

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 13, 2000**

CASE NO: MC-2000-818

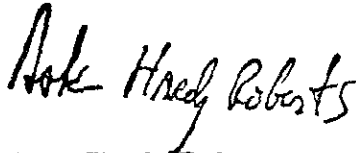
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Michael J. Havicon
c/o Oakcreek Village of Bonne Terre
6967 Stormy Lane
Bonne Terre, MO 63628

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

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,

v.

Manufactured Housing Services of
Bonne Terre d/b/a Oakcreek Village of
Bonne Terre,

Respondent.

Case No. MC-2000-818

**ORDER GRANTING RECONSIDERATION,
SETTING ASIDE ORDER OF DEFAULT,
AND EXTENDING DATE FOR RESPONSE**

On June 14, 2000, the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Missouri Public Service Commission (Complainant) filed a complaint with the Missouri Public Service Commission (Commission) against Manufactured Housing Services of Bonne Terre d/b/a Oakcreek Village of Bonne Terre (Respondent).

Notice of the complaint was mailed to the Respondent by certified mail on June 19, 2000. The official case file reflects a postal service receipt showing that Respondent accepted delivery on July 3, 2000. In that notice of complaint, the Respondent was given 30 days from the date of the notice of complaint (i.e., until July 19, 2000) to respond to the complaint by filing an answer, a notice that the complaint had been satisfied, or a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint.

The Respondent did not respond to the complaint. The Commission entered an order finding default on July 27, 2000, an effective date of August 8, 2000.

On August 11, 2000, Respondent filed a motion for "rehearing and reconsideration." The Complainant did not respond to the Respondent's motion.

Commission Rule 4 CSR 240-2.070(9) states:

If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause.

Commission Rule 4 CSR 240-2.160(2) states:

Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.

Thus, according to these Commission rules, Respondent's motion was actually a combination of a motion for reconsideration, since the order finding default was in the nature of an interlocutory and not a final order, plus a motion to set aside the order finding default. Respondent's motion was filed out of time regardless of how the motion is classified.

Respondent, in its motion, stated, *inter alia*, that on or about July 5, 2000, the President of Respondent, Michael J. Havicon (Havicon), met with Blaine Beard¹ in order to have the matter resolved with the purchasers of the mobile home, which is the subject matter of this complaint. Respondent further related that on July 26, 2000, Havicon met with Gene Winn, a member of the Complainant's staff, and attempted to get

¹ Respondent does not explain who this is.

an extension for the scheduled work. The remaining work, alleged the Respondent, was scheduled to be completed during the weekend of July 29, 2000. Around the date of August 2, 2000, the Respondent stated that most of the scheduled work had been completed, with the exception of the stairwell; a copy of the factory material and service authorization accepted by the purchasers of the mobile home was attached to the motion as an exhibit.

Respondent alleged that it did not hire a lawyer or respond to the complaint or otherwise file an answer because it did not realize the importance of such a failure.

Respondent stated the good cause supporting its motion was that it was in substantial compliance and only had the stairwell to complete and had that work scheduled for "this weekend." Respondent further pointed out that its failure to timely file an answer was based on inadvertence, excusable neglect, and the failure to hire legal counsel. Respondent claimed to have a meritorious defense and also alleged that no party would be prejudiced if the Commission set aside its order finding default and granted Respondent additional time within which to answer the complaint and show compliance.

The Commission finds good cause, based on Respondent's assertions set forth in the immediately preceding paragraph, to grant reconsideration, to set aside the order finding default, and to extend the filing date for the answer.

IT IS THEREFORE ORDERED:

1. That the order finding default issued by the Missouri Public Service Commission on July 27, 2000, against Manufactured Housing Services of Bonne Terre d/b/a Oakcreek Village of Bonne Terre, is hereby set aside.

2. That Manufactured Housing Services of Bonne Terre d/b/a Oakcreek Village of Bonne Terre shall have until no later than September 28, 2000, to file an answer, a notice that the complaint has been satisfied, or a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint.

3. That this order shall become effective on September 25, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 13th day of September, 2000.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 13th day of Sept. 2000.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge