

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Director of the Division of Manufactured
Homes, Recreational Vehicles and Modular
Units of the Public Service Commission,

Complainant,

vs.

Mobile Home Estates, Inc., an Ohio
Corporation,

Respondent.

CASE NO. MC-94-47

APPEARANCES:

David Woodsmall, Assistant General Counsel, P. O. Box 360
Jefferson City, Missouri 65102, for the Staff of the
Missouri Public Service Commission.
Gregory S. Hill, Attorney at Law, Feldhausen & Ralls, P.C.
10034 N. Executive Hills Blvd., Suite 200, Kansas City,
Missouri 64153, for Mobile Home Estates, Inc.
John Shaffer, Attorney at Law, Newcomer, Shaffer, Bird &
Spangler, 117 W. Maple Street, Bryan, Ohio 43506,
for: Mobile Home Estates, Inc.
John B. Coffman, Assistant Public Counsel, and
Susan Anderson, Assistant Public Counsel, P. O. Box 7800,
Jefferson City, Missouri 65102, for the Office of the
Public Counsel and the Public.

HEARING

EXAMINER: Mark A. Grothoff

REPORT AND ORDER

On August 10, 1993, the Staff of the Commission (Staff) filed a complaint against Mobile Home Estates, Inc. (Estates). On October 8, 1993, Staff filed an amended complaint against Estates. On October 13, 1993, Estates was notified of the amended complaint. On November 15, 1993, Estates filed an answer to the amended complaint.

On January 4, 1994, a prehearing conference was held as scheduled and on February 15, 1994, the Commission established a procedural schedule for this case. On April 4, 1994, a hearing was held as scheduled. On May 23, 1994, Staff filed a motion to dismiss Count II of its amended complaint against Estates. Briefs were subsequently filed by the parties.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

On August 10, 1993, Staff filed a complaint against Estates. The Commission experienced problems in serving notice of the complaint on Estates and on October 8, 1993, Staff filed an amended complaint. Staff's amended complaint alleges that Estates sold a manufactured home within Missouri which did not comply with the provisions of the Federal Standards for Manufactured Homes as adopted by the Commission in 4 CSR 240-120.100. Staff's amended complaint also alleges that Estates failed to comply with the provisions of Sections 2301-2312 of Title 15 of United States Code, known as the Magnuson-Moss Warranty Act.

On May 23, 1994, Staff filed a motion to dismiss the second count of its amended complaint. Staff stated that the Magnuson-Moss Warranty Act is not specifically applicable to this case. The Commission will grant Staff's motion.

Estates argues that the mobile home was tested in compliance with the Code and it attempted to resolve the problems to the owners' satisfaction. Estates notes that the owners settled their claim in Circuit Court against Estates for \$8,000 in excess of the purchase price of the unit.

The record shows that the home at issue was manufactured by Estates on or about October 23, 1991 and remained on the display lot at the manufacturing

plant for several months. Prior to being placed on the display lot, the home was inspected and issued the appropriate compliance certificate. In February, 1992, the home was sold to a dealership in Illinois. However, the dealership declined delivery and the home was returned to the manufacturing plant. Estates then replaced the existing frame.

During the frame replacement, some of the wiring was caught between the frame and the floor of the unit, thereby pinching and pulling the wires. The employee in charge of testing the unit apparently failed to follow proper procedures and retest unit's electrical system. In a letter to Staff, Estates' service manager stated that "...the home was not re-electrical tested. The electrical test should have been completed before leaving our factory, which we failed to do."

On April 20, 1992, Estates resold the home to a dealership in Hollister, Missouri. On July 10, 1992, the home was purchased by Mr. and Mrs. John Senf. Shortly after the home was set-up on the homesite, the Senfs began to experience problems.

Foremost were the problems with the electrical system. Many of the 110 volt electric outlets had 220 volts passing through them. The Senfs experienced electrical surges and burn-outs of electrical appliances. Also, light bulbs burned-out at an unreasonable rate and yellow discolorations appeared around the base of light fixtures. Photographs contained in Schedule 11 of Exhibit 2 reveal the severity of the problems and the poor quality of the attempted repairs.

There were also structural problems with the home. The record indicates that the home's frame was not sitting properly under the floor joists. Several of the home's outriggers were not positioned under the floor joists.

Outriggers are metal braces extending from the I-beam of the transportation chassis to the exterior walls which are intended to provide structural support. The record also indicates that a required additional lag screw and clip were not installed. In addition, lag screws which were supposed to extend through the outriggers into the floor joists were merely screwed into the insulation, thereby providing no structural support. Furthermore, the record shows only one 2x6 floor joist was placed under the shear wall in the living room rather than the required two. The unrebutted testimony of Staff witness Phillips indicates that having only one floor joist under the interior shear wall seriously compromised the home's ability to resist the loads imposed on it.

The structural problems resulted in the home twisting itself into a bind. The stress associated with this bind caused the living room window to shatter and one door to become inoperable.

