



STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
Transcript of Proceedings
Hearing
June 2, 2004
Jefferson City, Missouri
Volume 2
**Director of the Manufactured Housing and Modular Units
Program of the Public Service Commission vs. Amega Sales, Inc.**
CASE NO. MC 2004-0079
FILED
JUN 21 2004
*Missouri
Public Service Commission*

MIDWEST LITIGATION SERVICES

"From Discovery to Trial"

● Jefferson City, MO

● Rolla, MO

● Columbia, MO

Headquarters
711 North 11th Street
St. Louis, Missouri 63101

● Springfield, MO

● Kansas City, MO

● Edwardsville, IL

Nationwide Scheduling

1.800.280.3376

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
HEARING

June 2, 2004
Jefferson City, Missouri
Volume 2

Director of the Manufactured
Housing and Modular Units
Program of the Public Service
Commission,

Complainant,

v.

Amega Sales, Inc.,

Respondent.

)
)
)
)
) Case No.
) MC-2004-0079

KENNARD L. JONES,
REGULATORY LAW JUDGE.
STEVE GAW, Chair
CONNIE MURRAY,
JEFF DAVIS,
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

A P P E A R A N C E S

THOMAS M. HARRISON, Attorney at Law
1103 East Broadway, Suite 101
Columbia, Missouri 65205
573-874-7777

FOR: Amega Sales, Inc.

KEITH R. KRUEGER, Deputy General Counsel
BRUCE H. BATES, Associate General Counsel

P.O. Box 360
Jefferson City, Missouri 65102
573-751-6651

FOR: Staff of the Missouri Public Service Commission

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

2 JUDGE JONES: Good morning. My name is Kennard
3 Jones. I'm the regulatory law judge presiding over this
4 matter, which is Director of Manufactured Housing and Modular
5 Units Program of the Public Service Commission versus Amega
6 Sales, Incorporated, Case No. MC-2004-0079. At this time I'll
7 have entries of appearance from Staff of the Commission.

8 MR. KRUEGER: Thank you, your Honor. Keith R.
9 Krueger for the Director of the Modular Hou-- the Manufactured
10 Housing and Modular Units Program of the Public Service
11 Commission. My address is PO Box 360, Jefferson City,
12 Missouri 65102.

13 JUDGE JONES: Thank you.

14 MR. KRUEGER: I'm sorry. Bruce Bates is also
15 representing the Director and his address is the same.

16 JUDGE JONES: And also entries of appearance
17 from Amega.

18 MR. HARRISON: Your Honor, Tom Harrison is my
19 name. I represent the Respondent in this case. My address is
20 PO Box 1017, Columbia, Missouri 65205. The Respondent also is
21 present by its corporate representative, Greg DeLine.

22 JUDGE JONES: Thank you, Mr. Harrison.

23 I will note for the record that the Office of
24 the Public Counsel is not present, at least at this time.

25 First, let's talk about the number of witnesses

1 we're going to have today. Mr. Krueger, how many witnesses
2 does Staff intend to call and who are they?

3 MR. KRUEGER: We expect to call five witnesses.
4 They are Lynn Hanks, who is an appraiser; Don Higgenbotham,
5 who is the purchaser of the manufactured home in question; Ron
6 Pleus, the Director of the Manufactured Housing and Modular
7 Units Program; Tim Haden, who's an inspector; and Gene Winn,
8 who also works for the Manufactured Housing and Modular Units
9 Program.

10 I might also mention that we served a subpoena
11 on Mr. Higgenbotham and we have been informed by a voice mail
12 message this morning that he is unable to be here today
13 because of transportation difficulties. We consider that he's
14 still under subpoena and that he's obliged to be here, but if
15 he does not -- if he's not able to appear, we will probably
16 plan to read his deposition into the record.

17 JUDGE JONES: Okay. Thank you. Approximately
18 how long do you think it will take for you to put on your
19 Direct Testimony? Not having been faced with this question
20 ahead of time, I don't expect exact minutes, just an
21 approximation.

22 MR. KRUEGER: Probably a couple of hours.

23 JUDGE JONES: Now, if I remember correctly,
24 wasn't there a subpoena for Mr. Higgenbotham's wife?

25 MR. KRUEGER: No, your Honor. We did not

1 subpoena her.

2 JUDGE JONES: Okay. And, Mr. Harrison, does
3 Amega have any witnesses?

4 MR. HARRISON: Yes, Judge. I haven't counted
5 them, but we expect to call -- we may call in our rebuttal
6 case, in our case, Mr. Haden, we may call Mr. Pleus, we may
7 call Mr. Winn, we may call Mr. Higgenbotham. We certainly
8 will read portions of Mr. Higgenbotham's deposition and
9 Mrs. Higgenbotham's deposition, both which were taken in this
10 case, and I expect to call Mark Mayes and Greg DeLine as well
11 as witnesses.

12 JUDGE JONES: I know who the first several
13 persons are. Who is Mark Mayes?

14 MR. HARRISON: He's an employee of -- he's an
15 employee of an affiliate of the Respondent.

16 JUDGE JONES: And you intend to call the same
17 witnesses as Staff will call?

18 MR. HARRISON: I'm not saying that I will. I
19 may do that. I reserve the right to do that. In all
20 likelihood, I'll probably cover what I need to cover in
21 cross-examination, quite frankly.

22 JUDGE JONES: I see. Well, between the two of
23 you, it looks like we can finish this today; is that right?

24 MR. HARRISON: I'd be very surprised if we
25 didn't.

1 MR. KRUEGER: I would hope so.

2 JUDGE JONES: Okay. Now, we had a couple of
3 preliminary motions that I need to deal with. Mr. Harrison
4 has filed -- or I should say Amega has filed motions for a
5 jury trial and a motion for dismissal. I realize,
6 Mr. Harrison, your motion for jury trial is based on, I
7 suppose, the quasi-criminal nature of this proceeding, but you
8 do realize the Commission does not impose criminal penalties?

9 MR. HARRISON: Certainly it's my position that
10 the Commission cannot impose criminal penalties and cannot
11 make findings of criminal liability, but I think that's
12 exactly what the complainant is asking the Commission to do,
13 which is one of the reasons I asked for a jury trial.

14 JUDGE JONES: Now, I guess I'm grappling with
15 the problem that I don't understand where the right to a jury
16 trial comes from in an administrative proceeding. It, to some
17 extent, defeats the purpose of administrative proceedings
18 altogether.

19 MR. HARRISON: Judge, based on my reading of
20 the complaint, they've asked the Commission, among other
21 things, to find violations of Section 407.020 and 700.045 of
22 the Missouri statutes. Both of which, as I read them, are
23 criminal statutes to impose criminal sanctions for a violation
24 of those statutes.

25 I don't think they have the -- I don't think

1 the Director has the power or jurisdiction to bring that
2 complaint in the first place. I don't think the Commission
3 has the power or jurisdiction to make those determinations,
4 but if that's what they want, if that's what they're asking
5 the Commission to do, I want all of the attendant protections
6 that the law affords to criminal defendants, one of which
7 being a jury trial and that's why I asked for it.

8 JUDGE JONES: Mr. Krueger, do you have any
9 response to that?

10 MR. KRUEGER: Yes, your Honor. We're not
11 asking for a determination of criminal liability. We're
12 asking for a determination that the acts that the Respondent
13 did constitute violations of various sections of Chapter 700.

14 Chapter 700 provides that sanctions may be
15 imposed upon a Respondent who does acts that constitute
16 violations of 700.045, which is the misdemeanor statute that
17 Mr. Harrison referred to, and acts that constitute violations
18 of 407.020, the Merchandising Practices Act.

19 Basically those provisions are incorporated
20 into Chapter 700, which authorizes the imposition of
21 sanctions. We're not asking that he be determined to be
22 criminally liable, we're just saying that he has done acts
23 which constitute a criminal violation. Obviously in a
24 criminal case there would be a right to a jury trial. We're
25 not asking for a jury trial, we're not asking for a

1 determination of guilt.

2 The standard of proof in a case of a
3 misdemeanor would be different from the standard of proof in
4 Chapter 700. We are saying that the Respondent has
5 committed -- has done things which constitute violations of
6 407.020 and 700.045 and, therefore, is subject to sanctions
7 pursuant to Chapter 700.

8 JUDGE JONES: Thank you. Mr. Harrison, any
9 response to that?

10 MR. HARRISON: Yes. Several things. First, I
11 think a fair reading of the complaint. particularly the last
12 paragraph, Respondent particularly and specifically asks the
13 Commission for a finding and a determination that 700.045 and
14 407.020 have been violated. In order to make that
15 determination, it's our position that the Commission has to
16 exercise the judicial function. The case law is clear that
17 the Commission does not possess and cannot exercise the
18 judicial function.

19 JUDGE JONES: That's assuming that they would
20 have to exercise that circuit court judicial function.

21 MR. HARRISON: That's correct and that is our
22 position. 700.045 the very first five words of that statute
23 are, It shall be a misdemeanor, and then it lists six things
24 that constitute misdemeanors in violation of that section. By
25 its clear and express terms, that is a criminal statute.

1 If counsel is saying that they're withdrawing
2 that part of their complaint and that's out of the case now,
3 then that's great. And if they're asking -- if they're
4 telling you and the Commission that they're not seeking a
5 finding of that section, that's great. I don't think that's
6 what they're saying. It's our position that that's a criminal
7 statute. Similarly, 407.020 imposes criminal sanctions for
8 violation of that statute.

9 JUDGE JONES: Now, Mr. Harrison, if the
10 Commission were to make findings in favor of Staff under those
11 statutes, I believe they would go to circuit court in order to
12 enforce any sanctions that may be imposed. At that time do
13 you think you have the right to a jury trial?

14 MR. HARRISON: Absolutely. I think I've got a
15 right to a jury trial --

16 JUDGE JONES: And now also?

17 MR. HARRISON: Absolutely. If I may --

18 JUDGE JONES: Go right ahead.

19 MR. HARRISON: -- I think the procedure would
20 be there has to be a finding in circuit court first of a
21 violation of 700.045 or 407.020. That I think is the proper
22 procedure. This forum is not the forum in which that initial
23 determination should be made for a variety of reasons,
24 including the fact that the Commission simply doesn't possess
25 that power.

1 JUDGE JONES: Have you looked at 700.100?

2 MR. HARRISON: I have.

3 JUDGE JONES: It says at subsection 3, The
4 following specifications shall constitute grounds for
5 suspension, revocation or placing on probation of a
6 manufacturer or dealer's registration. And as you skip over
7 to subpart 9, engaging in conduct in violation of Section
8 700.045.

9 It doesn't contemplate fines or up to a year in
10 jail or anything. It deals with the jurisdictional power that
11 the Commission has with regard to the registration if there's
12 a violation of that statute, not that you have -- a
13 misdemeanor has to have occurred, but that elements of that
14 statute have been violated.

15 MR. HARRISON: With all due respect, I don't
16 agree with that interpretation. I think the premise is a
17 court or jury has to find that a criminal violation has
18 occurred and that is brought to the Commission for
19 disciplinary reasons.

20 I would bring to your attention 700.015, which
21 is remarkably similar in its express terms to 700.045 except
22 700.015 isn't a criminal statute. 700.015, subsection 1 says,
23 No person shall rent, lease, sell or offer for sale any new
24 manufactured home unless it complies with the code and bears
25 the proper seal. That's almost exactly the same language as

1 is in Section 700.045, subsection 2. There's a reason that
2 there are two different statutes. One's a criminal statute,
3 one is not.

4 I guess I liken this to Department of Revenue
5 procedure. And I don't claim to be an expert on Department of
6 Revenue procedure, but my understanding is that with respect
7 to driver's licenses, for example, the Department of Revenue
8 can take certain disciplinary action against someone who
9 possesses a driver's license. For example, if a person has a
10 DWI conviction, I think the Director of Revenue has the
11 authority to suspend or revoke a license, but there has to be
12 a judicial finding first that that has happened.

13 So you take the judicial finding from a court,
14 you bring it to the Commission, then you have disciplinary
15 action. We've got the cart before the horse here.

