



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.ecodev.state.mo.us/psc/>

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

March 2, 2000

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

FILED³

MAR 02 2000

Missouri Public
Service Commission

RE: Case No. MC-2000-397

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 MOTION TO SUPPLEMENT ANSWER OR FILE ANSWER TO COMPLAINT OUT OF TIME.**

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
(573) 751-6726
(573) 751-9285 (Fax)

DS/dkf
Enclosure
cc: Counsel of Record

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

4. Respondent alleges that he did not know that any sort of formal response was necessary. The Commission's Notice of Complaint is very clear on this. It requires the Respondent to file a response with the Secretary of the Commission within 30 days after the Notice of Complaint. Letters from the Respondent to Mr. Eugene Winn stating that the Respondent is trying to find someone to give an estimate on fixing the home in question clearly do not meet the requirements plainly set out in the Notice of Complaint. The content of those letters does not even address the allegations in the Complaint. In no way can the letters to Mr. Winn be construed as an answer to the Director's Complaint.

5. The Motion also does not show good cause as to why the Respondent should be allowed to answer out of time. Respondent indicates that it was "filing" the letters to Mr. Winn in a good faith response to the Director's Complaints. As indicated above, the plain language of the Notice of Complaint refutes any suggestion that the Respondent did not know that a formal response, filed with the Secretary of the Commission, was required.

6. In *Marcellus v. Pitts Mobile Homes, Inc.*, 2 Mo. P.S.C.3rd 164 (1993), Respondent American Family Homes, Inc. ("American") failed to attend a prehearing conference. The Commission, upon oral motion from the complainants, found American in default. American attacked the default in two ways, first, by claiming that missing a prehearing conference was not grounds for default, and second, by claiming that the Commission's orders were not sufficiently clear for American to realize it was required to attend a prehearing conference on the date in question. The Commission found American's arguments

“disingenuous” and found that the Commission’s orders were “clear and incapable of being so misinterpreted as claimed by American.” (Id. at 165).

7. The Notice of Complaint issued by the Commission is similarly clear and incapable of being so misinterpreted. The Notice of Complaint states the date that the answer is required to be filed, the address where the answer is to be filed, and other procedural requirements for filing an answer. The detail is such that no reasonable person could possibly misinterpret the Notice of Complaint and fail to realize that a formal response, filed with the Commission, was required.

8. Further, Respondent’s Motion is filed out of time, because 4 C.S.R. 240-2.080(12) allows parties only ten (10) days to file a response to a pleading. The Director caused to be filed the Motion for Default on February 8, 2000. The Respondent’s Motion was filed on February 22, 2000, 14 days after the Director’s Motion for Default was filed.

WHEREFORE, the Director respectfully requests that the Commission find the Respondent in Default and issue an Order consistent with the Director’s Motion for Default.

Respectfully submitted,

DANA K. JOYCE
General Counsel

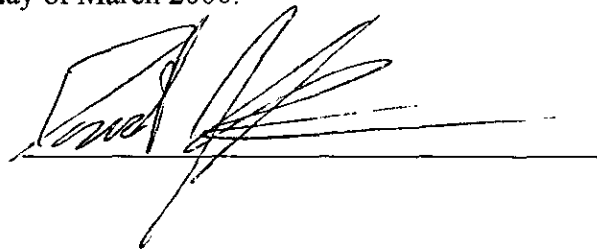


David J. Staeven
Assistant General Counsel
Missouri Bar No. 51274

Attorney for the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)

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

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Loyd Biggs
Rock Road Trailer Parts & Sales
12725 St. Charles Rock Road
Bridgeton, MO 63044