The record also establishes that the floors of the home squeaked and popped in several places when walked upon. The unrebutted testimony of Staff witness Phillips indicates that a weakening in the floor system had resulted from several rows of decking staples having missed the floor joists entirely. Also, large holes had been cut in the floor contributing to the weakening of the floor system.

In addition, the record shows that the drain line servicing the commode in the master bath has a reverse slope, thereby causing the commode to not flush properly and require frequent plunging. Also, a sanitary tee, in the horizontal position, was used to connect the drain lines from the master bath and a second bath. As a result, waste from the second bath was directed towards the master bath rather than out the drain.

Staff witness Phillips also indicates that improper crimp rings were used on the piping in the hot water heater compartment. The improper crimp rings will result in leaks, causing secondary damage. The record shows that the master bath shower unit's base is gapped from the floor and shifts when someone steps in the shower. This has caused the styrofoam around the shower drain to crack.

Section 700.015.1, RSMo 1986, states, "No person shall rent, lease, sell or offer for sale any manufactured home...unless such manufactured home...complies with the code." In 4 CSR 240-120.100, the Commission adopted the Federal Manufactured Home Standards as set forth in 24 CFR 3280 (the code). The code mandates several different tests to be performed on manufactured homes including electrical, plumbing, and gas piping tests.

The Commission finds that Estates sold a manufactured home which did not comply with the code in violation of Section 700.015.1, RSMo 1986. The record is clear that the home in question did not comply with the code, and that Estates failed to perform the proper testing as required by the code. Thus, the Commission determines that Estates' certificate should be suspended. Furthermore, in consideration of the number and the severity of the problems, the Commission determines that Estates' certificate should be suspended for a period of one year.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over manufactured homes and manufactured home manufacturers pursuant to Chapter 700, RSMo 1986, as amended. In 4 CSR 240-120.100, the Commission adopted the Federal Manufactured Home Standards as set forth in 24 CFR 3280.

Section 700.015(1), RSMo 1986, states: "No person shall rent, lease, sell or offer for sale any manufactured home, recreational vehicle, or modular unit within this state, manufactured after January 1, 1974, unless such manufactured home, recreational vehicle, or modular unit complies with the code."

Section 700.100.3(4), RSMo 1986, authorizes the Commission to suspend, revoke, place on probation, or refuse to renew a registration of a manufactured home manufacturer for engaging in conduct which constitutes a violation of the provisions of Section 407.020, RSMo 1986. Section 700.115.1, RSMo 1986, states:

Except as otherwise provided in subsections 2 and 3 of this section, a violation of the provisions of sections 700.010 to 700.115 shall constitute a violation of section 407.020, RSMo. In addition to the authority vested in the attorney general to enforce the provisions of that section, he may petition the court and the court may enter an order revoking the registration certificate of the defendant or defendants issued pursuant to the provisions of section 700.090.

Staff argues that Estates has violated Section 700.015(1) and that such violation constitutes a violation of Section 407.020 pursuant to Section 700.115.1. Staff states that the Commission is therefore authorized to suspend Estates' certificate pursuant to Section 700.100.3(4).

Estates argues that Section 700.115 vests no authority in the Commission but deals only with the power of the Attorney General to seek penalties. Estates contends that only the Attorney General may use the provisions of Section 700.115 and that the question of whether a violation of Chapter 700 can be considered a violation of Section 407.020 is only relevant to actions by the Attorney General.

The Commission finds Estates' argument to be nonsensical. Simply because the second sentence of a provision authorizes the Attorney General to act on the first sentence does not render the first sentence meaningless as to anyone or anything else. The first sentence of Section 700.115.1 is clear and unambiguous. A violation of Sections 700.010 to 700.115 constitutes a violation of Section 407.020. The only exceptions placed on this provision were provided in subsections 2 and 3 which make no mention of the Attorney General, but which establish penalties for violations of Chapter 700.

The Commission has found that Estates violated Section 700.015(1). Pursuant to Section 700.115.1, such a violation constitutes a violation of Section 407.020. Under Section 700.100.3(4), the Commission may suspend a manufacturer's registration certificate for a violation of Section 407.020. Thus, the Commission concludes that, pursuant to Section 700.100.3(4), Estates' certificate should be suspended.

IT IS THEREFORE ORDERED:

1. That Count II of the amended complaint filed in this case by the Staff of the Commission is hereby dismissed.
2. That the certificate of registration of Mobile Home Estates, Inc. is hereby suspended for a period of one (1) year from the effective date of this Report and Order.
3. That the General Counsel of the Commission is hereby authorized to seek penalties against Mobile Home Estates, Inc. pursuant to Section 700.115, RSMo 1986.

4. That this Report and Order shall become effective on
September 20, 1994.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch
Executive Secretary

(S E A L)

McClure, Perkins, and
Crumpton, CC., Concur.
Kincheloe, C., Dissents, and
certify compliance with the
provisions of Section 536.080, RSMo 1986.
Mueller, Chm., Absent.

Dated at Jefferson City, Missouri,
on this 9th day of September, 1994.