

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

Director of the Manufactured Housing and)
Modular Units Program of the Missouri)
Public Service Commission,)
)
Complainant,)
)
v.)
)
Amega Sales, Inc.)
)
Respondent.)

Case No. MC-2008-0071

**RESPONDENT'S
ISSUES LIST AND STATEMENT OF POSITION**

COMES NOW Respondent Amega Sales, Inc. ("Amega") and provides the following list of issues to be determined in this cause and Amega's statement of position with regard to the issues, all pursuant to the Order Adopting Procedural Schedule issued November 7, 2007 and the Order Rescheduling Hearing entered on April 10, 2008, in this cause:

General Issues

1. Does the commission have jurisdiction and authority to determine a violation of section 407.020 RSMo. in this case for any purpose?

Amega's Position Statement: The commission does not have jurisdiction.

2. Does section 386.510 RSMo., as applied to this case, violate the Missouri Constitution, and specifically Art. I, Section 14, Art. I, Section 10, Art. V, Section 14, and Art. V, Section 18 thereof?

Amega's Position Statement: This statute does violate those constitutional provisions.

3. Does section 386.510 RSMo., as applied to this case, violate the Tenth and Fourteenth Amendments to the U.S. Constitution?

Amega's Position Statement: This statute does violate those constitutional provisions.

4. Does the commission have jurisdiction to determine whether a criminal violation of section 407.020 RSMo. has occurred?

Amega's Position Statement: The commission does not have jurisdiction.

5. What is the applicable standard that the Complainant is required to meet in this case to establish a violation of section 407.020 RSMo.?

Amega's Position Statement: The Complainant must prove his case beyond a reasonable doubt.

6. Does the Director have the authority to file and prosecute a criminal action under section 407.020 RSMo. or a civil action under sections 407.020 and 407.025 RSMo.?

Amega's Position Statement: The Director does not have authority.

7. Is the Respondent entitled to a trial by jury with respect to the Complainant's claims in this case that section 407.020 RSMo. has been violated?

Amega's Position Statement: Respondent does have a right to a jury trial.

8. Has any court of competent jurisdiction previously made a determination that section 407.020 RSMo. has been violated with respect to the homes and the consumers involved in this case?

Amega's Position Statement: No.

9. If the commission finds in favor of Complainant, may the commission sanction Amega's dealer registrations for all five of its sales lots if the conduct at issue occurred on only one or two of those sales lots?

Amega's Position Statement: No, all of the registrations are not subject to sanction.

10. Is there a definition of the term "offer for sale" concerning manufactured homes in applicable statutes or regulations? If not, does the commission have authority to supply a definition of that term in this case? If so, what is that definition?

Amega's Position Statement: The term is not defined in applicable statutes or regulations and the commission does not have authority to provide such a definition.

11. What is the definition and scope of the "Code" as used in the Director's complaint and as applicable to this case?

Amega's Position Statement: The code consists of Chapter 700, RSMo., 24 C.F.R. Part 3280 and 24 C.F.R. Part 3282.

12. Do Missouri's regulatory and enforcement schemes for manufactured homes comply with the federal standards and regulations exactly as required by applicable federal law, or do they deviate from the federal standards and thereby fail to comply with the preemption provisions of the applicable federal statutes and regulations?

Amega's Position Statement: The regulatory and enforcement schemes do not comply with federal standards and are therefore preempted by federal standards and are unenforceable.

13. Should the Director be required to pay all or part of Amega's attorney's fees in this case under section 536.087 RSMo.?

Amega's Position Statement: Yes.

14. For each of the homes in question, when was each home sold to the buyer(s)?

Amega's Position Statement: The Whiteford home was never sold. The Gilmore and Nelson homes were sold under the meaning of the code and they were in full compliance with the code and after full disclosure of the condition thereof had been made.

Nelson Home Issues

1. Was the Nelson home sold when it did not comply with the code?

Amega's Position Statement: No.

2. Was the Nelson home offered for sale when it did not comply with the code?

Amega's Position Statement: No.

3. Did Amega violate section 407.020 RSMo. in connection with the sale of the Nelson home?

Amega's Position Statement: No.

4. Did the Nelsons suffer an ascertainable loss in connection with the purchase of their home such that Amega can be found to have violated section 407.020 RSMo. in connection with the sale of their home?

Amega's Position Statement: No.

5. Did Amega know that the Nelson home did not comply with the code when it was sold?

Amega's Position Statement: The Nelson home did comply with the code when it was sold.

6. Did Amega know that the Nelson home did not comply with the code when it was offered for sale?

Amega's Position Statement: The Nelson home did comply with the code when it was offered for sale.

7. Did Amega sell or offer for sale the Nelson home when it was subject to a "red tag" or when it did not have HUD labels affixed to it?

Amega's Position Statement: No.

