

1 STATE OF MISSOURI

2 PUBLIC SERVICE COMMISSION

3

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5 TRANSCRIPT OF PROCEEDINGS

6 On-the-Record Presentation

7 April 13, 2004

8 Jefferson City, Missouri

9 Volume 1

10 Director of the Manufactured)

11 Housing and Modular Units Program)

12 Of the Public Service Commission,)

13 Complainant,)

14 v.) Case No. MC-2004-0078

15 A&G Commercial Trucking, Inc.,)

16 Respondent.)

17 KENNARD L. JONES, Presiding,

18 REGULATORY LAW JUDGE.

19 ROBERT M. CLAYTON,

20 COMMISSIONERS.

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22

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1 P R O C E E D I N G S

2 JUDGE JONES: Okay. We can go ahead and go
3 on the record. All right. This is Case No. MC-2004-0078,
4 Director of the Manufactured Housing and Modular Units
5 Program of the Public Service Commission vs. A&G
6 Commercial Trucking, Incorporated. The director filed a
7 complaint in August of last year, and has now -- the
8 parties have now filed a Stipulation & Agreement in this
9 matter, and this is a presentation to answer the
10 Commission questions about that Stipulation & Agreement.

11 My name is Kennard Jones. I am presiding
12 judge over this matter. Sitting to my left is
13 Commissioner Clayton, and at this time I'm going to take
14 entries of appearances from those attorneys who are
15 present.

16 MR. BATES: Good afternoon, your Honor. My
17 name is Bruce H. Bates. I represent the manager of the
18 Manufactured Housing and Modular Units Department of the
19 Missouri Public Service Commission. My address is Post
20 Office Box 360, Jefferson City, Missouri 65102.

21 MR. MILLER: On behalf of Amega, attorneys
22 Tom Harrison and Mike Berry, my name is Danny Miller; my
23 business address is 10 Southampton, Columbia, Missouri
24 65203. Thank you.

25 MS. KRASSER: Your Honor, I'm Laura Krasser

1 appearing on behalf of the Missouri Attorney General. My
2 address is P.O. Box 899, Jefferson City, Missouri 65101.

3 JUDGE JONES: Thank you. Mr. Krueger,
4 would you like to enter your appearance?

5 MR. KRUEGER: Keith R. Krueger, also
6 appearing for the Staff. My address is P.O. Box 360,
7 Jefferson City, Missouri 65102.

8 JUDGE JONES: Thank you. And at this time
9 I have Mr. Miller -- oh, are you -- I realize you're a
10 stand-in at this point. Are you very familiar with the
11 Stipulation & Agreement, enough to summarize it?

12 MR. MILLER: I am, sir.

13 JUDGE JONES: Would you do that, please?

14 MR. MILLER: Be happy to, your Honor.

15 I would request that the Commission take
16 notice of all of the facts and representations made by
17 both parties in the matter of the Director of Manufactured
18 Housing and Modular Units Program of the Public Service
19 Commission vs. Amega Mobile Homes, previously heard
20 immediately prior to this proceeding.

21 This is the companion matter to the Amega
22 matter, and how it is factually different is as follows:
23 That in response to the concept that a dealer could not
24 sell a mobile home in that condition and after being
25 informed that it had to be marked as salvage, Amega sold

1 the homes to A&G Commercial Trucking. There is some
2 interlapping ownership between A&G Commercial Trucking and
3 Amega, and A&G being a transportation company who may have
4 had something to do with some of the damage to these
5 homes, because that was who brought them from the
6 manufacturer to Amega's lot.

7 But at any speed, they were sold from Amega
8 to A&G. A&G then sold them. There is -- in conjunction
9 with the exhibits filed as part of the complaint and
10 stipulation in this matter, there were representations to
11 the ultimate consumers regarding the concept that these
12 were sold as damaged salvage and the same was disclosed to
13 a customer, each of those orders bearing the consumer's
14 signature.

15 The director brought this complaint making
16 the allegations as are shown in the six pages of the
17 complaint. It was answered as in accordance with the
18 answer in the file. The stipulation that is likewise
19 shown in the file, likewise dated the 19th day of March of
20 2004, deals with the -- answering the allegations in the
21 conclusion -- or excuse me -- the proposed resolution of
22 the complaints which were mediated at the same mediation
23 as set forth in the Amega case.

24 The terms of that stipulation were that
25 a -- here I was cooking with gas and I need to ask a quick

1 question -- \$2,000 in conjunction with the fine provision
2 of this matter. This is -- you know, if I were to say
3 much further, it would merely be a rehash of what I'd said
4 previously.