16 MR. KRUEGER: Your Honor, if I may. Section
17 700.115.3 provides that any individual or director, officer or
18 agent of a corporation who knowingly and willfully violates
19 any provision of Section 700.010 to 700.115 is subject to
20 conviction or imprisonment. I'm sorry. That's not the one I
21 want to rely on.

22 But I should have called your attention to
23 subsection 2 which authorizes civil penalties in an amount
24 which will shall not exceed \$1,000 for each violation for
25 anyone who violates any provision of this chapter.

1 We are not seeking a finding of guilt, we're
2 not seeking criminal penalties. We are seeking civil
3 penalties. That's the remedy that we're seeking. And the
4 allegation is that the Respondent has done acts which
5 constitute violations of those provisions and, therefore,
6 pursuant 700.100, the Respondent is subject to sanction.

7 JUDGE JONES: Okay. I understand your
8 argument, Mr. Harrison. It sounds like you're saying there
9 needs to be a determination in court first and based upon that
10 determination, the Commission can then act.

11 I will say, at this point to me it seems more
12 academic than practical. I do know that the right to jury
13 trial existed long before administrative proceedings did and
14 that administrative proceedings were instituted to unclog the
15 courts, so to speak. To then have administrative hearings
16 that hold jury trials would defeat that purpose. So at this
17 time I will deny the motion for jury trial to be more fully
18 explored, however, in the Report and Order that stems from
19 this hearing.

20 And there was another -- a motion to dismiss
21 you had?

22 MR. HARRISON: Yeah. I think I filed three
23 separate motions to dismiss.

24 JUDGE JONES: Aren't they all the same?

25 MR. HARRISON: Not quite. There are

1 differences among them. I filed one on -- in late March, I
2 think I filed one last week and I filed one on June 1st.

3 JUDGE JONES: Well, and your motion to dismiss
4 is based on the Commission not having jurisdiction?

5 MR. HARRISON: One of them is, yes.

6 JUDGE JONES: And the other?

7 MR. HARRISON: Well, if you'll bear with me for
8 one second.

9 JUDGE JONES: Of course I will.

10 MR. HARRISON: The motion to dismiss that was
11 filed yesterday, June 1st essentially, your Honor, raises the
12 following points. First, that the Director has no
13 constitutional, statutory or other authority to even bring
14 this case.

15 Second, that there's a separation of powers and
16 substantive due process argument in that the finder of fact,
17 namely, the Commission and the prosecutor -- the parties
18 prosecuting this case, namely, the Director, are part of the
19 same entity. And I think that that violates the doctrines of
20 separation of powers and substantive due process. Understand
21 I'm summarizing these grounds so as to save time.

22 JUDGE JONES: Let's deal with those points.
23 The Staff of the Commission -- well, first I have to say the
24 Staff and Director and the Commission -- the Commission is a
25 separate entity from the Staff of the Commission. Granted

1 they all work for the Public Service Commission, but the Staff
2 brings complaints and cases before the Commission for the
3 Commission to decide. I feel like you're saying there's a
4 hint of bias in that process and there isn't. It's just that
5 simple. I don't know how else to put that.

6 MR. HARRISON: No. I'm saying that essentially
7 what you have is the same entity -- and I understand the point
8 you just made. I think the point is that you have the same
9 entity effectively acting as prosecutor and finder of fact,
10 and I think that violates certain fundamental fairness as well
11 as certain constitutional provisions.

12 JUDGE JONES: So you're saying that the
13 Director of Manufactured Housing and the Commissioners are the
14 same?

15 MR. HARRISON: I'm saying that they're
16 certainly related. I'm not saying they're the same. Of
17 course they're not the same

18 JUDGE JONES: Then you can't have the same
19 person as a prosecutor and trier of fact if they aren't the
20 same.

21 MR. HARRISON: Of course they're not literally
22 the same, but they're part of the same agency and entity of
23 State government. That's our position.

24 JUDGE JONES: So if the Staff of the Commission
25 then were to bring the complaint against someone, you're

1 saying the Commissioners shouldn't be able to hear complaints
2 in any cases that Staff brings before it?

3 MR. HARRISON: I'm saying in this particular
4 case, it violates -- I'm not making a generalized statement.
5 I'm relating it to this particular case. It violates
6 separation of powers and due process.

7 JUDGE JONES: What would be different from this
8 case and any other case?

9 MR. HARRISON: I can't answer that question. I
10 don't know what any other case would entail.

11 JUDGE JONES: Mr. Krueger?

12 MR. KRUEGER: Your Honor, I'd call your
13 attention to Rule 4 CSR 240-2.070, which governs complaints.
14 Subsection 1 provides the Commission on its own motion, the
15 Commission Staff through the general counsel, Office of the
16 Public Counsel or any person or public utility who feels
17 aggrieved by a violation of a statute, rule or order or
18 decision within the Commission's jurisdiction may file a
19 complaint.

20 That clearly provides authorization to the
21 Commission Staff to bring a complaint. It's a procedure
22 that's been followed for many years in all kinds of cases that
23 are presented to the Commission, including rate cases and
24 other cases. And the vast majority of complaints are brought
25 by either the Staff through the general counsel or by the

1 Office of Public Counsel.

2 It's a very common practice. I see nothing in
3 this rule provision that would distinguish the current
4 situation from the other situations in which the Staff has
5 historically been allowed to bring complaint cases.

6 JUDGE JONES: Mr. Harrison, it looks like
7 you're wanting to say something.

8 MR. HARRISON: The only thing I would say in
9 response to that -- I mean, obviously we could go on ad
10 nauseam, ad infinitum. The only thing I would say
11 specifically in response to that is my argument primarily on
12 the motion that we're arguing here is a constitutional
13 argument and the Constitution obviously would take precedence
14 over any regulation or rule.

15 JUDGE JONES: Okay. Now, I do appreciate your
16 arguments, Mr. Harrison. However, I'll have to -- I can rule
17 on the motion to dismiss and deny that motion at this time.

18 MR. HARRISON: Do you want to hear argument?
19 I'm sorry.

20 JUDGE JONES: Do I want to hear argument on?

21 MR. HARRISON: Either of the other two motions.

22 JUDGE JONES: The motion to dismiss for other
23 reasons?

24 MR. HARRISON: Yes.

25 JUDGE JONES: Okay. What are your other

1 reasons?

2 MR. HARRISON: The motion that I filed on
3 May 27th, part of it relates to what we've already argued
4 about earlier here this morning, particularly with respect to
5 interpretation and application of 700.045 and 407.020. I
6 won't reiterate those arguments unless you want me to, Judge.

7 In addition, it's our position that the
8 Director has no power to bring a claim seeking a finding of
9 407.020, which I think is exactly -- again, looking at the
10 complaint and I think based on statements of counsel, that's
11 exactly what the Complainant wants. He wants the Commission
12 to find 407.020 has been violated. It's our position that
13 only the Attorney General, a prosecutor or a private civil
14 litigant can bring a claim under Chapter 407.

15 Also attached to my motion that I filed on
16 May 27th is a declaration filed by the Missouri Attorney
17 General in a Boone County lawsuit to which the Respondent is a
18 party. I draw your attention to that declaration, your Honor,
19 particularly paragraph 9 in which the Attorney General stated
20 that after attending Mr. Higgenbotham's deposition,
21 Mr. Higgenbotham being a witness in this case -- I was going
22 to say the complaining witness, but that's not really
23 accurate.

24 After attending his deposition and reviewing
25 the evidence in the Plaintiff's possession regarding

1 Mr. Higgenbotham's complaint, the Plaintiff, that being the
2 Attorney General, determined that Mr. Higgenbotham's complaint
3 could not be sufficiently proved for inclusion in the group of
4 consumer complaints that form the basis of the Attorney
5 General's action in court.

6 I think that's a binding statement made by a
7 party. By the way, the Attorney General was a party to this
8 case when that declaration was made and filed in Boone County.
9 I think that's a binding admission that I think is -- makes it
10 incumbent upon you and the Commission to dismiss those parts
11 of the complaint dealing with and alleging violation of
12 407.020

13 JUDGE JONES: And you say that because the
14 Attorney General doesn't think they have a case under that
15 with regard to Mr. Higgenbotham?

16 MR. HARRISON: The Attorney General doesn't
17 think they have a case and the Attorney General is one of the
18 parties that can prosecute a claim under 407.020. The
19 Director is not one of those parties.

20 JUDGE JONES: That's not very convincing.
21 Because the Attorney General doesn't think -- it's a party and
22 doesn't think it has a case against the statute against
23 Mr. Higgenbotham this case should be dismissed?

24 MR. HARRISON: That's part of my argument.

25 JUDGE JONES: That doesn't follow. If that's a

1 basis for the -- I guess second motion to dismiss, then --

2 MR. HARRISON: Judge, you know, my second
3 motion to dismiss has several bases. I don't want to sit here
4 and read them.

5 JUDGE JONES: I understand.

6 MR. HARRISON: That wouldn't be very time
7 sufficient. So obviously all of the grounds I stated in my
8 motion I believe are valid grounds and I'm not abandoning any
9 of them by not arguing them here. I'm just arguing some of
10 those points.

11 Now, with respect to my March 25th motion,
12 again, all of the bases stated in my motion are serious and I
13 want each of them to be looked at.

14 A couple things I would point out. There's a
15 preemption question in this case, federal preemption question.
16 Section 5403 of Title 42 of the US Code is a preemption
17 statute that says, A state cannot adopt safety standards with
18 respect to manufactured homes which are not identical to the
19 federal standards.

20 In this case Commission and the Director have
21 done exactly that. They've adopted standards which are not
22 identical to the standards in the federal scheme. So that's
23 part of my motion.

24 I also raise various constitutional arguments
25 in my motion that I filed on March 25th, but I won't -- unless

1 you want to hear argument on them, I won't argue those here.

2 MR. KRUEGER: Your Honor, I would just point
3 out that that motion that was filed on March 25th has already
4 been overruled by the Commission at the time of the
5 on-the-record presentation on April 13th. The transcript,
6 page 68, line 23 you stated, The motion filed by Amega to
7 dismiss this complaint or in the alternative to strike certain
8 paragraphs was denied.

9 JUDGE JONES: That was during the on-the-record
10 presentation of the Stipulation and Agreement?

11 MR. KRUEGER: Correct, your Honor.

12 JUDGE JONES: Thank you.

13 MR. HARRISON: I apologize. I didn't get
14 notice of that and I didn't read the transcript -- that part
15 of the transcript before I came in here.

16 JUDGE JONES: Well, the other motions to
17 dismiss are denied. I'll discuss them more fully in the
18 following Report and Order from this case.

19 Are there any other motions pending between the
20 parties other than the motions to dismiss and the motion for
21 jury trial?

22 Okay. Mr. Harrison, are you still -- are you
23 searching?

24 MR. HARRISON: I don't think there are any
25 other pending motions. I have a few more prehearing matters

1 to discuss.

2 JUDGE JONES: We'll take those up, but quickly
3 I want to -- normally we have Direct Testimony that's filed --
4 pre-filed, I should say. Direct Testimony in this case,
5 however, will be live as will many other of the Commission's
6 cases.

7 So we'll have opening statements within some
8 time frame, you know. I don't want you to go on and on and on
9 about what your case is and spell out each fact. Just say
10 what it is you want to prove and how you're going to do that.

11 Do you all want to make closing remarks?

12 MR. KRUEGER: I do, your Honor.

13 JUDGE JONES: I suppose you do too?

14 MR. HARRISON: That's fine. I assume we'll be
15 filing briefs as well?

16 JUDGE JONES: Yes. I suggest we -- do you all
17 need more than one round of briefs for this?

18 MR. KRUEGER: Your Honor, if we're going to be
19 filing briefs, I don't need to make a closing argument.

20 JUDGE JONES: Okay. Do you all need more than
21 one round of briefs?

22 MR. KRUEGER: I don't think so.

23 MR. HARRISON: Let me understand what you're
24 asking. Do you mean he --

25 JUDGE JONES: Brief and a reply.

1 MR. HARRISON: Well, I don't think so. What do
2 the rules say about timing? Twenty days after a hearing?

3 JUDGE JONES: I believe it is.

4 MR. HARRISON: And then I have 10 or 20 to
5 respond?

6 JUDGE JONES: Right.

7 MR. HARRISON: That's fine with me.

8 JUDGE JONES: Is it a time issue that you're
9 concerned with?

10 MR. HARRISON: It's fine with me unless
11 something crazy happens in this hearing today.

12 MR. KRUEGER: Well, if his brief is in response
13 to mine, if they're not simultaneous briefs, I would like to
14 have an opportunity to file a reply.

15 JUDGE JONES: Mr. Harrison? I mean, that's how
16 it usually happens in appellate court. Right?

17 MR. HARRISON: Right.

18 JUDGE JONES: Let's see. Now, as far as the
19 procedure for the examination of witnesses is concerned, I
20 propose we do this: We have Direct Testimony and we have
21 questions from the Bench, then we have cross based on
22 questions from the Bench and the direct, then we have -- I'm
23 sorry -- yes, we have direct questions from the Bench, cross
24 and then redirect. Do you all follow that?

25 MR. HARRISON: After each attorney examination,

1 then there will be an opportunity for questions from the
2 Bench?

3 JUDGE JONES: Well, actually questions from the
4 Bench will come after Direct Testimony, and then cross, then
5 redirect.

6 Is that fine with you, Mr. Krueger?

7 MR. KRUEGER: Yes, your Honor.

8 JUDGE JONES: Okay. And we'll deal with the
9 other preliminary matters you have, Mr. Harrison, and then
10 we'll -- you all have exhibits, don't you?

11 MR. KRUEGER: Yes.

12 MR. HARRISON: Yes.

13 JUDGE JONES: Then we'll have the exhibits
14 marked and then take a short break at which time I'll retrieve
15 the Commissioners and then we can start.

16 So we'll deal with the other preliminary
17 matters you have now, Mr. Harrison.

18 MR. HARRISON: For purposes of preserving the
19 record, I know the rulings you made this morning, but I want
20 the record to be clear that all my motions to dismiss and my
21 jury trial demand are not waived, of course, and are renewed.

22 My understanding of the law is that the
23 Complainant in this case has to prove violations of Section
24 700.045 and 407.020 beyond a reasonable doubt and that's going
25 to be the standard that the Respondent is going to insist on

1 in these proceedings.

2 The Respondent invokes the rule excluding
3 non-party witnesses and requests that any non-party witnesses
4 in this case be excluded from the hearing room during the
5 hearing.

6 JUDGE JONES: With regard to having people step
7 out of the room, I'll let you all monitor that between the two
8 of you. I don't know who's who out there, so it will be your
9 responsibility to let me know who you want to have leave and
10 I'll have them leave.

11 MR. HARRISON: I don't know -- I recognize some
12 of the witnesses back here. I recognize Mr. Winn and
13 Mr. Haden. I think they're non-party witnesses so I think
14 they need to --

15 JUDGE JONES: I'll tell you what I'll do then.
16 When the first witness comes up, I'll just ask that all the
17 non-party witnesses be excused.

18 MR. HARRISON: All right. There's a settlement
19 stipulation that the parties entered into and unless I missed
20 something, I don't think -- I don't think that stipulation's
21 been ruled upon by the Commission.

22 JUDGE JONES: It has not. The Commission has
23 decided not to rule on that at this time based on their
24 discretion and their ability to either approve or reject it
25 and decided to do neither at this time.

1 MR. HARRISON: It's my position and the
2 Respondent's position that all the claims and controversies in
3 this case have been settled in full and that there aren't any
4 claims or controversies to be tried. And I'm going to argue
5 that the Complainant has stopped from proceeding in this case
6 and I don't want them to proceed because I believe all claims
7 have been settled in this case based on the settlement
8 stipulation.

9 JUDGE JONES: Except that settlement
10 stipulation doesn't exist because it hasn't been approved. So
11 it's ineffective at this time. Now, it's your choice to
12 proceed, of course --

13 MR. HARRISON: Yeah. And I will, of course,
14 proceed, but I want the record to be clear that by proceeding,
15 we don't waive any claimed defense or anything else,
16 particularly the argument and defense which we've raised in
17 our answer that this case has been settled. So I want that to
18 be clear on the record.

19 JUDGE JONES: Okay. Thank you.

20 MR. HARRISON: And I don't think I have any
21 other pretrial, prehearing matters.

22 MR. KRUEGER: Your Honor, if I may, in response
23 to that, I would just reiterate what I've previously said,
24 that we disagree on the standard of proof. We contend that
25 the standard of proof is by a preponderance of the evidence as

1 in any civil case. The allegations of the complaint are
2 that -- or strike that.

3 Section 700.100.3(4) states that, Engaging in
4 any conduct which constitutes a violation of the provisions of
5 Section 407.020 RSMo shall constitute grounds for suspension
6 or revocation of a dealer's registration.

7 Essentially what that does is incorporates the
8 terms of that -- the elements of an offense under 407.020,
9 just -- it incorporates them basically in a way to avoid
10 having to reprint the entire substance of it. So those
11 elements are all part of the elements of 700.100.3(4), but the
12 standard of proof is merely preponderance of the evidence,
13 and similarly with the allegations of paragraph 8 and 9 of the
14 complaint which pertain to violations of 700.045(2), the
15 misdemeanor statute.

16 We contend that in order to prove our case
17 under 700.100.3(9), we need to prove the elements that are
18 shown in that 700.045 but only by a preponderance of the
19 evidence and that the elements of 700.045 are incorporated for
20 the purpose of efficiency in putting it in the statute.

21 JUDGE JONES: Okay. I'm inclined to suggest
22 that you all incorporate these into your briefs. The only
23 problem I see with that is if we proceed, I suppose the
24 Director will proceed assuming that you only have to prove by
25 a preponderance of the evidence the facts that you've alleged

1 when if, after you all brief this issue, the Commission
2 determines, well, maybe it should be beyond a reasonable
3 doubt, then you will have not proved your case as
4 satisfactorily as you would have had you known we would have
5 proceeded under that standard.

6 What I suggest at this time is that you prove
7 what you can prove as best as you can prove it and the
8 standard that we use can be argued in your-all's briefs at the
9 end of this. Is that fair?

10 MR. KRUEGER: I think so. That would be my
11 intention. I intend to make the best case that I can. I'd
12 like to make a case beyond a reasonable doubt, even though I
13 believe that the standard is preponderance of the evidence.

14 JUDGE JONES: I understand. Mr. Harrison?

15 MR. HARRISON: As long as the record's clear as
16 to what my position is, which is, again, reasonable doubt is
17 the standard.

18 JUDGE JONES: I'm saying you need to make that
19 clear in the briefs that are filed after this hearing.

20 And while I'm thinking about it, when we go on
21 to the webcast, Mr. Harrison, you'll need to speak into the
22 microphone. I can hear you fine and I'm sure the court
23 reporter can, but for all these technical purposes, it won't
24 be broadcast. So just try to keep that in mind. If you
25 forget, I'll find some subtle way to remind you.

1 MR. HARRISON: All right.

2 JUDGE JONES: All right. With that, is there
3 anything else for anyone?

4 Okay. What I suggest then is that -- how many
5 exhibits do you have, Mr. Krueger, approximately?

6 MR. KRUEGER: I haven't counted. I think it's
7 about a dozen.

8 JUDGE JONES: And you, Mr. Harrison?

9 MR. HARRISON: I think I have nine, some which
10 may be duplicates.

11 JUDGE JONES: Okay. Well, I don't suppose it
12 will hurt with that few exhibits to have duplicates come in.
13 So why don't you all -- Staff, you take the lower numbers and,
14 Mr. Harrison, you take the higher numbers and let's have your
15 exhibits marked and then we'll enter them as you present them
16 during the hearing. Okay?

17 At this time we'll go off the record.

18 (Off the record.)

19 (Exhibit Nos. 1 through 23 were marked for
20 identification.)

21 JUDGE JONES: Okay. At this time we'll go
22 ahead and have opening statements from Mr. Krueger.

23 MR. HARRISON: Your Honor, if I might.

24 JUDGE JONES: Yes, you may.

25 MR. HARRISON: I request again that witnesses

1 be excluded from the hearing and I think they should be
2 excluded at this time.

3 JUDGE JONES: Thank you. At this time I'll ask
4 that all non-party witnesses be excluded from the hearing
5 room. When it is time for you to come in and testify, the
6 attorney sponsoring your testimony will retrieve you.

7 Go ahead, Mr. Krueger.

8 MR. KRUEGER: Thank you, your Honor. Good
9 morning. May it please the Commission.

10 My name is Keith R. Krueger and I represent the
11 Director of the Manufactured Housing and Modular Units Program
12 of the Public Service Commission in this proceeding. I may
13 refer to my client as the Director and department that he
14 manages as the program.

15 The Director brought this case against Amega
16 Sales, Inc. to enforce the professions of Chapter 700 of the
17 Revised Statutes of Missouri which governs manufactured
18 housing dealers, including Amega, the Respondent in this case.

19 The Director filed its complaint last August
20 and because he filed another complaint against a related
21 entity at the same time, it's important to distinguish between
22 these two cases. This case, the claim against Amega, involves
23 a single transaction, the sale of a manufactured home to Don
24 and Terri Higgenbotham.

25 The Director contends that Amega sold this home

1 to the Higgenbothams, that the home was damaged and did not
2 have HUD labels as required by law. HUD label is a Department
3 of Housing and Urban Development label. That because it did
4 not have the HUD labels, the Director placed a prohibitive
5 sale notice on the home. That prohibitive sale notice is
6 known in the industry as a red tag. And the Director told
7 Amega that the home could not be sold as a new manufactured
8 home.

9 Amega -- the Director also contends that Amega
10 told the Director that the home would not be sold as a new
11 home, but would only be sold as a used home. In reliance on
12 that statement from Amega, the Director removed the red tag.

13 The Director also contends that Amega presented
14 to the Higg-- represented to the Higgenbothams that the home
15 was new. That they then sold the home to the Higgenbothams,
16 delivered it to them and set it up on their property and that
17 there were numerous construction defects in the home as
18 delivered.

19 The Director contends that these acts
20 constitute violations of three provisions of Chapter 700;
21 namely, 700.100, 700.045, and 407.020 of the Missouri
22 statutes, and also the Federal Manufactured Housing Code
23 adopted by the Commission.

24 The Director also contends that as a result
25 thereof, Amega's registration as a manufactured housing dealer

1 in Missouri should be revoked and the Commission should seek
2 civil penalties against Amega in circuit court.

3 As mentioned, the case involves a single
4 transaction, the sale of a home to the Higgenbothams. The
5 evidence will show that in March of 2002, the Director
6 inspected Amega's sales lot in Ashland, Missouri. He found
7 that this particular home, the one that the Higgenbothams
8 purchased, which bears Serial No. 0151-0412-MA/B, did not have
9 a HUD label. Because it didn't have a HUD label, the home
10 could not be lawfully sold as a new manufactured home in
11 Missouri. The Director, therefore, placed a prohibitive sale
12 notice on the home known as a red tag. We don't expect Amega
13 to dispute this fact.

14 The evidence will also clearly show that later
15 in 2002, the Higgenbothams bought this same home, the one
16 bearing the serial number I just mentioned, 0151-0412-MA/B,
17 which was delivered to the Higgenbothams at a lot that they
18 owned at Lake Road 64-63H in Osage Beach, Camden County,
19 Missouri where they now live. This was the home that was red
20 tagged in March 2002. Because it's the same home that was red
21 tagged and the Higgenbothams now own, we may sometimes refer
22 to it as the Higgenbotham home.

23 The evidence will also clearly show that the
24 Higgenbothams filed a complaint with the Commission about this
25 particular home and that an inspector of the Commission, Tim

1 Haden, found numerous construction defects in the home.

2 The evidence will also show that on May 2,
3 2002, Mr. Higgenbotham and Amega signed a document that
4 sometimes is known in the industry as a Form 500, sometimes
5 called a bill of sale or a purchase contract which Amega
6 prepared. That document has Amega's name and address at the
7 top, it identifies Mr. Higgenbotham as the buyer of the
8 manufactured home and it describes the manufactured home and
9 shows the sales price for the home and other information --
10 other financial information about it.

