

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 17th day of
October, 2006.

Director of the Manufactured Housing and)	
Modular Units Program of the Public Service)	
Commission,)	
)	
Complainant,)	
)	
v.)	
)	
Amega Sales, Inc.,)	
)	
Respondent.)	

Case No. MC-2004-0079

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: October 17, 2006

Effective Date: October 17, 2006

Syllabus: This order approves the Stipulation and Agreement entered into between the Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") and Amega Sales, Inc. ("Amega") with regard to the Director's August 5, 2003 Complaint against Amega.

Background

Amega is a Missouri corporation, with its principal place of business located at 111 Eastside Drive, Ashland, Missouri. Amega is owned by Greg DeLine, Kelly DeLine, and Rose Grant, with Greg DeLine serving as the corporation's president.

On August 5, 2003, the Director filed a Complaint against Amega alleging that it had improperly sold a 2000 Skyline Corporation manufactured home located on its sales lot in

Ashland, Missouri. Prior to this sale, the Director had placed a prohibitive sale notice on this particular manufactured home and informed Amega that the home could not be sold as a new manufactured home. Despite the Director's pre-sale determination, Amega sold the home to Don Higginbotham as a new home for habitation in violation of the prohibitive sale notice. The Director requested that the Commission find that Amega had violated provisions of Chapters 700 and 407, RSMo, and that the Commission suspend Amega's registration and authorize the Director to seek civil penalties in circuit court.

The parties submitted the case to mediation, executed a Stipulation and Agreement and filed it with the Commission on March 19, 2004. The Commission never approved or rejected the Stipulation and Agreement, but instead scheduled a bifurcated hearing. The Commission conducted the first phase of the evidentiary hearing, and on September 2, 2004, issued a Report and Order where it found that Amega violated Section 700.045 by selling a home without a seal and that Amega violated Section 407.020 by misrepresenting to Mr. Higginbotham that the home he purchased was a new home.

The Cole County Circuit Court issued a writ of prohibition barring the Commission from conducting the second phase of the evidentiary hearing. Ultimately, the writ was appealed to the Missouri Supreme Court, and after remand, the circuit court dismissed the writ returning jurisdiction of this matter to the Commission.

On September 29, 2006, the Director and Amega executed, and filed with the Commission, another Stipulation and Agreement ("Agreement") to resolve all issues in this case.

The Agreement

The signatories to the Stipulation and Agreement agreed on the following:

- Amega shall pay a civil penalty in the amount of \$10,000 to the school fund for the violations that were the subject of the Commission's September 2, 2004 Report and Order.
- Amega shall suspend all sales activity at its sales lot in Ashland, Missouri, for a period of twenty days. Amega may not have contact with potential customers on the Ashland lot during this time period and is prohibited from steering potential customers to other sales lots owned or maintained by Greg Deline, Amega's principal owner, or owned or maintained by any of Amega's affiliates.
- Amega and its affiliates are prohibited from selling any manufactured home that does not have a Housing and Urban Development (HUD) data plate or label or modular seal, as is required by law. Amega must notify the Director any time it receives title to any manufactured home that does not have the required data plate or seal for the home to be resold.
- Amega shall pay a civil penalty in the amount of \$10,000 for any future violation where Amega or one of its affiliates sells any manufactured home lacking a Housing and Urban Development (HUD) data plate or label or modular seal, as is required by law.

Staff's Memorandum in Support

On October 2, 2006, the Director filed its "Suggestions in Support of Stipulation and Agreement." In its suggestions, the Director states that the Agreement essentially puts the Ashland lot out of business for a period of 20 days, and that Amega "will not only lose the profits that it would have realized from sales for most of a month, but will also be prevented from the activity that might lead to sales after the suspension period ends."

Amega must advertise the suspension by placing a prominent sign at the main front entrance to the Ashland lot serving to prevent customers from coming onto the lot in violation of the Agreement and warn them that they may not do business with Amega during the suspension period. This sign will also advertise the suspension to members of

the general public who happen to pass by the sales lot, thereby serving a valuable public relations function. By the terms of the Agreement, Amega will not be able to steer any business from the Ashland lot to other lots owned or maintained by Amega and its affiliates.

The Director notes that its Complaint pertained only to the two violations associated with Amega's sale of the 2000 Skyline Corporation manufactured home to Mr. Higginbotham. In addition to the civil penalty that will be imposed by the terms of the Agreement for that inappropriate sale, Mr. Higginbotham, the customer who bought the subject manufactured home, has settled his claim against Amega whereby Amega provided a payment of \$38,321.63 to Mr. Higginbotham in full satisfaction of his claims. Mr. Higginbotham testified in the hearing in this case that he was satisfied with this settlement and there is no unresolved civil litigation as a result of the subject transaction.

The Director further states that while Amega's agreement, not to sell or convey any manufactured home that is "red tagged" at the time of the sale and not to sell any new manufactured home lacking the proper HUD labels and certificates, does not require Amega to do more than the law already requires, that the agreed upon future penalty for improper sales in the amount of \$10,000 per occurrence should serve as a strong deterrent to prevent Amega and its affiliates from selling manufactured homes that do not comply with the code. This penalty is far more than the \$1000 per violation penalty authorized by Section 700.115.

While Amega does not acknowledge or admit liability under the terms of the Agreement, the Agreement does provide that Amega will not seek judicial review or otherwise challenge the findings of fact or conclusions of law that are included in the Report and Order that the Commission issued in this case on September 2, 2004.

Discussion

The Commission has jurisdiction over manufactured home manufacturers and dealers pursuant to Chapter 700, RSMo. By Commission Rule 4 CSR 240-120.031, the Commission delegated to the Director all of its powers pertaining to manufactured homes under Chapter 700, RSMo, "except the powers to revoke, deny, refuse to renew or place on probation a registration under section 700.090, RSMo," which are retained by the Commission.

The Commission has the legal authority to accept a stipulation and agreement to resolve a case.¹ The Commission notes that "[e]very decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement . . . shall include . . . findings of fact and conclusions of law."² Consequently, the Commission need not make findings of fact or conclusions of law in this order.

If no party objects to a stipulation and agreement, the Commission may treat the Agreement as unanimous.³ The Director and Greg DeLine, the president of Amega, have both signed the Agreement. Although the Office of the Public Counsel is a party to this action, it has not filed anything in this matter or participated in any way. Pursuant to Commission Rule 4 CSR 240-2.115(2)(C) "if no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation." Commission Rule 4 CSR 240-2.115(2)(B) allows each party seven days to file an objection to a nonunanimous stipulation and agreement.

¹ See Section 536.060, RSMo 2000.

² Section 536.090, RSMo 2000.

³ 4 CSR 240-20115(2)(C).

Because all parties have either signed the Agreement filed on September 29, 2006, or have not opposed the Agreement within the time period allowed, the Commission will treat the Agreement as unanimous.

Conclusion

The Commission has reviewed the Stipulation and Agreement, and the Director's memorandum in support of the Stipulation and Agreement, and having considered these verified pleadings, which are admitted into evidence, finds that the resolution of the Director's Complaint by the terms of the Agreement is not detrimental to the public interest and shall be approved. Furthermore, no party objects to the Stipulation and Agreement. Therefore, under Commission Rule 4 CSR 240-2.115(2)(C), the Commission will treat it as unanimous.

IT IS ORDERED THAT:

1. The Unanimous Stipulation and Agreement filed by the signatories in this matter is approved.
2. Amega Sales, Inc., shall comply with the terms and conditions contained in the Stipulation and Agreement.
3. This order shall become effective on October 17, 2006.

4. This case may be closed on October 18, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Stearley, Regulatory Law Judge