

**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.                              | ) |                       |

**SUGGESTIONS IN SUPPORT OF THE PARTIES' STIPULATION AND  
AGREEMENT AND EXPLANATION OF THE PROPOSED ORDER REVOKING  
REGISTRATIONS, SUSPENDING EXECUTION OF REVOCATION, AND  
GRANTING PROBATION**

COMES NOW, the Director, by counsel, and presents his suggestions in support of the Stipulation and Agreement of the Parties. These suggestions are not joint suggestions, they are the opinions and suggestions of the Director and counsel only and do not reflect any consensus with Amega or its attorneys. Per the terms of the Parties Stipulation and Agreement, as well as Commission rules, Amega is invited to file any response to these suggestions it finds appropriate.

**CURRENT PROCEDURAL STATUS**

On September 7, 2007, the Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") filed a Complaint against Amega Sales, Inc., d/b/a Quality Preowned Homes, Columbia Discount Homes, Mark Twain Mobile Home Sales, and Chateau Homes (collectively "Amega"), alleging that

Amega violated sections 700.015.1 and 407.020.1 RSMo. Greg DeLine is an individual and President of Amega. The Director, Amega and DeLine are referred to herein collectively as the “Parties.”

On October 10, 2007, Amega filed an Answer and Affirmative Defenses denying the Director’s allegations. The Commission set this matter for hearing on March 12 and 13, 2008. The Parties filed a Stipulation and Agreement on March 10, 2008, proposing a resolution of the Complaint, but that proposal was rejected by the Commission on March 31, 2008. In its Order Rejecting Stipulation and Agreement, the Commission determined that the Parties Stipulation and Agreement was flawed in that it: 1) Would allow DeLine to repurchase a controlling interest in Amega after the expiration of the two-year period of probation, 2) Does not specify who will be purchasing a controlling interest in Amega so that the Commission can determine whether the purchase would be truly independent of DeLine, and 3) Was unenforceable because it did not contain a stipulation of facts that would allow for judicial determination of any Commission order revoking Amega’s probation.

The Commission reset the matter for hearing on June 16 and 17, 2008. The Parties filed a second proposed Stipulation and Agreement (the Agreement) on May 30, 2008, as a second attempt to resolve this matter short of hearing.

**SUGGESTIONS IN SUPPORT OF STIPULATION AND AGREEMENT  
AND SUGGESTED FORM OF COMMISSION ORDER**

The Director suggests that the Commission approve the Parties’ Stipulation and Agreement because it achieves more than the Commission could order if the case were determined by the Commission after hearing. Also, the three primary concerns of the Commission, noted above, are addressed as follows in the Agreement: 1) DeLine agrees

to entry of a Commission order effective beyond the two year of probation wherein he will not manage, operate or conduct business as a dealer and that he will not possess a majority interest or control any entity engaged in the sale of manufactured homes, 2) DeLine will disclose the identity the purchaser of his interest so the Commission can determine if the new owner will be independent of DeLine, and 3) the Agreement includes a stipulation of facts that allows the Commission to adjudicate the Complaint and order discipline in accordance with the Parties' Agreement.

#### The Form of the Commission's Order

Filed contemporaneously with these Suggestions is the Director's proposed order revoking Amega's registrations and placing Amega on probation. Simply approving the Stipulation and Agreement of the Parties would require the Commission to interpret a contract in the event of a future dispute. Rather, the Commission should make specific findings of fact and conclusions of law based upon the Agreement and incorporate the specific terms of the parties' Stipulation and Agreement into the Commission's order. The conditions of probation thus become part of the ordered paragraphs in the Commission's order and are enforceable in the Circuit Court as a Commission order under section 386.360. In addition, because the Commission will already have found that the agreed facts are sufficient for discipline in the form of revocation of Amega's registrations, the conditions of probation must be followed in order for the revocation to be stayed during the term of probation.

#### Findings of Fact

The Parties have agreed to a set of facts that call for the Commission to find a violation of section 700.100.3(6), the provision requiring that a dealer arrange for proper

initial setup of a manufactured home. Though the Complaint itself does not allege a separate violation of 700.100.3(6) as one of the counts, the facts concerning the Nelson home support such a determination and the Parties expressly agree that the set of facts agreed to in its jointly proposed “Stipulation of Facts” is accurate. This is similar a judge or jury finding a defendant guilty of a lesser included offense subsumed within a certain set of facts that may support a greater charge. Note in paragraph 12 of the Complaint on page 4 that the Director alleged that “the setup of the home was improper or incomplete in many respects.” Under 700.100.2 and 700.100.3, the Commission has authority to suspend, revoke or place on probation a dealer’s registration upon finding that Amega did not arrange for the proper initial setup of the Nelson home.

