

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
August 30, 2001**

**CASE NO: MC-2000-660**

**Office of the Public Counsel**

P.O. Box 7800  
Jefferson City, MO 65102

**Larry J. Meyer, President**

Discount Manufactured Housing, Inc.  
1601 North Outer Road East 50 Highway  
Warrensburg, MO 64093

**General Counsel**

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Daniel R. Carter**

Fitzgerald, Fitzgerald & Carter  
219 North Holden Street  
Warrensburg, MO 64093

**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**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office in  
Jefferson City on the 30th day of  
August, 2001.

Director of the Division of Manufactured  
Homes, Recreational Vehicles and Modular  
Units of the Public Service Commission,

Complainant,

v.

Discount Manufactured Housing, Inc.,

Respondent.

**Case No. MC-2000-660**

**ORDER APPROVING NONUNANIMOUS  
STIPULATION AND AGREEMENT**

This order approves the agreement filed by two of the parties.

**Brief Procedural History**

On April 17, 2000, the Director of the Division of Manufactured Homes and Modular Units of the Missouri Public Service Commission filed with the Commission a complaint against Discount Manufactured Housing, Inc., for altering a manufactured home to which a seal had been affixed and for failing to correct a code violation within 90 days after being ordered to do so by the Commission. On May 15, 2001, the Commission issued its order establishing a procedural schedule that included an evidentiary hearing set for July 31, 2001.

However, on July 30, 2001, the Director and Discount filed a statement of settlement, stating that they had settled the case, making the evidentiary hearing

13

unnecessary. Director and Discount requested that the hearing be canceled and noted that the Office of the Public Counsel did not object. The Commission entered its order on July 31, 2001, canceling the evidentiary hearing and directing the parties to file, by August 14, 2001, either a stipulation and agreement or a procedural schedule.

### **The Stipulation and Agreement**

Director and Discount filed a nonunanimous agreement on August 13, 2001.

Briefly restated, the terms are:

- (a) Discount will admit that the manufactured home was altered by Discount in violation of the code and that Discount is responsible for set-up, so is therefore in violation of the provisions of Section 700.025 RSMo<sup>1</sup>;
- (b) The Director will recommend a 14-day suspension of Discount's license and Discount's inventory will have a prohibitive sales notice placed on it for the suspension period;
- (c) The agreement has resulted from negotiations between the parties in consideration of the underlying facts and legal issues. If the Commission does not approve the agreement in total, it will be void and no party will be bound;
- (d) The Director may submit a memorandum explaining his rationale for entering into the agreement and each party will have an opportunity to respond;
- (e) The Director may provide whatever oral explanation the Commission requests;

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<sup>1</sup> References to Sections of the Revised Statutes of Missouri, unless otherwise specified, are to the revision of the year 2000.

- (f) The pre-filed testimony will be received into evidence; and
- (g) If the Commission approves the agreement, the parties waive their respective rights to call witnesses; present oral argument and written briefs; the reading of the transcript by the Commission; and to seek judicial relief.

Thus, Director and Discount requested that the Commission issue its Order approving the terms of the agreement.

### **The Director's Memorandum**

On August 27, 2001, the Director filed his memorandum in support of the agreement. Director's memorandum pointed out that the rationale for the Director's participation in the agreement is already set out in its entirety in that document. Therefore, since there is no further dispute between the Director and Discount, the Director requests that the Commission approve the terms of the agreement, for the reasons set forth therein.

No other party filed a response to Director's pleading. Public Counsel filed no pleadings in this case.

### **Findings and Decision**

There is no need for a hearing since no party requested a hearing. The *Deffenderfer* case held that the requirement for a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no party requests a hearing, the Commission may determine that a hearing is not necessary and that the Commission may make a decision based on the agreement.<sup>2</sup>

Even though one of the parties, i.e., Public Counsel, did not participate in the case, the Commission is treating the agreement as unanimous because no one has requested a

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<sup>2</sup> See *State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C.*, 776 S.W.2d 494, 496 (Mo. App. 1989).

hearing. Commission Rule 4 CSR 240-2.115(1) sets forth the conditions for when the Commission may treat a nonunanimous agreement may be treated as a unanimous agreement and states:

A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one...or more parties requests a hearing of one...or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.

