

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day of
October, 2015.

The Manufactured Housing Consumer)
Recovery Fund Advisory Committee)

File No. MO-2016-0035

**ORDER GRANTING MOTION TO SUBMIT ADVISORY
COMMISSION RECOMMENDATION FOR DISBURSEMENT
FROM THE RECOVERY FUND AND ORDER GRANTING WAIVER**

Issue Date: October 22, 2015

Effective Date: November 1, 2015

Procedural History

On August 12, 2015, the Staff of the Commission ("Staff"), on behalf of the Manufactured Housing Consumer Recovery Advisory Committee ("Committee"), filed its Recommendation ("Recommendation") for Disbursement from the Missouri Housing Consumer Recovery Fund ("Recovery Fund"). On the same date, Staff filed a Request for Waiver.

In the Recommendation, Staff states that the Recovery Fund was established in 2008 for the purpose of paying consumer claims. The Committee investigates claims and decides whether a claimant has met the requirements for recovery from the Recovery Fund.

The Committee recommends the disbursement of \$3,565 to Roy and Jeanette Harmon from the Recovery Fund.¹ The Committee voted 2-1 in favor of the disbursement and, on October 8, 2015, the Commission convened a procedural conference

¹ This disbursement would be the first in the Recovery Fund's history.

to allow the dissenting voter a chance to voice his concerns. At that conference, the dissenting voter, Tom Hager, stated that he believed the claimants needed to actually get a judgment before receiving any funds.²

The Committee states that its recommendation was due to be made within 60 days of receipt of the claim. Due to technical difficulties caused by a software change, the Committee failed to submit the recommendation within the 60 days. Thus, the Committee asks for a waiver of the 60-day requirement.

Discussion

The State of Missouri established the Recovery Fund for the purpose of paying consumer claims according to Commission procedure.³ The Commission promulgated a Consumer Recovery Fund rule ("Rule") to administer the Recovery Fund.⁴ The Rule provides for the Committee to assist the Commission in administering the fund.⁵

To recover from the 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

² Mr. Hager is the member of the Missouri Manufactured Housing Association's member on the Committee.

³ Section 700.041.1 RSMo (2008).

⁴ Commission Rule 4 CSR 240-126.020.

⁵ Commission Rule 4 CSR 240-126.020(2).

⁶ Commission Rule 4 CSR 240-126.020(3).

The Committee consists of three members. Two Committee members found the above-listed criteria were met.

In particular, the Committee found the Harmons bought a manufactured home from Rightway Homes in West Plains, Missouri. The purchase price included the cost of delivery. Before the Harmons received the home, Rightway Homes went out of business. The Harmons then contacted Taylor's Mobile Home and Transporting Service to deliver the home. As a result, the Harmons incurred extra expense. Thus, the Committee voted in favor of recommending that the Commission allow a disbursement as mentioned above.

The 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.”⁷ Commission records indicate the Rightway Homes file was closed on March 25, 2013, due to “not renewing” its registration.

The Committee may also 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 relevant factor.”⁸ Because Rightway Homes was no longer engaged in commercial activity, the Committee found that it would have been futile for the consumer to commence legal action against the dealer. Thus, the Committee found that the consumer has properly exhausted all legal remedies prior to submitting a claim form.

The Commission agrees with the Committee. The Commission's rules explicitly state that the Committee may consider the futility of legal action against a dealer as

⁷ Commission Rule 4 CSR 240-126.020(6)(B).

⁸ Commission Rule 4 CSR 240-126.020(6)(C).

grounds to find the consumer has properly exhausted all legal remedies. In addition to being futile, such legal action would be unnecessarily expensive and time consuming.

Commission Rule 4 CSR 240-2.080(13) allows parties ten days from the date of a pleading's filing to respond, unless otherwise ordered by the Commission. The Commission issued no order to the contrary, more than ten days have elapsed since the Committee filed its Recommendation, and no party has responded.

All recommendations of the Committee and all disbursements from the Recovery Fund are subject to Commission approval.⁹ Upon review of the Recommendation, the Commission finds that it should approve the Recommendation and the Committee's request for disbursement from the Recovery Fund. The Commission further finds that it should waive the Committee's requirement per Commission Rule 4 CSR 240-126.020(4) to make its Recommendation within 60 days of receipt of the claim form.

THE COMMISSION ORDERS THAT:

1. The Manufactured Housing Consumer Recovery Advisory Committee's Recommendation for Disbursement from the Missouri Housing Consumer Recovery Fund filed on August 12, 2015, is approved.

2. Commission Rule 4 CSR 240-126.020(4) is waived.

⁹ Commission Rule 4 CSR 240-126.020(5).

3. This order shall become effective on November 1, 2015.
4. This file shall be closed on November 2, 2015.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge