

Staff moved the Commission to open an investigatory docket in case number MO-2019-0258 to investigate whether Respondents hire unlicensed installers and use waivers to evade their responsibility to properly install manufactured homes they sell.³ On March 27, 2019 the Commission opened an investigatory docket.⁴ Staff filed its report on October 28, 2019 finding that Respondents violated Missouri law and Commission rules by using waivers to circumvent proper installation.⁵ Staff filed the formal Complaint in this matter on November 15, 2019.⁶

1. Did the Brunes violate § 700.100.3(6), RSMo and 20 CSR 4240.120-065(1)(C) by failing to arrange for the proper initial setup of the five manufactured homes which are the subject of this complaint?

Staff's Position: Yes. Section 700.100.3(6), RSMo and 20 CSR 4240.120-065(1)(C) require a manufactured home dealer to arrange for the proper initial setup of a new manufactured home. As detailed in the Inspection Reports, attached as Attachment JS-d2 to the *Direct Testimony of Justin Smith*, the Brunes failed to arrange for the proper initial setup of the five manufactured homes which are the subject of this complaint. Respondents' waivers are not valid waivers, which are permitted by 700.100.3(6), RSMo⁷ and 20 CSR 4240-120.065(1) (A).⁸ The waivers state that the homeowners would install their own homes and not hold Respondents responsible for the installations.⁹ Mr. Brune's self-serving testimony that each

³ *Motion to Open an Investigatory Docket*, MO-2019-0258 (Mar 11, 2019).

⁴ *Order Opening an Investigation*, MO-2019-0258 (Mar 27, 2019).

⁵ *Progress Report of Staff*, MO-2019-0258, P. 13-14 (Oct 28, 2019).

⁶ Complaint, MO-2020-0135 (Nov 15, 2019).

⁷ 700.100.3(6), RSMo includes as grounds for suspending, revoking, or placing a dealer's license on probation "failing to arrange for the proper initial setup of any new manufactured or modular unit home sold from or in the state of Missouri, except as allowed under subsection 5 of section 700.656; the dealer shall receive a written waiver of that service from the purchaser or his or her authorized agent." (Emphasis added.)

⁸ 20 CSR 4240-120.065(1)(A) states that "[a] dealer who sells a new manufactured home shall arrange for the proper initial setup of the manufactured home unless the dealer obtains from the purchaser or the purchaser's authorized agent a written waiver of that service as described in section 700.100.3(6), RSMo." (Emphasis added.)

⁹ All waivers are similar. The waiver the Brunes obtained from Ms. Schemel and Ms. Fox is attached to their supplemental testimonies and states as follows:

homeowner “elected to be responsible for the installation of their own home on their own property”¹⁰ is directly contradicted by all other relevant evidence, and is not corroborated by any other independent evidence.

Three homeowners testify that although they recognize their signatures on the waivers, they do not recall telling Mr. Brune they wanted to install their own homes and they would not have knowingly waived proper installation. These homeowners further testify that Mr. Brune arranged for their homes’ installations and they did not hire or know the people who installed their homes. The homeowners were not even on site when Respondents’ unlicensed installers set up their homes.¹¹

Because the Commission’s Program lacks jurisdiction over unlicensed contractors, manufactured homes in Missouri must be installed by a licensed installer or under a licensed installer’s supervision, unless a homeowner installs his or her own manufactured home.¹² Respondents have never held Commission-issued installers’ licenses and despite being in business over 30 years, only recently began using licensed installers.¹³

The relevant facts are that Respondents either installed the subject homes themselves and/or hired unlicensed contractors, in violation of the law.¹⁴ Respondents used the waivers to attempt circumvention of Missouri law and Commission regulations, as well as to reduce their liability for subpar installations not meeting Commission

Brune Mobile Sales has received this written waiver by Debbie Fox and Elizabeth Schemel according to Section 700.100.3(6) and Debbie Fox and Elizabeth Schemel will be setting up their own home Serial #SA4070126AL TRU MH: Model: 9948; The Frazier, year 2016, size 14/70. Mr. Brune informed the above parties about the rules and regulations according to P.S.C. standard and also information on concrete pad for home. The above parties agrees to hold harmless and indemnify Brune Mobile Sales from any and all action taken from any agency, government, lender, insurance company about anything in question on laws pertaining to Debbie Fox and Elizabeth Schemel setting up this home; by this written waiver, to include Brune Mobile Sales, its successor and/or assignees. The waiver Mr. Thomas signed is attached to his supplemental testimony.

