

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

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

**Complainant,**

**v.**

**Amega Sales, Inc.**

**Respondent.**

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**Case No. MC-2008-0071**

**ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

COMES NOW Respondent, by and through its undersigned attorneys, and for its Answer and Affirmative Defenses to the Complaint filed in this cause states the following:

**Answer to Allegations Common to All Counts**

1. In answer to paragraph 1 of the Complaint, Respondent admits that the Public Service Commission (the "Commission") generally has jurisdiction over manufactured homes and manufactured home dealers. The remaining allegations of paragraph 1 are denied.
2. Respondent admits the allegations of paragraph 2 of the Complaint.
3. Respondent admits the allegations of paragraph 3 of the Complaint, except that it is denied that this action relates to all five of Respondent's dealer locations.
4. In answer to paragraph 4, Respondent states that §700.015 RSMo. and the provisions of the HUD Code speak for themselves. All other allegations of paragraph 4 are denied.
5. In answer to paragraph 5, Respondent states that the provisions of §407.020.1 RSMo. speak for themselves and the remaining allegations of paragraph 5 are denied.

6. In answer to paragraph 6, Respondent states that the provisions of §700.100.3(4) speak for themselves. The remaining allegations of paragraph 6 are denied.

7. Respondent denies the allegations of paragraph 7 of the Complaint.

#### **Answer to Count I**

8. Respondent denies the allegations of paragraph 9 of the Complaint.

9. Respondent denies the allegations of paragraph 10 of the Complaint.

10. Respondent denies the allegations of paragraph 11 of the Complaint.

11. Respondent admits that an inspection report is attached to the Complaint as Exhibit

C. The remaining allegations of paragraph 12 are denied.

12. Respondent denies the allegations of paragraph 13 of the Complaint.

13. Respondent denies the allegations of paragraph 14 of the Complaint.

14. In answer to paragraph 15, Respondent states that the portion of the statute quoted therein is accurately quoted. Respondent denies that it violated that statute or any other provision of law. All other allegations of paragraph 15 are denied.

WHEREFORE, Respondent prays that the Commission dismiss Count I of the Complaint, that the Commission find in favor of Respondent on Count I, for costs and for such other relief as Commission deems just and proper.

#### **Answer to Count II**

15. Respondent denies the allegations of paragraph 17 of the Complaint.

16. Respondent denies the allegations of paragraph 18 of the Complaint.

17. Respondent denies the allegations of paragraph 19 of the Complaint.

WHEREFORE, Respondent prays that the Commission dismiss Count II of the Complaint, that the Commission find in favor of Respondent on Count II, for costs and for such other relief as Commission deems just and proper.

### **Answer to Count III**

18. Respondent is without knowledge to admit or deny the allegations of paragraph 21 and therefore denies the same.

19. Respondent denies the allegations of paragraph 22 of the Complaint.

20. Respondent denies the allegations of paragraph 23 of the Complaint.

21. Respondent is without knowledge to admit or deny when the Whitford home was inspected. Respondent admits that an inspection report is attached to the complaint as Exhibit E. All other allegations of paragraph 24 are denied.

22. Respondent denies the allegations of paragraph 25 of the Complaint.

23. Respondent denies the allegations of paragraph 26 of the Complaint.

24. In answer to paragraph 27, Respondent states that the language from the statute is accurately quoted therein, but Respondent denies that it violated that statute or any other provision of law.

WHEREFORE, Respondent prays that the Commission dismiss Count III of the Complaint, that the Commission find in favor of Respondent on Count III, for costs and for such other relief as Commission deems just and proper.

### **Answer to Count IV**

25. Respondent denies the allegations of paragraph 29 of the Complaint.

26. Respondent denies the allegations of paragraph 30 of the Complaint.

27. Respondent denies the allegations of paragraph 31 of the Complaint.

WHEREFORE, Respondent prays that the Commission dismiss Count IV of the Complaint, that the Commission find in favor of Respondent on Count IV, for costs and for such other relief as Commission deems just and proper.

