

MEMORANDUM

To: Missouri Public Service Commission Official Case File
File No. MO-2016-

From: Natelle Dietrich 8/12/15
Tariff, Safety, Economic and Engineering Analysis/Date

Kevin Thompson 8/12/15
Staff Counsel/Date

Subject: Harmon – Consumer Recovery Fund Request

Date: August 12, 2015

I. Advisory Committee Recommendation

The Advisory Committee, by a two to one vote, submits for the approval of the Missouri Public Service Commission, the following recommendation for the disbursement of \$3,565 to Roy and Jeanette Harmon, ** _____ ** (Harmons, consumer(s) or customer). The Advisory Committee consists of Natelle Dietrich and Kevin Thompson, of the Commission's Staff, and Tom Hagar, Executive Director of the Manufactured Housing Association. By majority vote, the Advisory Committee recommends the Harmons receive \$3,565 from the fund. Mr. Hagar recommends the Harmons not receive reimbursement from the fund.

II. Section 700.041 and 4 CSR 240-126.020

The Manufactured Housing Consumer Recovery Fund (Recovery Fund) was established in 2008¹ for the purpose of paying consumer claims. The Commission administers the fund and is required to establish an advisory committee to assist with the evaluation of all claims filed by consumers. The Advisory Committee shall consist of three members: two employees of the commission - one member being the program director (manager)² and one member from the commission's general counsel's office³, and one member of the Manufactured Housing Association.⁴

Upon receipt of a claim, the advisory committee shall investigate and determine whether the claimant has met the requirements for recovery under this rule and shall submit a

¹ Section 700.041 RSMo (Senate Bill 788).

² Due to employee turnover during the time the claim was submitted and reviewed, the Director-Tariff, Safety, Economic and Engineering Analysis filled the program director Advisory Committee spot.

³ Since the time of the implementation of 4 CSR 240-126, the Commission has created a "general counsel's office" to represent the Commission in external litigation and a "staff counsel's office" to represent the Staff of the Commission. For purposes of the advisory committee, "general counsel's office" is interpreted as the "Staff Counsel's Office".

⁴ 4 CSR 240-126.020(2)

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recommendation for the Commission's approval within 60 days of the receipt of the claim form.⁵

To be eligible to receive disbursement of funds from the Recovery Fund, the following criteria must be met:

- A consumer must have purchased a new manufactured home or residential modular unit;
- The home or unit must have been purchased from a manufacturer or dealer;
- At the time of the purchase, the manufacturer or dealer must have been registered with the Commission;
- A consumer must have an unsatisfied claim resulting from a violation;
- A consumer must have exhausted all remedies prior to submitting a claim form;
- A consumer must file a claim form within one (1) year from the exhaustion of legal remedies;
- The amount requested by the consumer from the Recovery Fund must reflect the actual cost of repairs and, for a single section home, shall not exceed \$5,000.⁶

By Majority Vote, the Advisory Committee verifies the following:

1. The claimant purchased a 2013, 3 bedroom Champion home on October 10, 2012 (Highly Confidential Attachment 1);
2. The unit was purchased from Rightway Homes, a dealer at 3162 N. Hwy 63, West Plains, MO 65775;
3. On October 10, 2012, Rightway Homes was registered with the commission pursuant to sections 700.010 to 700.692, RSMo Supp. 2008 (Attachment 2);
4. The Harmons submitted a request from the Consumer Recovery Fund as a result of a violation of 4 CSR 240-120.065(1), failure of a dealer to arrange for the proper initial setup of a manufactured home (Highly Confidential Attachment 3).
5. The claimants have exhausted all legal remedies. The Commission rules set forth parameters for the advisory committee to consider when determining whether all legal remedies have been exhausted by the consumer.⁷

4 CSR 240-126.020(6)(B) states the advisory committee may consider "[i]nformation indicating that a manufacturer, dealer, or installer, against whom action may be taken, is out-of-business, bankrupt, closed, dissolved, or no longer subject to the jurisdiction of the commission." Commission records indicate the Rightway Homes file was closed on March 25, 2013, due to "not renewing" its registration.