5 I believe, much as in the previous case,
6 that this -- and the only addition to this one is that
7 the -- there is a requirement that A&G register as a
8 mobile home dealer, even though the statute says if you
9 sell four or less you don't have to. However, pursuant to
10 the terms of the Stipulation & Agreement, it was felt by
11 the director that registration as a dealer was an
12 appropriate activity so that it would subject them to
13 regulation by the director, and A&G consented to that.

14 But other than that, the stipulations are
15 basically identical as to the Amega case, and that's all I
16 can think of to say about that.

17 JUDGE JONES: Thank you, sir.

18 Mr. Bates, do you have anything you'd like
19 to add?

20 MR. BATES: Yes, your Honor. Only to add
21 that A&G has made that application already.

22 MR. MILLER: And the fine has likewise been
23 deposited, correct?

24 MR. BATES: Has been deposited into
25 account, yes.

1 JUDGE JONES: Commissioner Clayton?

2 MR. BATES: That's correct. I did know

3 that, but I said it wrong. Deposited and held, not yet

4 into account.

5 COMMISSIONER CLAYTON: Forgive me. I

6 haven't read the complaint. How many manufactured homes

7 is A&G Commercial Trucking accused of or alleged to have

8 sold?

9 MR. BATES: Out of the four that were not

10 red tagged, two were sold and one was moved.

11 COMMISSIONER CLAYTON: So two were -- two

12 were sold in the complaint?

13 MR. BATES: Yes.

14 COMMISSIONER CLAYTON: Mr. Miller made

15 reference to an exception if you sell less than four. Do

16 you know what statute that is?

17 MR. BATES: Give me a moment. That would

18 be 700.010(4).

19 COMMISSIONER CLAYTON: Okay. Does Staff

20 believe that they -- that A&G is actually in the business

21 of selling manufactured homes? Is that why it seeks for

22 them to be registered?

23 MR. BATES: Yes.

24 COMMISSIONER CLAYTON: Does Staff believe

25 that the Commission has jurisdiction over A&G if they are

1 not a licensed dealer or registered dealer?

2 MR. BATES: Not under -- no.

3 COMMISSIONER CLAYTON: You don't believe?

4 MR. BATES: Not under 700.010(4).

5 Obviously we did here because the -- they had homes that

6 weren't -- did not have the proper HUD labels on, which is

7 a different section.

8 COMMISSIONER CLAYTON: I didn't make

9 reference to a section, I don't think. Staff believes

10 that the Public Service Commission has jurisdiction over a

11 non-dealer but one who sells manufactured homes?

12 MR. BATES: Yes. That is why the complaint

13 was brought.

14 COMMISSIONER CLAYTON: I understand. And

15 which statute is that based on?

16 MR. BATES: Well, 700.045(2) makes it a

17 misdemeanor to do -- to sell certain things such as new

18 modular homes or new modular units or a modular unit.

19 COMMISSIONER CLAYTON: That doesn't have

20 anything to do with us, does it? Can we prosecute

21 misdemeanors?

22 MR. BATES: No. I'm sorry, Commissioner.

23 I did not mean to confuse you, and perhaps I was confused

24 by your question, but that's my fault, not yours. We

25 allege that Respondent owned these homes, but then did

1 sell them. Therefore, they were dealers as defined under
2 700.010(4) effectively, even though they had not made
3 application at that time for registration under 700.090.

4 COMMISSIONER CLAYTON: But a dealer is only
5 defined as one who sells four or more in a consecutive
6 12-month period, and you-all have alleged that they've
7 sold only two.

8 MR. BATES: Sell or offer for sale, and by
9 being out on the lot, they were effectively offered for
10 sale.

11 COMMISSIONER CLAYTON: Okay. So 700.010
12 applies to any entity or defines a dealer, quote, unquote,
13 not as one who is registered but one who sells or offers
14 for sale?

15 MR. BATES: Right.

16 COMMISSIONER CLAYTON: Does the complaint
17 allege that they have offered to sell more than four
18 manufactured homes?

19 MR. BATES: Well, yes. They, in effect,
20 had offered it. They were on the lot. They were not red
21 tagged. The red tags had been removed as a result of a
22 letter from the director, after they were discovered not
23 to contain the appropriate HUD seals. I think you can
24 find that more specifically in paragraph 10.

25 COMMISSIONER CLAYTON: Yeah. There's no

1 reference to A&G Trucking in paragraph 10.

2 MR. BATES: Right. In paragraph 12,

3 Respondent -- it states that Respondent owned all four of

4 those homes and that Mr. DeLine, who was an owner of A&G

5 stated that A&G owned those homes and further stated that

6 A&G owned those homes and further stated that A&G would

7 sell those homes.