### **Answer to Count V**

28. Respondent is without knowledge to admit or deny the allegations of paragraphs 33 and therefore denies the same.

29. Respondent denies the allegations of paragraph 34 of the Complaint.

30. Respondent denies the allegations of paragraph 35 of the Complaint.

31. In answer to paragraph 36, Respondent admits that an inspection report is attached as Exhibit G. Respondent has no knowledge to admit or deny when Mr. Haden conducted the inspection as alleged in paragraph 36 and therefore denies that same. All other allegations of paragraph 36 are denied.

32. Respondent denies the allegations of paragraph 37 of the Complaint.

33. Respondent denies the allegations of paragraph 38 of the Complaint.

34. In answer to paragraph 39, Respondent admits that the language from the statute is accurately quoted therein, but Respondent denies that it violated that statute or any other provision of law.

WHEREFORE, Respondent prays that the Commission dismiss Count V of the Complaint, that the Commission find in favor of Respondent on Count V, for costs and for such other relief as Commission deems just and proper.

### **Answer to Count VI**

35. Respondent denies the allegations of paragraph 41 of the Complaint.

36. Respondent denies the allegations of paragraph 42 of the Complaint.

37. Respondent denies the allegations of paragraph 43 of the Complaint.

38. Respondent denies the allegations of paragraph 44 of the Complaint.

WHEREFORE, Respondent prays that the Commission dismiss Count VI of the Complaint, that the Commission find in favor of Respondent on Count VI, for costs and for such other relief as Commission deems just and proper.

#### **Answer to Count VII**

39. Respondent denies the allegations of paragraph 46 of the Complaint.

40. Respondent admits the allegations of paragraph 47 of the Complaint.

41. Respondent admits the allegations of paragraph 48 of the Complaint.

42. Respondent denies the allegations of paragraph 49 of the Complaint.

43. Respondent denies the allegations of paragraph 50 of the Complaint.

44. Respondent denies the allegations of paragraph 51 of the Complaint.

45. In answer to paragraph 52, Respondent states that the Commission generally has jurisdiction over issues dealing with manufactured homes pursuant to Chapter 700 of the Revised Statutes of Missouri. However, Respondent denies that the Commission has jurisdiction over the matters described in the Complaint filed in this cause and specifically denies that the Commission has jurisdiction over Respondent or to consider the matters and issues or to grant the relief requested by the Complainant in the Complaint.

WHEREFORE, Respondent prays that the Commission dismiss Count VII of the Complaint, that the Commission find in favor of Respondent on Count VII, for costs and for such other relief as Commission deems just and proper.

### **Affirmative Defenses**

For its affirmative defenses to all counts of the Complaint, Respondent states and alleges the following:

1. Any allegation contained in the Complaint not expressly admitted above is hereby denied by Respondent.

2. Chapter 700 of the Missouri Revised Statutes and the regulations governing the Commission fail to set forth adequately the procedure for a proceeding of this nature. Respondent states that the claims set forth in the Complaint are legal claims triable to a jury. Therefore, Respondent demands trial by jury in all issues in this cause.

3. The Commission has no jurisdiction or authority to consider this case or to grant the relief sought by Complainant in this cause, and the Commission's consideration of this cause is beyond the scope of its jurisdiction because Missouri law does not authorize the Commission to impose the penalties sought by Complainant in this cause.

4. Any civil penalty, criminal penalty or suspension imposed by the Commission in this cause would constitute a taking of property without just compensation in violation of the Missouri Constitution and the Fifth Amendment and Fourteenth Amendment of the United States Constitution.

5. This proceeding violates the Fourth, Fifth , and Sixth Amendments to the United States Constitution, the due process clauses contained in the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Constitution of the State of Missouri.

6. The Commission has no jurisdiction or authority to consider this case in that any purported delegation to the Commission of the power, right, or authority to consider or preside over this cause constitutes an illegal and unconstitutional delegation of powers to the Commission, violates the doctrine of separation of powers, and illegally attempts to put the Commission in the position of a court and to exercise judicial functions.

7. The civil penalties sought by Complainant in this action are penal in nature and therefore constitute criminal penalties, which the Commission is not authorized to impose or sanction. Accordingly, the Commission has no jurisdiction to consider this case, and this case violates the Fourth, Fifth, and Sixth Amendments to the United States Constitution as well as Article I, Section 10 of the Constitution of the State of Missouri.

