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

In the Matter of an Investigation to Review the)
Setup Installation Practices of Brune Mobile Sales) **File No. MO-2019-0258**

PROGRESS REPORT OF STAFF

Respectfully submitted,

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Senior Counsel
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Justin Smith
Manager, Manufactured Housing

October 28, 2019

****Denotes Confidential Information****

STAFF'S PROGRESS REPORT
Case No. MO-2019-0258

INTRODUCTION

On March 11, 2019, the Manager of the Manufactured Homes and Modular Units Program of the Public Service Commission filed a motion asking the Commission to open an investigatory docket intended to investigate the installation and set-up practices of Brune Mobile Sales. On March 27, 2019, the Commission issued its Order Opening an Investigation, which ordered Staff to undertake an investigation of Brune Mobile Sales' installation and set-up practices and to file a progress report regarding its investigation no later than September 27, 2019. Due to a discovery dispute described in more detail below, Staff requested an extension of time in which to file its report and was granted until October 28, 2019.

More specifically, the investigation focused on whether Brune Mobile Sales had obtained written waivers of installation service, but nevertheless utilized its unlicensed employees or independent contractors to setup the homes, and if so, whether and to what extent Brune Mobile Sales uses waivers to circumvent its obligation to arrange proper initial setup.

BACKGROUND

Brune Mobile Sales¹ ("Brune") is currently registered, as set forth under section 700.090, RSMo, as a dealer of manufactured units. A Certificate of Dealer Manufacturer Registration ("Certificate") was issued to Brune on January 15, 2019, and it is valid until January 15, 2020.² The Certificate lists an established place of business at 901 N. Kingshighway, Perryville, MO 63775. From November 1, 2015,

¹ During all times relevant to this investigation, Brune Mobile Sales has been the fictitious name of the business registered with the Missouri Secretary of State. Neither Brune Mobile Sales nor its owners has held a valid installers licenses.

² Brune Mobile Sales was also issued a Certificate effective during the following time periods: April 14, 2015 to January 15, 2016;

March 9, 2016 to January 15, 2017;
December 27, 2016 to January 15, 2018; and
December 18, 2017 to January 15, 2019.

to October 1, 2017, Brune sold five (5) homes with a purported written waiver of installation service;³ these homes may be further identified and described as:

- (1) ** _____
_____ ** (“Home 1”)
- (2) ** _____
_____ **
 (“Home 2”)
- (3) ** _____
_____ **
 (“Home 3”)
- (4) ** _____
_____ ** (“Home 4”)
- (5) ** _____
_____ ** (“Home 5”)

The subject of this investigation is whether Brune utilized the written waivers of installation service relating to these homes to circumvent its obligation to provide proper initial setup of the homes, and whether a licensed installer was utilized to install the homes.

APPLICABLE STATUTES AND RULES

Several statutes and rules are applicable to the investigation in this matter, including 20 CSR 4240-120.065. First, it is important to note that 20 CSR 4240-120.065’s purpose is to “set forth the extent to which manufactured home dealers are responsible for proper initial setup of new manufactured homes.”⁴ Subsection (1) governs “Manufactured Home Dealer Setup”⁵ and states:

- (1) Manufactured Home Dealer Setup.

³ See DR 0012 attached hereto as Appendix 1.

⁴ MO. CODE REGS. ANN. tit. 20, § 4240-120.065

⁵ MO. CODE REGS. ANN. tit. 20, § 4240-120.065 (emphasis added).

(A) A dealer who sells a new manufactured home shall arrange for the proper initial setup of the manufactured home unless the dealer obtains from the purchaser or the purchaser's authorized agent a written waiver of that service as described in section 700.100.3(6), RSMo.

(B) As used in this rule, "proper initial setup" means installation and setup of the home in accordance with the installation manual provided by the manufacturer of the home and in complete compliance with 24 CFR section 3285 and with all of the provisions regarding setup in sections 700.010 to 700.115, RSMo.

