

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

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

Complainant,

vs.

Burkhart Mobile Homes, Inc.,

Respondent.

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Case No. MC-2011-0319

DIRECTOR'S MOTION FOR SUMMARY DETERMINATION

COMES NOW the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission, by and through counsel, and for his Motion for Summary Determination pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

1. 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 and seeking penalties for this conduct.

2. The Director amended his complaint on September 27, 2011. The *1st Amended Complaint* charged that Burkhart made five sales of manufactured homes while its license was expired, three of which were also sales of "red-tagged" manufactured homes.

3. Commission Rule 4 CSR 240-2.117(1) provides for summary determination as follows:

(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.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

* * *

(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.

* * *

4. The Respondent in this case is Burkhart Mobile Homes, Inc. ("Burkhart") and Burkhart filed its *Answer* to the *1st Amended Complaint* on October 21, 2011, which is incorporated herein by reference.¹ Therefore, this motion is filed after Respondent has filed its responsive pleading as required by Rule 4 CSR 240-2.117(1)(A).

5. On October 25, 2011, the Commission granted the Director's *Motion for Continuance*, cancelling the evidentiary hearing set for November 3, 2011, and the Commission has not yet set a new date for the evidentiary hearing in this case.

Therefore, this motion is filed more than sixty days prior to the commencement of the evidentiary hearing as required by Rule 4 CSR 240-2.117(1)(A).

6. There is no genuine issue as to the material facts set out in Paragraphs 7 through 31, below.

7. Burkhart admits that Complainant is the Director of Manufactured Housing and Modular Units Program of the Missouri Public Service Commission and that Commission Rule 4 CSR 240-123.020 delegates to the Director all of the Commission's powers pertaining to manufactured homes and modular units under Chapter 700, RSMo, except the powers to revoke, deny, refuse to renew, or place on probation a registration under § 700.090, which are retained by the Commission.²

8. Burkhart admits that it is Burkhart Mobile Homes, Inc., a domestic general business corporation that was administratively dissolved on August 25, 2010, and has not since been reinstated; that its principal place of business is located at 8700 E. 70 Highway, Kansas City, County of Jackson, State of Missouri; and that its registered agent is Steve Burkhart, 8700 E. 70 Highway, Kansas City, Missouri.³

9. Burkhart admits that it is in the business of selling, or offering for sale, both new and used manufactured homes and modular units and that it is therefore a manufactured home "dealer" as defined in § 700.010(4), RSMo, subject to the jurisdiction of the Commission under § 700.040, RSMo.⁴

10. Burkhart admits that it was duly registered with the Director as a dealer of

¹ For convenience, a true and correct copy of Burkhart's *Answer to the Director's 1st Amended Complaint* ("Answer") is attached.

² Answer, at ¶ 2.

³ Answer, at ¶ 3.

⁴ Answer, at ¶¶ 4 & 5.

manufactured homes and modular units until February 23, 2010, when that registration expired and that its registration has not since been reinstated or renewed.⁵

11. Section 700.045(1), RSMo, prohibits any dealer from selling any manufactured home “unless there is in effect a registration with the commission.”

12. Burkhart admits that, at all times herein pertinent, it knew and understood that it was not authorized to sell new or used manufactured homes while its dealer registration was not in effect.⁶

13. Federal rule 24 CFR § 3282.7(cc) provides:

To red tag means to affix a notice to a manufactured home which has been found to contain an imminent safety hazard or a failure to conform with any applicable standard. A red tag is the notice so affixed to the manufactured home.

14. Section 700.015.1, RSMo, prohibits any dealer from selling any new manufactured home “unless such manufactured home complies with the code and bears the proper seal.”

15. Burkhart admits that, at all times herein pertinent, it knew and understood that it was prohibited from selling a new manufactured home that had been red-tagged.⁷

16. Burkhart admits that, on June 14, 2010, it sold a new Champion I manufactured home to William and Wanda Smith of Lansing, Kansas.⁸

17. Burkhart admits that its dealer registration was not in effect when it made the sale to William and Wanda Smith.⁹

⁵ Answer, at ¶ 6.

⁶ Answer, at ¶ 8.

⁷ Answer, at ¶ 27.

⁸ Answer, at ¶ 9.

⁹ Answer, at ¶ 10.

18. Burkhart admits that the manufactured home sold to William and Wanda Smith had been red-tagged by the Director's agent on May 20, 2010.¹⁰

19. Burkhart admits that, sometime between May 20, 2010, and September 10, 2010, it sold a new Clayton manufactured home to Milton Kutzil of Excelsior Springs, Missouri.¹¹

20. Burkhart admits that its dealer registration was not in effect when it made the sale to Milton Kutzil.¹²

21. Burkhart admits that the manufactured home sold to Milton Kutzil had been red-tagged by the Director's agent on May 20, 2010.¹³

22. Burkhart admits that, sometime between November 23, 2010, and December 30, 2010, it sold a new Champion II manufactured home to John R. Wilder of Blue Springs, Missouri.¹⁴

23. Burkhart admits that its dealer registration was not in effect when it made the sale to John R. Wilder.¹⁵

24. Burkhart admits that the manufactured home sold to John R. Wilder had been red-tagged by the Director's agent on November 23, 2010.¹⁶

25. Burkhart admits that, sometime in January or February 2011, it sold a new or used manufactured home to Ron and Jacqueline Goddard of Blue Springs, Missouri.¹⁷

¹⁰ Answer, at ¶ 28.

¹¹ Answer, at ¶ 12.

¹² Answer, at ¶ 13.

¹³ Answer, at ¶ 31.

¹⁴ Answer, at ¶ 15.

¹⁵ Answer, at ¶ 16.

26. Burkhart admits that its dealer registration was not in effect when it made the sale to Ron and Jacqueline Goddard.¹⁸

27. Burkhart admits that, in September 2010, it sold a used manufactured home to Delbert Scott of Overland Park, Kansas.¹⁹

28. Burkhart admits that its dealer registration was not in effect when it made the sale to Delbert Scott.²⁰

29. Each of the manufactured homes referred to herein was manufactured after January 1, 1974.²¹

30. Burkhart's sales of manufactured homes to William and Wanda Smith, Milton Kutzil, John Wilder, Ron and Jacqueline Goddard, and Delbert Scott as described herein violated § 700.045(1), RSMo, because Burkhart's dealer's registration was not in effect when each of these sales was made.

31. Burkhart's sales of manufactured homes to William and Wanda Smith, Milton Kutzil, and John Wilder as described herein violated § 700.015.1, RSMo, because each of these manufactured homes had been red-tagged by the Director.

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

¹⁶ *Answer*, at ¶ 34.

¹⁷ *Answer*, at ¶ 18.

¹⁸ *Answer*, at ¶ 19.

¹⁹ *Answer*, at ¶ 21.

²⁰ *Answer*, at ¶ 22.

²¹ *Affidavit of Ron Pleus*.

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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Commission

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 **2nd 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, which date is not later than the date on which this pleading is filed with the Commission as required by Rule 4 CSR 240-2.117(1)(B), relating to Summary Determination.

s/ Kevin A. Thompson