

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Director of the Department of)	
Manufactured Homes and Modular Units)	
of the Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. MC-2000-397</u>
)	
Rock Road Trailer Parts and Sales, Inc.,)	
)	
Respondent.)	

ORDER DENYING MOTION FOR DEFAULT,
GRANTING MOTION TO FILE ANSWER OUT OF TIME,
SETTING PREHEARING CONFERENCE, AND REQUIRING FILING
OF PROCEDURAL SCHEDULE

The Director of the Department of Manufactured Homes and Modular Units of the Public Service Commission (Director) filed a formal complaint with the Missouri Public Service Commission on December 29, 1999, against Rock Road Trailer Park and Sales, Inc. (Rock Road Trailer). The Director alleged that Rock Road Trailer failed to properly comply with the setup procedures for a manufactured home and failed to create the setup deficiencies within a reasonable amount of time as specified by the Director, as required by Section 700.100.3(6), RSMo 1994. The Director also contended that Rock Road Trailer sold a manufactured home that did not comply with the Code in violation of Section 700.015.1, RSMo Supp. 1999. The Director requested that the Commission revoke the dealer registration of Rock Road Trailer, and authorize the General Counsel to seek

penalties from Rock Road Trailer pursuant to Section 700.115.2, RSMo Supp. 1999.

On January 4, 2000, the Commission issued a Notice of Complaint requiring Rock Road Trailer to answer within 30 days from the date of the notice (February 3, 2000), by filing a response with the Secretary of the Commission. No responses were filed with the Secretary of the Commission, and on February 8, 2000, the Director, by and through the Commission's Office of General Counsel, filed a Motion for Default. The Director notes that as of February 7, 2000, Rock Road Trailer had not responded to the complaint and that pursuant to 4 CSR 240-2.070(9), if a respondent fails to respond to a complaint in a timely fashion (30 days pursuant to 4 CSR 240-2.070(7)), the complainant's averments shall be deemed admitted unless the Commission finds good cause to extend the filing date of the answer. The Director alleges Rock Road Trailer should be deemed to have admitted the averments contained within the complaint.

On February 22, 2000, Rock Road Trailer filed an Answer and a Motion to Supplement Answer or to File Answer Out of Time (Answer). The Answer indicates that Rock Road Trailer admits the allegations contained in the complaint paragraphs 1 through 16. However, Rock Road Trailer denies that it failed to comply with setup procedures or failed to correct setup deficiencies within a reasonable time as specified by the Director. Rock Road Trailer further denies that the home sold to Ms. Piccininno was sold in violation of the Code in that the home is a preowned manufactured home that by reason of normal wear and tear cannot be held to compliance with the same Code

as a new manufactured home. Further, Rock Road Trailer states that the home was sold in an "as is" condition, pursuant to a contract by the parties. Rock Road Trailer alleges that the Director does not have standing or jurisdiction to file a complaint with respect to a preowned home. Rock Road Trailer requests that the Commission make a finding that the Director does not have jurisdiction or standing to bring the complaint in that the home in question is a preowned manufactured home and therefore the complaint should be dismissed.

Rock Road Trailer states that in the event the Commission finds that the Director does have standing and jurisdiction to proceed in this matter, Rock Road Trailer requests that, in the alternative, the Commission make the following findings:

- (A) Find that Rock Road Trailer properly complied with setup procedures for the manufactured home mentioned in the complaint and that any deficiencies existing after the initial setup were not due to failure to properly comply with setup procedures;
- (B) Find that the manufactured home mentioned in the complaint was sold in compliance with the Code or, in the alternative, is not required to be sold in compliance with the Code, and that neither the Commission nor the Director have jurisdiction or standing in this case;
- (C) Find that Rock Road Trailer's dealer registration license is not subject to revocation;

(D) Find that there is no ground from which the Office of the General Counsel can seek civil penalties from Rock Road Trailer pursuant to Section 700.115.2, RSMo 1994; and

(E) Issue any other findings and orders as are just and reasonable.

Rock Road Trailer also filed a Motion to Supplement Answer or to File Answer Out of Time (Motion to Supplement) on February 22, 2000. This motion notes that as of February 21, 2000, Rock Road Trailer had not filed a formal answer to the complaint; however, Rock Road Trailer did answer the complaint by filing handwritten letters, dated January 12, 2000, and January 25, 2000, which were directed to Gene Winn of the Missouri Public Service Commission (Appendix 1 and Appendix 2 to the Motion to Supplement). The Motion to Supplement indicates that Rock Road Trailer believed that these answers were sufficient response to the complaint. Rock Road Trailer was not aware that it was necessary for the answer to the complaint to be filed by an attorney or that it should be done on a more formalized basis. The Motion to Supplement contends that Rock Road Trailer's action in filing the informal answers was made in good faith. Rock Road Trailer requests that the Commission grant it leave to supplement its answers or to file its answer to the Director's complaint out of time.

The Commission has reviewed the Motion for Default, the Answer, and the Motion to Supplement Answer, and finds that the Motion for Default shall be denied. The Commission finds that good cause exists to accept Rock Road Trailer's answer out of time.

The Commission further determines that it is appropriate to set a prehearing conference and direct the filing of a procedural schedule to ensure the prompt resolution of this matter. At the prehearing conference, the parties or their representatives should be prepared to discuss the nature of any discovery each will conduct and the interval necessary for its completion; the number of witnesses each expects to call at hearing; the number and nature of any exhibits each expects to offer at hearing; and the anticipated length of the hearing. The parties or their representatives should also be prepared to discuss the current status of settlement negotiations. It is expected that the prehearing conference will provide an opportunity for the parties to further pursue settlement discussions.

The parties shall jointly file a proposed procedural schedule. The proposed procedural schedule shall establish dates for the close of discovery and the filing of a list of contested issues and statements of position following that list of issues, as well as the witnesses to be called on each day of hearing and the order thereof. The proposed procedural schedule shall also establish dates for the hearing in this matter.

IT IS THEREFORE ORDERED:

1. That the Motion for Default filed on February 8, 2000, by the Director of the Department of Manufactured Homes and Modular Units of the Public Service Commission is denied.

2. That the Answer submitted out of time by Rock Road Trailer Parts and Sales, Inc., on February 22, 2000, is accepted for filing, and the Motion to Supplement Answer or to File Answer Out of Time,

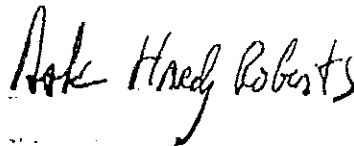
submitted by Rock Road Trailer Parts and Sales, Inc., on February 22, 2000, is granted.

3. That a prehearing conference shall be held on April 19, 2000, beginning at 10:00 a.m. The prehearing conference shall be held at the Commission's offices on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline - 1-800-392-4211, or TDD Hotline - 1-800-829-7541.

4. That the parties shall jointly prepare and file a proposed procedural schedule no later than May 1, 2000.

5. That this order shall become effective on March 28, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Vicky Ruth, Regulatory Law Judge,
by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30,
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 17th day of March, 2000.

RECEIVED
MAR 17 2000

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION