

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,)	
)	
v.)	<u>Case No. MC-97-542</u>
)	
Amega Mobile Home Sales, Inc., d/b/a)	
Quality Preowned Homes,)	
)	
Respondent.)	
)	

APPEARANCES

R. Blair Hosford, Assistant General Counsel, and **Stephen H. Gunn**, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission.

Danieal H. Miller, Danieal H. Miller, P.C., 309 South Providence Road, Columbia, Missouri 65201 and **Thomas M. Harrison**, Van Matre and Harrison, P.C., 1103 East Broadway, Suite 101, Columbia, Missouri 65201, for Amega Mobile Home Sales, Inc., d/b/a Quality Preowned Homes.

REGULATORY LAW JUDGE: **Morris L. Woodruff.**

REPORT AND ORDER

Procedural History

This complaint was filed by the Director of the Division of Manufactured Housing, Recreational Vehicles and Modular Units of the Public Service Commission (Director) on June 16, 1997. On July 16, Amega Mobile Home Sales, Inc. d/b/a Quality Preowned Homes (Amega) filed its Answer and Affirmative Defenses, a Motion to Dismiss or Alternative

Motion to Strike, a Motion to Disqualify Counsel, and a Request for Hearing. On July 28, Director filed an Amended Complaint. On the same date, Director also filed the following documents: Reply to Respondent's Answer and Affirmative Defenses; Reply to Respondent's Motion to Dismiss or Alternative Motion to Strike; and Reply to Respondent's Motion to Disqualify Counsel. On August 5, the Commission issued an order which found that Director's Amended Complaint sufficiently stated a cause of action and denied each of Amega's motions. The parties were ordered to file a suggested procedural schedule.

On August 19, Amega filed its Answer and Affirmative Defenses to Amended Complaint, a Motion to Dismiss Amended Complaint or Alternative Motion to Strike, a Motion to Disqualify Counsel and a Request for Hearing. Amega filed its Proposed Scheduling Order on August 29. Director filed his Suggested Procedural Schedule on September 2. Director subsequently, on September 4, filed a Request to File Reply Pleadings or Alternatively, for Leave to File Out of Time, a Reply to Respondent's Answer and Affirmative Defenses to Complainant's Amended Complaint, a Reply to Respondent's Motion to Dismiss or Alternative Motion to Strike, and a Reply to Respondent's Motion to Disqualify Counsel.

The Commission issued its Order Denying Motions and Adopting Procedural Schedule on October 9. Director filed his direct testimony on October 27. No further testimony was prefiled in this case. On November 14, Amega filed objections to Director's first data request. Director responded on December 8 with a motion to compel discovery. Amega responded to the motion to compel on December 15. The parties subsequently reached an agreement on their discovery dispute during a

prehearing conference on January 5, 1998, and Director withdrew his motion to compel discovery on January 14.

An evidentiary hearing was held before the Commission on January 22 at which four witnesses testified. During the course of the hearing, Director was requested to provide, as a late-filed exhibit, a document known as a "Manufacturer's Statement of Origin" relating to the manufactured home at issue in this case. On February 6, Director moved for an extension of time in which to file the exhibit. On February 13, Director notified the Commission that he had been informed by the State of Illinois that the Manufacturer's Statement of Origin was not available. The parties filed simultaneous briefs on March 17 and reply briefs on March 27. Additionally, on March 27, Director filed a motion to strike certain statements in Amega's brief. On April 7, Amega filed its response to Director's motion to strike.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

The Director brought this complaint before the Commission alleging that on October 4, 1996, Amega sold a previously owned manufactured home to Larry and Phyllis Smith. The Director alleges that the manufactured home was sold without a HUD or Missouri State Seal affixed to the home. 4 CSR 240-121.030(1) provides that "[n]o precowned mobile home which entered the first stage of production after January 1, 1974 shall be rented, leased or sold or offered for rent, lease or sale in this state unless a seal or approval insignia is properly affixed to it." Section 700.045, RSMo (1994) provides that the sale, without the appropriate seal, of a home that was manufactured before January 1, 1974,

is a misdemeanor. Section 700.100.2, RSMo (1994) authorizes the Commission to suspend, revoke or place on probation, a dealer's registration if the dealer has engaged in conduct in violation of section 700.045. Accordingly, the Director's Amended Complaint requests that the Commission suspend Amega's dealer's registration for the period of two weeks.

