

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

Director of the Manufactured Housing and)	
Modular Units Program of the Missouri)	
Public Service Commission,)	
)	
Complainant,)	
)	
v.)	
)	Case No. MC-2008-0071
Amega Sales, Inc.)	
d/b/a Quality Preowned Homes, Columbia)	
Discount Homes, Mark Twain Mobile)	
Home Sales, and Chateau Homes)	
)	
Respondent.)	

**DIRECTOR’S RESPONSE TO
RESPONDENT’S MOTION TO DISMISS COUNT VII**

DIRECTOR’S RESPONSE TO RESPONDENT’S ALLEGATION #1

In the Report and Order effective October 17, 2006 in Case No. MC-2004-0079, the Commission ordered that “Amega Sales, Inc., shall comply with the terms and conditions contained in the Stipulation and Agreement.” That *Stipulation*, between Amega Sales, Inc, the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission, and Greg DeLine, personally,¹ included certain “Covenants by Amega Concerning Sales of Manufactured Homes in the Future[.]” In particular, the *Stipulation* provided that “Amega, its affiliate, of DeLine, will not sell any manufactured home that is ‘red tagged’ at the time of sale....”

¹ The *Stipulation and Agreement* approved by the Commission in Case No. MC-2004-0079 between Amega Sales, Inc, the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission, and Greg DeLine, personally, is included as Appendix A to this Response.

Section 386.390.1. RSMo² states, in pertinent part, that, “[c]omplaint may be made... ..by petition or complaint in writing, setting forth any act or thing done... ..by any corporation [or] person... ..in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission....” Thus, the statute confers upon the Commission the authority to interpret its own Orders as a means to the determination of whether an entity is in violation of a Commission Order. As per § 386.040, the Commission also has those powers necessary and proper to reasonably effectuate its statutory duties, such as determining whether an entity is in violation of a Commission Order. Thus, since the Commission has ordered Amega to comply with a stipulation to which Amega is a signatory, the Commission is necessarily empowered to make a determination of whether Amega is in compliance with the *Stipulation*, antecedent to its determination of whether Amega is in violation of the Commission Order approving that *Stipulation* entered into in Case No. MC-2004-0079.

In that Count VII of Director’s Complaint only calls for the Commission to make a determination of whether the Respondent has violated a standing Commission Order, no extra-statutory exercise of the judicial power is called for. As such, Respondent’s *Motion to Dismiss Count VII* is without merit.

DIRECTOR’S RESPONSE TO RESPONDENT’S ALLEGATION #2

Amega claims a violation of due process in that the Director is an employee of the Commission. The Director is charged with the administration of Chapter 700 except the power to discipline a registration. 4 CSR 240-120.031. The Commission cannot

² All Statutory references contained herein are to RSMo 2000, unless otherwise noted.

determine Amega's complaints about the constitutionality of a statute, therefore, Amega's claim must fail.

DIRECTOR'S RESPONSE TO RESPONDENT'S PARAGRAPH #3

Director hereby readopts and re-incorporates all prior responses, claims, motions, and etc., and does not hereby waive or abandon the same, nor any defense, claim, or other matter previously asserted by Director in this cause.

WHEREFORE, having fully answered Amega's Motion to Dismiss Count VII, the Director prays that the Motion be denied.

/s/ Sarah Kliethermes
Sarah L. Kliethermes
Missouri Bar No. 60024

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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 counsel of record this 28th day of January, 2008.

/s/ Sarah Kliethermes
Sarah L. Kliethermes

c. On May 28, 2004, the Commission ordered that the hearing on the Complaint be bifurcated. The Commission held the first phase of the bifurcated hearing, to determine whether Amega had violated the law, on June 2, 2004. On September 2, 2004, the Commission issued a Report and Order, finding that Amega had violated § 700.100.3 (4), RSMo and § 700.045, RSMo, and ordered that the second phase of the bifurcated hearing be held on September 15, 2004.

d. Before the second phase of the bifurcated hearing could be held, Amega obtained a writ of prohibition from the Cole County Circuit Court to prevent the Director and Commission from exercising further jurisdiction or taking further action in the case. The said writ of prohibition was reversed on appeal, however. The circuit court accordingly issued its order dismissing the petition for writ of prohibition on June 6, 2006, and the Commission regained jurisdiction of the Complaint. The Commission has not yet scheduled a hearing on the second phase of the bifurcated hearing.

e. The parties resumed their negotiations and have now resolved all issues raised by the Complaint in this case. The parties have entered into this Agreement to set forth their agreements, which they have made in order to resolve the Administrative Case.

f. The recitals of fact contained in this Paragraph 2 are substantive provisions of this Agreement, and not mere recitals.

