

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

MANAGER OF THE MANUFACTURED)	
HOMES and MODULAR UNITS PROGRAM)	
OF THE MISSOURI PUBLIC SERVICE)	
COMMISSION,)	
)	
Complainant,)	
v.)	Case No. MC-2020-0135
)	
CHARLES W. BRUNE and ANNA G. BRUNE,)	
d/b/a BRUNE MOBILE SALES,)	
)	
Respondents.)	

**POSITION STATEMENT OF CHARLES AND ANNA BRUNE,
d/b/a BRUNE MOBILE SALES**

COME NOW RESPONDENTS, through counsel, and submits the following as its Position Statement with regard to the List of Issues filed on behalf of the parties by the Staff of the Missouri Public Service Commission (“Staff”) on July 8, 2020:

BRUNES’ POSITION ON LIST OF ISSUES

First, the Bruness’ position for all issues below is that while Anna Brune’s name in past years has been included in registration applications and other documents submitted to the Public Service Commission (“the Commission”), Anna has not been involved in the day-to-day operations of the business for many years, and any responsibility for the operation of Brune Mobile Sales and allegations of violations would fall to Charles Brune, and not his wife, Anna.

1. Arranging Proper Initial Setup

Did the Bruness violate § 700.100.3(6), RSMo and 20 CSR 4240.120-065(1)(C) by failing to arrange for the proper initial setup of the five manufactured homes which are the subject of this complaint?

Response:

No. Mr. Brune obtained a valid written waiver from each of the purchasers of the five (5) manufactured homes at issue, waiving installation by a licensed installer pursuant to § 700.100.3(6), RSMo. Brune will testify that when he sold each of the homes, he discussed with the purchasers installation by a licensed installer and that each homeowner decided to sign a written waiver waiving installation by a licensed installer. Brune will further testify that his understanding of the above statute in conjunction with § 700.656.5, RSMo., is that the purchasing homeowner could waive installation by a licensed installer and then perform the installation themselves and/or hire unlicensed third parties to act on behalf of the purchasing homeowner to perform the installation if it is on their own real property and for their own occupancy. In each of the purchases at issue, that is what occurred: the purchaser(s) waived the dealer arranging proper initial setup by a licensed installer and instead took responsibility for either installing the home themselves or hiring their own laborers to install the home on their behalf.

It is worth noting that, while Brune stands by his position that the purchasers can waive proper initial setup and install the home in the manner and by whom they choose, he has been using licensed installers since these issues were raised to him by Staff as a precaution in case Brune has misinterpreted the law.

Therefore, because all the purchasers properly waived the requirement that Brune arrange proper initial setup of the homes as allowed by statute, Brune did not fail to arrange proper initial setup of the homes as claimed by Staff.

2. Correcting Alleged Violations Within 90 Days

Did the Brunes engage in conduct in violation of § 700.045(5), RSMo for failing to correct code violations within 90 days after being ordered to do so by the Commission's authorized representative in the five manufactured homes which are the subject of this complaint?

Response:

No. First, with regard to all five homes, the purchaser(s) signed valid written waivers pursuant to § 700.100.3(6), RSMo, and elected to be responsible for setting up and installing their homes. Any alleged deficiencies in the setup of the homes are the responsibility of the purchaser(s). If the purchaser(s) hired third parties as agents to setup the home on their behalf, any alleged deficiencies would be an issue for the purchaser(s) to resolve with their third party agents without Staff's or the Commission's involvement.

Second, it is Brune's position that, when a person purchases a manufactured home and waives installation pursuant to § 700.100.3(6), RSMo, Staff and the Commission have no authority or jurisdiction over how the person chooses to install their home. Consequently, Staff lacked authority to inspect the above homes and order the purchaser(s), Brune, or anyone else to correct any claimed deficiencies. Again, if there are any deficiencies they would solely be a matter between the purchaser and their third party agents to resolve according to their contractual obligations to one another, and not a matter for Staff and the Commission.

Third, the inspection reports and alleged deficiencies cited by the inspector are unreliable. At the outset, Brune notes that he was not afforded the opportunity to conduct his own inspections of these homes in response to the inspector's claims, nor was he allowed to accompany the inspector during any of these inspections to verify his claims of deficiencies. Further, the inspector committed a number of errors in compiling the reports, including but not limited to the following: (1) for one home, the inspector noted in a report that the soil under the home needed to be crowned, when in fact the home was on a concrete slab; (2) for another home, the inspector noted several deficiencies that Brune later confirmed did not exist upon reentry into the home; and (3) the reports had several errors in reports regarding the dates of inspection that Staff had to go back and correct,

some of which are detailed in Staff's Complaint filed in this matter. The inspector is also known to have approved a concrete slab foundation for a manufactured home as meeting PSC standards, including a depth of 6 inches and adequate sloping away from the slab for water drainage, when the slab was not in fact 6 inches deep and there were issues with rain water not draining away from the slab. Finally, the inspector's credibility generally is questioned by his engagement in other unprofessional and unethical behavior seemingly designed to put Brune out of business: behavior ranging from informing Brune's customers erroneously that Brune was losing his license and going out of business, to advising a customer not to pay Brune their remaining balance owed for the home, to notifying a local bank they could not sell one of the homes because of deficiencies caused by Brune, among other things. As such, the veracity of his reports and alleged deficiencies are suspect. Brune maintains that the appropriate HUD guidelines and manufacturer instructions were complied with in the setup of all of these homes.

In addition, Brune states the following concerning specific homes:

Armstrong home

The purchaser of this home, James Michael Armstrong, is deceased. His home was foreclosed upon by First State Community Bank in early 2019. The bank has inspected the home and found no deficiencies that need correction.

Kasten home

This is the only home in over 30 years in business for which a purchaser has ever made a complaint against Brune. The Kastens no longer own this home as it has also been foreclosed upon by First State Community Bank. The bank has inspected the home and found no deficiencies that need correction.

Thomas home

The Thomas home was installed November 1, 2015. Staff has only one year from delivery to inspect a home. 20 CSR 4240-120.065(2)(B). An inspection can be done within two years of delivery if a complaint is made. 20 CSR 4240-120.065(2)(C). However, no complaint was ever made to Staff about this home. Assuming the date is correct, the inspection of the home was done March 15, 2018, two and a half years after delivery. Staff therefore lacked authority to inspect the Thomas home, and further lacks authority to order Brune to correct alleged deficiencies.

3. Installing Home Without License

Did the Brunes violate § 700.656.1, RSMo by installing a home without holding a valid installer's license issued by the Commission pursuant to § 700.650, RSMo to § 700.680, RSMo?

Response:

No. Brune's position is that each purchaser waived installation of their home by a licensed installer and opted to be responsible for installing the home as stated above. Any part of the installation performed by unlicensed individuals was at the direction and on behalf of the purchaser, as the purchaser's agent. As discussed above, Brune's understanding of the waiver made pursuant to § 700.100.3(6), RSMo, is that so long as the purchaser was installing the home on his or her property for his or her occupancy, he or she could waive installation by a licensed installer and then install the home themselves and/or by and through third party agents hired by the purchaser, similar to how a contractor may use subcontractors to build a home. Brune acted in the capacity of a third party agent for the purchaser.

Furthermore, as previously discussed, since this issue was brought to Brune's attention he has used licensed installers in the event he has misinterpreted the law in allowing purchasers to hire unlicensed individuals to setup their homes.

4. Hiring Unlicensed Installers

Did the Brunes violate § 700.656.3, RSMo by hiring unlicensed individuals to install the manufactured homes which are the subject of this complaint?

Response:

No. Brune's position is that each purchaser waived installation of their home by a licensed installer and opted to be responsible for installing the home as stated above. Any part of the installation performed by unlicensed persons was at the direction and on behalf of the purchaser, as the purchaser's agent. As discussed above, Brune's understanding of the waiver made pursuant to § 700.100.3(6), RSMo, is that so long as the purchaser was installing the home on his or her property for his or her occupancy, he or she could waive installation by a licensed installer and then install the home themselves and/or by and through third party agents hired by the purchaser, similar to how a contractor may use subcontractors to build a home. Brune acted in the capacity of a third party agent for the purchaser.

Furthermore, as previously discussed, since this issue was brought to Brune's attention he has used licensed installers in the event he has misinterpreted the law in allowing purchasers to hire unlicensed individuals to setup their homes.

5. Monthly Sales Reports

Did the Brunes violate § 700.096.1, RSMo and 20 CSR 4240-120.130(1) by failing to file monthly sales reports with the Commission for the five manufactured homes which are the subject of this complaint?

Response:

No. Brune has timely filed his monthly sales reports. The issue here is that on a single occasion Brune sold a manufactured home to a customer who was installing the home in Illinois. At the time, Brune believed that since the home was sold to a person in Illinois and would be

installed in Illinois and not Missouri, the sale of the home was not required to be reported to Staff or the Commission. This is consistent with the fact that the Commission would have no authority over installation of the home and would not be inspecting the home post-installation since it was being installed outside of Missouri. When it was brought to Brune's attention that his understanding was incorrect, he promptly submitted a corrected sales report for that month to include the home in question.

It is worth noting that this error was discovered during Brune's cooperation with Staff's investigation, including review of Brune's business records. Brune was cooperative throughout the entire investigation and provided Staff any and all documents they requested.

WHEREFORE, Respondents respectfully submit this Position Statement for the Commission's consideration.

Respectfully submitted,

LICHTENEGGER LAW FIRM

/s/Thad M. Brady

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 10th day of July 2020.

/s/Thad M. Brady