



Missouri Public Service Commission

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March 30, 2001

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Director, Utility Services

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Director, Administration

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³
MAR 30 2001

RE: Case No. MC-2000-818

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **MEMORANDUM OF LAW AND REQUEST FOR PENALTIES**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Bruce H. Bates
Associate General Counsel
(573) 751-743400
(573) 751-9285 (Fax)
bbates@mail.state.mo.us

BHB:ccl
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED³

MAR 30 2001

Missouri Public
Service Commission

Director of the Division of Manufactured)
Homes, Recreational Vehicles and)
Modular Units of the Public Service)
Commission,)

Complainant,)

v.)

Case No. MC-2000-818

Manufactured Housing Services of Bonne)
Terre d/b/a Oakcreek Village of Bonne)
Terre,)

Respondent.)

MEMORANDUM OF LAW AND REQUEST FOR PENALTIES

COMES NOW the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission ("Director" or "Complainant") and for his *Memorandum of Law and Request for Penalties* states to the Missouri Public Service Commission ("Commission") as follows:

1. On June 14, 2000, the Director filed a *Complaint* against Manufactured Housing Services of Bonne Terre d/b/a Oakcreek Village of Bonne Terre ("Respondent") in which he requested that the Commission "[s]uspend the Dealer Registration of Oakcreek under the authority provided the Commission in section 700.100.3(4) until such time as the unauthorized

alteration and the setup deficiencies are corrected, or a period of 30 days, whichever is longer.” Section 700.100.3, RSMo (2000) provides in part that: “[t]he following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer’s or dealer’s registration: (4) Engaging in any conduct which constitutes a violation of the provisions of section 407.020, RSMo.” Section 407.020 deals with unlawful merchandising practices.

2. On July 27, 2000, the Commission issued its *Order Finding Default*. On October 12, 2000, the Commission issued its *Second Order Finding Default*, in which it stated, “[t]hat the averments in the complaint filed on June 14, 2000, by the Director...are deemed admitted.” (The previous default order had been set aside by the Commission on September 13, 2000, because Respondent had stated to the Commission that it had not realized the importance of failing to respond to the *Complaint*, and had not hired an attorney.)

3. The Director filed a *Motion to Reopen Case* on December 20, 2000, because the Commission had closed the case without granting the Director the remedies he requested in his *Complaint*. On February 21, 2001, another prehearing conference was held in this case. Neither Respondent nor anyone representing it appeared.

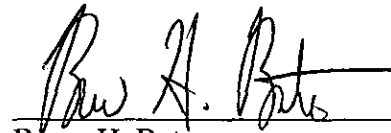
4. Rule 4 CSR 240-2.116(3) states that “[a] party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a...prehearing conference....” (Emphasis added.) The language of the rule provides that a *party* may dismissed from a case because to dismiss the case itself would produce the perverse result of rewarding the defaulting party. It is clear from the circumstances that Respondent can be held in default for failure to appear at the prehearing conference on February 21, and that it should be. It is equally clear, for these reasons, that the Commission made the correct determination in defaulting Respondent.

5. The Director again requests that the Commission suspend the Dealer Registration of Respondent under the authority provided it in Section 700.100.3(4) until such time as the deficiencies set out in the *Complaint* are corrected, or for a period of 30 days, whichever is longer. Staff notes that this registration has expired; however, the same owner, Michael J. Havicon, has submitted an application for registration to do business under a new name. Therefore, Staff's position remains the same.

WHEREFORE, the Director prays that the Commission accept his *Memorandum of Law and Request for Penalties* as set out above and grant him the penalties requested against Respondent.

Respectfully submitted,

DANA K. JOYCE
General Counsel

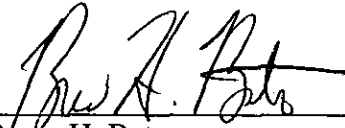
A handwritten signature in black ink, appearing to read "Bruce H. Bates", is written over a horizontal line.

Bruce H. Bates
Associate General Counsel
Missouri Bar No. 35442

Attorney for the Staff of the
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 30th day of March 2001.



Bruce H. Bates

**Service List for
Case No. MC-2000-818
Revised: March 30, 2001 (ccl)**

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