3. Suspension of Amega's Registration as a Manufactured Housing Dealer.
Amega agrees that its registration as a manufactured housing dealer in Missouri, under Chapter 700, RSMo, shall be suspended for a period of twenty (20) days, on the following terms:

a. The suspension shall be for a period of twenty (20) consecutive calendar days, commencing on the effective date of the Commission's order approving this Stipulation and Agreement (the "Suspension Period"); provided, however, that the Suspension Period shall not begin sooner than seven (7) days after the Commission issues its order approving the Agreement.

b. During the Suspension Period, Amega shall not sell or offer for sale, on consignment or otherwise, a manufactured home or modular unit from its sales lot or place of business in Ashland, Missouri (the "Ashland Lot"). During the Suspension Period, Amega shall not do any act at the Ashland Lot that it is only permitted to do by virtue of its registration with the Commission as a manufactured housing dealer pursuant to § 700.090, RSMo. The Parties understand and agree, however, that the said suspension shall not prohibit business activity at locations other than the Ashland Lot.

c. During the Suspension Period, Amega shall not have any of its sales staff personnel on the Ashland Lot. Amega shall be permitted to have clerical staff on the Ashland Lot during the Suspension Period in order to perform the functions described in paragraph 3.f. hereof. During the Suspension period, Amega shall not have

any contact with any other customers or potential customers on the Ashland Lot with respect to sales of new or used manufactured homes. Amega shall lock or otherwise secure the Ashland Lot at all times in the same manner that it has customarily secured the said lot during the hours when it is not open for business.

d. Except as allowed under the terms of Paragraph 3.e hereof, Amega shall not remove any unsold home from the Ashland Lot between the date of the execution of this Agreement and the last day of the Suspension Period.

e. Nothing in this Agreement shall prevent Amega from delivering from the Ashland Lot a home to a customer who purchased or contracted to purchase the home before the first day of the Suspension Period, nor from taking other actions to complete performance of contracts that were executed prior to the first day of the Suspension Period so long as no meetings with customers take place on the Ashland Lot during the Suspension Period. Amega shall provide to the Director, prior to the first day of the Suspension Period, a complete list of all customers that it will contact for this purpose during the Suspension Period, and a complete list of all pending contracts that were originated from the Ashland Lot.

f. Nothing in this Agreement shall prevent Amega from ordering homes from manufacturers, or from taking delivery thereof, or from performing record-keeping or other management functions at the Ashland Lot so long as no meetings with customers or potential customers take place at the Ashland Lot during the Suspension Period.

g. During the Suspension Period, Amega and its agents shall not refer potential customers to any of Amega's affiliates, nor take any action to suggest to potential customers that they can do business with Amega, directly or indirectly, at another sales lot owned or controlled by DeLine or by one of Amega's affiliates.

h. During the Suspension Period, Amega shall place a sign in a conspicuous place adjacent to the driveway of the main front entrance to the Ashland Lot, to inform members of the public that the lot is not open for business. The sign shall consist of plywood not less than 3/4 inch thick and not less than four feet square, painted white. The sign shall be subject to the approval of the Director, and shall contain a message, in black letters not less than three inches tall, in the following form: "This lot will be closed from _____, 2006 through _____, 2006." It shall also contain the following message, in black letters not less than one and one-half inches tall: "For more information, contact the Manager of the Missouri Public Service Commission's Manufactured Housing and Modular Units Program, (800) 819-3180." No other information shall appear on the sign. The sign shall remain in place throughout the Suspension Period.

i. Amega shall grant to the Director and the employees of the Commission full, complete, and unrestricted access to such records, documents and information as is required to verify Amega's compliance with the terms of this

Agreement. This shall specifically include all manufacturer invoices and manufacturer shipment documents, including bills of lading, sales and home delivery records, and a list of all homes without pending sales contracts, including the serial number(s) thereof. However, it shall not include employment information, personal or corporate tax records, Social Security numbers, or customer-related or customer-supplied information or documents, such as credit applications, financial information and the like.

4. Restrictions on Future Sales. Neither Amega, nor any of its affiliates, nor any company owned or controlled by DeLine shall sell or convey any new manufactured home (as said term is defined in applicable HUD regulations now existing or hereafter amended) unless all applicable required HUD labels and certificates are properly affixed and attached to said manufactured home.

5. Payment by Amega: Upon the final execution of this Agreement and the approval thereof by the Commission, Amega shall pay to the Director a penalty in the amount of Ten Thousand Dollars (\$10,000.00), for deposit to the public school fund pursuant to the provisions of § 166.011, RSMo.