(C) If a dealer fails to arrange for the proper initial setup of a manufactured home, the commission may discipline the dealer's registration by suspending, revoking, or placing the registration on probation, pursuant to the provisions of section 700.100, RSMo, if the manager provides evidence to the commission, incident to an inspection, under subsections (2)(B) or (2)(C) of this rule, of set up deficiencies.

(D) The manager, in consultation with the commission staff director, after attempting to contact the entity involved and documenting consideration of potential mitigating factors, including, but not limited to, the number of similar non-compliance issues, circumstances beyond the entity's control, and the entity's responsiveness to commission requirements, may assess a two hundred dollar (\$200) inspection fee to dealers that fail to hire commission licensed installers to set up a home. The manager will track fees assessed or waived under this provision, along with any documented consideration of mitigating factors, and compile a quarterly report summarizing such information for review by the commission.

Subsection (1) (A) of 20 CSR 4240-120.065 references § 700.100.3(6), which states:

3. The following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration:

(6) As a dealer, failing to arrange for the proper initial setup of any new manufactured home or modular unit sold from or in the state of Missouri, except as allowed under subsection 5 of section 700.656; the dealer shall receive a written waiver of that service from the purchaser or his or her authorized agent[.]⁶

Section 700.100.3(6) then refers to § 700.656.5. Section 700.656, RSMo.,⁷ provides:

1. No person shall engage in the business of installing manufactured homes or hold himself or herself out as a manufactured home installer in this state unless such person holds a valid installer license issued by the commission pursuant to sections 700.650 to 700.680.

2. The installer license obtained from the commission shall be the only installer license required for installing manufactured homes within this state. No political subdivision of this state may issue an installer license or require additional professional licensure of installers already licensed by the commission.

⁶ MO. REV. STAT. § 700.100.3(6).

⁷ MO. REV. STAT. § 700.656 (emphasis added).

3. Manufactured home dealers and manufactured home manufacturers who do not subcontract with a licensed installer and who perform installations themselves or through direct agents or employees shall have at least one agent or employee who is a licensed installer.
4. Any corporation, partnership, or other legal entity that performs installation shall have at least one supervising agent who is a licensed installer.
5. A license to install manufactured homes is not required for a person who installs a manufactured home on his or her property for his or her own occupancy or who is a direct agent of a licensee, working under the licensee's supervision and within the licensee's job scope. The licensed installer is responsible for supervising all such agents for their competent and proper performance.

Based on the foregoing, a manufactured homes dealer has a responsibility to arrange for proper initial setup of the home, however, that responsibility can be discharged by written waiver executed by the home's purchaser or authorized agent when the purchaser installs a manufactured home on his or her property for his or her own occupancy.

Additionally, and likewise relevant to this investigation, there are provisions regarding property locators. The requirement that a manufactured home dealer provide a property locator within a certain time is contained at 20 CSR 4240-120.065(2) (A),⁸ which states:

(A) A dealer who sells a new manufactured home shall submit to the manufactured housing and modular units program a property locator indicating the destination of the home within five (5) business days of the date the home leaves the dealer's location or the manufacturer's location if the home is shipped directly to the consumer. For multi-section homes the five (5) business days begins when the first section leaves the dealer's or manufacturer's location. The dealer shall use the property locator form provided by the commission.

This provision clearly states that the dealer must make certain submissions to identify the destination of the home when a manufactured home leaves the dealer's lot.⁹

⁸ MO. CODE REGS. ANN. tit. 20, § 4240-120.065(2) (A). Property locators serve an important function, as they signal to Staff that a home has been moved and Staff can go inspect that home at its new location. Where the dealer does not submit these property locators, Staff is not "clued-in" to the movement of the home and, as a result, Staff is delayed in inspecting the home.

⁹ Again, these submissions are important, as they serve as a form of notification to Staff that a new manufactured home is being installed for the purchaser; these notifications are an important signal to Staff that an installed home will be ready for inspection.

THE INVESTIGATION

Staff initially propounded formal discovery on May 1, 2019, consisting of Interrogatories, Request for Production of Documents, and Request for Admissions,¹⁰ as allowed by 4 CSR 240-2.090(1).¹¹ Brune timely responded to the Request for Admissions and the parties agreed to an extension of time in which to respond to the Request for Production of Documents and Request for Admissions. Brune responded by the agreed-upon deadline. However, Brune objected to some questions because terms like “installed” and “installation” were not defined.

Staff submitted Data Requests (DR or DRs) in the Commission’s Electronic Filing and Information System (EFIS) on July 11, 2019, as allowed by 4 CSR 240-2.090 (2).¹² Per 4 CSR 240-2.090 (2) (C) and (H),¹³ responses to those requests were due in the Commission’s Electronic Filing and Information System (EFIS) on July 31, 2019. Responses were not provided by that deadline. Staff Counsel made inquiry to Brune’s Counsel by email on August 7, August 15, and August 29, and spoke with Brune’s Counsel by telephone on August 29, regarding the overdue responses. Brune’s Counsel indicated responses would be provided by September 9; however, the responses were not provided by that date and a discovery conference was held on September 17. The responses were received by email on September 20.

Discovery Responses - In General

Some general responses to Staff’s discovery requests are useful for purposes of the remainder of this Report. In response to Request for Admission Number 1, which stated “[p]lease admit that the Company did not utilize a licensed installer to install manufactured homes for: [list of homeowners identified above]”, Brune replied, “**RESPONSE:** Admit. Company affirmatively states that all above owners executed written waivers regarding installation of the homes, specifically that they would assume responsibility for installing their home.”¹⁴

¹⁰ MO-2019-0258, EFIS Item No. 4, Certificate of Service. Discovery requests were sent on May 1, 2019; however, the Certificate of Service was not filed in the docket until May 21.

¹¹ As of August 28, 2019, this rule is 20 CSR 4240-2.090(1).

¹² As of August 28, 2019, this rule is 20 CSR 4240-2.090(2).

¹³ As of August 28, 2019, this rule is 20 CSR 4240-2.090(2) (C) and (H).

¹⁴ See Response to Request for Admission 1, attached hereto as Appendix 2-C.

Additionally, Brune supplemented Interrogatory Number 4 in September by providing:

**

**17

Further discovery responses relating to each specific home, and the conclusions to be drawn from Staff's Investigation, are described below.

Discovery Responses - Home 1

DR 0009-C¹⁸ asked:

Please describe the Company's involvement with the sale and installation, as that term "installation" is defined in 4 CSR 240-127.010(1)(X) and incorporated into Chapter 120 by 4 CSR 240-120.011, of the ** _____

_____, including any and all communication the Company had with ** _____ ** regarding the installation of ** _____ ** manufactured home.

The response stated:

Company sold the manufactured home to ** _____ **, obtained a written waiver pursuant to RSMo § 700.1003 (6) from ** _____ **, and at their request hired workers to place the home on blocks, and anchor the home to the ground. Company reviewed with ** _____ ** the written waiver, including the purpose of the waiver. ** _____ ** agreed they wanted to be responsible for installing their home and executed the waiver.

DR 0010-C¹⁹ asked which of the Company's (a) employees, (b) independent contractors, or (c) what entity or individual installed the purchaser's manufactured home.

The response was: (a) N/A, (b) ** _____ = ** (c) See (b).

Based on the foregoing, Brune hired ** _____ ** to install Home 1. The Manager's records indicate that ** _____ ** did not have a valid installer license during the relevant time period. Thus, Brune has:

¹⁷ See Response to Interrogatory Number 4 and Supplemented Response, attached hereto as Appendix 4-C.

¹⁸ This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 1. DR 0009-C is attached hereto as Appendix 5-C.

