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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 9th
day of October, 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
ADOPTING PROCEDURAL SCHEDULE**

Procedural History

This complaint was originally filed by the Director of the Division of Manufactured Housing, Recreational Vehicles and Modular Units of the Public Service Commission (the Director), by and through the Commission's Office of General Counsel (hereafter referred to as the Staff) 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, Staff filed an Amended Complaint and reply briefs to Amega's motions. On August 5, the Commission issued an order finding that Staff's Amended Complaint sufficiently stated a cause of action and denying each of Amega's motions. The parties were then 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 another Request for Hearing. Amega filed its Proposed Scheduling Order on August 29. Staff filed its suggested procedural schedule on September 2, and subsequently filed Complainant's Request to File Reply Pleadings or Alternatively, for Leave to File Out of Time, Complainant's Reply to Respondent's Answer and Affirmative Defenses to Complainant's Amended Complaint, Complainant's Reply to Respondent's Motion to Dismiss or Alternative Motion to Strike, and Complainant's Reply to Respondent's Motion to Disqualify Counsel on September 4.

Discussion

Staff asserts in Complainant's Request to File Reply Pleadings or Alternatively, for Leave to File Out of Time that it was not required to respond to Amega's Answer and Affirmative Defenses to Amended Complaint because the Commission had already ruled that the Amended Complaint stated a cause of action. Further, the Commission had already addressed the issues presented in Amega's pleadings. Ordinarily, no new response to an amended pleading is required where the amendment does not raise new matters. Mahurin v. St. Luke's Hospital of Kansas City, 809 S.W.2d 418, 421 (Mo.App.W.D. 1991). However, Staff acknowledges that Amega raised the additional issue of preemption. The Commission therefore finds that Staff was required to file pleadings in response to the new claims filed by Amega. Staff filed its response six days late. However, the Commission finds that granting Staff's request to file its pleadings out of time is not prejudicial to Amega, and, as no objection has been filed, the Commission will grant Staff's request.

Amega's August 19 filings are substantially the same as its July 16 filings. Amega denies that the Commission has jurisdiction over the specific issues raised in this case and claims the Commission lacks the power to grant the relief requested by Staff. The Commission finds it has the power under Chapter 700 of the Missouri Revised Statutes to proceed to hearing on the issue raised in Staff's Amended Complaint and to render a decision including appropriate statutory penalties if warranted.

Amega next claims that the Commission's delegation of power to the Director under 4 CSR 240-121.020 (1989) is illegal and unconstitutional. In that rule, the Commission delegated its powers (except the power to revoke, deny, refuse to renew or place on probation a manufacturer's or dealer's registration) and responsibilities under Chapter 700 of the Revised Statutes of Missouri with respect to preowned mobile homes to the Director. However, as Section 700.040, RSMo (1995) specifically authorizes the Commission to appoint such employees and to issue such rules and regulations as it deems necessary for the administration of the statute, the Commission finds that Amega's claim is without merit.

No declaration may be made on the plethora of Amega's other constitutional challenges to Chapter 700, RSMo concerning separation of power; the vagueness and overbreadth; the "takings" clauses of the United States and Missouri Constitutions; the "due process" clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10, of the Missouri Constitution; the Fourth, Fifth and Sixth Amendments to the United States Constitution; and Article I, Section 31 of the Missouri Constitution. The declaration of the validity or invalidity of statutes and administrative rules is purely a judicial function. State Tax Commission v. Administrative Hearing Commission,

641 S.W.2d 69, 75 (Mo. banc 1982). As an administrative agency, the Public Service Commission lacks the jurisdiction to determine the constitutionality of statutory enactments and therefore declines to do so. However, the Commission will acknowledge that Amega has preserved these matters for the record.

Amega further alleges that the authority of the Missouri General Assembly and the Commission to enforce Sections 700.010(11) and 700.045 is preempted generally by the enactment of The National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. § 5401 *et seq.*, hereafter referred to as the Act) and specifically by Section 5403(d). However, the Act specifically exempts the sale of *used* manufactured homes from its regulations. 42 U.S.C.A. § 5409(b)(1) (West 1995). Both parties agree that the manufactured home sale at issue in this case involved a preowned or used manufactured home. Therefore, the provisions of Chapter 700, RSMo as applied to the sale in question are not preempted by the Act by its own terms.

Regarding Amega's second Motion to Disqualify Counsel, the Commission will not reconsider those issues which have been previously ruled on and denied. Therefore, to the extent that Respondent's pending motions reflect the same claims that were previously denied in the Commission's August 5 order, those claims will remain denied. To the extent the motion presents a new claim, the Commission finds that Staff has clear authority to act under Chapter 700 of the Missouri Revised Statutes, and has acted lawfully in filing its Amended Complaint through the General Counsel's Office.