6. Covenants by Amega Concerning Sales of Manufactured Homes in the Future: Amega and DeLine, on their own behalf and on behalf of affiliates of Amega and entities owned or controlled by DeLine, further covenant and agree with the Director as follows:

a. In the event that Amega, or an affiliate of Amega, or an entity owned or controlled by DeLine shall, in the future, receive title to any manufactured home that does not have affixed to it any data plate or seal that is required for the home to be resold, Amega, its affiliate, or DeLine, as appropriate, shall give notice to the Director of the fact that Amega, its affiliate, or DeLine has received such manufactured home.

b. Amega and DeLine recognize and understand that, from time to time, the Director places "prohibitive sale notices" on certain manufactured homes (which is generally referred to in the manufactured home industry as "red tagging" a manufactured home). Amega and DeLine covenant and agree that Amega, its affiliate, or DeLine, will not sell any manufactured home that is "red tagged" at the time of sale and will not sell any manufactured home that does not contain or have affixed to it a HUD data plate or label or modular seal.

c. In the event that Amega, its affiliate, or DeLine violates any covenant contained in this Paragraph 6, Amega, its affiliate, or DeLine, as appropriate, shall pay to the Director, as a penalty, the amount of Ten Thousand Dollars (\$10,000.00) per occurrence, for deposit to the public school fund, pursuant to § 166.011, RSMo. The Commission shall have the power to determine whether any violations of this Paragraph 6 have occurred, subject to rights of appeal and judicial review as provided for under Missouri law.

d. DeLine has been made a party to this Agreement solely for the purpose of personally guaranteeing the obligations of Amega or of its affiliate or of a company owned or controlled by DeLine to pay the liquidated damages described above, and DeLine hereby personally guarantees the payment of any and all liquidated damages which may be payable by Amega, its affiliate, or a company owned or controlled by DeLine to the Director pursuant to this Paragraph 6. However, the personal guarantee and personal liability of DeLine as stated herein shall be limited solely to payment of liquidated damages if the same become payable, and DeLine's personal guarantee does not extend to any other obligation of Amega, its affiliate or company owned or controlled by DeLine, undertaken in this Agreement. Specifically, but not in limitation of the foregoing, DeLine shall have no personal liability obligation to ensure the compliance by Amega or its affiliate with the provisions of this Paragraph 6.

7. Commission Approval: No Effect on Future Cases: Agreement Not to Seek Judicial Review: Amega agrees that it will not take any further action to seek judicial review of, or to otherwise challenge, the findings of fact or conclusions of law as set forth in the Report and Order that the Commission issued in the Administrative Case on September 2, 2004; provided, however, that if this Agreement is not approved and adopted by the Commission in total, Amega shall be free to seek any and all judicial review and shall be free to seek any and all judicial challenges that are available to it under applicable law.

The parties have settled the disputes between them, as described in the Complaint, as a result of the uncertainty of proceeding with litigation of the Complaint. This Agreement has resulted from extensive negotiations between the signatories, and the terms hereof are interdependent. In the event the Commission does not adopt this Agreement in total, then this Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof, and no portion of this Agreement shall be admissible in any judicial, administrative, or other proceeding to which any Party is a party. The stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

If the Commission accepts the specific terms of this Agreement, the parties waive, with respect to the issues resolved herein, their respective rights, pursuant to § 536.080.1, RSMo, to present testimony; to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to § 536.080.2, RSMo; and their respective rights to seek rehearing pursuant to § 386.500, RSMo; and to seek judicial review pursuant to § 386.510, RSMo.

The parties agree to cooperate with each other in presenting this Agreement to the Commission for approval and shall take no action, direct or indirect, in opposition to the request for approval of this Agreement.

8. Dismissal of Complaint: Upon the final execution of this Agreement and after all covenants and conditions stated herein are completed by Amega and the

Director, the Director shall dismiss the Complaint and all portions thereof and all allegations therein with prejudice such that the Complaint cannot be refiled at any time by the Director. Each Party shall be responsible for paying his or its own attorney's fees, costs, and expenses in this action, including investigative expenses.

9. **Binding Effect; Construction:** This Agreement shall be binding upon the Parties hereto and their respective heirs, executors, successors, personal representatives, administrators, and assigns. It shall be interpreted in accordance with the laws of the state of Missouri.

10. **No Adverse Inference:** All Parties had equal input with respect to the language chosen in this Agreement and, accordingly, no rule of law or construction that requires the construction hereof more favorably or strongly in favor of or against any party to this Agreement shall be employed in construing this Agreement.

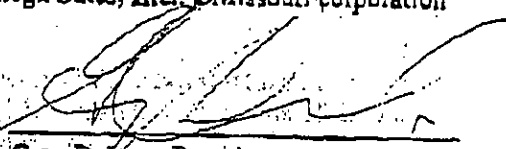
11. **Entire Agreement:** This Agreement expresses the entire Agreement of the Parties, and supersedes or replaces any and all prior discussions between the Parties or their respective attorneys.

12. **Amendment:** This Agreement shall not be amended except by a written document that is executed by all of the Parties.

13. **Full and Complete Understanding of Settlement:** The Parties, by executing this Agreement, represent and warrant to each other that they fully and completely comprehend and understand each of the provisions of this Agreement, the legal effect thereof, and the consequences of entering into same.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above-written.

Amega Sales, Inc., a Missouri corporation

By: 
Greg DeLine, President


Greg DeLine, individually

Director of the Manufactured Housing
and Modular Units Program of the Public
Service Commission

By: 
Ron Pleus