¹⁰ *Rebuttal Testimony of Charles Brune*, P. 3 (Apr 17, 2020).

¹¹ *Supplemental Testimony of Debbie Fox*, P. 2-3 (Jun 17, 2020); *Supplemental Testimony of Elizabeth Schemel*, P. 2-3 (Jun 17, 2020); *Supplemental Testimony of Robert Thomas*, P. 2-3 (Jun 17, 2020); and *Supplemental Testimony of Kirby Klaus*, P. 2 (Jun 17, 2020).

¹² *Direct Testimony of Justin Smith*, P. 5-6 (Apr 3, 2020).

¹³ *Rebuttal Testimony of Charles Brune*, P. 3 (Apr 17, 2020).

¹⁴ *Direct Testimony of Justin Smith*, P. 2-4 (Apr 3, 2020) and *Surrebuttal Testimony of David Freeman*, P. 3-5, 7 (May 1, 2020).

standards. The Commission's provisions allowing homeowners to install their own homes do not contemplate this manipulation in order to facilitate dealers avoiding their responsibilities. The Commission should find these waivers void as they are not permitted under the plain language of Section 700.100.3(6), RSMo and 20 CSR 4240.120-065(1)(C), and they violate the public policy underlying the statute and rule.

Additionally, Missouri law allows only homeowners who own their land to install their manufactured home.¹⁵ The waiver Robert Thomas signed is void as a matter of law, because he does not own the property beneath his home.¹⁶

The Manager requests that the Commission suspend Respondents' license for at least two years; order Respondents to complete repairs of all deficiencies by licensed installers; find Respondents liable for one thousand dollars (\$1,000) for each home where a violation occurred to be paid to the Public School Fund pursuant to § 386.600, RSMo; order Respondents to pay \$1800 to the Commission for reinspection fees; and authorize its General Counsel to file a petition in the Circuit Court seeking statutory penalties for the violations.¹⁷

2. Did the Brunos engage in conduct in violation of § 700.045(5), RSMo for failing to correct code violations within 90 days after being ordered to do so by the Commission's authorized representative in the five manufactured homes which are the subject of this complaint?

¹⁵ 700.656.5, RSMo provides that "[a] license to install manufactured homes is not required for a person who installs a manufactured home on his or her own property for his or her own occupancy..."

¹⁶ *Supplemental Testimony of Robert Thomas*, P. 2 (Jun 17, 2020) and *Supplemental Testimony of Kirby Klaus*, P. 1 (Jun 17, 2020).

¹⁷ *Direct Testimony of Justin Smith*, P. 6-7 (Apr 3, 2020).

Staff's Position: Yes. Section 700.045(5), RSMo states that it is a misdemeanor to fail to correct a code violation within a reasonable time, not to exceed 90 days, after being ordered to do so by the Commission's authorized representative.

Respondents received numerous notifications of code violations,¹⁸ ignored them and made no effort to contact Program staff until an investigatory docket was opened, and continue to fail to correct them to this day – well beyond 90 days after being ordered to do so.¹⁹

Commission Rule 20 CSR 4240-120.065(2)(A) requires manufactured home dealers to submit property locators to Program Staff indicating the destination of a newly sold home within five business days after the home leaves the dealer's location. Program Manager Justin Smith testifies that Respondents did not file property locators for the homes included in this complaint, making Staff's inspections difficult.²⁰

First State Community Bank foreclosed on and resold two of these five homes (the Armstrong and Kasten homes). Respondents will argue that according to Dennis Bohnert, Vice President of First State Community Bank, the bank inspected these two homes and found no deficiencies.²¹ However, Mr. Bohnert does not state who conducted these inspections; what certifications, if any, the bank's inspector has; or the inspection criteria. Mr. Bohnert's testimony fails to establish that the banks' inspection

¹⁸ Respondents were notified of code violations at the Armstrong home by letters dated March 6, 2018; August 1, 2018; September 24, 2018; and January 16, 2019.

