

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

Director of the Manufactured Housing)	
and Modular Units Program of the)	
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.)	

**MOTION TO DISMISS COUNTS I, III AND V,
OR ALTERNATIVE MOTION TO STRIKE**

COMES NOW Respondent Amega Sales, Inc., d/b/a Quality Preowned Homes, Columbia Discount Homes, Mark Twain Mobile Home Sales, and Chateau Homes (collectively “Amega”) and moves to dismiss Counts I, III and V of the Complaint in this cause for the following reasons and on the following grounds:

1. In Counts I, III and V, the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission (the “Director”) requests the Public Service Commission of Missouri (the “Commission”) find Amega violated Section 700.015¹ and that such violation constitutes a violation of Section 407.020. However, for the reasons set forth in this motion, such a finding cannot be made by the Commission.

¹All statutory references are to RSMo. 2000, unless otherwise noted.

Section 407.020 only authorizes a prosecuting attorney, circuit attorney or the Attorney General to commence an action to find a violation of that Section. The Director is specifically not identified as having the authority to bring such an action. Section 700.115.1 does state that a violation of Sections 700.010 to 700.115, shall constitute a violation of Section 407.020. However, Section 700.115.1, further states that only the Attorney General may seek to revoke a registration in a court for such violation. Thus, Section 700.115 does not expand the class of parties that can bring an action for violation of 407.020. In other words, the prosecuting attorney, circuit attorney, or Attorney General would not have to prove the elements of a violation of Section 407.020, but only that the party violated Sections 700.010 to 700.115. Section 700.115 does not grant the Commission the authority to find a violation of Section 407.020.

Additionally, Section 700.115 expressly authorizes the Attorney General, and only the Attorney General, to bring a suspension or revocation action. Neither the Director nor the Commission is authorized under Section 700.115 to seek a revocation or suspension of registration. The Commission is only granted the power and authority expressly conferred by statute. *See Public Service Commission of Missouri v. St. Louis-San Francisco Railway Co.*, 256 S.W. 226 (Mo. banc 1923). Accordingly, the Commission does not have authority to suspend or revoke a registration pursuant to Section 700.115.

Section 700.100 is the statutory grant of authority for the Commission to suspend or revoke a registration. Subsection 3 of that Section sets forth a list of events the occurrence of which the Commission can use to suspend or revoke a registration. The only violations of Chapter 700 that authorize the Commission to revoke or suspend a registration are violations of Sections 700.090 and 700.045. The list does not include a violation of Section 700.015. Therefore, a violation of Section

700.015 does not vest the Commission with the authority to suspend or revoke a registration. The Complaint alleges that Amega violated Section 700.015, and therefore under Section 700.115 also violated Section 407.020. Section 700.100.3(4) gives the Commission the authority to suspend or revoke a registration for a violation of Section 407.020. Therefore, the Director is requesting that the Commission expand its statutory authority beyond that which is expressly granted to it and revoke or suspend Amega's registration under Section 700.100.3(4). Doing so is unlawful. Using Section 700.115 to find a violation of Section 407.020 so that a registration can be revoked for a violation of Section 700.015 flies in the face of the express language of Chapter 700 and the legislative intent. *See State ex rel. Mobile Homes Estates, Inc. v. Public Service Commission of Missouri*, 921 S.W.2d 5 (Mo. Ct. App. 1996).

Section 700.115 is not a grant of authority to the Director or the Commission to seek or find a violation of 407.020, but rather, Section 700.115 assists a prosecuting attorney, circuit attorney or the Attorney General in proving its case under Section 407.020. Additionally, Section 700.115 is an authorization to the Attorney General, and only the Attorney General, to seek a suspension or revocation of a registration in a court. Accordingly, neither the Director, nor the Commission, have authority to seek the remedy sought or to render the decision sought in Counts I, III and V.

2. According to the express language of Section 407.020, only the courts of this state may find a violation of Section 407.020 RSMo. The case law decided under Section 407.020 RSMo. uniformly states that the law leaves "it to the court in each particular instance to declare whether fair dealing has been violated." *State ex rel. Webster v. Cornelius*, 729 S.W.2d 60, 64 (Mo. App. 1987) (quoting *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 368 (Mo. App. 1973)).

Section 407.020 RSMo. does not itself define deceptive practices. The result is that it is left "to the court in each particular instance the determination of whether fair dealing has been violated." *State ex rel. Webster v. Areaco Inv. Co.*, 756 S.W.2d 633 (Mo. App. 1988).

These cases make it clear that it is the function of the judiciary, and not administrative agencies, to interpret Section 407.020 RSMo. and to determine whether that statute has been violated. These cases expressly state that only courts have the power to make this determination. There cannot be any more clear authority that in order to find a violation of this statute, the body making that finding must possess the power to carry out the judicial function. Furthermore, as stated above, the Attorney General may seek to revoke a registration "in a circuit court." Section 700.115.1. Therefore, the Commission is not the proper arbiter for such actions, and the Director is not the proper entity to bring such an action.

Accordingly, if the Commission were to find a violation of Section 407.020 in Counts I, III and V, it would be exceeding its authority, and such findings would be unlawful. The Commission is only vested with the powers conferred on it by statute. *See Public Service Commission of Missouri v. St. Louis-San Francisco Railway Co.*, 256 S.W. 226 (Mo. banc 1923). In fact, "[n]either convenience, expediency, or necessity are proper matters for consideration in determination of the issue here submitted. Either or all of these can only be urged in support of an act of the Commission clearly authorized by the statute. We say clearly authorized because the statutory origin and administrative character of the Commission render it necessary that its power be warranted by the letter of the law or such a clear implication flowing therefrom as is necessary to render the power conferred effective." *State ex rel. Kansas City v. Public Service Commission of Missouri*, 257 S.W.

462, 462-63 (Mo. banc 1923). No statute has clearly authorized the Commission to rule on criminal violations of Section 407.020 RSMo, and therefore, the Commission is without authority to so act.

3. The Director purports to be employed by, part of and a subdivision of the Commission. The finder of fact in this case is the Commission itself. Therefore, both the complaining party and the trier of fact in this cause are essentially one and the same entity and are part of the same governmental agency. If this case is allowed to continue, the same governmental entity or agency will be acting as prosecutor, finder of fact and jury. These facts and these circumstances violate the substantive and procedural due process clauses of the United States Constitution and Missouri Constitution, the equal protection clauses of the Missouri Constitution and the United States Constitution, and the Doctrine of Separation of Powers found in the United States Constitution and the Missouri Constitution.

4. All prior defenses, claims, motions to dismiss, motions to strike and all other motions previously or contemporaneously filed in this cause by Respondent are incorporated herein by reference and are not waived or abandoned by the filing of this Motion. By filing this Motion, Respondent does not waive or abandon any defense, claim or other matter previously asserted by Respondent in this cause.

WHEREFORE, Respondent prays that Counts I, III and V of the Complaint in this cause be dismissed, that costs in this cause be taxed to Complainant, and for such other and further relief as the Commission deems just and proper.

In the alternative, Amega requests that the Commission strike from the prayer for relief in Counts I, III and V, the request that the Commission find that Amega violated Section 407.020.

Such request cannot be sought by the Director and is beyond the authority of the Commission to grant and would be unlawful, arbitrary and capricious.

/s/ Thomas M. Harrison
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The undersigned certifies that a complete and conformed copy of the foregoing document was faxed and mailed to each attorney who represents any party to the foregoing action, by U.S. Mail, postage prepaid in the proper amount, at said attorney's business address.

/s/Thomas M. Harrison
Dated: January 18, 2008