11 It also describes the home as new. The box
12 marked new on that Form 500 is checked. And it also shows the
13 amount of sales tax on the home. The Form 500 does not,
14 however, include the serial number of the home that is
15 described there.

16 The key issue today, the very crux of this
17 case, is whether that Form 500 pertains to the home that was
18 red tagged on March 13th, 2002 and which the Higgenbothams
19 ultimately bought and where they now live. That's the key
20 issue, does the Form 500 pertain to the Higgenbotham home.

21 We expect Amega to acknowledge or at least not
22 to dispute that it did prepare the Form 500 that contained the
23 information I have just described, but to suggest that perhaps
24 the Form 500 did not pertain to the home that the
25 Higgenbothams eventually purchased. But the Director will

1 present persuasive evidence that the Form 500 did pertain to
2 the Higgenbotham home.

3 First we'll present the testimony of an
4 appraiser, Lynn Hanks, who appraised the home that the
5 Higgenbothams bought. Mr. Hanks will testify that he
6 requested a copy of the bill of sale or the Form 500 for the
7 home that he was about to appraise for the Higgenbothams and
8 that Amega faxed that Form 500 to him, the Form 500 that I
9 previously mentioned.

10 And, second, we'll present evidence concerning
11 an exchange of correspondence between Amega and the Director.
12 This correspondence will show that Greg DeLine, the president
13 of Amega, acknowledged that his salesman, quote, erred when he
14 wrote the deal with this customer and used an Amega form and
15 checked the wrong box for new or used.

16 I should note that in the letter that I just
17 quoted from, the phrase "this customer" referred to the
18 Higgenbothams. That will make it very clear that the Form 500
19 that I've referred to pertained to the Higgenbotham home. The
20 reason this matters is that it will show that Amega sold this
21 home to the Higgenbothams as a new home even though there were
22 no HUD labels on the home and the Director had red tagged the
23 home; that is, the Director had prohibited Amega from selling
24 the home as a new home and yet they did.

25 Thus, Amega sold a new -- sold the home as a

1 new home after it was ordered not to do so and it falsely
2 represented to the Higgenbothams that it was a new home. And
3 according to the Form 500, it even collected sales tax on the
4 home which would not apply -- which would only apply to a new
5 home and not to a used home.

6 The evidence will show that Mr. Higgenbotham
7 filed a complaint with the Commission about the home that he
8 and his wife had purchased from Amega and in that complaint he
9 stated that it was a new home because that's what he believed
10 that it was, that's the way it had been represented to him.

11 I submit that the evidence in this case will be
12 more than sufficient to show that Amega violated the law. The
13 Commission has announced that the proceeding here today will
14 be bifurcated so that you will only be determining the issue
15 of whether there was a violation of law and that there will be
16 a subsequent proceeding -- if a violation of law is found,
17 there will be a subsequent proceeding about the appropriate
18 sanctions and about seeking penalties in circuit court.

19 The Director will present testimony by the
20 homeowner, Don Higgenbotham; the appraiser, Lynn Hanks; and by
21 three members of the Staff of the Manufactured Housing and
22 Modular Units Program, namely, Ron Pleus, the Director, and
23 Tim Haden and Gene Winn.

24 We appreciate your interest and we welcome your
25 questions. Thank you.

1 JUDGE JONES: Thank you, Mr. Krueger.

2 Mr. Harrison?

3 MR. HARRISON: Thank you, your Honor. May it
4 please the Commission, counsel.

5 My name's Tom Harrison. I practice law in
6 Columbia, Missouri. I represent the Respondent in this case.
7 At the table with me is Mr. Greg DeLine, who's representing
8 personally the Respondent in the hearing before you today.

9 I want to say at the outset that we greatly
10 appreciate the opportunity to be heard. We greatly appreciate
11 the opportunity to present evidence. We greatly appreciate
12 the opportunity to have this proceeding be conducted in a
13 fair, open and impartial forum and that those sentiments are
14 sincere.

15 In this case, the Complainant seeks your
16 finding, the finding of the Commission, among other things,
17 that my client has violated two specific statutes in Missouri.
18 Among other things, the Complainant claims and asks you for a
19 finding specifically that my client has violated Section
20 407.020 of the Missouri Revised Statutes, which is a statute
21 dealing with consumer protection and merchandising practices.

22 And the Complainant seeks a finding from you
23 specifically, according to the complaint, of a violation of
24 Section 700.045 of the Missouri Revised Statutes, which is
25 part of the manufactured home regulatory regime in effect in

1 this state.

2 As a preliminary matter -- I'll develop in a
3 moment what I expect the facts to be in support of the
4 Respondent's case, but as a preliminary matter, I would point
5 out to the Commission that it is the Respondent's position in
6 this case that those statutes that I just cited to you are
7 criminal statutes. Those are criminal statutes. They require
8 find-- in order for the Commission to find liability, it's our
9 position that the Commission has to conclude and find that the
10 Respondent acted in a criminal manner.

11 Therefore, it's our position that the
12 Complainant in this case is bound by the Constitution and by
13 applicable statutes to prove its case before you today beyond
14 a reasonable doubt. I don't believe that the preponderance of
15 evidence standard applies here. I think the beyond a
16 reasonable doubt standard applies. And I would respectfully
17 request that you keep that in mind throughout the course of
18 this proceeding.

19 As part and parcel of that, my client is going
20 to insist that strict adherence to procedural and evidentiary
21 rules apply in this case because, again, the Complainant is
22 seeking a finding from this Commission that the Respondent has
23 violated criminal statutes, it has acted in a criminal manner,
24 which, of course, we deny. We denied before this hearing, we
25 deny during the hearing, we'll deny that for all purposes in

1 this hearing. And certainly by engaging in this hearing and
2 making arguments and putting on evidence and allowing evidence
3 to be put on, we don't waive any of those defenses or
4 arguments. I want those -- I bring these up at the beginning
5 of my opening statement so that hopefully they'll be foremost
6 in everyone's minds here in this proceeding.

7 Now, with regard to the facts of the case and
8 the evidence that I expect to be adduced before you, this case
9 involves a used home -- not a new home, a used manufactured
10 home that was sold to Mr. Higgenbotham, Don Higgenbotham. And
11 Mr. Krueger's correct, the case before you involves one
12 transaction and one transaction only and it's the transaction
13 with the Higgenbothams.

14 Now, my client's position is and the evidence
15 will show that the home in this case was sold not by the
16 Respondent, but by a company called A&G Commercial Trucking.
17 That's what the evidence will show, that's particularly what
18 the documentary evidence will show. That's what we expect the
19 evidence to be. And that's one of the reasons that at the
20 conclusion of the case when arguments are made and briefs are
21 submitted, that's one of the bases on which we will ask you to
22 return a finding in favor of my client. Because the evidence
23 will be that the transaction was with A&G Commercial Trucking,
24 a totally separate and distinct entity.

25 Now, the evidence will also be that A&G

1 Commercial Trucking fully performed all of its obligations
2 both with respect to the Higgenbothams -- in other words,
3 performed everything that it told the Higgenbothams that it
4 would do, and it did everything that the Complainant told it
5 to do. And I'll develop that a little bit more fully here in
6 a minute.

7 The evidence will be -- you will hear at least
8 testimony via deposition from the Higgenbothams that -- you
9 may even hear live testimony from Mr. Higgenbotham, but at a
10 minimum, you will hear deposition testimony from
11 Mr. Higgenbotham and Mrs. Higgenbotham that says they are
12 satisfied in all respects and with all aspects of this
13 transaction. They have no complaints against either the
14 Respondent or A&G Commercial Trucking. You will hear that
15 testimony. That is testimony that you will hear.

16 You will also hear them say that they have
17 sustained no damages in connection with this transaction, that
18 they have no civil claims, they have no reason to see the
19 Respondent or A&G Trucking be prosecuted, they have no reason
20 to see the Respondent or A&G trucking be the subject of any
21 administrative proceedings. You will hear that testimony from
22 the Higgenbothams.

23 So in this case there is no consumer who needs
24 protection, there is no consumer whose rights have been
25 violated, there is no consumer who has come before you asking

1 for you to take action. The consumer in this case, the
2 Higgenbothams, are fully satisfied, that's what the evidence
3 will be.

4 The evidence will also be that the home that
5 the Higgenbothams purchased was a model year 2000 -- this is
6 an important point -- a model year 2000 Skyline home. A model
7 year 2000 Skyline home. This purchase contract or Form 500
8 that counsel described in opening statement refers to a 2001
9 home. By its very terms, it applies to and describes a
10 different home than the one the Higgenbothams purchased. I
11 don't think there will be any controversy or dispute in the
12 evidence that the home that the Higgenbothams actually bought
13 was a 2000 model, not a 2001 model.

14 Now, the Complainant also is going to rely on a
15 good deal of hearsay evidence, I expect, and other incompetent
16 evidence. And so I would ask the Commission to take that into
17 account as the hearing progresses. There will be substantial
18 amount of incompetent evidence that I believe the Complainant
19 will attempt to introduce in this case.

20 Again, the Complainant is going to rely on an
21 alleged purchase contract between the Respondent and the
22 Higgenbothams. And, again, that purchase contract doesn't
23 describe the home that's at issue in this case. By its
24 express terms it does not. It has no serial number on it, as
25 counsel pointed out in his opening statement. It has no

1 serial number on it, so there's no way to determine whether
2 that document -- which home that document describes. We do
3 know for sure that that document does not describe the home
4 that the Higgenbothams purchased.

5 There will be specific testimony -- in fact, I
6 expect the certificate of title to the home that the
7 Higgenbothams actually purchased to be introduced in evidence.
8 That has a serial number on it, that has the make, the model.
9 That will clear up any ambiguity or doubt about which home
10 they actually purchased.

11 Now, I expect the evidence to be that
12 Mr. Haden, who is an agent and representative of the
13 Complainant, did, in fact, red tag this home in March of 2002,
14 but he later removed it. He later removed the red tag or gave
15 the Respondent permission and instructions to remove the red
16 tag. This is an important point as well.

17 There is no allegation in this case and there
18 can be no proof that that home was sold while the red tag was
19 on the home. That's not what the Complainant alleges in this
20 case. The Complainant does not allege that the Respondent
21 sold this home or transferred it while this red tag was on the
22 home. It's important to stress that, I think.

23 The evidence will be that Mr. Haden led the
24 Respondent to believe that this was, in fact, a used home and
25 he clearly told the Respondent that the home could be sold as

1 a used home as long as a certificate of title for that home
2 were obtained. That's exactly what happened. A certificate
3 of title was obtained, that was shown to Mr. Haden, Mr. Haden
4 removed the red tag, the home was subsequently sold by A&G
5 Trucking as a used home.

6 And, again, there's no allegation in this case
7 and there isn't going to be any evidence that the home was
8 sold while the prohibitive notice, i.e., the red tag, was on
9 the home.

10 In short, the Respondent and A&G Commercial
11 Trucking did exactly what they were told to do by the
12 Complainant's agent, Mr. Haden. They did exactly what they
13 were told to do. They got a certificate of title to this
14 home, they sold it as a used home. That's what the evidence
15 will show.

16 So I think the primarily important facts in
17 this case are A&G Trucking was the owner of this home and the
18 seller of it, not the Respondent. That evidence may very well
19 be uncontroverted in this case. The home was sold as a used
20 home, not a new home. That's another primarily important
21 fact.

22 The third primarily important fact that I want
23 to stress again is that the Higgenbothams will say they are
24 100 percent happy and satisfied, they have no complaints
25 against either the Respondent or A&G Commercial Trucking.

1 They have no reason to see that this case proceed. They
2 haven't asked that this case proceed.

3 Based on this evidence, I do not believe you
4 will be able to make a finding that any violation of law
5 occurred whatsoever. The facts won't support it and I
6 specifically do not believe that you will be able to make a
7 finding or conclude that any criminal statutes were violated,
8 which is what the Complainant is asking you in this case.

9 Thank you for your time, again we appreciate
10 the opportunity to appear before you and have you hear our
11 evidence.