¹⁹ This is marked confidential pursuant to 20 CSR 4240-2.135(2) (A) 2. DR 0010-C is attached hereto as Appendix 6-C.

(1) utilized a waiver²⁰ to circumvent its obligation to arrange for proper initial setup;²¹
(2) engaged in the business of installing a manufactured home without holding a valid installer license as prohibited by § 700.656.1, and; (3) not subcontracted with a licensed installer or not having at least one agent or employee who is a licensed installer as required by § 700.656.3. Therefore, Brune has violated statute and rule and the Manager

Discovery Responses - Home 2

DR 0003-C²² asked:

Please describe the Company's involvement with the sale and installation, as that term "installation" is defined in 4 CSR 240-127.010(1)(X) and incorporated into Chapter 120 by 4 CSR 240-120.011, of the ** _____

_____, including any and all communication the Company had with ** _____ ** regarding the installation of ** _____ ** home.

The response stated:

Company sold the manufactured home to ** _____ **, obtained a written waiver pursuant to RSMo § 700.1003(6) from ** _____ **, and at their request hired workers to join the home's sections, place the home on blocks, and anchor the home to the ground. Company reviewed with ** _____ ** the written waiver, including the purpose of the waiver. ** _____ ** agreed they wanted to be responsible for installing their home and executed the waiver.

DR 0004-C²³ asked which of the Company's (a) employees, (b) independent contractors, or (c) what entity or individual installed the purchaser's manufactured home.

The response was: (a) N/A, (b) ** _____ _____, ** (c) See (b).

Based on the foregoing, Brune hired ** _____ _____ ** to install Home 2. The Manager's records indicate that ** _____ ** did not have valid installer licenses during the relevant time period. Thus, Brune has: (1) utilized a waiver²⁴

²⁰ The purported waiver is attached hereto as Appendix 7-C.
²¹ This home was inspected by Staff and a number of installation deficiencies were identified.
²² This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 1. DR 0003-C is attached hereto as Appendix 8-C.
²³ This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 2. DR 0004-C is attached hereto as Appendix 9-C.
²⁴ The purported waiver is attached hereto as Appendix 10-C.

to circumvent its obligation to arrange for proper initial setup;²⁵ (2) engaged in the business of installing a manufactured home without holding a valid installer license as prohibited by § 700.656.1, and; (3) not subcontracted with a licensed installer or not having at least one agent or employee who is a licensed installer as required by § 700.656.3. Therefore, Brune has violated statute and rule and the Manager may file a formal complaint or other appropriate pleading within a new file to institute contested case procedures.

Discovery Responses - Home 3

DR 0001-C²⁶ asked:

Please describe the Company's involvement with the sale and installation, as that term "installation" is defined in 4 CSR 240-127.010 (1) (X) and incorporated into Chapter 120 by 4 CSR 240-120.011, of the ** _____

_____, including any and all communication the Company had with ** _____** regarding the installation of ** _____** manufactured home.

The response stated:

Company sold the manufactured home to ** _____**, obtained a written waiver pursuant to RSMo § 700.1003(6) from ** _____**, and at his request hired workers to join the home's sections, place the home on blocks, and anchor the home to the ground. Company reviewed with ** _____** the written waiver, including the purpose of the waiver. ** _____** agreed he wanted to be responsible for installing his home and executed the waiver.

DR 0002-C²⁷ asked which of the Company's (a) employees, (b) independent contractors, or (c) what entity or individual installed the purchaser's manufactured home.

The response was: (a) N/A, (b) ** _____**
(c) See (b).

Based on the foregoing, Brune hired ** _____**
to install Home 3. The Manager's records indicate that ** _____**
_____** did not have valid installer licenses during the relevant time period.

Thus, Brune has: (1) utilized a waiver²⁸ to circumvent its obligation to arrange for proper

²⁵ This home was inspected by Staff and a number of installation deficiencies were identified.