In response to this complaint, Amega argues that the Commission lacks jurisdiction to hear this complaint because Amega is being accused of a crime in violating the requirements of Section 700.045, RSMo and that, as a result, this action can be prosecuted only in the appropriate circuit court. Amega also argues that the Director has failed to prove that the manufactured home did not contain the required seal at the time it was sold. Amega further contends that the Director has failed to prove that the manufactured home required a seal before it could be sold in that there was no proof that the home was manufactured after January 1, 1974.

EVIDENCE PRESENTED

The Director's evidence indicates that Amega sold a preowned manufactured home to Larry and Phyllis Smith on October 4, 1996. (Exhibit 1, p. 1). The bill of sale given to the Smiths by Amega (Exhibit 5) states that the mobile home being sold was a 1979 National, serial number 42495. The bill of sale also includes the notation "(Briggs)." Phyllis Smith testified that she and her husband did not receive a title to the mobile home until March of 1997. (Exhibit 1, p. 2) The title which was sent to the Smiths by Amega (Exhibit 6) indicates that the mobile home was previously owned by Joyce E. Briggs and describes the mobile home as a 1976 Skyline (SKYL) with a vehicle identification number of 3663.

At some point, Mr. and Mrs. Smith attempted to sell the mobile home but were informed by another dealer that they could not sell it because there was no HUD or Missouri Seal on the home. After some discussions with employees of Amega, the Smiths filed a complaint with the Missouri Public Service Commission. (Exhibit 1, pp. 3-4)

Mr. Tim Haden, a Field Inspector for the Division of Manufactured Housing, Recreational Vehicles and Modular Units (Division), testified that he responded to the Smith's complaint. Haden inspected the mobile home on May 9, 1997 but did not find either a HUD seal or a Missouri seal. (Exhibit 3, pp. 4-5) Following his inspection, Haden prepared a Field Inspection Report in which he concluded that there was no HUD seal on the home. (Exhibit 8)

The Agency presented the testimony of Joyce E. (Briggs) Schmitz. Ms. Schmitz testified that she is the former owner of a manufactured home which she identified as a 1976 National Fifth Avenue with a VIN of 3663. She testified that she purchased the mobile home in April of 1991 and sold it in June of 1996. (Exhibit 2, p. 1) At that time, she traded the mobile home to Amega Mobile Home Sales. (Exhibit 2, p. 3) Ms. Schmitz testified that she lived in the mobile home for five years and performed maintenance on the home during that time. During that time she did not notice any seals or stickers on the outside of the mobile home. (Exhibit 2, p. 2).

James Phillips, Director of the Division of Manufactured Housing, Recreational Vehicles and Modular Units, also testified. Mr. Phillips indicated that he called the Housing and Building Technology Department of the National Conference of States on Building Codes and Standards and asked that agency for assistance in tracking the history of the mobile home in question. He was told that the mobile home in question, serial

number 3663, was manufactured by National Mobile Homes sometime prior to June 15, 1976. (Exhibit 4, p. 7). Phillips also contacted the Missouri Department of Revenue and requested a title search on the mobile home. (Exhibit 4, p.7). The earliest date revealed in that title search is an Illinois title submitted to Missouri as part of a 1981 title application. The Illinois title indicates that a bank lien was placed on the mobile home on December 4, 1975. (Exhibit 14A, p. 5). The title indicates that the mobile home is a 1976 Fifth Avenue, serial number 3663. Phillips testified that he did not know whether or not this was the first title issued on this mobile home. (Tr. P. 152). The Missouri Department of Revenue issued a title for the mobile home on May 28, 1981 which indicates that the make of the mobile home is "5th" with a year of "'76" with a serial number of 3663. (Exhibit 14b, p. 3). That title also contains a handwritten notation of "corrected make." On June 7, 1981, the Missouri Department of Revenue issued a second Certificate of Title. (Exhibit 14c, p. 3) This Title refers to a 1976 Skyline make with a serial number of 3663. Phillips testified that a Manufacturer's Statement of Origin would have accompanied the mobile home when it was new but that such a statement of origin was not included in the documents which the Director had been able to obtain.