8. Did Amega, acting as a reasonable manufactured home dealer under all of the circumstances regarding the sale or offer for sale of the Nelson home, know that the Nelson home did not comply with the code when it was sold or offered for sale to the Nelsons?

Amega's Position Statement: Amega acted as a reasonable manufactured home dealer and did not know that the Nelson home did not comply with the code when it was sold or offered for sale.

9. Did Amega willfully and knowingly make misrepresentations to the Nelsons, fail to disclose to the Nelsons, and conceal material facts about the Nelson home?

Amega's Position Statement: No.

10. Have the Nelsons been damaged?

Amega's Position Statement: No.

11. Is the Nelsons' request that the Director not proceed with action against Amega based on the Nelsons' complaint binding upon the Director?

Amega's Position Statement: Yes.

Whiteford Home Issues

1. Was the Whiteford home sold when it did not comply with the code?

Amega's Position Statement: No.

2. Was the Whiteford home sold at all?

Amega's Position Statement: No.

3. Was the Whiteford home offered for sale when it did not comply with the code?

Amega's Position Statement: No.

4. Did Amega violate section 407.020 RSMo. in connection with the sale of the Whiteford home?

Amega's Position Statement: No.

5. Did Whiteford suffer an ascertainable loss in connection with the purchase of the Whiteford home such that Amega can be found to have violated section 407.020 RSMo. in connection with the sale of that home?

Amega's Position Statement: No.

6. Did Amega know that the Whiteford home did not comply with the code when it was sold (assuming it was sold at all)?

Amega's Position Statement: The home was not sold to Whiteford so whether the home complied with the code when it was sold is not applicable in this case.

7. Did Amega know that the Whiteford home did not comply with the code when it was offered for sale?

Amega's Position Statement: No.

8. Did Amega sell or offer for sale the Whiteford home when it was subject to a "red tag" or when it did not have HUD labels affixed to it?

Amega's Position Statement: No.

9. Did Amega, acting as a reasonable manufactured home dealer under all of the circumstances regarding the sale or offer for sale of the Whiteford home, know that the Whiteford home did not comply with the code when it was sold (if it was sold) or offered for sale?

Amega's Position Statement: Amega did act as a reasonable manufactured home dealer and did not know that the home did not comply with the code when it was offered for sale.

10. Did Amega willfully and knowingly make misrepresentations to Mr. Whiteford, fail to disclose to Mr. Whiteford and conceal material facts about the Whiteford home?

Amega's Position Statement: No.

11. Has Mr. Whiteford been damaged?

Amega's Position Statement: No.

Gilmore Home Issues

1. Was the Gilmore home sold when it did not comply with the code?

Amega's Position Statement: No.

2. Was the Gilmore home offered for sale when it did not comply with the code?

Amega's Position Statement: No.

3. Did Amega violate section 407.020 RSMo. in connection with the sale or offer for sale of the Nelson home?

Amega's Position Statement: No.

4. Did the Gilmores suffer an ascertainable loss in connection with the purchase of their home such that Amega can be found to have violated section 407.020 RSMo. in connection with the sale of their home?

Amega's Position Statement: No.

5. Did Amega know that the Gilmore home did not comply with the code when it was sold?

Amega's Position Statement: No.

6. Did Amega know that the Gilmore home did not comply with the code when it was offered for sale?

Amega's Position Statement: No.

7. Did Amega sell or offer for sale the Gilmore home when it was subject to a "red tag" or when it did not have HUD labels affixed to it?

Amega's Position Statement: No.

8. Did Amega, acting as a reasonable manufactured home dealer under all of the circumstances regarding the sale or offer for sale of the Gilmore home, know that the Gilmore home did not comply with the code when it was sold or offered for sale to Gilmores?

Amega's Position Statement: Amega did act as a reasonable manufactured home dealer and did not know that the Gilmore home did not comply with the code when it was sold or offered for sale because it did comply with the code at those times.

9. Did Amega willfully and knowingly make misrepresentations to the Gilmores, fail to disclose to the Gilmores and conceal material facts about the Gilmore home?

Amega's Position Statement: No.

10. Have the Gilmores been damaged?

Amega's Position Statement: No.

11. Was Amega prevented from attempting to deliver the Gilmore home under the previous stipulation? Did Amega attempt to deliver the Gilmore home? Did Amega's actions regarding the Gilmore home violate the previous stipulation?

Amega's Position Statement: Amega was not so prevented, Amega did not attempt to deliver the home when it was subject to a red tag, and Amega's actions did not violate the previous stipulation.

Amega reserves the right to amend this issues list prior to the deadline for filing.

/s/ Thomas M. Harrison
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on June 4, 2008, I electronically filed the foregoing with the Missouri Public Service Commission using the EFIS system which sent notification of such filing to all counsel of record. The undersigned further 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 on June 4, 2008.

/s/ Thomas M. Harrison