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August 8, 2003

Dale Hardy Roberts, Secretary
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Jefferson City, MO 65102-0360

FILED³

AUG 12 2003

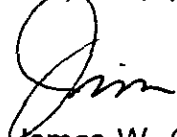
Missouri Public
Service Commission

Re: Petition to Rescind Rules

Dear Mr. Roberts:

Please find enclosed for filing with the commission an original and eight copies of Missouri Manufactured Housing Association's Petition to Rescind Rules.

Very truly yours,



James W. Gallaher

JWG:kcg

Enclosure

AUG 12 2003

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURIMissouri Public
Service Commission

Petition of the Missouri Manufactured)
Housing Association to rescind)
rules made pursuant to Chapter 536)
RSMo.)

Case No. _____

PETITION TO RESCIND RULES

Comes now Petitioner and for its petition seeking to rescind rules states as follows:

1. The Missouri Manufactured Housing Association ("MMHA") is a trade association incorporated under Missouri law with its principal place of business located at 4748 Country Club, Jefferson City, Missouri 65109. The membership of MMHA is comprised of manufactured homes dealers and manufacturers doing business in the state of Missouri. The Association was organized to promote, protect and represent the interest and rights of those engaged in the business outline above. The members of the Association are affected by the rules set out herein.

2. The Missouri Public Service Commission has established inspection fees by its enactment of Rule 4 CSR 2-40-120.135, Rule 4 CSR 240-123.075 and 4 CSR 240-121-185. MMHA petitions the Commission to rescind each of the above stated rules. The full text of each rule is as follows:

4 CSR 240-120.135 New Manufactured Home Inspection Fee.

PURPOSE: This rule provides for the manner in which inspection fees assessed on new manufactured home sales are calculated by the commission and submitted by registered dealers.

(1) The commission may, prior to the beginning of each fiscal year starting with the fiscal year commencing on July 1, 2000, issue an order establishing an inspection fee to be assessed on all new manufactured homes sold in the state of Missouri. Said inspection fee will be calculated as follows:

(A) The commission will determine the funding needs of the manufactured housing and modular units program;

(B) The director will determine through dealer monthly sales reports the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold in the 12-month period commencing May 1 and ending April 30 immediately preceding each fiscal year;

(C) The director will estimate the funds that the program will receive through dealer and manufacturer registrations, plan approvals, and any other fees that the program receives on a yearly basis, based on prior years receipts; and

(D) The director will subtract the amount determined in subsection (C) above from the programs legislative appropriation. That amount will then be divided by the aggregate number of new manufactured homes, pre- owned manufactured homes, and modular units sold as determined in subsection (B) above. The resulting amount will be rounded up to the next nearest whole dollar amount. This amount will be presented to the commission for approval.

(2) New manufactured home dealers shall remit fees to the director in an amount that equals the number of new manufactured homes sold, multiplied by the inspection fee as approved by the commission. Dealers shall submit said fee with the monthly sales report that is required by 4 CSR 240-120.130 and 4 CSR 240-123. Said fee shall be received no later than the tenth day following the month when the sales were made.

(3) The following situations shall constitute grounds for the denial, suspension, revocation, or placing on probation of a dealers certificate of registration:

(A) Failure to pay fees within 30 days of their prescribed due date;

(B) Failure to pay fees by the prescribed due date for two consecutive months; or

(C) Failure to pay fees by the prescribed due date for any four of the preceding 12 months.

(4) If a dealer remits the inspection fee for a new manufactured home and the sale is rescinded within 60 days of the date of the sale, the dealer has 60 days from the date of said rescission to request that the inspection fee be credited to the next month in which a dealer has a sale subject to the inspection fee.

(5) The director shall deliver copies of the commissions order establishing the new manufactured home inspection fee for the fiscal year to all existing registered dealers no later than July 15 of each fiscal year. The director shall also deliver a copy of the commissions order establishing the fee with each approved certificate of dealer registration.

AUTHORITY: sections 700.040 and 700.115, RSMo Supp. 1999.* Original rule filed Sept. 5, 2000, effective April 30, 2001.

*Original authority: 700.040, RSMo 1973, amended 1976, 1978, 1982, 1984, 1989, 1993, 1995, 1999; 700.115, RSMo 1976, amended 1978, 1982, 1984, 1995.