Respondents were notified of code violations at the Kasten home by letters dated March 1, 2018; July 10, 2018; September 24, 2018; and January 16, 2019.

Respondents were notified of code violations at the Orf home by letters dated March 5, 2018; October 2, 2018; and January 16, 2019. Respondents were notified of code violations at the Schemel/Fox home by letters dated March 1, 2018; August 1, 2018; October 2, 2018; and January 17, 2019.

Respondents were notified of code violations at the Thomas home by letters dated March 5, 2018; August 1, 2018; October 2, 2018; and January 17, 2019.

These letters are attached to the *Complaint* in this matter.

¹⁹ *Direct Testimony of Justin Smith*, P. 5-7 (Apr 3, 2020).

²⁰ *Direct Testimony of Justin Smith*, P. 6 (Apr 3, 2020).

²¹ *Supplemental Testimony of Dennis Bohnert*, P. 1-2 (Jun 17, 2020).

criteria are consistent with Missouri law and the Commission's rules. Mr. Bohnert's testimony should be discounted due to lack of foundation and relevancy.

The Manager requests that the Commission suspend Respondents' license for at least two years; order Respondents to complete repairs of all deficiencies by licensed installers; find Respondents liable for one thousand dollars (\$1,000) for each home where a violation occurred to be paid to the Public School Fund pursuant to § 386.600, RSMo; and authorize its General Counsel to file a petition in the Circuit Court seeking statutory penalties for the violations.²²

3. Did the Brunos violate § 700.656.1, RSMo by installing a home without holding a valid installer's license issued by the Commission pursuant to § 700.650, RSMo to § 700.680, RSMo?

Staff's Position: Yes. Section 700.656.1, RSMo states that no person shall install a manufactured home without a valid installer license issued by the Commission. Respondents, who did not have a valid installer's license, installed at least some of the Schemel/Fox home.²³

The Manager requests that the Commission suspend Respondents' license for at least two years; order Respondents to complete repairs of all deficiencies by licensed installers; find Respondents liable for one thousand dollars (\$1,000) for each home where a violation occurred to be paid to the Public School Fund pursuant to § 386.600, RSMo; and authorize its General Counsel to file a petition in the Circuit Court seeking statutory penalties for the violations.²⁴

²² Direct Testimony of Justin Smith, P. 6-7 (Apr 3, 2020).

²³ Surrebuttal Testimony of Justin Smith, P. 2 (May 1, 2020).

²⁴ Direct Testimony of Justin Smith, P. 6-7 (Apr 3, 2020).

4. Did the Brunos violate § 700.656.3, RSMo by hiring unlicensed individuals to install the five manufactured homes which are the subject of this complaint?

Staff's Position: Yes. Section 700.656.3, RSMo requires manufactured home dealers to hire either licensed contractors or licensed employees to install homes. Respondents hired unlicensed contractors to install the five homes which are the subject of this complaint.²⁵

The Manager requests that the Commission suspend Respondents' license for at least two years; order Respondents to complete repairs of all deficiencies by licensed installers; find Respondents liable for one thousand dollars (\$1,000) for each home where a violation occurred to be paid to the Public School Fund pursuant to § 386.600, RSMo; and authorize its General Counsel to file a petition in the Circuit Court seeking statutory penalties for the violations.²⁶

5. Did the Brunos violate § 700.096.1, RSMo and 20 CSR 4240-120.130(1) by failing to file monthly sales reports with the Commission?

Staff's Position: Program Staff dismisses this count.

Respectfully submitted,

/s/ Karen E. Bretz

Karen E. Bretz
Senior Counsel
Missouri Bar No. 70632
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-5472 (Voice)
573-751-9285 (Fax)
Karen.Bretz@psc.mo.gov

²⁵ Direct Testimony of Justin Smith, P. 2-4 (Apr 3, 2020) and Surrebuttal Testimony of Justin Smith, P. 1-2 (May 1, 2020).

²⁶ Direct Testimony of Justin Smith, P. 6-7 (Apr 3, 2020).

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 10th day of July, 2020.

/s/ Karen E. Bretz