

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

Director of the Manufactured Housing and	)	
Modular Units Program of the Missouri	)	
Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	Case No. MC-2008-0071
Amega Sales, Inc.	)	
d/b/a Quality Preowned Homes, Columbia	)	
Discount Homes, Mark Twain Mobile	)	
Home Sales, and Chateau Homes,	)	
	)	
Respondent.	)	

**RESPONSE TO MOTION TO DISMISS COUNTS I, III AND V**

Comes now, the Director, and for its response to Amega’s Motion to Dismiss Counts I, III, and V of the Complaint states:

1. Amega incorrectly claims that the Commission cannot authorize penalties against Amega under section 700.115. The language of section 700.115.2 is very clear regarding penalties. Even the case cited by the Respondent, *State ex rel. Mobile Home Estates, Inc. v. Public Service Commission*, 921 S.W.2d 5, 11 states that “the PSC has a variety of other ways to punish violations of Chapter 700, generally, and violation of section 700.015(1) in particular....Section 700.115.2 provides that ‘whoever violates any provision of this chapter shall be liable to the state of Missouri for a civil penalty....’”

Counts I, III, and V of the Complaint allege a violation of 700.015 by selling a home that did not comply with the Code. Counts I, III, and V seek penalties, not revocation of registrations. Amega mischaracterizes the relief requested to confuse and complicate what should be a simple and straight forward analysis: Amega sold a home

that did not comply with the Code; such a sale is a violation of 700.015; violation of any provision of Chapter 700 calls for penalties. *Id.* The Commission need only review paragraphs 13, 25, and 37 of the Complaint to see how clearly the violation of 700.015 is alleged: “Amega offered for sale and sold a new manufactured home that did not comply with the Code, in violation of the provisions of section 700.015”. References in paragraphs 14, 26, and 38 to violations of 700.015 being tantamount to a violation of section 407.020 are additional or alternative allegations that may or may not support the imposition of penalties; they make no difference in the authority of the Commission to authorize penalties against Amega for violating section 700.015.

2. The Director disagrees with Respondent’s analysis of what is required to prove a violation of section 407.020. Section 700.100.3(4) explicitly provides that the Commission can determine whether Amega engaged in conduct constituting a violation of section 407.020. Because Amega claims 700.100 is unconstitutional, the claim is not cognizable by the Commission.

3. Amega claims a violation of due process in that the Director is an employee of the Commission. The Director is charged with the administration of Chapter 700 except the power to discipline a registration. 4 CSR 240-120.031. The *Mobile Home Estates* case cited above expressly found that the Commission has authority to authorize penalties. *Id.* Amega’s claim must fail.

Wherefore, having fully answered Amega’s Motion to Dismiss Counts I, III, and V, the Director prays that the Motion be denied.

Respectfully submitted,

**/s/ Steven C. Reed**

Steven C. Reed

Missouri Bar No. 40616

Sarah L. Kliethermes

Missouri Bar No. 60024

Attorneys for the Staff of the

Missouri Public Service Commission

PO Box 360

Jefferson City, MO 65102

(573) 751-3015 (Telephone)

(573) 751-9285 (Fax)

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the Response to Motion to has been delivered by electronic mail, to Tom Harrison, Attorney for Amega Sales, Inc., and via electronic mail to Christina Baker, Office of the Public Counsel, at [Christina.Baker@ded.mo.gov](mailto:Christina.Baker@ded.mo.gov) on this 28<sup>th</sup> day of January, 2008.

/s/ Steven C. Reed