The Commission concludes that all issues were settled by the agreement. The Commission has the legal authority to accept a stipulation and agreement offered by the parties as a resolution of issues raised in a case. Section 536.060, which allows parties to dispose of cases by agreement with summary action that waives procedural requirements, states:

Contested cases...may be informally resolved by consent agreement or agreed settlement or may be resolved by stipulation, consent order, or default, or by agreed settlement where such settlement is permitted by law. Nothing contained in sections 536.060 to 536.095 shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law, or (2) to prevent any agency authorized to do so from assisting claimants or other parties in any proper manner, or (3) to prevent the waiver by the parties (including, in a proper case, the agency) of procedural requirements which would otherwise be necessary before final decision, or (4) to prevent stipulations or agreements among the parties (including, in a proper case, the agency).

Thus, the Commission will approve the agreement filed by Director and Discount.

**IT IS THEREFORE ORDERED:**

1. That the Missouri Public Service Commission approves the stipulation and agreement filed on August 13, 2001, by Discount Manufactured Housing, Inc., and the Director of the Division of Manufactured Homes, Recreation Vehicles, and Modular units of the Missouri Public Service Commission, and whose terms are set forth in Attachment A.

2. That this order will become effective on September 9, 2001.

**BY THE COMMISSION**

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

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

( S E A L )

Simmons, Ch., Murray, Lumpe and Gaw, CC., concur

Hopkins, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

AUG 13 2001

Missouri Public  
Service Commission

Director of the Division of Manufactured )  
Homes, Recreation Vehicles and Modular )  
Units of the Public Service Commission, )

Complainant, )

vs. )

Case No: MC-2000-660

Discount Manufactured Housing, Inc., )

Respondent. )

STIPULATION AND AGREEMENT

COMES NOW, the Director of the Division of Manufactured Homes, Recreation Vehicles and Modular Units of the Public Service Commission ("Director"), by and through the Commission's Office of the General Counsel, and Discount Manufactured Housing, Inc. ("Discount"), and hereby stipulate and agree as follows:

1. On or about April 17, 2000, the Director filed a Complaint against Discount alleging that Discount violated the provisions of Section 700.025 RSMo by altering a manufactured home while converting the home to real property. Such conversion was alleged to be in violation of the code.
2. That Respondent did request mediation, and on July 18, 2000, all parties met in Columbia, Missouri, and conferred at the Center for Dispute Resolutions at the University of Missouri School of Law.
3. That the parties were unable to resolve their differences through mediation.
4. That on or about May 15, 2001, the Commission issued an Order Establishing a Procedural Schedule setting forth dates for the filing of testimony, a pre-hearing conference, a pre-hearing memorandum and setting a date for an evidentiary hearing.

5. In accordance with the Procedural Schedule, the Director submitted direct testimony. Discount submitted rebuttal testimony in response to the Director's said direct testimony and the Director submitted surrebuttal testimony.
6. Following the filings as referred to in paragraph 5 above, a List of Issues, an Order of Witnesses and Statement of Positions were filed. The matter was scheduled for evidentiary hearing on July 31, 2001.
7. That prior to evidentiary hearing, the Director and Discount were able to reach a satisfactory resolution of the issues existing between the parties as follows:
  - (a) Discount will admit that the manufactured home was altered by Discount in violation of the code at the request of the homeowner, and that Discount, being a licensed dealer is responsible for set-up and therefore is in violation of the provisions of Section 700.025 RSMo.
  - (b) The Director will recommend a 14-calendar-day suspension of Discount's license as full and complete resolution of the matter. Discount's inventory will have prohibitive sales notice placed on it for the duration of the suspension.
  - (c) The Stipulation and Agreement has resulted from negotiations between the parties in consideration of the underlying facts and legal issues. If the Commission does not approve this Stipulation and Agreement in total, it shall be void and no parties shall be bound, prejudiced or in any way affected by any of the agreements or provisions hereof, and no party shall be bound, prejudiced or in any way affected by any of the agreement or provisions hereof, in any