240-123.075 Modular Unit Inspection Fee

(1) The commission may, prior to the beginning of each fiscal year starting with the fiscal year commencing on July 1, 2000, issue an order establishing an inspection fee to be assessed on all modular units sold in the state of Missouri. Said inspection fee will be calculated as follows:

(A) The commission will determine the funding needs of the manufactured housing and modular units program;

(B) The director will determine through dealer monthly sales reports the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold in the 12-month period commencing May 1 and ending April 30 immediately preceding each fiscal year;

(C) The director will estimate the funds that the program will receive through dealer and manufacturer registrations, plan approvals, and any other fees that the program receives on a yearly basis, based on prior year's receipts; and

(D) The director will subtract the amount determined in subsection (C) above from the program's legislative appropriation. That amount will then be divided by the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold as determined in subsection (B) above. The resulting amount will be rounded up to the next nearest whole dollar amount. This amount will be presented to the commission for approval.

(2) Modular unit dealers shall remit fees to the director in an amount that equals the number of modular units sold, multiplied by the inspection fee as approved by the commission. Dealers shall submit said fees with the monthly sales report that is required by 4 CSR 240-120.130 and 4 CSR 240-123.070. Said fees shall be received no later than the tenth day following the month when the sales were made.

(3) The following situations shall constitute grounds for the denial, suspension, revocation, or placing on probation of a dealer's certificate of registration:

(A) Failure to pay fees within 30 days of their prescribed due date;

(B) Failure to pay fees by the prescribed due date for two consecutive months; or

(C) Failure to pay fees by the prescribed due date for any four of the preceding 12 months.

(4) If a dealer remits the inspection fee for a modular unit and the sale is rescinded within 60 days of the date of the sale, the dealer has 60 days from the date of said rescission to request that the inspection fee be credited to the next month in which a dealer has a sale subject to the inspection fee.

(5) The director shall deliver copies of the commission's order establishing the modular unit inspection fee for the fiscal year to all existing registered dealers no later than July 15 of each fiscal year. The director shall also deliver a copy of the commission's order establishing the fee with each approved certificate of dealer registration.

AUTHORITY: sections 700.040 and 700.115, RSMo Supp. 1999. *

* Original authority: 700.040, RSMo 1973, amended 1976, 1978, 1982, 1984, 1989, 1993, 1995, 1999; 700.115, RSMo 1976, amended 1978, 1982, 1984, 1995.

Original rule filed Sept. 5, 2000, effective April 30, 2001.

NOTES:

PURPOSE: This rule provides for the manner in which inspection fees assessed on modular unit sales are calculated by the commission and submitted by registered dealers.

240-121.185 Pre-Owned Manufactured Home Inspection Fee

(1) The commission may prior to the beginning of each fiscal year starting with the fiscal year commencing on July 1, 2000, issue an order establishing an inspection fee to be assessed on all pre-owned manufactured homes sold in the state of Missouri. Said inspection fee will be calculated as follows:

(A) The commission will determine the funding needs of the manufactured housing and modular units program;

(B) The director will determine through dealer monthly sales reports the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold in the 12-month period commencing May 1 and ending April 30 immediately preceding each fiscal year;

(C) The director will estimate the funds that the program will receive through dealer and manufacturer registrations, plan approvals, and any other fees that the program receives on a yearly basis, based on prior year's receipts; and

(D) The director will subtract the amount determined in subsection (C) above from the program's legislative appropriation. That amount will then be divided by the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold as determined in subsection (B) above. The resulting amount will be rounded to the next nearest whole dollar amount. This amount will be presented to the commission for approval.

(2) Pre-owned manufactured home dealers shall remit fees to the director in an amount that equals the number of pre-owned manufactured homes sold, multiplied by the inspection fee as approved by the commission. Dealers shall submit said fees with the monthly sales report that is required by 4 CSR 240-121.180. Said fees shall be received no later than the tenth day following the month when the sales were made.

(3) The following situations shall constitute grounds for the denial, suspension, revocation, or placing on probation of a dealer's certificate of registration:

(A) Failure to pay fees within 30 days of their prescribed due date.

(B) Failure to pay fees by the prescribed due date for two consecutive months.

(C) Failure to pay fees by the prescribed due date for any four of the preceding 12 months.