12 JUDGE JONES: Thank you, Mr. Harrison.

13 At this time, Mr. Krueger, will you call your
14 first witness?

15 MR. KRUEGER: Staff's first witness will be
16 Lynn Hanks.

17 (Witness sworn.)

18 JUDGE JONES: Thank you. You may be seated.
19 Go ahead, Mr. Krueger.

20 MR. KRUEGER: Thank you.

21 HARRY LYNN HANKS testified as follows:

22 DIRECT EXAMINATION BY MR. KRUEGER:

23 Q. State your name and address for the record,
24 please.

25 A. My name is Harry Lynn Hanks. My address is

1 Post Office Box 2268, Lake Ozark, Missouri 65049.

2 Q. What is your occupation?

3 A. I'm a State-certified residential appraiser.

4 Q. By whom are you employed?

5 A. I'm self-employed. I own my own firm.

6 Q. What are your duties?

7 A. I appraise single-family residential and vacant
8 land, etc.

9 Q. In the course of this business, did you ever
10 come in contact with Don and Terri Higgenbotham?

11 A. Yes, I did.

12 Q. What was the nature of that contact?

13 A. I received a order from my client, Liberty
14 Financial, to do a proposed plan and specs appraisal on a new
15 manufactured home on property that they were purchasing or
16 owned in Osage Beach, Missouri.

17 Q. You said this was a plans and specs appraisal?

18 A. Yes.

19 Q. Can you tell me what that means?

20 A. Well, the manufactured home is not on premises,
21 it's raw land. And what we do is we take the information on
22 the property -- on the manufactured home and from this we did
23 it on plans and specs. In other words, we -- it's kind of
24 extraordinary assumption because it's not there, there's
25 nothing physically there. And we take that information and

1 then we take comparables and compare it to the information we
2 had on the proposed structure.

3 Q. Does this then involve an examination of the
4 actual structure itself?

5 A. Yes.

6 Q. The plans and specs appraisal?

7 A. No, not the actual structure. It's not there.

8 Q. Did you provide professional services then as a
9 result of this contact?

10 A. Yes.

11 Q. What services did you provide?

12 A. I performed the plans and specs, or proposed
13 appraisal, giving an estimate of market value which was sent
14 to Liberty Financial.

15 MR. HARRISON: Your Honor, at this point could
16 I interpose an objection?

17 JUDGE JONES: What's your objection,
18 Mr. Harrison?

19 MR. HARRISON: My objection is in discovery I
20 requested a list of witnesses who would be testifying at the
21 hearing here today. Mr. Hanks was not on the list. His name
22 was disclosed in writing to me yesterday. It was disclosed to
23 me verbally last Wednesday, I think. I don't think those are
24 timely or seasonal supplements.

25 I wanted to hear what he was going to testify

1 about generally before making the objection. I object to any
2 further testimony by this witness on that basis.

3 JUDGE JONES: Mr. Krueger?

4 MR. KRUEGER: Your Honor, we did not disclose
5 the name of Mr. Hanks at the time of our initial response to
6 the discovery request because we didn't know his name. As
7 soon as we ascertained his name, we disclosed it to
8 Mr. Harrison. I disclosed it to him orally during the
9 depositions that were taken last Wednesday and then I
10 supplemented the response to the discovery request by sending
11 him an e-mail yesterday conveying the same information that I
12 had given last week.

13 Furthermore, in the responses to the discovery
14 requests, I did identify -- I did state that the appraiser was
15 a witness, but that the appraiser's name was not known. So I
16 disclosed that this person was a possible witness, although I
17 did not know his name.

18 MR. HARRISON: Your Honor, if I might.

19 JUDGE JONES: Mr. Krueger, this name came up
20 some time ago, didn't it, in the initial investigation in
21 2002?

22 MR. KRUEGER: I think the name was -- I'm sure
23 that the name was known at the time of the initial
24 investigation; however, it was not known at the time after --
25 from the time that we filed the complaint until just recently.

1 The way that the Director ascertained the name
2 of this witness was by making an extraordinary effort, I
3 think, to try to determine who it was by going back through
4 telephone records and looking for numbers that they did not
5 recognize and calling until they ascertained who this person
6 was. The Director did not know the name of this witness or
7 how to contact him until last week. As soon as we determined
8 what his name was and how to contact him, we did so and we
9 disclosed that information to Mr. Harrison.

10 JUDGE JONES: Is that true, Mr. Harrison?

11 MR. HARRISON: Judge, they told me verbally
12 last week. They told me in writing yesterday. I would note
13 that in the motion that was filed for leave of the Commission
14 to issue the subpoena to Mr. Hanks prior to 20 days -- within
15 20 days before the hearing, paragraph 5 of the motion says,
16 The Director was in possession of Mr. Hanks' name at the time
17 of the initial investigation into this matter.

18 I mean, they knew who he was. Now, I can't
19 be -- you know, I don't really understand the argument. I
20 mean, if they knew who he was, they should have disclosed him
21 before.

22 MR. KRUEGER: I have acknowledged that we did
23 at one time know the name of Mr. Hanks. In fact, we had
24 contact with him, but the name was lost and not known or
25 available to the Director until last week.

1 JUDGE JONES: Okay. Thank you.

2 Mr. Harrison, are you suggesting you're not
3 prepared to cross-examine the witness?

4 MR. HARRISON: I'm suggesting that there was
5 not timely notice given or not timely opportunity to prepare
6 for examination of the witness.

7 JUDGE JONES: The objection's overruled.
8 Proceed, Mr. Krueger.

9 And, Mr. Harrison, I'll remind you to speak
10 into your microphone.

11 BY MR. KRUEGER:

12 Q. I believe you stated, Mr. Hanks, that your
13 client was Liberty Financial Corporation; is that right?

14 A. That is correct.

15 Q. What services did you agree to provide to them?

16 A. I agreed to provide to them a summary appraisal
17 on a new manufactured home on vacant land located at Taos
18 Estates, which is located off Lake Road 5463H in Osage Beach,
19 Missouri.

20 Q. Did Liberty Financial give you any other
21 instructions?

22 MR. HARRISON: Object to that question, it
23 calls for hearsay.

24 MR. KRUEGER: This is part of the normal course
25 of his business. He's relating the instructions that he --

1 he's asked to relate the instructions that he had in
2 performing these services.

3 JUDGE JONES: The objection's overruled.

4 THE WITNESS: Re-- did I get any other
5 instructions?

6 BY MR. KRUEGER:

7 Q. Yes.

8 A. Yes. I received a fax from Liberty Fin--

9 MR. HARRISON: I'll object. I think he's
10 trying to prove the contents of a writing, your Honor.
11 Violates the best evidence rule.

12 JUDGE JONES: Do you have a copy of the
13 writing, Mr. Krueger?

14 MR. KRUEGER: Mr. Hanks has a copy in his
15 possession and I have a copy. I can offer it as an exhibit if
16 that's necessary.

17 JUDGE JONES: Do the contents of the writing
18 contain the testimony you're trying to elicit?

19 MR, KRUEGER: Yes, your Honor, I believe it
20 does.

21 JUDGE JONES: Then why don't we submit that
22 exhibit?

23 MR. KRUEGER: I will do so. I don't have
24 copies at this time.

25 JUDGE JONES: You just said you had a copy of

1 it.

2 MR. KRUEGER: I'm sorry. I don't have
3 copies -- the requisite number. I don't have 10 copies. I
4 can present the original for marking and make copies at the
5 next break.

6 JUDGE JONES: Why don't you do that and then --
7 I'll give it back to you and you can have your co-counsel go
8 make copies.

9 MR. KRUEGER: May I approach the witness?

10 JUDGE JONES: Yes, you may.

11 THE WITNESS: Do you need all of it?

12 MR. KRUEGER: Just that one.

13 BY MR. KRUEGER:

14 Q. I'm going to show you a document -- I'm sorry.

15 MR. KRUEGER: Would you mark this, please?

16 (Exhibit No. 24 was marked for identification.)

17 BY MR. KRUEGER:

18 Q. I'm going to show you a document that's been
19 marked for identification as Exhibit No. 24 and ask if you can
20 identify that document?

21 A. Yes.

22 Q. What is it?

23 A. It is a fax that was sent to me by Liberty
24 Financial from the loan officer Monte stating that they were
25 ordering the Higgenbothams' appraisal and said if I needed

1 anything else, to let him know. Also, Chris at Amega can help
2 with questions concerning the house --

3 MR. HARRISON: Judge, if he can authenticate
4 and identify the document, that's fine.

5 JUDGE JONES: Just tell us what the document
6 is, please.

7 THE WITNESS: It is the order to do the summary
8 appraisal.

9 JUDGE JONES: Also, will you move the
10 microphone little closer to you?

11 THE WITNESS: I'm sorry.

12 JUDGE JONES: That's okay.

13 MR. KRUEGER: I'd offer Exhibit 24, your Honor.

14 MR. HARRISON: There hasn't been any
15 foundation. It's a hearsay statement, out of court statement
16 offered by a non-party who's not here, there's been no
17 foundation laid. I object on those bases.

18 MR. KRUEGER: It's not a hearsay statement
19 because it's not offered to prove the truth of what's stated
20 in there. It's just the instructions that Mr. Hanks received
21 regarding the performance of his tasks.

22 JUDGE JONES: Objection overruled. This is
23 exhibit -- is this Exhibit 24?

24 MR. KRUEGER: That's correct, your Honor.

25 JUDGE JONES: Okay. Exhibit 24 is admitted

1 into the record. Go ahead and have copies made of that.

2 (Exhibit No. 24 was received into evidence.)

3 MR. KRUEGER: So we don't have to delay, your
4 Honor, I'd like to give Mr. Hanks a copy that I have so that I
5 can ask questions about it.

6 JUDGE JONES: That will be fine.

7 BY MR. KRUEGER:

8 Q. What additional information did Liberty
9 Financial provide to you?

10 A. Liberty Financial provided to me an estimated
11 cost for Don and Terri Higgenbotham. They estimated the total
12 cost for the land, water, well, septic, electric, excavation,
13 garage and home at \$123,075.

14 Q. Did Liberty Financial tell you where you could
15 obtain additional information regarding this home?

16 A. Yes.

17 Q. What did they tell you?

18 A. They told me to contact Chris at Amega at
19 657-2176.

20 Q. Is that stated on that fax that's been --

21 A. Yes.

22 Q. -- marked --

23 A. It is stated on the fax.

24 Q. -- and admitted as Exhibit 24?

25 Did you then contact Amega?

1 A. Yes.

2 Q. How did you contact them?

3 A. By telephone.

4 Q. Do you recall when you did that?

5 A. It would have been on the 21st.

6 Q. The 21st of what month and what year?

7 A. May 21st, 2002.

8 Q. And whom did you talk to there?

9 A. Chris.

10 Q. What did he tell you at that time?

11 A. At the time that I contacted him, I told him I
12 needed a copy of the sales contract and a copy of the floor
13 plan of the proposed manufactured home, which were faxed to
14 me.

15 Q. That is what you told him?

16 A. Yes.

17 Q. And then did you subsequently receive this
18 additional information?

19 A. Yes, I did.

20 MR. KRUEGER: May I approach the witness, your
21 Honor?

22 JUDGE JONES: Yes, you may.

23 BY MR. KRUEGER:

24 Q. I want to show you a copy of a document that's
25 been marked for identification as Exhibit 1 and ask if you can

1 identify that document?

2 A. Yes, I can.

3 Q. Tell me what it is, please.

4 A. I call it a contract for sale or sales contract
5 for the manufactured home.

6 Q. Is that the document that you received from
7 Chris at Amega Homes --

8 A. Yes.

9 Q. -- Amega Sales, I'm sorry?

10 A. Yes, it is.

11 Q. What date did you receive that document?

12 A. I received the document on the -- also on
13 May 21st, 2002.

14 Q. The same day that you requested it?

15 A. Yes.

16 Q. How do you know that?

17 A. Basically because it's marked on the top of the
18 form where I received the fax. It says I received this fax
19 May 21st, 2002 at 11:03 and it says Amega Sales.

