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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 5th
day of August, 1997.

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.	)	

ORDER DENYING MOTIONS AND
ORDERING PROCEDURAL SCHEDULE

This Complaint was filed by the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission, by and through the Commission's Office of General Counsel (hereinafter referred to as the Staff) on June 16, 1997. An Amended Complaint was filed by the Staff on July 28. The Amended Complaint alleges that Amega Mobile Home Sales, Inc., d/b/a Quality Preowned Homes (Amega) sold a manufactured home without a HUD or State of Missouri seal, in violation of Section 700.045(2), RSMo 1994.

On July 16, 1997 Amega filed its Answer and Affirmative Defenses, a Motion to Dismiss or, alternatively, Motion to Strike, a Request for Hearing, a Motion to Disqualify Counsel, and as an apparent part of its answer, a large notation stating "jury trial demanded."

As part of its Motion to Dismiss, Amega states that no allegation appears in the Complaint, now amended, that Amega actually sold the mobile

home in question to the individuals named in the Complaint, nor did so without the requisite seals. Amega alleges that the Complaint does not state a claim upon which relief may be granted. In addition, Amega alleges that the Commission has no jurisdiction to consider this cause or to grant the relief sought. Finally, Amega alleges various constitutional issues and issues involving the penalties sought by the Staff.

After review of the Amended Complaint, the Staff response to the various motions as set out above, and the statutes and case law, the Commission finds that the Staff Complaint, as amended, is sufficient to state a cause of action. In addition, the requested penalty, that being the suspension of Amega's dealer registration, is authorized by statute and may be imposed by the Commission after reaching findings based on competent and substantial evidence on the record. The appropriateness of Paragraph C of the amended prayer, that being for authorization to seek penalties in Circuit Court, is authorized by statute in certain situations, and will be determined by the Commission upon the completion of the record and submission of this case to the Commission for decision.

Regarding the statutory and constitutional issues raised by Amega, the Commission has the legal authority and statutory jurisdiction under Chapter 700 to entertain this Complaint and to impose penalties as provided by the legislature. In regard to the various constitutional arguments, the Commission will acknowledge that Amega has preserved those matters for the record but will point out that it has no authority to make any determination as to the constitutionality of statutes, rules or regulations.

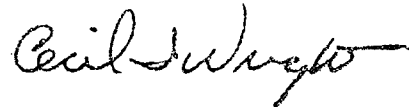
In regard to Amega's motion to disqualify counsel, careful reading of both the applicable statutes and case law reveals that the Staff has clear authority to act under Chapter 700, RSMo, and has acted legally in filing its Amended Complaint through the General Counsel's office.

Finally, concerning Amega's request for hearing and demand for jury trial, the Commission finds no legal or constitutional requirement to grant an on-the-record hearing for oral argument of these pending motions. In addition, no statute, constitutional provision, or case precedent provides for a jury in an administrative proceeding. While both of these requests will, therefore, be denied, the Commission will order the parties to file a suggested procedural schedule for the proper litigation of this matter. The parties will be ordered to do this no later than the close of business September 2.

IT IS THEREFORE ORDERED:

1. That the motions of Amega Mobile Home Sales, Inc., as set out above, are hereby denied.
2. That the parties, either jointly or separately, are hereby ordered to file a suggested procedural schedule for the hearing of this matter no later than the close of business September 2, 1997.
3. That this order shall become effective on the date hereof.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton, Drainer,
Murray, and Lumpe, CC., Concur.

ALJ: Derque