#### Conclusions of Law

Once the facts are determined according to the stipulated facts, the Commission need only apply the law and reach its legal conclusions. Because of the violation of section 700.100.3(6) the Commission has authority to suspend, revoke or place on probation. Based on the stipulated facts, the Commission should revoke Amega’s five registrations and, as per the Agreement, place Amega on probation for two years with conditions that Amega must follow. In this manner, the Commission will have adjudicated the Complaint leaving nothing for later determination; the Commission will have officially and formally revoked Amega’s registrations. Per the Agreement, the Commission should then suspend or stay the execution of its order revoking the registrations and place Amega on probation on the terms agreed to by the Parties. If the Commission finds that Amega has violated the terms of its probation in the future, the Commission will simply have a hearing regarding the violation of probation and, if

proven, will terminate the probation and order the revocation to be executed. Any appeal will deal with the propriety of the termination of probation, not the propriety of the revocation of the registrations previously done as part of the current case.

#### The Allegation of Violation of the Merchandising Practices Act

As part of its overall defense to the Director's Complaint, Amega challenged the Commission's authority to make a finding under section 700.100.3(4) that Amega has "engaged in conduct which constitutes a violation of section 407.020." Amega claims that according to section 700.115.1 only the attorney general has the authority to prosecute a case under 407.020, and therefore, the Commission can act under 700.100.3(4) only after the attorney general has prosecuted a case under 407.020 and a Court has made a determination. Amega seeks a writ of prohibition that is currently pending before the Western District Court of Appeals on this issue.

In 2004 the Circuit Court of Cole County issued a writ prohibition to prevent the Commission from adjudicating a claim arising under 700.100.3(4) against A&G Trucking, Commission Case No. MC-2004-0078. After two years on appeal the Missouri Supreme Court ultimately vacated the Circuit Court's Order on grounds unrelated to whether the Commission can adjudicate a case alleging a violation of 407.020. In this case, the Court of Appeals has not acted. In the event the Commission accepts this Stipulation and Agreement, the Commission may advise the Court of Appeals that the issue has become moot.

#### Amega's Five Certificates of Registration

One issue in this case is how many of Amega's registrations can the Commission discipline. Amega is a manufactured home dealer operating five lots in the State of

Missouri under the following names: Amega Sales, Inc., Quality Preowned Homes, Columbia Discount Homes, Mark Twain Mobile Home Sales, and Chateau Homes.

Count I alleges that Amega Sales, Inc., d/b/a Quality Preowned Homes offered to sell a home to the Nelsons when it did not comply with the HUD Code. The Code is identified at 4 CSR 240-120.100 as both the federal regulations found at 24 CFR 3280 and the installation instructions promulgated by a manufacturer of a home. Count II alleges that Amega violated section 407.020.1 by failing to disclose information to the Nelsons about the condition of the home at the time of sale. Counts III and IV bring similar allegations concerning a home sold to the Whitefords. The Whiteford home was also sold from the Quality Preowned Homes lot. Counts V and VI are similar allegations arising from actions that took place on the Columbia Discount lot.

Section 700.090 provides that every dealer who sells or offers for sale a manufactured home from or in the state of Missouri “shall register each location with the commission”. In January 2007, and again in January 2008, the Director issued five separate registrations to Amega Sales, Inc. for each of its five lots. The five certificates of registration were pursuant to five separate applications made by Amega in the months of December preceding renewal of its registrations. One of the issues that would be litigated if this case proceeds to hearing is whether the Commission can discipline all five of Amega’s registrations or only those two that represent the locations giving rise to the allegations. The May 30, 2008 Stipulation and Agreement makes clear that, upon approval of the Parties’ Agreement, all five registrations are subject to discipline and will be placed on probation.

