

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Director of the Division of Manufactured)	
Homes, Recreational Vehicles and Modular)	
Units of the Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	<u>CASE NO. MC-94-320</u>
)	
AA Mobile Home Sales, Inc.,)	
)	
Respondent.)	

APPEARANCES: David F. Woodsmall, Assistant General Counsel,
 P. O. Box 360, Jefferson City, Missouri 65102,
 for the Staff of the Missouri Public Service
 Commission.

James F. Ralls, Jr., Attorney at Law, Feldhausen &
 Ralls, P.C., 10034 N. Executive Hills Blvd.,
 Suite 200, Kansas City, Missouri 64153, for
 AA Mobile Homes Sales, Inc.

Susan A. Anderson, Assistant Public Counsel,
 P. O. Box 7800, Jefferson City, Missouri 65102,
 for the Office of the Public Counsel and the Public.

Hearing
Examiner: Mark A. Grothoff

REPORT AND ORDER

On April 13, 1994, the Staff of the Commission (Staff) filed a complaint against AA Mobile Home Sales, Inc. (AA Homes). On April 15, 1994, AA Homes was notified of the complaint and on May 17, 1994, AA Homes filed an answer to Staff's complaint.

On June 8, 1994, a prehearing conference was held as scheduled and on June 22, 1994, the Commission established a procedural schedule for this case. On August 9, 1994, a hearing was convened as scheduled but,

upon the motion of AA Homes, was continued to August 23, 1994, at which time it was held. Briefs were subsequently filed by the parties.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

On April 13, 1994, Staff filed a two-count complaint against AA Homes. Count 1 alleges that AA Homes violated Section 700.455, RSMo Supp. 1993, by repeatedly failing to keep copies of books, records, files and other matters required and necessary to conduct business at its sales lot in St. Peters, Missouri and available for inspection at that location during normal business hours. Count 2 of Staff's complaint alleges that AA Homes violated Section 700.040.1, RSMo Supp. 1993, and 4 CSR 240-120.060 by failing to provide for inspection during normal business hours its books and records related to new manufactured homes.

On May 17, 1994, AA Homes filed an answer to Staff's complaint. AA Homes argues that under Chapter 700, RSMo, a dealer is only required to file one application listing all of its lots and to have one bona fide place of business where all of its records are kept. AA Homes also argues that Staff has the right to inspect only five types of documents specifically enumerated in Section 700.460, RSMo 1986, and that no other power has been granted to the Commission.

The factual circumstances leading to Staff's complaint are essentially undisputed. The record shows that on December 22, 1993, AA Homes submitted an application for a certificate of registration for its St. Peters sales lot. The application included certification by a Missouri State Highway Patrolman that AA Homes' St. Peters location was a bona fide established place of business. On January 19, 1994, a certificate of

dealer registration was issued by the Commission for AA Homes' lot in St. Peters.

The record also indicates that AA Homes submitted separate applications for each of its lots in Festus, Scott City and Fenton, Missouri. Each application submitted by AA Homes includes certification by a Missouri State Highway Patrolman that AA Homes has a bona fide established place of business at that specific location. In addition, a separate certificate of registration has been issued by the Commission for each of AA Homes' individual lots.

In January, 1994, Gene Winn, an inspector for the Commission's Division of Manufactured Homes, conducted a routine dealer inspection on AA Homes' lot in St. Peters. Mr. Winn requested to see the records of the manufactured homes at that lot. He was informed by an employee of AA Homes that those files were kept at AA Homes' Festus location. Mr. Winn then informed the employee that all files related to homes sold from a specific lot must be kept at that particular location. The employee stated that he would pass such information on to Mary Williams, the owner of AA Homes.

On March 31, 1994, Mr. Winn informed AA Homes that he would be returning to the St. Peters lot to follow up on a consumer complaint and requested that the relevant files be made available upon his arrival. When he arrived at the St. Peters lot the following day, Mr. Winn was informed that upon advice of counsel, all records would remain at the corporate headquarters in Festus, Missouri.

On April 4, 1994, Leonard Mayberry, an inspector for the Commission's Division of Manufactured Homes, went to AA Homes' Festus location in regard to a consumer complaint. When Mr. Mayberry requested the file on the home in question, he was informed by the service manager that the file was not available at the main office. Mr. Mayberry informed

the service manager that he would return the following day. Upon his return the next day, Mr. Mayberry was allowed only limited access to the records. Specifically, AA Homes allowed Mr. Mayberry access to a disclosure statement and an application for title. Records which were requested by the Commission's inspector but not provided by AA Homes include: receiving documents specifying the condition of the home at the time of delivery; bills of sale and other attending documents; correspondence between manufacturer and dealer; documentation that the dealer has submitted the homeowner's card informing the federal government of the home's location in the event of a recall; anchor approval letters; documentation that the dealer is providing the ventilation improvement options required by the code; and any service records in order to ensure code compliance.

Staff's complaint has presented the Commission two issues: 1) whether a mobile home dealer with multiple sales lots is required to keep documents and other records associated with a lot at that specific lot, and 2) whether all records and documents pertaining to new manufactured homes should be made available to Commission inspectors. In the course of considering those issues, however, AA Homes raised an ancillary issue: whether a mobile home dealer with multiple sales lots is required to register each lot separately. Each issue will be discussed in turn.

I) Is A Dealer Required To Register Each Lot Separately?

Section 700.090, RSMo 1986, provides, in pertinent part, that every dealer who sells or offers for sale a manufactured home in Missouri shall register with the Commission. This section also provides that the Commission shall issue a certificate of registration to a dealer who completes and files with the Commission an application for registration

which contains, among other things, the business address of the dealer and the addresses of each separate facility owned and operated by the dealer from which manufactured homes are offered for sale if different from the business address of the dealer.

Section 700.455, RSMo Supp. 1993, provides, in pertinent part, that every dealer shall, on or before January 15 of each year, make a verified application for a distinctive number for all of the manufactured homes dealt in or controlled by the dealer. This section also provides that the application include certification by a Missouri State Highway Patrolman stationed in the troop area in which the dealer claims to have a place of business that the dealer in fact has a bona fide established place of business. This section goes on to provide that a certificate of registration shall be assigned to each dealer.

The Commission finds that the language of Section 700.090 is clear and unambiguous. The Commission shall issue a certificate of registration to a dealer who files an application containing, among other things, the business address of the dealer and the addresses of each separate facility owned and operated by the dealer. The language of Section 700.455 is likewise clear and unambiguous. Every dealer shall make a verified application for a distinctive number for all of the manufactured homes controlled by the dealer and each dealer shall be assigned a certificate of registration. Both sections clearly contemplate a single application by a dealer and a single certificate of registration for each dealer. Thus, the Commission finds that dealers are not required to register each individual lot, but rather, are required to file only a single application listing the addresses and telephone numbers of each sales lot.

II) Where Is A Dealer Required To Keep And Maintain Records?

Section 700.455.1(2), RSMo Supp. 1993, provides that a dealer's application for registration must include certification by a Missouri State Highway Patrolman "stationed in the troop area in which the applicant claims to have place of business located that applicant in fact has a bona fide established place of business...." This section goes on to define a bona fide established place of business as:

...a permanent enclosed building or structure, either owned in fee or leased and actually occupied as a place of business by the applicant for the selling, bartering, trading, or exchanging of manufactured homes, wherein the public may contact the owner or operator at any reasonable time and wherein should be kept and maintained the books, records, files and other matters required and necessary to conduct the business.

The Commission finds that AA Homes' sales lot in St. Peters is a place of business as contemplated by Section 700.455. The location is used by AA Homes for the selling or trading of manufactured homes. The St. Peters lot is where mobile homes are parked and displayed, and where orders for mobile homes are taken and filled.

Following certification by a Missouri Highway Patrolman, the St. Peters lot became a "bona fide established place of business". Thus, as a bona fide established place of business, AA Homes is required to maintain copies of the books, records and files pertaining to the St. Peters lot at the St. Peters lot.

AA Homes acknowledged such a requirement in its application for registration for its St. Peters sales lot. Its signed application contains the following provision:

Pursuant to Chapter 700, RSMo all books, records, files and other matters required and necessary to conduct the business shall be kept and available for inspection during normal daytime business hours

at the bona fide established place of business listed above.

The record is clear that despite its acknowledgement of the statutory requirement, AA Homes has not kept and maintained the records pertaining to its St. Peters sales lot at the St. Peters lot. Thus, the Commission finds that AA Homes has violated Section 700.455 by failing to keep copies of books, records, files and other matters required and necessary to conduct the business at its sales lot in St. Peters.

III) What Records Must Be Made Available For Inspection?

Section 700.040, RSMo Supp. 1993, provides in pertinent part, that the Commission shall perform sufficient inspections of dealer premises to ensure that the provisions of the code are being complied with. This section also provides that such inspections may include examination of all books, records, performance and technical data of a manufacturer related to the subject matter of Sections 700.010 to 700.115. This section further authorizes the Commission to issue and promulgate such rules and regulations as necessary to make effective the code and the provisions of Sections 700.010 to 700.115.

Under the authority granted in Section 700.040, the Commission promulgated 4 CSR 240-120.060. This rule provides that the books, records, inventory and premises of manufacturers and dealers of new manufactured homes shall be subject to an inspection to ascertain if a manufacturer or dealer is complying with Chapter 700 as it relates to new manufactured homes, Commission rules, federal standards and Housing and Urban Development regulations.

Section 700.460, RSMo 1986, provides in pertinent part, that dealers shall permit an employee of the Commission to inspect any of the

following documents: 1) any title to any manufactured home, 2) any application for title to any manufactured home, 3) any affidavit provided pursuant to Chapter 301 or 407, RSMo, 4) any assignment of title to any manufactured home, 5) any disclosure statement or other document required by the laws of the United States or any other state.

An examination of the statutory and regulatory language indicates that the Commission and its inspectors are mandated to inspect all of the records of a dealer pertaining to the sale of manufactured homes. The record establishes that AA Homes failed to make such records available to a Commission inspector even after advanced notice was provided as to which documents were to be inspected. Thus, the Commission finds that AA Homes has violated Section 700.040, RSMo, and 4 CSR 240-120.060 by failing to provide for inspection of its books and records related to new manufactured homes.

The Commission has found that AA Homes has violated Section 700.455, RSMo Supp. 1993, Section 700.040, RSMo Supp. 1993, and 4 CSR 240-120.060. Thus, the Commission determines that AA Homes' certificate should be suspended. Furthermore, in consideration of the number and the nature of the violations, the Commission determines that AA Homes' certificate should be suspended for a period of two weeks.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over manufactured homes and manufactured home dealers pursuant to Chapter 700, RSMo 1986, as amended. In 4 CSR 240-120.100, the Commission adopted the Federal Manufactured Home Standards as set forth in 24 CFR 3280.

Section 700.040, RSMo Supp. 1993, states in pertinent part:

The Commission shall...perform sufficient inspections of manufacturing and dealer premises to ensure the provisions of the code are being observed. The Commission shall establish a comprehensive inspection system, including a determination of the extent to which its own inspectors or authorized representatives are used. The inspections may include examination of all books, records, performance and technical data of a manufacturer related to the subject matter of Sections 700.010 to 700.115.

Section 700.040.5, RSMo Supp. 1993, states that "[t]he Commission may issue and promulgate such rules as necessary to make effective the code and the provisions of Sections 700.010 to 700.115."

4 CSR 240-120.060 states, in pertinent part, that "[t]he books, records, inventory and premises of manufacturers and dealers of new manufactured homes...shall be subject to an inspection...to ascertain if a manufacturer or dealer is complying with Chapter 700, RSMo as it relates to new manufactured homes, this chapter, the federal standards and the Housing and Urban Development regulations...."

Section 700.090, RSMo 1986, states, in pertinent part, that "[e]very manufacturer or dealer of manufactured homes who sells or offers for sale...a manufactured home...shall register with the commission."

Section 700.090.3, RSMo 1986, states, in pertinent part, "The commission shall issue a certificate of registration to a dealer who...files with the commission an application for registration which contains...[t]he business address of the dealer and addresses of each separate facility owned and operated by the dealer...if different from the business address of the dealer[.]"

Section 700.455, RSMo Supp. 1993, states, in pertinent part:

Every dealer shall, on or before January fifteenth of each year, instead of registering each

manufactured home dealt in, make a verified application...for a distinctive number for all the manufactured homes dealt in or controlled by such dealer. The application shall contain, but need not be limited to:

(2) Certification by a uniformed member of the Missouri state highway patrol stationed in the troop area in which the applicant claims to have place of business located that the applicant in fact has a bona fide established place of business.... A bona fide established place of business for any dealer shall include a permanent enclosed building or structure, either owned in fee or leased and actually occupied as a place of business by the applicant for the selling, bartering, trading or exchanging of manufactured homes, wherein the public may contact the owner or operator at any reasonable time and wherein shall be kept and maintained the books, records, files and other matters required and necessary to conduct the business.

Section 700.460.1, RSMo 1986, states, in pertinent part, "Each person registered as a dealer...shall permit an employee of the commission...to inspect, during normal business hours, any of the following documents which are in his possession or under his custody or control:

- (1) Any title to any manufactured homes;
- (2) Any application for title to any manufactured home;
- (3) Any affidavit provided pursuant to chapter 301 cr 407, RSMo.;
- (4) Any assignment of title to any manufactured home;
- (5) Any disclosure statement or other document required by the laws of the United States or any other state."

Several issues were raised in the course of this proceeding. Each issue will be discussed in turn.

I) Is A Dealer Required To Register Each Lot Separately?

AA Homes argues that a dealer is only required to file one application listing all of its lots. Staff, in its reply brief, concedes

that a dealer is not required to separately register each individual lot. However, the Office of the Public Counsel (Public Counsel) argues that an examination of Section 700.090 and Section 700.455 together shows that the registration of all lots is required. Public Counsel states if all lots are not required to be filed, the Highway Patrol would have no way of determining which lots it has to inspect pursuant to Section 700.455 and that such an interpretation would render Section 700.455 meaningless. Public Counsel notes that for 20 years, Staff's interpretation has been one of requiring separate registration for each sales lot and that the Commission agreed with Staff's interpretation in Director v. Ferrell Mobile Homes, Inc., Case No. MC-91-205.

The Commission disagrees with Public Counsel's position. The language of Section 700.090 is clear and unambiguous. The Commission shall issue a certificate of registration to a dealer who files an application containing, among other things, the business address of the dealer and the addresses of each separate facility owned and operated by the dealer. The language of Section 700.455 is likewise clear and unambiguous. Every dealer shall make a verified application for a distinctive number for all of the manufactured homes controlled by the dealer and each dealer shall be assigned a certificate of registration.

Both sections clearly contemplate a single application by a dealer and a single certificate of registration for each dealer. Section 700.455 supplements Section 700.090 regarding the timing of filing an application and the content of an application. It does not modify the provisions of Section 700.090 into a requirement for each sales lot to be separately registered.

In addition, the argument that Staff's interpretation has required separate registration for 20 years is irrelevant. The fact that a statutory interpretation has been utilized over a long period of time does not automatically legitimize that interpretation. An incorrect interpretation remains incorrect regardless of how long that interpretation is used.

Furthermore, Public Counsel's analysis of the Director v. Ferrell decision is erroneous. The Commission did not find that separate registration for each sales lot was required. Rather, the Commission's finding was that a dealer is not explicitly required to supplement its registration when it establishes a new lot between the annual registration dates. Such a finding is consistent with a statutory interpretation that only a single registration listing all of a dealer's lots is required.

In view of the foregoing, the Commission concludes that dealers are not required to register each individual lot. Rather, the Commission concludes that Section 700.090 and Section 700.455 only require a dealer to file a single application for registration listing the addresses and telephone numbers of each of the dealer's sales lots.

II) Where Is A Dealer Required To Keep And Maintain Records?

AA Homes argues that only one bona fide place of business is required by Section 700.455 and it is at that one bona fide place of business that a dealer must maintain its records. Conversely, Staff and Public Counsel maintain that copies of the records pertaining to a specific sales lot must be kept and maintained at that particular lot.

This issue turns on the meaning of the term "place of business". The Missouri Supreme Court considered the definition of "place of business" in Mobil-Teria Catering Company v. Spradling, 576 S.W.2d 282

(Mo. banc 1978). In determining the place of business of a mobile food service company, the Supreme Court concluded that "place of business" refers to the "place where the trucks are parked, the wares are displayed, the initial orders are taken and filled, payments therefor are made, and the sales are thereby consummated." Also, in Missouri Association of Realtors vs. Division of Employment Security, 761 S.W.2d 660 (Mo.App. 1988), the Court cited the case of Life & Casualty Ins. Co. v. Unemployment Compensation Commission, 178 Va. 46, 16 S.E.2d 357 (1941) in which it was stated, "We do not construe 'places of business' to mean the headquarters of the employer or the office premises of the employer but of all the places of business." In addition, Section 700.455.2 provides its own guidance: "...a permanent enclosed building or structure...actually occupied...for the selling, bartering, trading or exchanging of manufactured homes...."

The Commission concludes that a "place of business" as contemplated by Section 700.455 means any location utilized by a dealer to sell, barter, trade or exchange manufactured homes. At each of a dealer's sales lots, manufactured homes are parked, displayed and offered for sale. Each lot is also where orders for mobile homes are taken and filled. Under Section 700.455, each sales lot a dealer operates or controls is a place of business, not just a dealer's assigned headquarters.

Since each sales lot is a place of business, each lot is required to be certified by a Missouri State Highway Patrolman as a bona fide established place of business. Thus, the Commission concludes that, as each lot is certified as a bona fide established place of business, dealers are required to keep and maintain copies of the records pertaining to a specific sales lot at that particular lot.

III) What Records Must Be Made Available For Inspection?

Staff and Public Counsel maintain that all records and other documents pertaining to the sale of manufactured homes are to be made available to Commission inspectors. AA Homes, though, argues that inspectors are entitled to only those documents delineated in Section 700.460.

An examination of the statutes and Commission rule shows that the records and other documents of a dealer related to the subject matter of Chapter 700, RSMo, namely, the manufacture and sale of manufactured homes, must be made available to Commission inspectors. Section 700.040 authorizes the Commission to conduct sufficient inspections of dealer premises to ensure compliance with the code and provides that such inspections may include all books, records and performance and technical data of a manufacturer related to the subject matter of Sections 700.010 to 700.115. Section 700.040 also authorizes the Commission to promulgate such rules as necessary to make effective the code and provisions of Chapter 700.

In order to effectuate the code and provisions of Chapter 700, the Commission found it necessary to promulgate 4 CSR 240-120.060. This regulation clearly subjects the books, records, inventory and premises of dealers to inspection to ascertain compliance with Chapter 700, the code, and federal Housing and Urban Development regulations.

AA Homes argues that it is required to provide inspectors only limited access to its records pursuant to Section 700.460. However, such an argument simply disregards not only the authorization of inspector access to all records in Section 700.040 and 4 CSR 240-120.060, but also ignores Section 700.460.1(5), a broad provision requiring inspector access

to any document required by United States law. On its own, Section 700.460.1(5) would require inspector access to all information required under Housing and Urban Development regulations as promulgated by the federal government, including records necessary to show compliance with the code and Chapter 700. The broadness of the language of Section 700.460.1(5) reveals an all-encompassing provision for documents not specifically enumerated.

AA Homes counters that Section 700.460.1(5) is not a "catch-all" provision but provides limited access as the other provisions of Section 700.460.1 do. AA Homes postulates that under the "last antecedent doctrine" of statutory construction, the phrase "other documents required by the laws of the United States" qualifies the term "disclosure statement", and that the intent of the provision was to ensure purchasers were being provided with financial information under the federal Trust and Lending laws. However, AA Homes' reasoning is faulty.

The Missouri Supreme Court has adopted the "Doctrine of the Last Antecedent" in Norberg v. Montgomery, 173 S.W.2d 387 (Mo banc 1943). This doctrine states that relative and qualifying words and phrases are to be applied to the words immediately preceding them, and are not to be construed as extending to or including other words more remote. However, the Supreme Court also stated that the word "or" is to be considered disjunctive, rather than conjunctive, and should be interpreted as meaning "either this or that". Norberg, id.

When these rules of construction are applied to Section 700.460.1(5), the disjunctive word "or" separates the term "disclosure statement" and the term "other document". AA Homes' interpretation would require substituting the conjunctive word "and" for the disjunctive word

"or". Furthermore, when the Doctrine of the Last Antecedent is applied, the words "required by the laws of the United States" qualify only the words "other document". Under such statutory construction, Section 700.460.1(5) is undoubtedly a broad provision encompassing documents not specifically enumerated.

The Commission is of the opinion that because there is no previous interpretation of the statute in question, these rules of construction adopted by the Missouri Supreme Court should be utilized in interpreting the statute. Thus, the Commission concludes that any records and other documents of a dealer related to the subject matter of Chapter 700, RSMo, must be made available to Commission inspectors.

The Commission has found that AA Homes has violated Section 700.455, RSMo Supp. 1993, Section 700.040, RSMo Supp. 1993, and 4 CSR 240-120.060. Thus, the Commission concludes that AA Homes' certificate should be suspended for a period of two weeks.


IT IS THEREFORE ORDERED:

1. That the certificate of registration of AA Mobile Home Sales, Inc. is hereby suspended for a period of two (2) weeks from the effective date of this Report and Order.

2. That the General Counsel of the Commission is hereby authorized to seek penalties against AA Mobile Home Sales, Inc. pursuant to Section 700.115.2, RSMo 1986.

3. That this Report and Order shall become effective on the
28th day of December, 1994.

BY THE COMMISSION

A handwritten signature in cursive script that reads "David L. Rauch".

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur
and certify compliance with the
provisions of Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri,
on this 16th day of December, 1994.