8 COMMISSIONER CLAYTON: Okay. What is the

9 penalty in this case?

10 MR. BATES: In this case we're asking for

11 \$2,000.

12 COMMISSIONER CLAYTON: And what would be

13 the maximum that you would seek before us?

14 MR. BATES: Be \$1,000 per occurrence, and

15 in this case you could have, I suppose, 4,000 for no HUD

16 seals, and 2,000 for the sale of the two, and 1,000 for

17 the moving of the one home from one lot to the other.

18 COMMISSIONER CLAYTON: So our maximum would

19 be \$7,000?

20 MR. BATES: Yes.

21 COMMISSIONER CLAYTON: And what did you say

22 the settled amount was?

23 MR. BATES: 2,000.

24 COMMISSIONER CLAYTON: 2,000. Okay. And

25 that they will register as a dealer?

1 MR. BATES: Yes. And they have done so.

2 COMMISSIONER CLAYTON: And in so doing,

3 that makes them for sure under the jurisdiction of the

4 Public Service Commission?

5 MR. BATES: Absolutely. Although, again,

6 we argue that they were anyway.

7 COMMISSIONER CLAYTON: Now, if one applies,

8 I guess you file an application to become a dealer; is

9 that how it works?

10 MR. BATES: Yes.

11 COMMISSIONER CLAYTON: And do you know

12 anything about how -- what process the applicant goes

13 through?

14 MR. BATES: I know a little about it.

15 However, Mr. Pleus, the director, is here and he can

16 answer that in more detail.

17 COMMISSIONER CLAYTON: Why don't you tell

18 me what you understand first, and then we'll decide if we

19 have to go to Ron?

20 MR. BATES: Basically what I know is there

21 is a process that the person makes application, the

22 director reviews that application, and if it's -- if the

23 application is in proper form and the applicant meets all

24 the qualifications of being a dealer, then the director

25 will go ahead and issue a permit.

1 COMMISSIONER CLAYTON: Do you know if such
2 a -- that such a permit -- is it a certificate, a permit,
3 a registration?

4 MR. BATES: A registration, I guess is the
5 most proper. It's a piece of paper.

6 COMMISSIONER CLAYTON: Be consistent. Is
7 it possible for the director to issue a conditional -- a
8 conditional registration?

9 MR. BATES: No. Mr. Pleus is shaking his
10 head. I didn't know that answer.

11 COMMISSIONER CLAYTON: So once they get it,
12 they get it and you have to follow a procedure that will
13 afford due process before it is revoked?

14 MR. BATES: Yes.

15 COMMISSIONER CLAYTON: Staff believes it's
16 a good thing for A&G Commercial Trucking to be in the
17 manufactured housing business?

18 MR. BATES: Staff -- Staff believes that
19 they would meet the requirements if they discharged the
20 terms of the stipulation, having also been approved for
21 registration.

22 COMMISSIONER CLAYTON: I guess I ask the
23 question with the alternative being that A&G Commercial
24 Trucking just not be a dealer. Staff believes that it
25 would be better for A&G Commercial Trucking to be in the

1 business of selling manufactured homes, as opposed to not
2 being in the business?

3 MR. BATES: So long as they abided by the
4 rule of law, yes.

5 COMMISSIONER CLAYTON: Which they haven't
6 done so far, correct?

7 MR. BATES: Which we allege that there are
8 occasions that they did not do before they were officially
9 registered, yes.

10 COMMISSIONER CLAYTON: That's not setting a
11 very good precedent for then turning around and giving
12 them a registration. Maybe you can convince me.

13 MR. BATES: Well, we believe that at the
14 time that they made application, that they did meet the
15 criteria to be a properly registered dealer and that the
16 stipulation, the terms within the stipulation, if they
17 honor them, then they will have atoned, I suppose might be
18 the right word, for the problems that gave rise to the
19 allegations in the complaint.

20 COMMISSIONER CLAYTON: Do you know what the
21 criteria include?

22 MR. BATES: I know a couple of them. I'd
23 rather have Mr. Pleus answer that, because I believe he
24 has much more detailed knowledge of that.

25 COMMISSIONER CLAYTON: I don't know if I

1 want to get that far, start swearing people in. I don't
2 want to do that. I don't have any other questions.

3 JUDGE JONES: Thank you, Mr. Bates.

4 Mr. Miller, would you like to?

5 MR. MILLER: I'd love to, and I will be
6 brief. I probably -- obviously I didn't do a particularly
7 good job. Otherwise it wouldn't have put Mr. Bates in
8 that position.