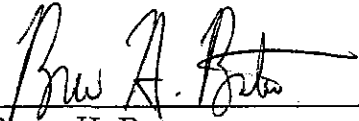
future proceeding, or in any proceeding currently pending with regards to this matter under a separate docket.

8. The Director shall have the right to submit to the Commission a Memorandum explaining his rationale for entering into this Stipulation Agreement. Each party shall be served with a copy of any Memorandum and shall be entitled to submit to the Commission within ten (10) business days of receipt of the Director's Memorandum, a Responsive Memorandum which shall also be served on all parties. A Memorandum filed by the Director pursuant to this paragraph shall not bind the Director in this proceeding if the Commission does not approve the Stipulation and Agreement and shall not bind the Director in any future proceedings in such event.
9. The Director shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests.
10. The parties agree that all of the pre-filed testimony submitted by the Director and Discount shall be received into evidence without the necessity of their respective witnesses taking the stand.
11. In the event the Commission issues an Order proving this Stipulation and Agreement, the parties waive their respective rights to:
  - (a) Call, examine or cross-examine witnesses pursuant to Section 536.070(2);
  - (b) Present oral argument and written briefs pursuant to Section 536.080.1;
  - (c) The reading of the transcript by the Commission pursuant to Section 536.080.2;


- (d) Seek re-hearing to reconsideration pursuant to Section 386.510; and,
- (e) Seek judicial relief pursuant to Section 386.510.

WHEREFORE, the signatories respectfully request the Commission issue its Order approving the terms of this Agreement.

Respectfully submitted,

  
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Bruce H. Bates  
Associate General Counsel  
Missouri Bar No. 35442

Director for the Director of the Division of  
Manufactured Homes, Recreational Vehicles  
and Modular Units of the Missouri Public  
Service Commission  
(573) 751-7434  
(573) 751-9285 (Fax)

  
\_\_\_\_\_  
Daniel R. Carter  
Fitzgerald, Fitzgerald & Carter  
Missouri Bar No. 31223

Attorney for Discount Manufactured  
Housing, Inc.  
219 North Holden Street  
Warrensburg, MO 64093  
(660) 747-3188  
(660) 747-8070 (Fax)

### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the service list below this 13<sup>th</sup> day of August 2001.

Bruce A. Bate

**Service List for**  
**Case No. MC-2000-660**  
**Verified: July 18, 2001 (lb)**

**Office of the Public Counsel**  
**P.O. Box 7800**  
**Jefferson City, MO 65102**

**Larry J. Meyer, President**  
**C/O Discount Manufactured Housing, Inc.**  
**1601 North Outer Road East 50 Highway**  
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**Daniel R. Carter**  
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**219 North Holden St.**  
**Warrensburg, MO 64093**

**Jim Levin, Director and Law Student**  
**Center for Dispute Resolution**  
**University of Missouri School of Law**  
**206 Hulston Hall**  
**Columbia, MO 65211**

ALJ/Secretary:

*Hopkins/Byce*

Date Circulated

*8-27*

CASE NO.

*ME-2000-668*

*KS*  
Simmons, Chair

*mw*  
Murray, Commissioner

*JS*  
Lumpe, Commissioner

*HH*  
Gaw, Commissioner

Commissioner

Agenda Date

*8-30*

Action taken:

*4-0 AS,*

Must Vote Not Later Than

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 30<sup>th</sup> day of August 2001.

*Dale Hardy Roberts*

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