The section dealing with Amega's request to strike certain statements from the original complaint was inadvertently left out of the

August 5 order. As an amended complaint has been filed, the original complaint is deemed abandoned and these issues are moot. The Commission will consider Amega's request to strike certain statements from the Amended Complaint raised in Amega's Motion to Dismiss Amended Complaint or Alternative Motion to Strike. Amega claims that paragraphs 6, 7, 8, 10, and 11 contain statements that are irrelevant and immaterial and therefore these paragraphs should be stricken in their entirety. The Commission does not agree. Each of the five paragraphs Amega seeks to strike are factual allegations. The central issue in this case is the sale transaction involving a manufactured home that allegedly does not have the appropriate seals required by Missouri law. As each of these paragraphs bears upon the character of the central issue of the sale, the Commission finds them to be both relevant and material. Therefore, Amega's Alternative Motion to Strike will be denied.

As stated in its prior order concerning Amega's request for hearing and demand for a jury trial, the Commission finds no legal or constitutional requirement to grant an on-the-record hearing for oral argument of these pending motions. Furthermore, the Commission finds no statute, constitutional provision, or case precedent which provides for a jury in an administrative proceeding. Both of Amega's requests will therefore be denied.

Procedural Schedule

The Commission has considered the pleadings of the parties and finds neither procedural schedule to be adequate. Therefore the Commission will adopt the schedule set out in ordered paragraph 4. The Commission finds that the following conditions shall be applied to the schedule:

A. The Commission will require the prefiling of testimony in compliance with the requirements of 4 CSR 240-2.130, including the filing of testimony on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays in the proceedings caused by allegations of unfair surprise at the hearing.

B. Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. Any testimony or schedule filed without a protective order first being established shall be considered public information.

C. The Commission will schedule a prehearing conference to allow the parties the opportunity to resolve substantive issues as well as to consider those matters described in 4 CSR 240-2.090(6). The parties shall also use the prehearing conference to eliminate issues which can be resolved through updating of a party's case, clarification of misunderstandings, explanation of an issue's interrelationship with other issues, and correction of clerical or arithmetic errors.

D. The parties shall file a hearing memorandum setting out the issues to be heard and the witnesses to appear on each day of the hearing, definitions of terms used in describing those issues, and each party's position on those issues. The hearing memorandum will set forth the issues that are to be heard and decided by the Commission. Any issue not contained in the hearing memorandum will be viewed as uncontested and not requiring resolution by the Commission. The briefs to be submitted by the parties shall follow the same format established in the hearing memorandum. Initial briefs must set forth and cite the proper portions of the record

concerning the remaining unresolved issues that are to be decided by the Commission.

The Commission Staff will be responsible for preparing and filing the hearing memorandum. The Commission wishes to emphasize the importance of the deadline for filing the hearing memorandum. Unless the Commission orders otherwise, the hearing memorandum shall be filed on the date set. Each party is expected to provide Staff with its position on each unresolved issue at least two business days before the due date. If a party fails to provide its position by that date, the Staff is not obligated to include that party's position in the hearing memorandum.

E. The Commission's general policy provides for the filing of the transcript within two weeks after the conclusion of the hearing. Any party seeking to expedite the filing of the transcript shall tender a written request to the administrative law judge at least five days before the hearing.

F. Initial briefs shall be limited to 30 pages and reply briefs to 15 pages. All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080(7).

IT IS THEREFORE ORDERED:

1. That Staff's Alternative Motion for Leave to File its Reply Pleadings Out of Time is granted.

2. That all the motions filed by Amega Mobile Home Sales, Inc., on August 19, 1997, are denied.

3. That any motions not expressly ruled upon in the foregoing section are denied.

4. That the following procedural schedule is adopted for this proceeding, subject to the conditions discussed above:

Complainant's Direct Testimony	October 27, 1997 3:00 p.m.
Respondent's Rebuttal Testimony	November 24, 1997 3:00 p.m.
Surrebuttal Testimony	December 15, 1997 3:00 p.m.
Prehearing Conference	January 5, 1998 10:00 a.m.
Hearing Memorandum	January 15, 1998
Evidentiary Hearing	January 22-23, 1998 10:00 a.m.

4. The prehearing conference and evidentiary hearing will be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference or hearing at: Consumer Services Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

5. That this order shall become effective on October 9, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

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

Hennessey, Regulatory Law Judge