Amega did not present any evidence.

PENDING MOTION

The initial issue which must be addressed is the Director's Motion to Strike filed on March 27, 1998. That Motion suggests that the Commission strike certain passages from Amega's brief because they misstate the evidence that was presented to the Commission. The Commission is capable of reviewing the evidence and arguments and

deciding for itself whether or not the arguments of the parties are supported by the evidence. If the statements of which the Director complains are improper, they are not of a nature which would interfere with the ability of the Commission to determine the case on the merits. There is no need to strike any portion of Amega's brief. Accordingly, the Director's Motion to Strike is denied. See. Zurheide-Hermann, Inc. v. London Square Development Corp., 504 S.W.2d 161 (Mo. 1973).

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.

The Director's Amended Complaint requests that the Commission suspend the Dealer's Registration of Amega Mobile Home Sales, Inc. for a period of two weeks pursuant to the authority granted to the Commission by Section 700.100.2, RSMo (1994), which provides that "[t]he commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of the provisions of this section, which charges, if proven, shall constitute grounds for revocation or suspension of his registration, or the placing of the registered manufacturer or dealer on probation." The Director's Complaint alleges that the specific grounds for the proposed suspension are to be found at Section 700.100.3(9), RSMo (1994) which provides that "[t]he following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration: . . . (9) Engaging in conduct in violation of section 700.045." Section 700.045, RSMo (1994) provides in relevant part that "[I]t shall be a misdemeanor: . . . (2) To rent, lease, sell, or offer to sell any

manufactured home or modular unit manufactured after January 1, 1974, or any new recreational vehicle which does not bear a seal as required by sections 700.010 to 700.115." The Commission has further defined the term "manufactured after January 1, 1974" by regulation to provide that "[n]o preowned mobile home which *entered the first stage of production* after January 1, 1974 shall be rented, leased or sold or offered for rent, lease or sale in this state unless a seal or approval insignia is properly affixed to it." 4 CSR 240-121.030(1) (emphasis added) The Director's Amended Complaint also requests that the Commission authorize the Office of General Counsel to seek additional financial penalties pursuant to Sections 700.115.2 and 386.570.1, RSMo (1994).

Amega argues that the Commission lacks jurisdiction in this case because Amega has been alleged to have violated the provisions of Section 700.045(2) which makes it a misdemeanor to "rent, lease, sell or offer to sell any manufactured home or modular unit manufactured after January 1, 1974, or any new recreational vehicle which does not bear a seal as required by sections 700.010 to 700.115." Amega contends that this action is essentially a criminal prosecution over which the circuit courts of Missouri have exclusive jurisdiction. (Brief of Respondent, p. 11) Amega misunderstands the nature of this action.

Amega has not been charged with any crime. Rather the Director has asked the Commission to suspend Amega's registration as a manufactured housing dealer. The Commission is specifically granted the authority to consider such a complaint by the provisions of Section 700.100.2, RSMo (1994). Section 700.100.3(9), RSMo (1994) authorizes the Commission to suspend a dealer's registration if the dealer has engaged *in conduct in violation of Section 700.045*. (Emphasis added) Note that this provision does not require that the dealer be criminally convicted

of a violation of Section 700.045 before his registration may be suspended. In order to justify a suspension of Amega's registration, the Commission need merely find that Amega has engaged in conduct which is proscribed by Section 700.045. The Commission is not conducting a criminal prosecution and does have jurisdiction to proceed under the authority granted by the legislature in Section 700.100, RSMo (1994).

Because this is an administrative proceeding rather than a criminal prosecution, the proper standard of proof is the standard applicable to administrative decisions. The applicable standard is that the Commission's decision must be supported by competent and substantial evidence. See. State ex rel. Associated Natural Gas Co. v. Public Service Commission, 954 S.W.2d 520 (Mo. App. W.D. 1997).

Whatever the standard of proof, the Director, as the Complainant in this action, has the burden of proving that Amega's registration is subject to discipline. Amega's brief correctly lists the four elements which must be proven:

A. That Amega rented, leased, sold, or offered to sell a manufactured home or modular home.

B. That the modular home or manufactured home in question entered the first stage of production after January 1, 1974.

C. That the modular home or manufactured home in question did not bear the seal or an approved insignia required by sections 700.010 to 700.115, RSMo, and

D. That the act complained of took place in the state of Missouri. (Brief of Respondent, p. 11)

The Director has failed to prove the second element of the case. Despite his attempts to do so, the Director was unable to offer competent and substantial evidence to establish the date when the mobile home in

question was manufactured. The best evidence of when the mobile home was manufactured would be a manufacturer's statement of origin which should have accompanied the mobile home when it was first titled. (Tr. p. 151) However, a manufacturer's statement of origin was not available. (Notice Regarding Late-Filed Exhibit No. 15) In the absence of a Statement of Origin, the Director sought to establish the age of the mobile home by submitting documents obtained through a title search conducted by the Missouri Department of Revenue. (Exhibit 4, p.7) The earliest date revealed in that title search is an Illinois title submitted to Missouri as part of a 1981 title application. The Illinois title indicates that a bank lien was placed on the mobile home on December 4, 1975. (Exhibit 14A, p. 5) However, there is no way of knowing whether or not this was the first title issued on this mobile home. (Tr. P. 152).

The titles submitted by the Director do indicate that the mobile home is a 1976 model. Testimony by James Phillips indicates that the industry practice is that a 1976 model would have been manufactured between June 15, 1975 and June 15, 1976. (Tr. p. 128) However, even if that testimony is accepted as establishing the industry practice, it does not establish the age of this mobile home. Given the ease with which the make of the mobile home in question was transformed from a National Fifth Avenue into a Skyline through a simple notation in a title application, (Exhibits 14b and 14c) it is apparent that the notation of a model year in a title is not a reliable indicator of the actual date when the mobile home was manufactured.

The Director has failed to meet his burden of proof in that he has failed to present competent and substantial evidence to establish that the mobile home allegedly sold by Amega was manufactured after January 1, 1974. Therefore, the Director has failed to establish that

Amega has engaged in conduct in violation of Section 700.045, RSMo (1994).

CONCLUSIONS OF LAW

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

The Commission has jurisdiction of this matter under the authority granted by Section 700.100.2, RSMo (1994), which provides that "[t]he commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of the provisions of this section, which charges, if proven, shall constitute grounds for revocation or suspension of his registration, or the placing of the registered manufacturer or dealer on probation."

Section 700.100.3(9), RSMo (1994) provides that "[t]he following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration: . . . (9) Engaging in conduct in violation of section 700.045."

Section 700.045, RSMo (1994) provides in relevant part that "[I]t shall be a misdemeanor: . . . (2) To rent, lease, sell, or offer to sell any manufactured home or modular unit manufactured after January 1, 1974, or any new recreational vehicle which does not bear a seal as required by sections 700.010 to 700.115."

4 CSR 240-121.030(1) provides that "[n]o preowned mobile home which entered the first stage of production after January 1, 1974 shall be rented, leased or sold or offered for rent, lease or sale in this state unless a seal or approval insignia is properly affixed to it."

The Director, as the Complainant in this action, has the burden of proving by competent and substantial evidence that Amega's registration is subject to discipline.

The Director has failed to meet that burden.

IT IS THEREFORE ORDERED:

1. That the Motion to Strike filed by the Director of the Commission on March 27, 1998, is denied.
2. That, because no conduct in violation of Section 700.045 has been established, there is no basis under Section 700.100, RSMo (1994) to suspend the registration of Amega Mobile Home Sales, Inc.
3. That the Office of General Counsel is not authorized to seek additional financial penalties pursuant to sections 700.115.2 and 386.570.1, RSMo (1994).
4. That this Report and Order shall become effective on September 25, 1998.
5. That this case shall be closed on September 26, 1998.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Crumpton, Murray, Schemenauer and Drainer, CC., concur.
Lumpe, Ch., absent.

Dated at Jefferson City, Missouri,
on this 15th day of September, 1998.