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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 6th
day of July, 1999.

Director of the Division of Manufactured	)	
Homes, Recreational Vehicles and Modular	)	
Units of the Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. MC-99-221</u>
	)	
Lake Area Development Co. Inc.	)	
DBA Factory Direct Manufactured Housing,	)	
	)	
Respondent.	)	

ORDER APPROVING STIPULATION AND AGREEMENT

Procedural History

On November 17, 1998, the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission of the State of Missouri (Director) filed a complaint against Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing (Factory) for failure to properly set up a manufactured home and to correct code violations in a manufactured home as required by Section 700.100.3(6), RSMo 1994¹.

Factory filed an answer on December 23, 1998, and moved to dismiss the complaint. On December 30, 1998, the Director filed a response to Factory's motion to dismiss. On June 17, 1999, this motion was denied.

A prehearing conference was held on February 2, 1999. As a result of discussions during and after the prehearing conference, the Director and Factory filed their proposed *Stipulation and Agreement* (Agreement) on June 9, 1999.

The Agreement stated that, *inter alia*, if requested by the Commission, the Director should have the right to submit to the Commission a memorandum explaining its rationale for entering into the Agreement. The Agreement also stated that each party should be served with a copy of the memorandum and should have the right to submit to the Commission a responsive memorandum served on all parties within five (5) business days of the service of the Director's memorandum. The Commission requested a memorandum from the Director. On June 16, 1999, the Director filed his *Suggestions in Support of the Stipulation and Agreement*. Factory did not respond.

Discussion

The Agreement stated that Factory and Director had reached a mutual resolution of the complaint brought against Factory by the Director. Factory acknowledged that it had received the inspection reports of the Director for the home referred to in the complaint; the

¹ All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

complaint concerned a manufactured home purchased from Factory by David Ferguson and Patti Ferguson (Fergusons). Factory further acknowledged that the Director had found various deficiencies in the setup of the Fergusons' home². Factory stated that it had responded to and had made attempts to satisfy the items set forth in the complaint. Factory also stated that David Ferguson had refused to allow Factory to make any further repairs to the home.

The Agreement also stated that Factory's dealer registrations would be placed on probation for ninety (90) days, beginning on the date the Commission approves the Agreement. During the probationary period, the Agreement stated that if Factory violated any of the rules, regulations, or laws pertaining to the sale or setup of manufactured homes, the Director would have the option to file a formal complaint for violation of this order approving the Agreement. The Agreement also stated that such complaint would be in addition to a complaint filed against Factory for the alleged offense which caused the probation violation.

The Agreement also stated that in the event the Commission issued an order approving the Agreement, the parties would waive their respective rights to: (a) call, examine, or cross-examine witnesses, pursuant to Section 536.070(2); (b) present oral argument and written briefs, pursuant to Section 536.080.2; (c) have the transcript read by the Commission pursuant to Section 536.080.2; (d) seek rehearing or

² The Fergusons also alleged a host of other deficiencies which are not covered by this case. Only the setup deficiencies alleged by the Director are covered herein.

reconsideration pursuant to Section 386.410, RSMo Supp. 1998; and (e) seek judicial review pursuant to Section 386.510. The Agreement stated that the waiver did not apply to any other matter brought before the Commission.

The Agreement stated that the signing of the Agreement by Factory did not constitute an admission on the part of Factory that the items contained in the inspection reports constitute improper setup of a manufactured home.

Finally, the Agreement concluded with an agreement by the Director to file a motion to dismiss with prejudice the complaint filed against Factory. The Agreement stated that this motion would be filed within one (1) week after the Commission approves the Agreement. Factory stated that it agreed to the dismissal pursuant to 4 CSR 240-2.116.

Findings of Fact

The Missouri Public Service Commission has arrived at the following findings of fact:

Factory is a dealer of manufactured homes and currently operates lots for the sale of manufactured homes in the Missouri towns of Eldon, Laurie, Sedalia, and St. Robert.

On June 30, 1995, David Ferguson and Patti Ferguson purchased a new 1995 Skyline Sabre manufactured home, Serial Number 42-51-1890-H (Fergusons' home) from Factory. No valid waiver of any setup responsibilities was received from the Fergusons by Factory as part of the purchase agreement. On June 13, 1996, Fergusons filed a consumer complaint with the Director. Following the receipt of the Ferguson

complaint, the Fergusons' home was inspected on several occasions, apparently by Factory³. On June 8, 1998, and August 14, 1998, additional inspections of the Fergusons' home were conducted by Gene Winn (Winn), an authorized inspector employed by the Commission. As a result of his inspections, Winn prepared two field inspection reports citing a number of deficiencies, including setup deficiencies, in the Fergusons' home that did not comply with the required code. Both reports, as well as other documents referred to hereinafter, were attached to the complaint: the field inspection report dated June 8, 1998 as Exhibit A, and the field inspection report dated August 14, 1998 as Exhibit B⁴.