4 CSR 240-126.020(6)(C) states the advisory committee may consider "[i]nformation indicating that legal action against a manufacturer, dealer, or installer is futile or is barred by statute or equitable principle, or any other

⁵ 4 CSR 240-126.020(4)-(5).

⁶ 4 CSR 240-126.020(3).

⁷ 4 CSR 240-126.020(6).

relevant factor.” As Rightway Homes was no longer engaged in commercial activity, the Committee finds that it would have been futile for the consumer to commence legal action against the dealer. For the foregoing reasons, the Advisory Committee finds that the consumer has properly exhausted all legal remedies prior to submitting a claim form.

6. The Harmons complaint was filed on April 5, 2013, within one (1) year from the date of exhaustion of legal remedies.
7. The amount requested by the claimant reflects the actual cost of repairs and does not exceed \$5,000.⁸

III. Background

On April 5, 2013, the Manufactured Housing & Modular Units Program (Program) received an “Inspection Request/Consumer Complaint Form” in which the Harmons submitted a Recovery Fund claim. The Harmons indicated the reason for the request was “Dealer went out of Business before delivery of home. Owner incurred double expense to have home delivered, set up, A/C installation. Home was paid in full and sat on Rightway Homes lot for a couple of months, then owner informed they closed their doors and owner of home left with responsibility to get it off the lot!!”

On April 8, 2013, Tim Haden, Program Director, sent the manufacturer, the dealer and the installer form letters indicating that a complaint had been received and requesting the various entities investigate their respective roles related to the home. Mr. Haden also sent a form letter to the Harmons indicating a Program inspector would be contacting them within 10 days to check on the status of the complaint and to schedule an inspection of the home.

On September 9, 2014, Blake Eastwood, Program Manager, discovered that the request was not addressed due to change in Program management. A meeting was held with Mr. Hagar and Commission representatives to discuss the request. It was determined that the request did not have enough information for the Advisory Committee to make a recommendation. The Program software, CitizenServe, does not have the functionality to track Recovery Fund requests, so once again the request was not fully processed.

The issue was again identified in late March or early April 2015, and on April 16, 2015, Jean Lager, on behalf of her parents, the Harmons, sent an email more specifically outlining the amount requested from the Recovery Fund:

- \$ 3,915.00 compensation for monies paid to Rightway Homes.

⁸ The initial claim from the fund was not clear, but appeared to be in the amount of \$3,915. The Harmons provided subsequent information indicating the claim was for \$5,375.48. As explained in the Memorandum, the clarification included reimbursement of sales tax, which is not a Recovery Fund issue, but a Missouri Department of Revenue issue.

- \$ 1,460.48 sales tax paid to Rightway Homes, but not paid by Rightway Homes to the Missouri Department of Revenue.
- \$ 5,375.48 total amount requested from the Recovery Fund.

The Advisory Committee met again on May 19, 2015.

IV. Staff Analysis and Recommendation

During the May 19 meeting, Mr. Hagar indicated he would work with the Department of Revenue (Revenue) to get the Harmons' title to the home. Documentation has been provided to Revenue demonstrating that the sales tax was paid by the Harmons and Revenue has been provided the manufacturers certificate of origin. The title was to be mailed to the Harmons on July 27. This part of the Harmons claim should be resolved.⁹

The Harmons submitted copies of checks (Highly Confidential Attachment 4) a copy of the sales contract (Highly Confidential Attachment 1), and various receipts for work the Harmons include in the request from the Recovery Fund.

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| • Taylor's Mobile Home & Transporting (Taylor) ¹⁰
(Highly Confidential Attachment 5) | \$ 2,775 |
| • Mo-Ark Custom Dozing & Backhoe Service (Mo-Ark)
(Highly Confidential Attachment 6) | \$ 640 |
| • Butler Heating and Air (Butler)
(Highly Confidential Attachment 7) | \$ 500 |

The Advisory Committee disagrees on the amount the Harmons should receive from the Recovery Fund.

With respect to Taylor, Mr. Hagar requested an itemized receipt from Taylor since the receipt lists:

- Deliver, block and level
- Anchor
- Replace one bundle of shingles on roof
- Hook up water and sewer pipe and fittings
- Buy fireplace vent
- Fireplace stack no ring
- Paid Rightway for tires and axles
- Did not water check
- No heat

⁹ Although Revenue has not received the sales tax, once the Harmons have the title, it is up to Revenue to pursue action with the dealer, and not a function of the Recovery Fund.

¹⁰ MoPSC certified installer (Marshall Taylor, owner) since 2009.

Staff attempted to obtain an itemized receipt to no avail due to the length of time that has elapsed since the work was completed. As previously noted, the sales contract says delivery, blocking, leveling and anchoring were included in the sale price. It appears the Harmons paid twice for these services.

The contract also indicates the dealer will keep wheels, tires and axles so it appears the Harmons paid twice for these items. It is estimated the tires, wheels and axles would cost from \$500 to \$1200 depending on the number of tires and axles.

The sales contract also states the dealer will “add fireplace”, but the Taylor receipt says Taylor had to buy a fireplace vent and stack. It appears the Harmons paid twice for “adding” the fireplace.

Taylor had to replace one bundle of shingles. Although it is not clear why this item had to be replaced, shingles were presumably included in the price of the unit.

Finally, the sales contract says customer will pay for water and sewer hook-up. The Taylor receipt includes an item - hook up water and sewer pipe and fitting. It appears this amount should have been separately paid by the Harmons. Staff contacted various contractors to determine a cost for water and sewer hook-up. All contractors indicated they would charge \$300-\$400.

Recommendation: Staff recommends the Harmons receive \$2,425 (\$2,775-\$350) from the Recovery Fund.

The Mo-Ark statement indicates the Harmons paid \$640 for machine hire to move the trailer house. It is Staff’s understanding the home had to be moved twice – once to move the home from the lot when the bank was going to foreclose on Rightway and once to move the home to the property after site prep. The sales contract indicates the customer is responsible for site prep. Since the receipt says it is for “moving” the house, it appears to Staff the Harmons paid three times for the delivery of the home as indicated by the sales contract, the Taylor receipt and the Mo-Ark receipt.

Recommendation: Staff recommends the Harmons receive \$640 from the Recovery Fund.

The Butler statement is a proposal of the labor cost to install the air conditioner and A-coil. The Harmons instead decided to install a heat pump. As evidenced by Attachment 6, instead of paying the \$500 requested from the Recovery Fund, they actually paid \$3,000. Included in the Rightway contract is “Dealer installs 3 ton central air” so the installation of central air was included in the contract price.

Recommendation: Staff recommends the Harmons receive \$500 from the Recovery Fund since the Harmons ultimately paid much more than that amount to have the heat pump installed.

Attachment 1

Is Deemed

Highly Confidential

In Its Entirety

MISSOURI PUBLIC SERVICE COMMISSION

MANUFACTURED HOUSING AND MODULAR UNITS PROGRAM 2012

Certificate of Dealer Manufacturer Registration

REGISTRATION NUMBER: 725104

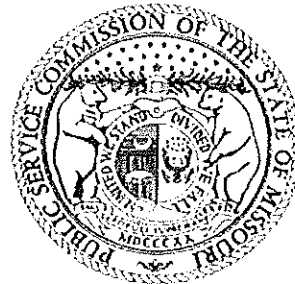
TO WHOM IT MAY CONCERN: The dealer shown below has complied with the requirements of Sections 700.090 and 700.455 RSMo, and therefore is registered in the State of Missouri as a Dealer of Manufactured Homes. This certificate is valid until **January 15, 2013**.

ISSUED TO
RIGHTWAY HOMES-WEST PLAINS
P.O. BOX 228
WEST PLAINS, MO 65775

DBA
RIGHTWAY HOMES-WEST PLAINS
3162 N HWY 63*
WEST PLAINS, MO 65775

Ron Pleus

Ron Pleus, Program Director
Manufactured Housing and
Modular Unit Program



Issue Date: Mar 16, 2012

Expire Date: January 15, 2013

THIS CERTIFICATION MUST BE PROMINENTLY DISPLAYED

Attachments 3 - 7

Are Deemed

Highly Confidential

In Their Entirety