

MAY

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of January, 1993.

Marcellus & Rhonda Davis, 19730 Humphries Road)	
Platte City, Missouri 63079,)	
Phone #(816)329-4502)	
)	
Complainant,)	
)	
vs.)	<u>CASE NO. MC-92-251</u>
)	
William L. Pitts d/b/a Pitts Mobile Homes,)	
8747 E. 40 Hwy., Kansas City, Missouri 64129)	
and American Family Homes, Inc.)	
Serve: American Family Homes, Estate of)	
Harry Taylor, Hwy. 71 North, Box 438,)	
Anderson, Missouri 64831 and American Family)	
Homes, Inc., Nancy Ann Taylor, 115 Cedar Ridge,)	
Neosho, Missouri 64850,)	
)	
Defendants.)	

**ORDER DENYING STAY AND
SETTING PROCEDURAL SCHEDULE**

On March 30, 1992, Marcellus and Rhonda Davis (Complainants) filed a complaint against William L. Pitts d/b/a Pitts Mobile Homes (Pitts) and American Family Homes, Inc. (American). On April 9, 1992, Pitts and American were notified of the complaint and were directed to either answer the complaint or explain any action taken to satisfy the complaint. On May 11, 1992, American filed an answer to the complaint.

On July 8, 1992, the Commission ordered the Staff of the Commission (Staff) to investigate the allegations against American. The Commission also deemed that Pitts had admitted the averments against him by virtue of his failure to timely file an answer.

On September 1, 1992, Staff filed a report on its investigation into the allegations against American. Staff recommended that the Commission

establish a procedural schedule for this case. On September 14, 1992, Complainants requested that the Commission schedule a formal hearing and an early prehearing conference. On October 28, 1992, a prehearing conference was attended by Complainants, Pitts, American and Staff.

On November 16, 1992, Complainants filed an amended complaint against Pitts and American. On November 30, 1992, American filed an answer to the amended complaint. On December 14, 1992, Pitts filed an answer to the amended complaint. Pitts also filed a motion to stay proceedings, suggestions in support of his motion and a request for an oral hearing on his motion.

On December 23, 1992, Staff filed a response to Pitts' motion to stay proceedings. On December 24, 1992, Complainants filed a response to Pitts' motion. Complainants also filed a motion to strike Pitts' request for an oral hearing and a motion to strike Pitts' answer.

In support of his motion to stay proceedings, Pitts states that this case is essentially a civil proceeding. Pitts also states that there is an action pending in the Circuit Court of Platte County, Missouri, which involves the same parties and the identical subject matter. Pitts further states that Complainants' amended complaint specifically seeks civil damages, that Complainants specifically acknowledged in the prehearing conference that they were seeking civil damages, and that the Commission has neither the jurisdictional power, the resources, nor the procedural structure to provide a full and fair hearing of civil litigation.

Staff does not agree that the nature of this case is a civil proceeding. Staff indicates that the Commission cannot grant monetary relief as requested by Complainants. Staff states that Complainants are also seeking Commission action against the Respondents' registrations and that Complainants have alleged that the Respondents have violated numerous provisions of Missouri law, including Chapter 700, RSMo 1986 and Commission rules.

Staff points out that in addition to taking action against the Respondents' registrations, the Commission can authorize Staff to pursue a penalty action in circuit court. Staff also points out that the Commission's findings and conclusions in this case would be limited to issues pertaining solely to whether violations of Chapter 700, RSMo 1986, and Commission rules have occurred. Staff argues that the action pending in the Platte County Circuit Court and this case are entirely separate causes of action regarding different issues.

Complainants argue that they are seeking administrative remedies which are distinct from civil remedies, including suspension or revocation of the licenses issued to American and Pitts by the Commission. Complainants point out that the Platte County Circuit Court cannot suspend or revoke the licenses issued by the Commission. Complainants also argue that they are entitled to various administrative remedies under the law, but if they pursued such remedies in circuit court, they would be denied because they did not exhaust their administrative remedies.

Complainants also point out that Pitts has been deemed to have admitted the allegations against him. Complainants argue that the only proceedings which remain concerning Pitts involve the Commission deciding what remedies to level against Pitts and that Pitts' motion would only serve confusion and delay.

Complainants further argue that Pitts' request for an oral hearing should be either stricken or denied. Complainants state that it is an extreme hardship to them to be required to travel to Jefferson City to argue a motion of a party that has already, in effect, suffered a default judgment in this case. Complainants also state that Pitts' request should be denied regardless because the Commission should have no problems examining the written arguments and deciding this issue on the pleadings.

Complainants have also filed a motion to strike Pitts' answer. The Commission is of the opinion that the other parties should have the opportunity to respond to Complainants' motion. Thus, the Commission will require suggestions from Complainants in support of their motion and responses to Complainants' motion from the other parties to be filed within ten days of the effective date of this Order.

The Commission finds that the pleadings on this issue are sufficient to make a determination on Pitts' motion to stay proceedings and that an oral hearing on Pitts' motion would only serve to unduly delay the proceedings. Thus, the Commission determines that Pitts' request for an oral hearing on his motion should be denied.

The Commission also finds that this case is a separate cause of action with different issues from the action pending in the Platte County Circuit Court. The Commission further finds that a stay of the proceedings in this case would only serve to unduly delay a factual and legal determination of the issues in this case. Thus, the Commission determines that Pitts' motion to stay proceedings should be denied and that a procedural schedule should be established in this case.

IT IS THEREFORE ORDERED:

1. That the request of William L. Pitts d/b/a Pitts Mobile Homes, Inc. for an oral hearing on his motion to stay proceedings is hereby denied.
2. That the motion to stay proceedings filed by William L. Pitts d/b/a Pitts Mobile Homes, Inc. is hereby denied.
3. That Marcellus and Rhonda Davis shall file suggestions in support of their motion to strike the answer of William L. Pitts by January 15, 1993.
4. That William L. Pitts d/b/a Pitts Mobile Homes, Inc., American Family Homes, Inc., and the Staff of the Commission shall file their responses

to Marcellus and Rhonda Davis' motion to strike William L. Pitts' answer by January 15, 1993.

5. That Marcellus and Rhonda Davis shall file fifteen (15) copies of their prepared direct testimony with the Executive Secretary of the Commission and shall serve two (2) copies of same upon each of the other parties on or before February 25, 1993.

6. That the Staff of the Commission, William L. Pitts d/b/a Pitts Mobile Homes, Inc., and American Family Homes, Inc. shall each file fifteen (15) copies of their prepared rebuttal testimony with the Executive Secretary of the Commission and shall serve two (2) copies of same upon each of the other parties on or before March 29, 1993.

7. That Marcellus and Rhonda Davis shall file fifteen (15) copies of their prepared surrebuttal testimony with the Executive Secretary of the Commission and shall serve two (2) copies of same upon each of the other parties on or before April 19, 1993.

8. That the Staff of the Commission, William L. Pitts d/b/a Pitts Mobile Homes, Inc., and American Family Homes, Inc. shall each file fifteen (15) copies of their prepared cross-surrebuttal testimony with the Executive Secretary of the Commission and shall serve two (2) copies of same upon each of the other parties on or before April 19, 1993.

9. That a second prehearing conference is hereby scheduled for April 26, 1993, commencing at 10:00 a.m., in the Commission's hearing room located on the fifth floor of the Harry S Truman State office Building, Jefferson City, Missouri.

10. That the parties shall file a hearing memorandum setting out the issues to be heard and the witnesses to appear on each day of the hearing, definitions of terms used to describe those issues and each party's position on those issues on or before May 3, 1993.

11. That a hearing in this matter is hereby scheduled for May 12, 1993, commencing at 10:00 a.m., and continuing through May 14, 1993, as necessary, in the Commission's hearing room located on the fifth floor of the Harry S Truman State Office Building, Jefferson City, Missouri.

12. That this Order shall become effective on the date hereof.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., Concur.