On June 17, 1998, the Director sent a letter to Factory, enclosing a copy of Exhibit A, directing that the setup deficiencies enumerated be corrected within thirty (30) days (Exhibit C). On August 17, 1998, the Director sent a letter to Factory, enclosing a copy of Exhibit B, directing that the setup deficiencies enumerated be

³ The pleadings are silent on the point of who actually conducted the first inspections of the Fergusons' home.

⁴ Exhibit A listed, *inter alia*, items of improper setup: (a) there is no vapor barrier under the home; (b) the front door piers are single stacked instead of double stacked; (c) the home needs some re-leveling; and (d) the electric wire used on the home is for 100 amp service but, since it was a total electric home, it needed wiring for 200 amp service, plus there was no ground wire. Exhibit B listed, *inter alia*, items of improper setup: (a) all of those listed in Exhibit A (except any reference to a ground wire); (b) the I-beam on the front door side was bent; and (c) the home is not properly anchored. (It should be noted that Factory, in its *Consolidated Answer, Affirmative Defenses and Motions to Dismiss* filed on December 23, 1998, stated that "The complaints of David and Patti Ferguson were and are trivial in nature and the conditions complained of are endemic to purchasers of the quality of manufactured home acquired by the Fergusons.")

corrected within thirty (30) days (Exhibit D). On September 17, 1998, the Director sent a letter to Factory directing Factory to forward work orders, signed by the Fergusons, indicating that the setup deficiencies noted in the inspections were corrected (Exhibit E). The work orders were to be forwarded within fifteen (15) days from the receipt of the letter.

On November 5, 1998, Winn again inspected the Fergusons' home. As a result of that inspection, Winn prepared a third field inspection report (Exhibit F), confirming the failure of Factory to comply with the Director's requirements and noting that additional setup deficiencies were created as a result of Factory's attempted repairs⁵.

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 dealers pursuant to Chapter 700, as amended, of the Revised Statutes of Missouri (Chapter 700). As prescribed by 4 CSR 240-120.031, the Commission has delegated its powers pertaining to new manufactured homes under Chapter 700 to the Director, except the powers to revoke, deny, refuse to renew, or place on probation a registration under Section 700.090.

Factory is currently registered with the Commission as a dealer for 1998 under dealer registration numbers 8765, 9161, 9115, and 9184, and is subject to the jurisdiction of the Commission.

⁵ Seventeen new setup deficiencies were listed in Exhibit F, q.v.

Section 700.100(2) states:

The 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(6) states:

[The following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration:] . . . As a dealer, failing to arrange for the proper initial setup of any new or used manufactured home or modular unit sold from or in the state of Missouri, unless the dealer receives a written waiver of that service from the purchaser or his authorized agent and an amount equal to the actual cost of the setup is deducted from the total cost of the manufactured home or modular unit[.]

There is no need for a hearing. The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no party requests a hearing, the Commission may determine that a hearing is not necessary and that the Commission may make a decision based on the Agreement. See State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C., 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission concludes that all issues were settled by the Agreement. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in a case, pursuant to Section 536.060, RSMo Supp. 1998.

Decision

With one exception, the Commission has decided to approve all the terms of the Agreement as being in the best interests of the

parties and achieving an equitable resolution of all the issues. Paragraph 6 of the Agreement states that the Factory will be placed on ninety (90) day probation, the probationary period beginning on the date that the Commission approves the Agreement. Paragraph 12 of the Agreement states that the Director will dismiss the case "with prejudice" within one (1) week after the Commission approves the Agreement. These two paragraphs are obviously contradictory: If the Commission allows the dismissal with prejudice, then there will be no case in which Factory is on probation. However, the Commission desires that Factory be put on probation. Thus, the Commission will not approve Paragraph 12 of the Agreement.

IT IS THEREFORE ORDERED:

1. That, except for Paragraph 12 thereof, the Missouri Public Service Commission approves the *Stipulation and Agreement* between the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission of the State of Missouri and Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing, signed and filed on June 9, 1999.

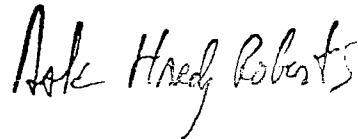
2. That Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing shall be placed on ninety (90) day probation beginning on the effective date of this order, with the condition that it comply with any and all of the statutes, rules and regulations pertaining to the sale or setup of manufactured homes.

3. That the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service

Commission of the State of Missouri shall report to the Missouri Public Service Commission at the end of the probationary period set forth above, said report stating whether or not Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing has complied with the condition of its probation. If the said report does not indicate a probation violation, this case may be closed.

4. That this order shall become effective on July 16, 1999.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Hopkins, Senior Regulatory Law Judge

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COMMISSION COUNCIL
PUBLIC SERVICE COMMISSION