

The Director filed his *Complaint* against Burkhart Mobile Homes, Inc., on March 31, 2011, charging, among other things, that Burkhart had sold manufactured homes while its dealer's registration was expired and also had sold "red-tagged" manufactured homes whose sale was prohibited. The Director amended his complaint on September 27, 2011; in the *1<sup>st</sup> Amended Complaint*, the Director alleged that Burkhart made five sales of manufactured homes while its license was expired, three of which were also sales of "red-tagged" manufactured homes. For relief, the Director prays that the Commission will (1) find that Burkhart has violated the law as charged by the Director

and (2) authorize the Commission's General Counsel to seek penalties in Circuit Court.

### **Argument**

#### ***Summary Determination:***

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 and the supporting affidavit of Staff's witness, Tim Haden, and incorporated herein by reference is Burkhart's *Answer to the Director's 1<sup>st</sup> Amended Complaint*, filed on October 21, 2011.<sup>1</sup>

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>2</sup> Staff suggests that its motion, Burkhart's *Answer*, the affidavit of Tim Haden, and these suggestions demonstrate that there is no dispute of material fact, that the Director is entitled to relief as a matter of law and that the public interest demands that the Director's complaint be sustained.

The Director urges the Commission to understand that summary determination should be favored, not disfavored. In a proper case, summary determination conserves scarce resources, both monetary and human, for the Commission and for all the parties. Why hold an expensive and time-consuming evidentiary hearing in a case like the present, in which the facts are not in dispute? The Commission would gain nothing

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<sup>1</sup> EFIS Item 18.

<sup>2</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 accompanying motion.

thereby that it cannot get from holding an oral argument on the Director's motion and Burkhart's opposition to that motion.<sup>3</sup>

***What is this Case about?***

This case is a simple case. It is about the conduct of Burkhart Mobile Homes, Inc., in (1) continuing to sell manufactured homes despite the expiration of its dealer's registration, and (2) selling "red-tagged" manufactured homes. There is nothing complex or unclear about the charges or Burkhart's conduct.

***Violations:***

The Director, in his *1<sup>st</sup> Amended Complaint*, charges that Burkhart on five occasions sold a manufactured home while its dealer's registration was ineffective because it had expired. In its *Answer*, Burkhart admits that these charges are true: Burkhart made these sales, although it knew that it was not authorized to do so. Likewise, the Director charges that three of these homes had been "red-tagged," that is, designated as prohibited to sell without first being repaired and re-inspected. Burkhart admits that it sold them anyway, although it knew that the sales were forbidden.

Each of these incidents constitutes a clear, undeniable and unambiguous violation of Chapter 700, RSMo.

***Penalties:***

Section 700.115.2, RSMo, authorizes a penalty up to \$1,000 for each violation of §§ 700.010 through 700.115. Section 386.600, RSMo, authorizes the Commission to bring an action to recover penalties "in any circuit court in this state[.]"

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<sup>3</sup> Assuming Burkhart does oppose the Director's motion.

**WHEREFORE,** Staff prays that the Commission will grant summary determination of its *Complaint* filed herein and enter its order (1) finding that Burkhart violated Chapter 700, RSMo, by selling five manufactured homes while its dealer's registration was not in effect and by selling three manufactured homes that had been red-tagged and (2) authorizing its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law; and granting such other and further relief as the Commission deems just.

Respectfully Submitted,

**/s/ Kevin A. Thompson**

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### **Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **2<sup>nd</sup> day of November, 2011**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson