone is insufficient to establish that the foundations are sound under Missouri's legal requirements. Missouri law § 700.683.1. states that the Commission shall require installers to install manufactured homes in accordance with the manufacturers' instructions. Further, Commission Rule 24 CSR 4240-120.065(1)(B) requires manufactured homes to be installed in compliance with the manufacturer's installation manual, 24 CFR 3285, and §§ 700.010 to 700.115, RSMo.

7. On August 26, 2020 the undersigned counsel sent a letter to Thad Brady, respondents' counsel, stating that the reports do not meet the Stipulation's requirements, because Mr. Lester does not describe how the setups comply with Missouri law and Commission standards. Mr. Lester's reports do not refer to the manufacturers' installation manuals, 24 CFR 3285, or Missouri law. Mr. Lester does not even mention the Program's deficiency reports. Mr. Brady did not respond to this letter.

8. On September 28, 2020 Justin Smith, the Manager, contacted Mr. Lester via telephone seeking clarification of his reports. Mr. Lester asked Mr. Smith to send his questions via email, which Mr. Smith did on September 30, 2020. Mr. Lester did not respond to Mr. Smith's questions.

9. Counsel sent an email to Mr. Brady on October 28, 2020 requesting his assistance to facilitate a conversation between Mr. Smith and Mr. Lester. Mr. Brady has not responded. Counsel left telephone messages at Mr. Brady's office on November 12, 2020 and November 18, 2020 requesting return phone calls. In the last

telephone call, counsel advised Mr. Brady's office that she would file this motion. Mr. Brady did not respond.

10. Paragraph 12 of the Stipulation states that “[i]f Respondents do not hire a licensed civil engineer or a licensed civil engineer states that the foundations are not sound, the Signatories shall further discuss responsibilities and repairs.” Although the Respondents hired a licensed civil engineer, the civil engineer did not state that the foundations comply with Commission rule. The parties have not discussed responsibilities and repairs due to a lack of communication.

11. For these reasons, the Manager requests that the Commission set a date for a hearing in this matter. At this hearing the Manager will request that the Commission impose disciplinary action of permanently revoking Respondents’ license; order Respondents to compensate the homeowners’ for the cost of engineering inspections, repairs that comply with Commission rule, and reinspection fees; and find Respondents liable for two thousand dollars (\$2,000) to be paid to the Public School Fund pursuant to § 386.600, RSMo.²

Respectfully submitted,

/s/ Karen E. Bretz

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² In paragraph 15 of the Stipulation the Respondents agreed that if they do not hire a licensed engineer to inspect the homes’ foundations as provided in paragraph 12, they would remit a payment of \$2000 to the Public School Fund.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 1st day of December, 2020.

/s/ Karen E. Bretz