### Amount of Penalties

The allegations of violation of section 700.015.1 in this case, if proven, can lead to penalties against Amega, but if a hearing is held, the potential amount of penalties may not be as great as the amount agreed to by the Parties. The Parties have agreed to a penalty of \$50,000. If hearing is held, a violation of section 700.015.1 provides through 700.115.2 for a civil penalty of up to \$1,000 for “each such violation” of selling or offering for sale a home that does not comply with the federal standards referred to as the HUD Code. The Director alleges that Amega offered three houses for sale. The Director would need to establish separate and distinct “offers for sale” in order to establish a continuing, day to day violation of 700.015.1.

### Deline’s Departure

Greg DeLine has agreed to be bound in the Parties’ Stipulation and Agreement to exit the industry as manager, operator and majority owner of any dealership in the State of Missouri. The Agreement calls for a Commission order to this effect that is perpetual and extends beyond the two year probationary term. As part of the Commission’s order approving this Agreement, the Commission will order the Parties to perform the Agreement and will include the provisions of the Agreement in the order’s ordered paragraphs. A Commission order is enforceable in the Circuit Court under section 386.360, which provides that the Commission may obtain mandamus or injunction whenever it is of the opinion that a person or corporation is failing to do anything required of it by law or order or decision of the Commission.

#### Letter of Credit to Repair Homes

The relief allowed in finding a violation of Chapter 700 or a violation of 407.020 is limited to civil penalties and revocation, suspension or probation, respectively. According to the Agreement and the terms of probation, Amega has agreed to establish, as a condition of probation, a letter of credit in the amount of \$70,000 to be utilized to repair homes that were damaged in transit. This type of provision may not be available should the case proceed to contested hearing. Additionally, the Parties' Agreement calls for the Commission to enter an order directing that Amega maintain the letter of credit for a term of five years. Once the Commission includes this provision in its ordered paragraphs, this provision will also be enforceable under section 386.360 by mandamus or injunction.

#### Repair of Eight Red-Tagged Homes

The Parties agree that Amega will repair eight red-tagged homes currently on Amega's lots so that they comply with the HUD Code. This will avoid the possibility of these homes being sold as "junk" or "used" and somehow ending up in the possession of some other dealer in another location that attempts to sell them as "new" to customers. The Parties are currently working on the repair of these homes.

#### The Hackman Home

The Hackman home has been located and Amega has agreed to repair any deficiencies so that it complies with the HUD Code.

#### Information Regarding Transit-Damaged Homes

Amega and DeLine have agreed to provide information regarding any other transit-damaged homes that they know of. This condition of probation is critical to



obtaining information regarding the location of any damaged homes that may not comply with federal standards. Absent the Parties' Agreement, this information may never be obtained from Amega and its officers.

#### Buy-back of Quinton Home and Reinstallation of the Cashman Home

Since the first Stipulation and Agreement was offered as a resolution of this case, the issue of consumer complaints brought by customers Quinton and Cashman came to the forefront of the Director's attention. Quinton claimed she had ordered a home with more insulation than the one she received from Amega. Cashman claimed her home was improperly installed. As part of the resolution of this case, and as a condition of probation, Amega has agreed to a buy-back of the Quinton home and has agreed to reinstall the Cashman home.

#### Violations of Law and the Conditions of Probation

If Amega violates any of the conditions of probation, the Director can move for revocation of probation and execution of the order revoking Amega's registrations. In addition, any material violation of law by Amega is grounds for the revocation of probation and dissolution of the stay of the order revoking of registrations. Such a violation of law might include any violation of Chapter 700 or section 407.020, the Merchandising Practices Act. In the event of such violation, a new complaint will not need to be brought. Rather, a motion alleging a violation of probation will be filed by the Director alleging a violation of law. The Commission, after hearing, will adjudicate the allegation and determine whether probation should be revoked. Thereafter, any appeal will be an appeal of the revocation of Amega's probation instead of an appeal of the

Commission's revocation of Amega's registrations, which is being done in this case before the Commission.

WHEREFORE, the Director prays that the Commission approve the Parties' Agreement as set forth herein.

Respectfully submitted,

/s/ Steven C. Reed

Steven C. Reed  
Missouri Bar No. 40616

Bob Berlin  
Missouri Bar No. 51709

Attorneys for the Director  
PO Box 360  
Jefferson City, MO 65102  
(573) 751-3015 (Telephone)  
(573) 751-9285 (Fax)

#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30<sup>th</sup> day of May, 2008.

/s/ Steven C. Reed

Steven C. Reed