

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Director of the Manufactured Housing and)	
Modular Units Program of the Missouri)	
Public Service Commission,)	
)	
Complainant,)	
)	
v.)	
)	Case No. MC-2008-0071
Amega Sales, Inc.)	
d/b/a Quality Preowned Homes, Columbia)	
Discount Homes, Mark Twain Mobile)	
Home Sales, and Chateau Homes,)	
)	
Respondent.)	

RESPONSE TO MOTION TO DISMISS COUNTS II, IV AND VI

Comes now, the Director, and for its response to Amega’s Motion to Dismiss Counts II, IV, and VI of the Complaint states:

1. Counts II, IV, and VI of the Director’s Complaint seek revocation of Amega’s registrations. The Director clearly alleges in paragraphs 17, 29, and 41 of the Complaint that Amega violated section 407.020 by engaging in misrepresentation, failure to disclose, and concealment in connection with the sale of a home. Section 700.100.3(4) is also very clear that “engaging in conduct which constitutes a violation of the provisions of section 407.020 RSMo” is grounds for suspending or revoking a registration. The allegations in paragraphs 19, 21, and 44 of the Director’s Complaint, alleging that a violation of section 700.015 is a violation of 407.020 are alternative allegations that may or may not support an action for revocation.

Amega seeks to dismiss by claiming that the Director cannot revoke a registration for a violation of section 407.020, only the Attorney General can. Amega’s Motion first

misrepresents the Complaint in this case by alleging on page 5 of its Motion to Dismiss that “[t]he Director does not allege that Amega violated the terms of Section 407.020, but that Section 407.020 has been violated through Section 700.115.1”. Then Amega offers a tortured reading of the *Mobile Home Estates*¹ case to support the notion that the Commission may revoke a registration for violations of sections 700.090 and 700.045 only.

The Director’s response is to direct the Commission once again to paragraphs 17, 29, and 41 of the Complaint. Paragraph 17 says:

In connection with the sale or advertisement of merchandise in trade or commerce, Amega Sales, Inc., through Quality Preowned Homes misrepresented to Mr. and Mrs. Nelson the condition of the home, failed to disclose to Mr. and Mrs. Nelson that the home had been damaged and did not comply with the Code, and concealed material facts about the condition of the home from Mr. and Mrs. Nelson in violation of the provisions of Section 407.020.1.

Paragraphs 18, 30, and 43 are equally clear and unequivocal: “Engaging in conduct that is a violation of section 407.020 is grounds for revocation of the registrations of Amega under section 700.100.”

Clearly, the allegations in paragraphs 19, 31, and 44 are different and alternative attempts to revoke Amega’s registrations because they refer to the findings in prior counts I, III, and V, as support for revocation. Paragraphs 19, 31, and 44 claim that selling a home that does not comply with the Code, a violation of section 700.015, is tantamount to a violation of section 407.020. Though the *Mobile Home Estates* case may prohibit the Commission from revoking a registration for a violation of section 700.015, it does not prevent the Commission from making a finding that 700.015 was violated and that referral to the Attorney General for prosecution is warranted.

¹ 921 S.W.2d 5 (Mo. App. W.D. 1996)

Amega's next argument is that, in spite of the express language in section 700.100.3(4) that the Commission may revoke a registration for engaging in conduct in violation of section 407.020, the Commission is without authority to decide the issue. Amega is really arguing that the statute is unconstitutional. But the Commission does not have the authority to decide the constitutionality of a statute so Amega's argument must fail.

Wherefore, having fully answered Amega's Motion to Dismiss Counts II, IV, and VI, the Director prays that the Motion be denied.

Respectfully submitted,

/s/ Steven C. Reed

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Response to Motion to has been delivered by electronic mail, to Tom Harrison, Attorney for Amega Sales, Inc., and via electronic mail to Christina Baker, Office of the Public Counsel, at Christina.Baker@ded.mo.gov on this 28th day of January, 2008.

/s/ Steven C. Reed