8. Article I, Section 31 of the Constitution of the State of Missouri states that an administrative agency may not establish a rule which fixes a fine for violation of that rule. Complainant is acting as and on behalf of an administrative agency. The Commission is an administrative agency. The Complainant works for, is part of and is responsible to the Commission. Accordingly, this action places the same party in the position of both Complainant and finder of fact, which procedure violates Article I, Section 31 of the Constitution of the State of Missouri as well as the doctrines of separation of powers, procedural due process, substantive due process, and equal protection of the law.

9. Both the authority of the Missouri General Assembly to establish and the authority of the Complainant or the Commission to enforce §700.015 RSMo., and §407.020 RSMo. as applicable to this case and to proceed in this case generally are preempted by 42 U.S.C. Section 5401 et. seq. Section 5403 of Title 42 of the United States Code, as well as regulations that have been



promulgated thereunder, establish that any and all federal statutes and regulations concerning manufactured home safety and construction are supreme and supersede any state or local law which is not identical to the federal standards.

10. The consumers whose manufactured homes are at issue in this action have not been damaged, they entered into transactions with Respondent after being fully informed of the facts, and have completely released Respondent from liability in connection with the subject transactions.

11. In this action, Complainant is requesting the Commission to construe, interpret and enforce the code set forth in 24 CFR part 3280 and part 3282. The Commission does not have the jurisdiction, power or legal authority to do so because doing so constitutes exercise of the judicial function. The Commission is an administrative agency and does not have the power or authority to exercise the judicial function.

12. The manufactured homes in issue in this action were situated on the Respondent's sales lots for extended periods of time. Representatives of the Director performed numerous routine inspections of such homes after the alleged damage to the homes occurred. The representatives and inspectors of the Director at no time noted any damage to the homes or restricted the Respondent's ability to sell, deliver, or offer to sell any of such homes. Based on these facts, Respondent pleads the affirmative defenses of waiver, estoppel, and laches.

13. Neither §407.020 nor §700.015 RSMo., are identical to the provisions of the Code, which the Complainant claims and alleges is applicable to this action. Accordingly, the preemption provisions of 24 CFR part 3282.11 are violated, and §700.015 RSMo. and §§407.020 RSMo., as applicable to this case are preempted, illegal, void, and unenforceable.

14. The Commission has no jurisdiction, power or authority to interpret or enforce the stipulation referenced in Count VII of the Complainant's complaint because doing so would put the Commission in the position of performing and carrying out the judicial function, which the Commission is not authorized to do as an administrative agency.

15. The Commission has no power or jurisdiction to adjudicate or find a violation of Chapter 407 of the Missouri Revised Statutes. Only the courts of the State of Missouri are authorized to make such findings or to perform the judicial function.

16. The Commission has no power, jurisdiction or authority to construe, interpret or make findings of violations of §700.015 RSMo.

17. The Director has no standing or authority to bring this action under Chapter 407 or to enforce Chapter 407 of the Missouri Revised Statutes.

18. The Complaint is vague and overly broad in that it does not allege at which of Respondent's sales lots the activity in the Complaint is alleged to have occurred, nor does it state or allege which licenses the director is requesting that the Commission revoke. As alleged in paragraph 2 of the Complaint, Respondent does business in several locations. As alleged in paragraph 3 of the Complaint, the Commission has issued five separate certificates of dealer registration to Respondent. The Complaint is not precise or clear as to which of the certificates of dealer registration are at issue in this action.

WHEREFORE, Respondent requests that all counts of the Complainant's Complaint be dismissed or alternatively that the Commission find that the Respondent did not commit the violations alleged in the Complaint, for costs and for such other and further relief as the Commission deems just and proper.

/s/ Thomas M. Harrison

Thomas M. Harrison

**Van Matre, Harrison, Volkert, and Hollis, P.C.**

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Attorney for Respondent

The undersigned certifies that a complete and conformed copy of the foregoing document was 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: October 10, 2007