9 Here's the way I look at it: A&G was not
10 technically a dealer at the time that they performed these
11 activities in terms of these homes. It's kind of like the
12 tax code, you know, you can call -- it's like what
13 happened whenever Congress said a vehicle's got to be
14 above 6,000 pounds to get this tax treatment. All of a
15 sudden GM added a third seat and full-sized spare in the
16 Tahoe and, voila, it's over. It technically met the law;
17 it violated the heck out of the spirit of it, but it's
18 legal.

19 Bottom line of it is, is this, is that did
20 A&G's activities previously, in my humble opinion, comply
21 with the letter of the law? Absolutely. Did they comply
22 with the spirit of it? Probably not. But that don't mean
23 it's bad, because if you comply with the letter of the
24 law, you're probably okay.

25 The director -- and I don't believe it was

1 inappropriate for them to have brought the complaint and
2 saying, you know, you look like a duck, you quack like a
3 duck and, therefore, you're a duck and now we've
4 registered as a duck. And how the benefit of it is is
5 this, is that A&G has probably the primary responsibility
6 in the issue of the damaged home areas.

7 And the way that it has been envisioned to
8 occur is this: If there's a damaged home that's red
9 tagged, then it stays an A&G home, or if it goes to Amega
10 and it's titled back, then it's titled back to A&G so,
11 therefore, there's no sales tax or other tax implications,
12 and it can be resold. So therefore, the only thing that
13 A&G would be selling are homes that A&G may have had a
14 little something to do with damaging. Amega only sells
15 homes which don't have that in conjunction with them.

16 It was the Staff's thought, I believe, that
17 that manner was a very efficient and pragmatic way to deal
18 with a problem that heretofore had had no clear solution.
19 They thought it worked. We think it works. And I would
20 urge you to likewise approve this one by virtue of the
21 fact that it brings not only the spirit, but the technical
22 aspects of the law and the regulation of these homes into
23 compliance with each other, and into compliance with the
24 statutes and prior rulings of this Commission and, quite
25 frankly, into compliance with what good common sense would

1 dictate, at least in my opinion.

2 That's all I had.

3 JUDGE JONES: Commissioner?

4 COMMISSIONER CLAYTON: Mr. Miller, I only

5 ask this question because you brought the subject up. You

6 indicated that it is the position of the Respondent that

7 they have not -- they may have violated the spirit of the

8 law but not -- have not violated technically the law as it

9 is written. Is that a correct recitation of your

10 position?

11 MR. MILLER: I can tell you that that was

12 the correct recitation of the pleadings -- excuse me -- of

13 the position in the pleadings. Whenever you get to a

14 stage where you enter into a stipulation wherein you

15 settle something, any allegation previously, in my humble

16 opinion, on either side is abandoned and you go only

17 within the four corners of the document.

18 I was giving you what the allegations were,

19 and I apologize if it came off as anything else, because

20 the deal -- in my world a deal's a deal, for them and for

21 us.

22 COMMISSIONER CLAYTON: So you would not be

23 in a position to admit or deny paragraphs 14 through 16 of

24 the complaint, which are factual allegations indicating

25 that -- that the Respondent did not follow a direction of

1 the director and sold homes without red tags and did not
2 have prior approval for the removal of red tags? You're
3 not in a position to admit or deny any of those
4 allegations, are you?

5 MR. MILLER: I really -- and like I said,
6 once you get to a stipulation, I wouldn't -- I wouldn't
7 comment under any such circumstances.

8 COMMISSIONER CLAYTON: I understand. But
9 you kind of started that by saying the Respondent complied
10 with the law, and then you turn around and say, well,
11 yeah, but this is a settlement. Which is it, are you
12 denying all liability or are you saying that, well, yes,
13 they sort of violated the spirit? Exactly what is your
14 position?

15 MR. MILLER: I apologize if I made any
16 misstatement which is in any way contrary to the four
17 corners of this document. The four corners of that
18 document deny liability but enter into agreements with
19 regard to it. I was giving you previously and I -- again,
20 I apologize if I said something that slopped into some
21 kind of belief that I was trying to denigrate this
22 settlement agreement or say, oh, gee, we really didn't do
23 this. It's -- if I did it, I apologize.

24 COMMISSIONER CLAYTON: Okay.

25 MR. MILLER: That's not what I meant to do.

1 COMMISSIONER CLAYTON: Okay. I don't have
2 any other questions for you.

3 Mr. Bates, I hate to bother you one last
4 time. Staff still believes and supports its allegations
5 that were made in the complaint, correct?

6 MR. BATES: Yes.

7 COMMISSIONER CLAYTON: Despite the
8 settlement where we say, well, there's no admission of
9 fault, Staff has evidence that supposedly would support
10 the factual allegations made in the complaint?