(D) If a dealer remits the inspection fee for a pre-owned manufactured home and the sale is rescinded within 60 days of the date of the sale, the dealer has 60 days from the date of said rescission to request that the inspection fee be credited to the next month in which a dealer has a sale subject to the inspection fee.

(4) The director shall deliver copies of the commission's order establishing the pre-owned manufactured home inspection fee for the fiscal year to all existing registered dealers no later than July 15 of each fiscal year. The director shall also deliver a copy of the commission's order establishing the fee with each approved certificate of dealer registration.

AUTHORITY: sections 700.040 and 700.115, RSMo Supp. 1999. *

* Original authority: 700.040, RSMo 1973, amended 1976, 1978, 1982, 1984, 1989, 1993, 1995, 1999; 700.115, RSMo 1976, amended 1978, 1982, 1984, 1995.

Original rule filed Sept. 5, 2000, effective April 30, 2001.

NOTES:

PURPOSE: This rule provides for the manner in which inspection fees assessed on pre-owned manufactured home sales are calculated by the commission and submitted by registered dealers.

3. MMHA seeks to rescind each of the above rules for the following reasons:

During the 2001 legislative session the commission and its staff sought additional funding for the operation of its manufactured housing and modular units program. In 2001 the commission sought additional funds through both legislative means (Senate Bill 317) and by the rulemaking process (the rules stated above). The commission in 2001 agreed that if MMHA supported the fee increases contained in Senate Bill 317 and the non-inspection fee increases contained in other proposed rules, if and when Senate Bill 317 passed and other non-inspection fee rules were adopted, the commission would rescind the inspection fees contained in the above quoted rules.

Acting in good faith and in reliance upon the commission's agreement MMHA supported those fee increases. In 2001 Senate Bill 317 was passed by the legislature, signed by the governor and became law. Also in 2001 the above quoted rules were published and adopted by the commission.

The agreement MMHA and the commission made was memorialized in the orders of rulemaking published on March 15, 2001. The order for each rule contained the following language: "If current legislation and of rulemaking proposals involving current fee structure increases are enacted, the commission will rescind the inspection fee rule." The legislation current in 2001 (Senate Bill 317) did pass and the rules involving current fee structure increases were adopted. MMHA supported both the legislation and the non-inspection fee rules.

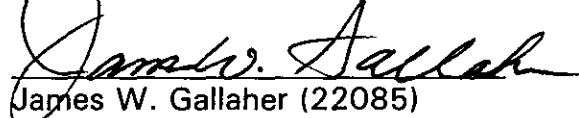
4. MMHA respectfully suggests to the commission that it has a legal obligation to rescind the rules according to *Prenger v. Moody* 845 S.W.2d 68, 78 (Mo.App. WD 1992) "An agency is compelled to comply with its rules duly promulgated pursuant to properly delegated authority as such rules have the force and effect of law and are binding upon the agency adopting them." Furthermore, it is sound public policy for the commission to honor the agreement stated in each of the orders of rulemaking.

5. It is MMHA's estimation that the effect of rescinding the above quoted rules will have no negative effect on private persons or entities with respect to required expenditures of money or reductions of income.

WHEREFORE, the petitioner respectfully requests the commission to issue its order rescinding each of the rules mentioned herein.

Respectfully submitted,

CARSON & COIL, P.C.

A handwritten signature in cursive script, appearing to read "James W. Gallaher", written over a horizontal line.

James W. Gallaher (22085)

515 East High Street

P.O. Box 28

Jefferson City, MO 65102

573-636-2177

FAX: 573-636-7119

Attorney for Petitioner

AFFIDAVIT OF JOYCE BAKER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Joyce Baker of lawful age, upon her oath states: that she has perticipated in the preparation of the forgoing petition in her capacity as Executive Director of the Missouri Manufactured Housing Association, that she has knowledge of the matter set forth

herein and the statements contained herein are true and correct to the best of her knowledge and belief.

Joyce Baker

Joyce Baker

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Now on this 8th day of July, 2003, before me personally appeared Joyce Baker, Executive Director of the Missouri Manufactured Housing Association, to me known to be the person who executed the foregoing and who acknowledged that the statements contained therein are true to her best knowledge and belief and that she executed the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Kathryne C. Murphree
Notary Public

My commission expires:

