

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of May, 1993.

Marcellus & Rhonda Davis, 19730 Humphries Road
Platte City, Missouri 63079,
Phone #(816)329-4502

Complainant,

vs.

CASE NO. MC-92-251

William L. Pitts d/b/a Pitts Mobile Homes,
8747 E. 40 Hwy., Kansas City, Missouri 64129
and American Family Homes, Inc.
Serve: American Family Homes, Estate of
Harry Taylor, Hwy. 71 North, Box 438,
Anderson, Missouri 64831 and American Family
Homes, Inc., Nancy Ann Taylor, 115 Cedar Ridge,
Neosho, Missouri 64850,

Defendants.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AND IMPOSING SANCTIONS

On March 30, 1992, Marcellus and Rhonda Davis (Complainants) filed a complaint against William L. Pitts d/b/a Pitts Mobile Homes (Pitts) and American Family Homes, Inc. (American). On April 9, 1992, Pitts and American were notified of the complaint and were directed to either answer the complaint or explain any action taken to satisfy the complaint. On May 11, 1992, American filed an answer to the complaint. On July 8, 1992, the Commission deemed that Pitts had admitted the averments against him by virtue of his failure to file an answer and directed the Staff of the Commission (Staff) to conduct an investigation as to the cause of the complaint against American. On September 1, 1992, Staff filed a report on its findings from its investigation.

On October 28, 1992, Complainants, Staff, American and Pitts attended an early prehearing conference as scheduled. On November 16, 1992, Complainants

filed an amended complaint against Pitts and American. Pitts and American subsequently filed separate answers to the amended complaint.

On January 5, 1993, the Commission set a procedural schedule for this case. On January 29, 1993, the Commission struck Pitts' answer from the record. The Commission reasoned that the amendment to Complainants' complaint was not so substantial and material as to amount to a new or additional claim so Pitts was not entitled to an opportunity to answer the amended complaint.

Complainants and Staff filed written testimony as scheduled. Neither Pitts nor American filed any written testimony.

On April 26, 1993, a prehearing conference was held as scheduled. Complainants, Staff and the Office of the Public Counsel (OPC) attended the prehearing conference. Neither Pitts nor American attended the prehearing conference. Complainants entered an oral motion for a default judgment against American for its failure to appear at the prehearing conference. Staff and OPC indicated that they did not oppose Complainants' motion.

On April 29, 1993, American requested and was granted an opportunity to respond to Complainants' motion. On May 4, 1993, American filed its response to Complainants' motion. Also on May 4, 1993, Staff and Complainants each filed a reply to American's response.

The Commission finds American's arguments to be disingenuous. The Commission finds its orders in this case to be clear and incapable of being so misinterpreted as claimed by American. This case has been pending for over one year. American has had ample opportunity to organize itself and follow Commission orders.

Parties are required to be present at all prehearing conferences, unless excused, and the Commission may default a party for not appearing. 4 CSR 240-2.090(5); 4 CSR 240-2.110(6). Thus, by virtue of American's failure to

appear at the prehearing conference, the Commission is of the opinion that a default judgment should be entered against American.

Inasmuch as both Pitts and American have suffered default judgments in this case, the only remaining issue to be determined is the sanctions to be levied against them. The relief requested by Complainants includes action against Pitts' and American's certificates of registration, reimbursement for repairs to Complainants' mobile home and a refund of the purchase price of the mobile home.

The Commission cannot order any monetary or pecuniary award or refund. *B.G. DeMaranville v. Fee Fee Trunk Sewer*, 573 S.W.2d 674 (Mo App. 1978). Nonetheless, the Commission is of the opinion that Complainants should be authorized to seek recovery of the purchase price and their repair costs in circuit court.

Upon review of the complaint, as amended, and Staff's inspection report of September 1, 1992, the Commission is also of the opinion that Staff should be authorized to pursue penalties against Pitts and American in circuit court. Additionally, the Commission determines that American's certificate of registration should be suspended until such time as American corrects all of the code violations and warranty related problems listed in Staff's inspection report. The Commission also determines that Pitts' certificate of registration should be suspended until such time as it arranges for the proper initial set up of the Complainants' mobile home. Furthermore, the Commission determines that upon the lifting of the suspension, Pitts' certificate of registration should remain on probation until it is due for renewal in January, 1994 with the condition that Pitts will have no further violations of Chapter 700, RSMo, or Commission rules.

IT IS THEREFORE ORDERED:

1. That a default judgment is hereby entered against American Family Homes, Inc. in this case.
2. That Marcellus and Rhonda Davis are hereby authorized to seek recovery of the purchase price of their mobile home and cost of repairs to their mobile home in circuit court.
3. That the Staff of the Commission is hereby authorized to pursue penalties against Pitts Mobile Homes and American Family Homes, Inc. in circuit court.
4. That the certificate of registration of American Family Homes, Inc. is hereby suspended until such time as American Family Homes, Inc. corrects the code violations and warranty related problems listed in the investigation report filed by the Staff of the Commission on September 1, 1992.
5. That the certificate of registration of Pitts Mobile Homes is hereby suspended until such time as Pitts Mobile Homes arranges for the proper initial set up of Marcellus and Rhonda Davis' mobile home.
6. That upon the lifting of the suspension imposed in Ordered Paragraph 5, the certificate of registration of Pitts Mobile Homes shall remain on probation until it is due for renewal in January, 1994, with the condition that should Pitts Mobile Homes commit any further violation of Chapter 700, RSMo, or Commission rules, its certificate of registration shall be automatically suspended.
7. That this Order shall become effective on May 18, 1993.

(S E A L)

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

Mueller, Chm., Rauch, McClure, Perkins,
and Kincheloe, CC., Concur.