11 MR. BATES: Yes.

12 COMMISSIONER CLAYTON: And I make that
13 statement specifically referring to the allegations that
14 would show that manufactured homes were inappropriately
15 sold.

16 MR. BATES: Yes.

17 COMMISSIONER CLAYTON: I may have already
18 asked this. I'm going to ask it again, at the risk of
19 being repetitive. Staff has alleged that a -- that an
20 entity has sold homes inappropriately, unlawfully, out of
21 compliance with state law and Commission rule, and in
22 direct opposite to the direction of our director of
23 manufactured housing?

24 MR. BATES: Yes.

25 COMMISSIONER CLAYTON: And yet you stand

1 here before us today saying that you support this entity
2 becoming a registered dealer in this state. Could you
3 convince me that that is a positive thing for the people
4 of this state?

5 MR. BATES: The application has been made
6 and received by the director, but has not yet been granted
7 by the director.

8 COMMISSIONER CLAYTON: But it is part of
9 this agreement, is it not, that the director will grant
10 the registration or is it they will only apply?

11 MR. BATES: Well, the agreement is -- and I
12 want to make absolutely sure I get this right. The
13 agreement actually is only to make the application.

14 COMMISSIONER CLAYTON: Is Staff agreeing to
15 grant the permit or the registration?

16 MR. BATES: I don't believe it's agreeing
17 to grant, but certainly -- as part of the stipulation, but
18 certainly should they meet the qualifications, if they
19 take the steps set out in this stipulation to correct what
20 we believe were the problems coming out of their past what
21 we believe were strong wrongdoings, it certainly would be
22 considered like any other application and would have a
23 right to be as any applicant would be. I don't think a
24 final decision has been made on that. I can't honestly
25 answer any other way.

1 COMMISSIONER CLAYTON: Okay. I'll leave it
2 at that. Thank you, Judge Jones.

3 MR. MILLER: And, Judge, one second, if I
4 may. At the time -- because in their defense and I think
5 an extreme point of clarification is, is that the position
6 of the parties at the time of these acts, our position had
7 been that we weren't subject to those regulations, so it
8 would be kind of like walking down the street and if the
9 Judge were to walk down the street and tell somebody who's
10 not subject to one of his orders to do something, they
11 don't really have to do it until they're subject to it.

12 This provision in this proceeding, if it's
13 approved, would make them subject to it and clarify any of
14 the questions. And before I go, I would apologize,
15 likewise, to the Staff and to the director also if any
16 alle-- or any statement I made intimated that somehow that
17 I was denigrating any portion of the settlement agreement,
18 because with regard -- not only with regard to them, but
19 with regard to you guys, I didn't intend that.

20 JUDGE JONES: Thank you. In this case,
21 there's been a motion to dismiss the complaint or, in the
22 alternative, a motion to strike. I will rule on that
23 motion now, and that motion is denied.

24 Also there has been a demand for a jury
25 trial. That issue is not yet ripe, as the Commission has

1 not ruled on this Stipulation & Agreement that is before
2 them.

3 And with regard to the Attorney General's
4 motion to be dismissed as a party, Ms. Krasser, in the
5 motion the AG's office states that it seeks the -- seeks
6 revocation of Amega Sales. That's irrelevant to this
7 case, isn't it?

8 MS. KRASSER: Because the cases involve the
9 same owner, which is --

10 JUDGE JONES: Can you step up here?

11 MS. KRASSER: Yes. I apologize, your
12 Honor, yes.

13 The reason we decided to go ahead and file
14 the same motion as we filed in the Amega case is because
15 in neither one of the Commission's cases was Mr. DeLine
16 named as Respondent, and yet in the pleadings it made it
17 sound like he was one of the Respondents. And so for fear
18 of not covering all of our bases, we decided to go ahead
19 and file.

20 It's the Commission's view that Amega Sales
21 is not implicated in the A&G case. I think our statement
22 would be that, at this time A&G is not a party to the
23 Attorney General's case, although the consumers who have
24 complained could potentially become part of our case or a
25 separate action, if one is necessary.

1 JUDGE JONES: It sounds like you're saying
2 these two cases have nothing to do with one another, aside
3 from the fact that Mr. DeLine is the owner of both
4 companies.

5 MS. KRASSER: Yes.

6 JUDGE JONES: As I stated in 0079, the
7 Amega case, I will rule on this after the 18th.

8 MS. KRASSER: Thank you. May I be seated?

9 JUDGE JONES: Yes, you may be seated. With
10 that, then, we will adjourn.

11 WHEREUPON, the on-the-record presentation
12 was concluded.

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