²⁶ This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 1. DR 0001-C is attached hereto as Appendix 11-C.

²⁷ This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 2. DR 0002-C is attached hereto as Appendix 12-C.

²⁸ The purported waiver is attached hereto as Appendix 13-C.

Further, Brune completed a Residential Modification Permit Application (Application)³² with a project description that stated in part that Brune would replace an old mobile home with a new mobile home. Staff asked about the Application, and why Brune would be involved, in Interrogatory Number 21, and Brune stated it was installing the home:³³

21. Regarding ** _____ ** manufactured home, please describe:

a. Why Brune Mobile Sales is listed as the contractor for ** _____ ** on a Residential Modification Permit Application for the City of Perryville, Missouri (and attached to this request as Attachment D).

b. Why Brune Mobile Sales, CW Brune, signed as an applicant on a Residential Modification Permit Application for the City of Perryville, Missouri.

ANSWER:

a) **In order to install ** _____ ** home inside city limits, the City of Perryville required this permit. Company is listed as contractor because Company was installing the home.**

b) **Company signed as applicant because Company was acting on behalf of ** _____ ** and was obtaining the permit as a courtesy to the owners.**

Based on the foregoing, ** _____ ** did not ultimately assume responsibility for installing their home; even if they had, they likely would have had a difficult time in trying to do so, as they were provided neither a set-up manual nor a homeowners' manual.³⁴ Further, despite these owners executing a written waiver of installation setup, Brune nevertheless completed permit applications identifying it as the contractor and made a sworn statement in its response to Staff that it was listed as the contractor "because Company was installing the home."³⁵ Thus, Brune has: (1) utilized

³² The confidential Application is attached hereto as Appendix 16-C.

³³ See Response to Interrogatory 21, attached hereto as Appendix 17-C.

³⁴ See Responses to Request for Admission 4 and Admission 5, attached hereto as Appendix 18-C and Appendix 19-C, respectively.

³⁵ See Response to Interrogatory 21, attached hereto as Appendix 17-C.

a waiver³⁶ to circumvent its obligation to arrange for proper initial setup;³⁷ (2) engaged in the business of installing a manufactured home without holding a valid installer license as prohibited by § 700.656.1, and; (3) not subcontracted with a licensed installer or not having at least one agent or employee who is a licensed installer as required by § 700.656.3. Therefore, Brune has violated statute and rule and the Manager may file a formal complaint or other appropriate pleading within a new file to institute contested case procedures.

Discovery Responses - Home 5

DR 0005-C³⁸ asked:

Please describe the Company's involvement with the sale and installation, as that term "installation" is defined in 4 CSR 240-127.010(1)(X) and incorporated into Chapter 120 by 4 CSR 240-120.011, of the ** _____

_____ **, including any and all communication the Company had with ** _____ ** regarding the installation of ** _____ ** manufactured home.

The response stated:

Company sold the manufactured home to ** _____ **, obtained a written waiver pursuant to RSMo § 700.1003(6) from ** _____ **, and at their request hired workers to join the home's sections, place the home on blocks, and anchor the home to the ground. Company reviewed with ** _____ ** the written waiver, including the purpose of the waiver. ** _____ ** agreed they wanted to be responsible for installing their home and executed the waiver.

DR 0006-C³⁹ asked which of the Company's (a) employees, (b) independent contractors, or (c) what entity or individual installed the purchaser's manufactured home.

The response was: (a) N/A, (b) ** _____ ** (c) See (b).

DR 0013 asked Brune to provide deeds, property tax records and documents the Company reviewed and/or relied on from title companies or bank lenders to verify that persons purchasing manufactured homes from the Company own the real estate upon

³⁶ The purported waiver is attached hereto as Appendix 20-C.

³⁷ This home was inspected by Staff and a number of installation deficiencies were identified.

³⁸ This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 1. DR 0005-C is attached hereto as Appendix 21-C.

³⁹ This is marked confidential pursuant to 20 CSR 4240-2.135 (2) (A) 2. DR 0006-C is attached hereto as Appendix 22-C.

which the home was or would be installed. As part of that response, Brune provided a signed document⁴⁰ stating that:

** _____ **

Will be their own general contractor on all work to be done on their project at ** _____ **. To including [sic] disbursement of money or funds for subcontractor which they have chosen and day to day operations of site.

This acknowledgement of Home 5’s purchasers’ status as a “general contractor” was not provided for other homes that are the subject of this investigation. Regardless, this acknowledgement as to Home 5 is a further layer to Brune’s circumvention of its obligation to provide for proper initial set-up of the home. Cutting through the form to get to the substance, Brune hired independent contractors ** _____

_____ to install Home 5. The Manager’s records indicate that ** _____ _____, ** did not have valid installer licenses during the relevant time period.

Thus, Brune has: (1) utilized a waiver⁴¹ (and the above-described acknowledgement) to circumvent its obligation to arrange for proper initial setup;⁴² (2) engaged in the business of installing a manufactured home without holding a valid installer license as prohibited by § 700.656.1, and; (3) not subcontracted with a licensed installer or not having at least one agent or employee who is a licensed installer as required by § 700.656.3. Therefore, Brune has violated statute and rule and the Manager may file a formal complaint or other appropriate pleading within a new file to institute contested case procedures.

CONCLUSION

While the statutes and rules contemplate that a dealer’s responsibility to arrange for proper initial setup of the home can be discharged by written waiver executed by the home’s purchaser(s) or authorized agent *when that person installs a manufactured home on his or her property* for his or her own occupancy, the statutes and rules do not allow a dealer to circumvent its responsibility to arrange for proper initial setup by having its purchaser(s) sign waivers before or after the dealer or its employees, agents, or

⁴⁰ Attached hereto as Appendix 23-C.

⁴¹ The purported waiver is attached hereto as Appendix 24-C.

⁴² This home was inspected by Staff and a number of installation deficiencies were identified.

independent contractors install the home in order to release the dealer from accountability for installation deficiencies. Further, § 700.656.3 addresses the situation in which dealers perform “installations themselves or through direct agents or employees” and requires that the dealer “have at least one agent or employee who is a licensed installer.”

Because Brune has violated statute and rule by (1) utilizing a waiver to circumvent its obligation to arrange for proper initial setup; (2) engaging in the business of installing a manufactured home without holding a valid installer license as prohibited by § 700.656.1, and; (3) not subcontracting with a licensed installer or not having at least one agent or employee who is a licensed installer as required by § 700.656.3, the Manager may file a formal complaint or other appropriate pleading within a new file to institute contested case procedures.

Missouri Public Service Commission

Data Request

Data Request No.	0012
Company Name	Brune Mobile Sales-(Manufactured Housing)
Case/Tracking No.	MO-2019-0258
Date Requested	7/11/2019
Issue	General Information & Miscellaneous - Other General Info & Misc.
Requested From	Thad Brady
Requested By	Lexi Klaus
Brief Description	Sold Home Numbers
Description	Please identify the number of homes sold from November 1, 2015, through October 31, 2017, in which the Company obtained a purported waiver of installation service as described in 4 CSR 240-120.065(1)(A) from the purchaser or the purchaser's authorized agent, as defined in 4 CSR 240-127.010(1)(B). DR requested by Lexi Klaus (lexi.klaus@psc.mo.gov)
Due Date	7/31/2019

The attached information provided to Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. MO-2019-0258 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Brune Mobile Sales-(Manufactured Housing) office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Brune Mobile Sales-(Manufactured Housing) and its employees, contractors, agents or others employed by or acting in its behalf.

Security	Public
Rationale	NA

Response to Data Request No. 12: 5

APPENDICES 2-24

HAVE BEEN DEEMED

CONFIDENTIAL

IN THEIR ENTIRETY