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March 2, 2000

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

RE: Case No. MC-2000-397

FILED³

MAR 02 2000

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **DIRECTOR'S REPLY TO RESPONDENT'S ANSWER**.

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,

David J. Stueven
By KRK

David J. Stueven
Assistant General Counsel
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DS/dkf

Enclosure

cc: Counsel of Record

**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.

Rock Road Trailer Parts and Sales, Inc.,

Respondent.

Case No. MC-2000-397

Director's Reply to Respondent's Answer

COMES NOW the Director of the Department of Manufactured Homes and Modular Units of the Public Service Commission ("Director" and "Department"), by and through the Missouri Public Service Commission's ("Commission") Office of General Counsel, and for his Reply to Respondent's Answer, states as follows:

1. On December 29, 1999, the Director filed a complaint against Rock Road Trailer Parts and Sales, Inc. ("Rock Road") in which he alleged that Rock Road sold a home that did not comply with the code. The Commission issued a Notice of Complaint on January 4, 2000.

2. On February 8, 2000, the Director caused to be filed a Motion for Default, because Rock Road had not filed an answer to the Complaint within 30 days, as ordered by the Commission.

3. On February 22, 2000, Rock Road finally filed a Motion to Supplement Answer or File Answer to Complaint Out of Time and filed an Answer to the Director's Complaint.

4. Rock Road alleges in its Answer that the Director does not have jurisdiction or standing to bring a complaint on a pre-owned manufactured home or, in the alternative that the

Commission does not have jurisdiction over pre-owned manufactured homes. This is clearly not the case.

5. Section 700.015, RSMo¹ explicitly states, “no person shall rent lease, sell or offer for sale **any manufactured home** ... unless such manufactured home complies with the code” (emphasis added). The statute does not differentiate between new and pre-owned manufactured homes. It plainly states that all manufactured homes must comply with the code.

6. Section 700.045(5), RSMo is equally clear. This statute makes it a misdemeanor to fail to correct a code violation in a manufactured home within 90 days after being ordered to do so by an authorized representative of the Commission. This statute also does not differentiate between a new and a pre-owned manufactured home.

7. Section 700.100, RSMo authorizes the Commission to suspend, revoke, or place on probation a manufactured housing dealer’s registration for violation of Section 700.045, RSMo.

8. 4 CSR 240-121.020 delegates the Commission’s authority and responsibility over pre-owned manufactured homes to the Director, except for the powers to revoke, deny, refuse to renew or place on probation a registration.

9. It is clear that the Commission has jurisdiction over pre-owned manufactured housing within the State of Missouri. Equally clear, is that the Director has the authority to bring a complaint before the Commission on a pre-owned manufactured house. Any other such reading is nonsensical.

10. The Director concedes that the contract between Rock Road and the consumer states that the home was sold “as is.” However, contract provisions that are contrary to the

¹ All references to the Revised Statutes of Missouri will be to RSMo 1994 and 1999 Supplement unless otherwise noted.

public policy of Missouri as expressed by the legislature are not recognized.² The courts have often found that any act forbidden by a statute passed for the public protection and providing a penalty for its violation cannot be the foundation of a valid contract.³

11. It is clear that the legislature has expressed the "public policy of Missouri" in the requirement that all manufactured homes comply with the applicable code. This is expressed by the legislature providing a criminal penalty,⁴ an administrative penalty,⁵ and a civil penalty⁶ for dealers that fail to correct code violations in a manufactured home within 90 days after being ordered to do so by an authorized representative of the Commission.

WHEREFORE, the Director respectfully requests that the Commission find that the Director has standing to bring this Complaint, that the Complaint is within the jurisdiction of the Commission to decide, and that, if the Commission finds in favor of the Director, that the penalties sought are within the Commission's authority and the Director requests that they be imposed.

² *First National Insurance Company of America v. Clark*, 899 S.W.2d 520 at 521 (Mo.banc 1995).

³ *Knight v. Johnson*, 741 S.W.2d 842 at 846 (Mo.App. E.D. 1987).

Hospital Development Corporation v. Park Lane Land Company, 813 S.W.2d 904 at 908 (Mo.App. W.D. 1991).

⁴ 700.045 RSMo (Cum.Supp. 1999).

⁵ 700.100 RSMo (Cum.Supp. 1999).

⁶ 700.115 RSMo (Cum.Supp. 1999).

Respectfully submitted,

DANA K. JOYCE
General Counsel

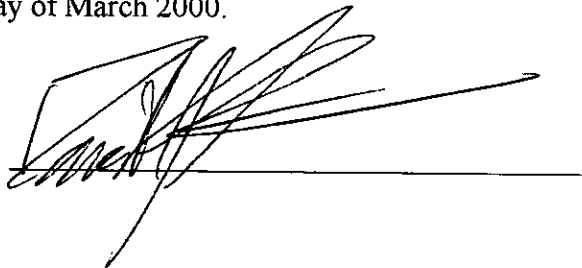


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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the below service list this 2nd day of March 2000.



Service List for
Case No. MC-2000-397
March 2, 2000

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