20 Q. You're referring now to the imprinting --

21 A. At the top of the form.

22 Q. -- at the top of the form?

23 MR. KRUEGER: Your Honor, I'd offer Exhibit
24 No. 1.

25 JUDGE JONES: What is exhibit -- let me see

1 what it is.

2 MR. KRUEGER: I'm sorry.

3 JUDGE JONES: Do you have copies for the
4 Commissioners?

5 Any objection, Mr. Harrison?

6 MR. HARRISON: Lack of foundation, relevance.

7 JUDGE JONES: It looks to be signed by Don
8 Higgenbotham.

9 MR. HARRISON: Also, that's part of my
10 objection. I don't think there's been a basis for him --
11 there's been no foundation for what it is, also contains
12 hearsay statements.

13 MR. KRUEGER: We will present evidence that
14 Mr. Higgenbotham identified that as his signature. The
15 document is relevant because it pertains to a home that
16 Mr. Higgenbotham purchased as a new home.

17 JUDGE JONES: I will overrule the objection on
18 the grounds of relevancy. How does this witness know what
19 this document is?

20 MR. KRUEGER: This was a document that he
21 received in the normal course of business. It was faxed to
22 him by Amega Sales.

23 JUDGE JONES: And 573-635-7347, whose fax
24 number is that?

25 THE WITNESS: Amega.

1 JUDGE JONES: Is his fax number indicated
2 anywhere on the document -- your fax number?

3 THE WITNESS: Not to my knowledge, your Honor.

4 JUDGE JONES: And you worked with Liberty
5 Financial?

6 THE WITNESS: They were the client. They were
7 the lender. They were a mortgage broker. They were the
8 lender for the Higgenbothams

9 JUDGE JONES: Okay. I'll admit this into
10 evidence as Exhibit 1 you said, Mr. Krueger?

11 MR. KRUEGER: That's correct, your Honor.

12 (Exhibit No. 1 was received into evidence.)

13 JUDGE JONES: Mr. Harrison, is your microphone
14 on?

15 MR. HARRISON: I'm trying to remember to turn
16 it on at the time that I speak. I apologize if I haven't been
17 doing that.

18 JUDGE JONES: Why don't you leave it on and
19 speak away from it?

20 MR. HARRISON: I'll try to remember.

21 JUDGE JONES: You can proceed, Mr. Krueger.

22 MR. KRUEGER: Your Honor, I have copies of
23 Exhibit 24 that I'd like to distribute.

24 BY MR. KRUEGER:

25 Q. Is this the type of document that you routinely

1 receive before you begin a plans and specs appraisal?

2 A. Yes, it is the type of document I normally
3 receive.

4 Q. Do you rely on this document in making your
5 appraisal?

6 A. Yes.

7 Q. What is this document called?

8 A. I call it a sales contract for the purchase of
9 a new manufactured home.

10 Q. What name appears at the top of that document?
11 MR. HARRISON: Judge, the document speaks for
12 itself.

13 JUDGE JONES: Are you laying a foundation for
14 the admissibility of Exhibit 1, Mr. Krueger?

15 MR. KRUEGER: No, your Honor.

16 JUDGE JONES: Are you speaking of Exhibit 1?

17 MR. KRUEGER: Yes, I am.

18 JUDGE JONES: You can go ahead and proceed, but
19 it does speak for itself. If you'd get to the point that you
20 want this witness to make, it would be greatly appreciated.

21 BY MR. KRUEGER:

22 Q. What name and address appears at the top of
23 that document?

24 A. Are you referring to the sales contract, sir?

25 Q. Yes, I am.

1 A. That says Amega Sales, Incorporated, 111 East
2 Side Drive, Ashland, Missouri 65010 and then their phone
3 numbers.

4 Q. Who is shown as the buyer on that document?

5 A. Don A. Higgenbotham.

6 Q. Does that include a description of a
7 manufactured home?

8 A. Yes, it does.

9 Q. And is there a box on there for new or used?

10 A. Yes.

11 Q. Is one of those boxes checked?

12 A. Yes.

13 Q. Which one?

14 A. New.

15 Q. Does this document also show the price of the
16 unit?

17 A. Yes.

18 Q. And other financial information?

19 A. Yes.

20 Q. And does it show sales tax?

21 A. Yes.

22 Q. What is the amount of sales tax shown there?

23 MR. HARRISON: Judge, same objections. I mean,
24 the document speaks for itself. This is an argumentative line
25 of questioning. I think he's making argument here. The

1 document can speak for itself and anyone can read it.

2 JUDGE JONES: I tend to agree with him.

3 However, I do wonder why you ask if there's a sales tax
4 indicated on here. Why is that relevant?

5 MR. KRUEGER: The reason I ask is because a key
6 part of our case is the fact that the manufactured home is
7 represented as a new home for which sales tax would be
8 applicable and paid. And this indicates that the home that
9 Mr. Hanks was asked to appraise was sold as a new home.

10 MR. HARRISON: There hasn't been that
11 connection made at all.

12 JUDGE JONES: First, I'll overrule the
13 objection. Second, I will note that it says it's new on here,
14 the box is checked that it's new, so --

15 MR. KRUEGER: Thank you, your Honor.

16 JUDGE JONES: -- try to move quickly -- more
17 quickly, I should say.

18 BY MR. KRUEGER:

19 Q. Do you see the signatures at the bottom of that
20 document?

21 A. Yes, I do.

22 Q. Can you identify either of those signatures?

23 A. No, I cannot.

24 Q. Did you make a report on your appraisal of this
25 property to Liberty Financial Corporation?

1 A. Yes, I did.

2 Q. Have you ever had any further contact with this
3 home that you appraised?

4 A. Yes.

5 Q. When did that contact occur?

6 A. I made a secondary inspection on August the
7 14th. The garage, as they have referred to, was incomplete so
8 the home could not be released.

9 Q. I'm sorry. What was incomplete?

10 A. The garage or pole building that they were
11 erecting on the premises, which is included in the finance
12 with the lender. It was not complete. I then returned --

13 MR. HARRISON: Judge, this is not responsive to
14 the question that was asked.

15 THE WITNESS: Okay. I made a final inspection
16 on 9/25/02 of the manufactured home.

17 BY MR. KRUEGER:

18 Q. What is the purpose of a final inspection?

19 A. The purpose of the final inspection is to see
20 that all of the criteria of the appraisal have been met. The
21 home has been placed on-site, hooked to utilities, excavation,
22 grading, well, septic, everything that is -- has been required
23 is complete.

24 Q. Did you find anything unusual at the time of
25 that inspection?

1 A. Yes, I did.

2 Q. What did you find?

3 A. I found the HUD seals were removed.

4 Q. After that inspection, did you submit any
5 further report to Liberty Financial Corporation?

6 A. I submitted to them a final inspection report.

7 Q. And what did you report?

8 A. I reported -- I will read verbatim --

9 MR. HARRISON: I'll object, best evidence rule,
10 Judge.

11 JUDGE JONES: Objection sustained. Is that
12 something that's in evidence?

13 MR. KRUEGER: No, it's not, your Honor.

14 JUDGE JONES: How do we know what he's reading
15 from?

16 MR. KRUEGER: I'll move along, your Honor.

17 JUDGE JONES: Please do.

18 BY MR. KRUEGER:

19 Q. Did you take any further action with regard to
20 this home?

21 A. Yes, I did.

22 Q. What action did you take?

23 A. Upon finding that the HUD sales were removed, I
24 contacted Liberty Financial. They --

25 MR. HARRISON: I'll object to the hearsay that

1 I think he's about to testify to.

2 JUDGE JONES: Objection overruled.

3 THE WITNESS: I contacted Liberty Financial
4 and -- Monte at Liberty Financial. I also contacted Amega.
5 The response that was given to me by Liberty Financial was --

6 MR. HARRISON: Now I'll object. I think he's
7 about to relate a hearsay statement.

8 JUDGE JONES: Would you like to offer proof,
9 Mr. Krueger?

10 MR. KRUEGER: No, your Honor.

11 THE WITNESS: Okay.

12 BY MR. KRUEGER:

13 Q. I'm sorry. Let me just ask a different
14 question.

15 A. Okay.

16 Q. Did you report this to any government agencies?

17 A. Yes, I did.

18 Q. To what government agency did you report it?

19 A. I reported it to the State of Missouri
20 Department of Economic Development, Public Service Commission
21 to Mr. Gene Winn, Manufactured Housing inspector supervisor.

22 Q. And did you subsequently meet with Mr. Winn?

23 A. Yes, I did.

24 Q. Where did you meet with him?

25 A. At the subject -- at the site.

1 Q. When did that meeting take place?

2 A. On September 25th, 2002.

3 Q. Did you make any further inspection of the home
4 at that time?

5 A. Yes.

6 Q. Did you find anything new that you had not
7 previously found?

8 A. Mr. Winn and I met and went down to the home.
9 Mr. Winn asked me to write down two numbers, which -- on my
10 folder, which I did. He then removed the skirting surrounding
11 the manufactured home. He read me two numbers. They matched
12 the numbers that he had in his notebook.

13 Q. I'm sorry. What numbers did you find under the
14 skirting?

15 A. 0151-0412-MA/B.

16 Q. Is that the serial number?

17 A. That is the HUD serial numbers, yes.

18 Q. Did you find HUD labels on the home at that
19 time?

20 A. No. There was four little holes where the
21 labels had been.

22 MR. KRUEGER: That's all the questions I have,
23 your Honor.

24 JUDGE JONES: Will there be any questions,
25 Chairman Gaw?

1 CHAIR GAW: Not at this time.

2 JUDGE JONES: Commissioner Murray?

3 COMMISSIONER MURRAY: No thank you, Judge.

4 JUDGE JONES: Commissioner Davis?

5 COMMISSIONER DAVIS: Do we have his actual
6 appraisal report or has any of that documentation -- I mean,
7 has it been submitted into evidence? I've gotten copies of
8 various documents in the past, but --

9 JUDGE JONES: It's not in evidence at this
10 time. Is it attached to your complaint, Mr. Krueger, a copy
11 of his appraisal report?

12 MR. KRUEGER: I believe it is.

13 COMMISSIONER DAVIS: I have an Exhibit 6 that
14 looks like it might be that, but --

15 MR. KRUEGER: You're asking about what now,
16 your Honor?

17 JUDGE JONES: Whether or not the appraisal
18 report is in evidence at this point.

19 MR. KRUEGER: No. The appraisal report was not
20 attached to the complaint and is not in evidence.

21 JUDGE JONES: Thank you. Commissioner Appling?

22 COMMISSIONER APPLING: No questions, Judge.

23 JUDGE JONES: Thank you.

24 Mr. Harris, cross-examination?

25 MR. HARRISON: Yes, sir. Thank you.

1 CROSS-EXAMINATION BY MR. HARRISON:

2 Q. Sir, you were engaged by Liberty Financial?

3 A. Correct.

4 Q. You were not engaged by the Higgenbothams?

5 A. No, sir.

6 Q. And you were not engaged by Amega Sales or A&G
7 Trucking?

8 A. No, sir.

9 Q. All right. Now, at the time you received the
10 purchase contract, which I think is Exhibit 1 --

11 A. Yes.

12 Q. -- you hadn't seen the home itself when you got
13 that document?

14 A. No, sir.

15 Q. When was the first time you actually saw the
16 home itself?

17 A. I saw the home for the first time in August. I
18 believe it was August 14th, 2002.

19 Q. The purchase contract describes a 2001 home.
20 Right?

21 A. Yes, sir.

22 Q. The home you saw was a 2000 home; isn't that
23 correct?

24 A. The home I saw was what?

25 Q. A model year 2000 home.

1 A. No, sir.

2 Q. What was the model year of the home that you
3 saw?

4 A. According to the sales contract, it's a 2001.

5 Q. That's not my question. What was the model
6 year of the home that you saw according to your inspection and
7 viewing of the home itself?

8 A. Sir, I have no way to determine the year of
9 that home except by this sales contract. There was nothing
10 available in the home.

11 Q. In other words, there's nothing on the home
12 itself by which you independently verified whether it was a
13 2001 home, a 2000 home or any other year; is that --

14 A. There is nothing available to me.

15 Q. So my statement is correct?

16 A. Yes, I guess so.

17 Q. Okay. So if someone testifies later in this
18 hearing that the home that the Higgenbothams actually
19 purchased was a model year 2000, you wouldn't have any way to
20 dispute that, would you --

21 A. No, sir.

22 Q. -- based on -- based on your visual inspection?

23 A. Yes, sir, I would have a way.

24 Q. Based on your visual inspection of the home?

25 A. On my final inspection when the HUD seals

1 numbers were found, that would stipulate the year of
2 manufacture.

3 Q. Okay. But the serial number itself didn't
4 reflect the year of manufacture?

5 A. No, sir, they do not.

6 Q. You'd have to take those numbers and compare it
7 to, say, a certificate of title to figure out what the year
8 was?

9 A. That is correct, sir.

10 Q. All right. You would agree with me that the
11 Form 5-- or the purchase contract that is in evidence as
12 Exhibit 1 doesn't have a serial number on it?

13 A. I do agree, sir.

14 Q. You'd also agree that the purchaser shown on
15 Exhibit 1, the purchase contract, is shown as Don
16 Higgenbotham?

17 A. Correct.

18 Q. There's no mention of anybody else? Maybe his
19 wife, but there's no mention of anybody else, is there?

20 A. No, sir.

21 Q. When were you engaged by Liberty Financial
22 to --

23 A. On 5/21/2002.

24 MR. HARRISON: No further questions.

25 JUDGE JONES: Thank you.

1 Will there be redirect?

2 MR. KRUEGER: No, your Honor.

3 JUDGE JONES: Any questions at this time from
4 the Bench?

5 Seeing none, you may step down; however, I'd
6 ask that you stay around just in case there are questions.

7 THE WITNESS: Thank you.

8 JUDGE JONES: Mr. Krueger, you may call your
9 next witness.

10 MR. KRUEGER: Your Honor, at this time we'd
11 like to present the testimony of Don Higgenbotham, who was
12 subpoenaed, but Mr. Higgenbotham has called this morning to
13 say that his transportation plans fell apart and he's unable
14 to attend the hearing this morning. We did take the
15 deposition of Mr. Higgenbotham, which was attended by
16 Mr. Harrison, in fact, Mr. Harrison scheduled the deposition
17 and we would like to read that deposition into evidence at
18 this time.

19 JUDGE JONES: Are there certain portions of the
20 deposition you want us to pay particular attention to?

21 MR. KRUEGER: I'm sure that there are some
22 portions that are more important than others. Perhaps I might
23 be able to meet with Mr. Harrison later and limit it to only
24 those portions that --

25 JUDGE JONES: My point is I would rather you

1 not read the whole deposition into the record when it can be
2 admitted as an exhibit and read by the Commissioners and
3 myself, unless you want to highlight some portion of it.

4 MR. KRUEGER: Okay. I haven't identified
5 specifically which portions I want to highlight, but perhaps I
6 can move on to another witness at this time and then after the
7 break, determine which ones to highlight.

8 JUDGE JONES: That will be fine. How long is
9 the deposition?

10 MR. KRUEGER: About 24 pages, I believe.

11 JUDGE JONES: Well, go ahead and call your next
12 witness and we'll hash that problem out later.

13 MR. KRUEGER: Call Ron Pleus.

14 JUDGE JONES: Mr. Bates, Mr. Pleus is here.

15 MR. BATES: Oh, I'm sorry. I'm sorry. Thank
16 you, your Honor.

17 (Witness sworn.)

18 JUDGE JONES: Thank you. You may be seated.

19 RONALD PLEUS testified as follows:

20 DIRECT EXAMINATION BY MR. KRUEGER:

21 Q. State your name and address for the record,
22 please.

23 A. My name is Ronald Joseph Pleus and I'm employed
24 with the Public Service Commission. I'm the manager of the
25 Manufactured Housing and Modular Unit Program.

1 Q. What is your address?

2 A. My address is PO Box 360, 200 Madison Street,
3 Jefferson City, Missouri.

4 Q. When did you begin work as the Director of the
5 Manufactured Housing and Modular Units Program?

6 A. September 30th, 2002.

7 Q. What are your duties in that capacity?

8 A. My duties including licensing and registration
9 and regulation of manufacturers and dealers of manufactured
10 and modular homes.

11 Q. Are you the custodian of the records of the
12 Manufactured Housing and Modular Units Program?

13 A. Yes.

14 Q. Do your duties include the registration of
15 manufactured homes and modular units -- modular unit dealers
16 and manufacturers?

17 A. Yes, sir.

18 MR. KRUEGER: May I approach the witness?

19 JUDGE JONES: Yes, you may.

20 BY MR. KRUEGER:

21 Q. I'm going to show you a document that's been
22 marked for identification as Exhibit 4 and ask if you can
23 identify that document?

24 A. Yes. The document before me is an Application
25 for Manufactured Home and Modular Unit Dealer Registration.

1 Q. And for whom is that application submitted?

2 A. For Amega Sales, Inc., 111 East Side Drive,
3 Ashland, Missouri 65010.

4 Q. What is the date on that document?

5 A. The date on the document that was received in
6 our office is January 16th, 2003.

7 Q. And is that the registration of Amega Sales for
8 the year 2003?

9 A. Yes, that is their application for
10 registration.

11 MR. KRUEGER: I'd offer Exhibit 4, your Honor.

12 JUDGE JONES: Any objection, Mr. Harrison?

13 MR. HARRISON: No objection.

14 JUDGE JONES: Exhibit 4 admitted into the
15 record.

16 (Exhibit No. 4 was received into evidence.)

17 BY MR. KRUEGER:

18 Q. I'm going to call your attention next to a
19 document -- copy of a document that's been marked as Exhibit
20 No. 5 and ask if you can identify that document?

21 A. Yes. That is the Certificate of Registration
22 that is given to a dealer who's satisfied the licensing
23 requirements for 2003 calendar year. And it's issued to Amega
24 Sales, Inc., 111 East Side Drive, Ashland, Missouri.

25 Q. And does that bear your signature?

1 A. Yes.

2 Q. Indicating that a Certificate of Dealer
3 Registration was issued to Amega Sales -- Amega Sales, Inc.?

4 A. Yes.

5 MR. KRUEGER: I'd offer Exhibit 5, your Honor.

6 JUDGE JONES: Any objection, Mr. Harrison?

7 MR. HARRISON: No objection.

8 JUDGE JONES: Exhibit 5 is admitted into the
9 record.

10 (Exhibit No. 5 was received into evidence.)

11 BY MR. KRUEGER:

12 Q. Call your attention next to a document -- a
13 group of documents that have been -- the original of which has
14 been marked -- I'm sorry, a group of documents that have been
15 marked for identification as Exhibit 6 and ask if you can
16 identify those documents?

17 A. Yes. This reflects the 2004 calendar year
18 Registration Dealer License Certificate for Amega Sales, Inc.
19 at 111 East Side Drive, Ashland, Missouri.

20 Q. And the first page of that bears your
21 signature?

22 A. Yes, sir.

23 Q. And that is the Certificate of Dealer
24 Registration?

25 A. Yes, sir.

1 Q. The second page of that document, can you tell
2 me what that is, please?

3 A. That is the actual application that is
4 completed or required to be filled out by the applicant before
5 the license is issued.

6 Q. And that was received in your office
7 January 16, 2004?

8 A. Yes, sir.

9 Q. The third page of that set of documents is
10 what?

11 A. That is the Certificate of Registration as a
12 corporation in the State of Missouri from Missouri Secretary
13 of State's Office, which is attached to the license
14 application for Amega Sales, Inc.

15 Q. And can you tell me what the fourth page of
16 that set of documents is?

17 A. That is the Certificate of No Tax Due issued by
18 the Missouri Department of Revenue for Amega Sales, Inc.

19 Q. And the last page?

20 A. That is a copy of the check that was sent in
21 with the various license applications for dealer registration
22 by Amega Sales, Inc. accompanying the 2004 registration.

23 Q. And is it fair to characterize that set of
24 documents as the documents that were submitted and issued in
25 regard to the certificate of dealer registration for Amega

1 Sales, Inc. for 2004?

2 A. Yes, sir.

3 Q. And, to your knowledge, is that still in
4 effect?

5 A. Yes, sir.

6 MR. KRUEGER: I'd offer Exhibit 6, your Honor.

7 JUDGE JONES: Any objection, Mr. Harrison?

8 MR. HARRISON: No, sir.

9 JUDGE JONES: Exhibit 6 is admitted into the
10 record.

11 (Exhibit No. 6 was received into evidence.)

12 MR. KRUEGER: I'm one short.

13 JUDGE JONES: Don't worry about that. We'll
14 get it later.

15 MR. KRUEGER: May I approach the witness, your
16 Honor?

17 JUDGE JONES: Yes, you may.

18 BY MR. KRUEGER:

19 Q. I'm going to show you a copy of a document
20 that's been marked for identification as Exhibit No. 7 and ask
21 if you can identify that document?

22 A. Yes. It is a letter addressed to Amega Sales,
23 signed by myself, Ron Pleus, regarding Don Higgenbotham's
24 Skyline manufactured home. And the document is dated
25 November 12th, 2002.

1 Q. Did you write that letter?

2 A. Yes, sir.

3 Q. And I'd ask you to look at the Re line on that
4 document and ask you to read that to me, please.

5 A. The Re line reads, Don Higgenbotham's Skyline
6 manufactured home, Serial No. 0151-0412-MA/B.

7 Q. Did you discuss that Skyline home in the body
8 of the letter?

9 A. Yes, sir.

10 Q. Did you address any other homes or any other
11 subjects in the body of that letter?

12 A. No, sir.

13 Q. I'd ask you to read the last sentence of the
14 first paragraph of the letter.

15 A. The last sentence of the first paragraph, A
16 copy of the inspection report is enclosed.

17 Q. And I'd call --

18 MR. KRUEGER: Your Honor, at this time I'd
19 offer this exhibit, Exhibit 7.

20 JUDGE JONES: Any objection, Mr. Harrison?

21 MR. HARRISON: Can I have just one moment?

22 JUDGE JONES: Yes, you may.

23 MR. HARRISON: Well, I guess I object on the
24 basis of relevance because there hasn't been any connection
25 that the letter that's the subject of -- the home that's the

1 subject of the letter that's Exhibit 7 has anything to do with
2 this case. There hasn't been any connection in that regard.

3 JUDGE JONES: Mr. Krueger?

4 MR. KRUEGER: Your Honor, the testimony of
5 Mr. Hanks was that the home that he was asked to inspect bore
6 this very same serial number and that that was -- that was the
7 home that Amega asked him to inspect and that did he inspect
8 and that which was the home that the Higgenbothams purchased
9 and was the home that had been red tagged.

10 JUDGE JONES: Do you recall that, Mr. Harrison?

11 MR. HARRISON: I do recall that.

12 JUDGE JONES: Objection's overruled and
13 Exhibit 7 is admitted into the record.

14 (Exhibit No. 7 Was received into evidence.)

15 BY MR. KRUEGER:

16 Q. Mr. Pleus, I'd call your attention to the
17 handwritten numbers that appear at the bottom of the letter.
18 Do you see those?

19 A. Yes, sir.

20 Q. Would you read those, please?

21 A. 7001 1940 0002 6942 2517.

22 Q. Did you write those numbers there?

23 A. No, sir.

24 Q. Do you know how they came to be written there?

25 A. Yes. The -- the technician in the office who

1 sends out certified mail registrations wrote that number in as
2 that was the sequence of numbers that needed to be used to
3 send out this particular document under our certified mail
4 sequence.

5 Q. Who was the person that wrote those in?

6 A. I'm -- I'm relatively sure that was Leslie
7 Wiebe.

8 Q. Did she do that at your direction?

9 A. Yes, sir.

10 MR. KRUEGER: May I approach the witness, your
11 Honor?

12 JUDGE JONES: Yes, you may.

13 BY MR. KRUEGER:

14 Q. I want to show you a document that's been
15 marked for identification as Exhibit 8 and ask if you can
16 identify that document?

17 A. That is a certified mail receipt that's
18 required with certified mail that was sent to Amega Sales,
19 Inc., attention -- or Greg DeLine, 111 East Side Drive,
20 Ashland, Missouri.

21 Q. And is there a signature on that document?

22 A. Yes. There is a signature on that document.

23 Q. Can you read the signature?

24 A. To the best of my ability, it appears to be
25 Dorcas J. Nichols.

1 Q. What does that show as date of delivery?

2 A. November 13th, 2002.

3 Q. And would you read the numbers at the bottom of
4 this document for the article number, please?

5 A. 7001 1940 0002 6942 2517.

6 MR. KRUEGER: Your Honor, I'd offer Exhibit 8.

7 MR. HARRISON: He didn't prepare the document,
8 Judge, and I don't think he's testified he can authenticate
9 it. I don't think he identified that he knows who signed it.

10 MR. KRUEGER: This is a document --

11 MR. HARRISON: The signature speaks for itself,
12 but there hasn't been any connection made as to who that
13 person is.

14 MR. KRUEGER: It's a document that's prepared
15 in the ordinary course of business when certified mail is sent
16 by certified mail receipt. There's a certified mail receipt
17 that's issued and this evidences the fact that a certified
18 mail receipt on an article addressed to Amega Sales, Inc. was
19 delivered on November 13th, 2002.

20 MR. HARRISON: Doesn't prove that it was
21 delivered, Judge. Not based on the document and not based on
22 his testimony.

23 JUDGE JONES: It's a piece of certified mail
24 that's been returned and it's addressed to Amega. Is that
25 correct, Mr. Harrison?

1 MR. HARRISON: Appears to be. If the point of
2 this is to prove that they got the letter, I don't think what
3 he's testified to proves that nor does this document. There's
4 got to be more evidence.

5 MR. KRUEGER: It's evidence that supports it,
6 your Honor, and we will present additional evidence that
7 establishes that it was received.

8 JUDGE JONES: So you want me to hold this for
9 now and then rule on its admissibility once you prove that it
10 was, in fact, received?

11 MR. KRUEGER: That would be okay.

12 JUDGE JONES: Okay. We'll do that. We'll mark
13 it as Exhibit 8 and show it as not submitted at this time.

14 MR. KRUEGER: May I approach, your Honor?

15 JUDGE JONES: Yes, you may.

16 BY MR. KRUEGER:

17 Q. I'm going to show you now a document that's
18 been marked for identification as Exhibit 9 and ask if you can
19 identify that document?

20 A. That's a fax which reflects confirmation sent
21 from our office dated November 14th, 2002, faxed to Greg
22 DeLine of Amega Sales from a former employee in our office,
23 Cindy Ott, which basically is sending another copy of the
24 inspection report that was supposed to be attached to the
25 November 12th memo that I sent to Amega Sales regarding the

1 Higgenbotham home.

2 Q. What was the date on that fax cover sheet?

3 A. November 14th, 2002.

4 Q. Would you read the writing under the Comments
5 section of that fax cover sheet?

6 A. Comments, Here's the report that was not
7 attached to the certified letter. Please call if you have any
8 questions. Thank you.

9 MR. KRUEGER: I'd offer Exhibit 9, your Honor.

10 JUDGE JONES: Any objection, Mr. Harrison?

11 MR. HARRISON: I guess I don't have an
12 objection to Exhibit 9, which I understand consists of one
13 page. I note for the record that there's nothing attached to
14 it. So, I mean, I don't know how it's relevant.

15 MR. KRUEGER: It indicates --

16 MR. HARRISON: I would note for the record that
17 there's nothing that goes with it.

18 MR. KRUEGER: The statement in the Comments
19 section on the fax states that there was a report attached to
20 the certified letter -- that it transmits the report that was
21 not attached to the certified letter.

22 COMMISSIONER DAVIS: Can we assume that that's
23 going to be offered as a separate exhibit?

24 MR. KRUEGER: This is a separate exhibit.

25 JUDGE JONES: Exhibit 9 is admitted into the

1 record.

2 (Exhibit No. 9 was received into evidence.)

3 BY MR. KRUEGER:

4 Q. Did you instruct that this message be sent?

5 A. Yes.

6 Q. Do you know why it was necessary to send that
7 message?

8 A. With the faxed document in question? The
9 office person received a call from someone in Amega's office
10 stating that the report -- inspection report was not attached
11 to the certified mail letter and they were requesting that a
12 copy of the report be faxed, and so she did so.

13 Q. And this was done in response to that request?

14 A. Yes, sir.

15 MR. KRUEGER: May I approach, your Honor?

16 JUDGE JONES: Yes, you may.

17 BY MR. KRUEGER:

18 Q. I'm going to show you a copy of a document
19 that's been marked for identification as Exhibit 10 and ask if
20 you can identify that document?

21 A. Yes. That is a letter received from Amega
22 Mobile Home Sales signed by Gregory DeLine dated -- or has no
23 date at the top, I'm sorry. The date stamped that we received
24 it in our office is November 15th, 2002 and it has CCs Tom
25 Harrison, Amega legal counsel.

1 Q. And you said that was signed by Greg DeLine?

2 A. Yes, sir.

3 Q. Did you receive the original of that letter?

4 A. Yes.

5 Q. Do you remember receiving that letter?

6 A. Yes.

7 Q. Does this letter show the date that it was
8 prepared?

9 A. No, sir. It reflects the date we received it,
10 but it doesn't have a date prepared that I can see.

11 Q. Do you know when you received it?

12 A. Yeah, November 15th, 2002.

13 MR. KRUEGER: I would offer Exhibit 10, your
14 Honor.

15 JUDGE JONES: Mr. Harrison?

16 MR. HARRISON: Object on the basis of
17 foundation and relevance. Other than the Re line where it
18 says Don Higgenbotham, there's no proof that it relates to the
19 home or homes that are the subject of this proceeding.

20 JUDGE JONES: Well, your clause other than
21 regarding Don Higgenbotham means that it could be relevant; is
22 that true?

23 MR. HARRISON: I'll grant you that it could be
24 relevant, yes.

25 JUDGE JONES: Exhibit 10 is admitted into the

1 record.

2 (Exhibit No. 10 was received into evidence.)

3 BY MR. KRUEGER:

4 Q. Mr. Pleus, did you testify as to the date that
5 that was received in your office?

6 A. Yes.

7 Q. And what date was it received?

8 A. November 15th, 2002.

9 Q. And this was just three days after the date
10 that you wrote the letter to Mr. DeLine?

11 A. Yes, sir.

12 Q. Now, do you see the Re line at the top of the
13 letter?

14 A. Yes, sir.

15 Q. Would you read that, please?

16 A. The Re line states Don Higgenbotham.

17 Q. I'd ask you to read the first sentence of the
18 first paragraph of the letter.

19 A. I'm -- I am in receipt of your letter
20 concerning the above-referenced consumer. First of all, as a
21 point of clarification, Mr. Higgenbotham does not own the home
22 in question.

23 Q. I asked only about the first sentence.

24 A. I'm sorry. I thought you said first paragraph.

25 Q. To your knowledge, did you write any other

1 letters to Mr. DeLine about Don Higgenbotham in November of
2 2002 or a short time before that?

3 A. Not that I can recall, sir.

4 Q. Have you checked your records to see whether
5 you wrote any such letters?

6 A. Yes.

7 Q. Did you find any?

8 A. No, sir.

9 Q. Did you have any other communication with
10 Mr. DeLine shortly before November 15th, 2002 about Don
11 Higgenbotham or about the home he purchased?

12 A. No, sir.

13 Q. Or about any other subject at all?

14 A. No, sir.

15 Q. So the only correspondence you had with
16 Mr. DeLine concerned this home?

17 A. Yes.

18 Q. Do you have any reason to believe that this
19 letter from Mr. DeLine might have referred to any letter other
20 than the letter that you wrote to him on November 12th?

21 A. No, sir.

22 Q. And the letter that you wrote on November 12th
23 stated in the Re line that it pertains to the Don Higgenbotham
24 Skyline manufactured home, Serial No. 0151-0412-MA/B; is that
25 correct?

1 A. Yes, sir.

2 Q. Do you have any other reason to believe that
3 Mr. DeLine might have referred to any home other than the one
4 bearing Serial No. 0151-0412-MA-B?

5 A. No, sir.

6 Q. In the course of your duties as Director of the
7 program, did you receive information about the condition of
8 the home bearing that serial number?

9 A. Yes, sir.

10 Q. What type of information did you receive?

11 A. Other information included the lot inspection
12 reports and on-site consumer inspection reports.

13 Q. Did you receive information about whether the
14 home was new or used?

15 A. The documents that I --

16 MR. HARRISON: I'll object to that question.
17 It calls for hearsay. I want a little bit more foundation to
18 be laid to know where the information is coming from.

19 JUDGE JONES: Your question was did he receive
20 information about what?

21 MR. KRUEGER: About whether the home was new or
22 used.

23 JUDGE JONES: That's a yes or no question. He
24 can answer that. Objection overruled.

25 THE WITNESS: The information that --

1 MR. HARRISON: Then I would ask the witness to
2 answer yes or no, and I'd ask you to direct him.

3 JUDGE JONES: Mr. Pleus --

4 THE WITNESS: Yes.

5 BY MR. KRUEGER:

6 Q. What information did you receive?

7 A. I received a copy of what's been referred to
8 here today as a Form 500 or a sales contract. And that
9 contract that I reviewed showed the home listed as a new home.

10 Q. Thank you.

11 Did you understand that this letter from
12 Mr. DeLine pertained to only this house or to other houses as
13 well?

14 A. It was my understanding that based on our
15 correspondence with the inspections and my correspondence,
16 that this home -- this letter was just directly related to the
17 Higgenbotham home.

18 Q. Now, I'd ask you to read the first sentence of
19 the third paragraph of the letter from Mr. DeLine to you.

20 A. First sentence of the third paragraph?

21 Q. Yes.

22 A. Ron --

23 MR. HARRISON: Judge, again, I think the letter
24 speaks for itself. It's in evidence.

25 JUDGE JONES: He can go ahead and read the

1 first sentence.

2 MR. HARRISON: I was just trying to save time.

3 JUDGE JONES: Go ahead, Mr. Pleus.

4 THE WITNESS: Ron, comma, it's pretty clear
5 from the documents that my salesman erred when he wrote the
6 deal with this customer and used an Amega form and checked the
7 wrong box for new or used.

8 BY MR. KRUEGER:

9 Q. Do you have any reason to believe that that
10 pertained to any home than the one bearing the serial number
11 that I've mentioned?

12 A. No, sir.

13 MR. KRUEGER: I've lost track of the exhibit
14 numbers, your Honor.

15 JUDGE JONES: That was Exhibit 10 that you just
16 submitted and was admitted into the record. Your next exhibit
17 number would be 11.

18 MR. KRUEGER: I would offer any exhibits that
19 have been offered -- that have been discussed but not yet
20 admitted.

21 JUDGE JONES: Exhibit 8?

22 MR. KRUEGER: Exhibit 8.

23 JUDGE JONES: Does this registered mail refer
24 to any of these -- have anything to do with these other
25 exhibits that have been admitted?

1 MR. KRUEGER: I think it does, your Honor,
2 because it was contemporaneous in time with these other
3 exhibits. The first letter from Mr. Pleus was dated
4 November 12th, I think the certified mail receipt was the 13th
5 and then the fax cover sheet was the 14th and the letter from
6 Mr. DeLine to Mr. Pleus was the 15th. And I submit that it's
7 all part of the same series of communication and, therefore,
8 relevant.

9 JUDGE JONES: I understand.

10 Mr. Harrison, I take it you want to renew your
11 objection to Exhibit 8?

12 MR. HARRISON: Correct. I don't think there's
13 been a foundation laid.

14 JUDGE JONES: Objection's overruled. Exhibit 8
15 is admitted into the record.

16 (Exhibit No. 8 was received into evidence.)

17 MR. KRUEGER: I believe that's all the
18 questions I have, your Honor.

19 JUDGE JONES: Thank you.

20 Commissioner Gaw, do you have questions of
21 Mr. Pleus?

22 CHAIR GAW: Not at this moment, thank you.

23 JUDGE JONES: Commissioner Murray?

24 COMMISSIONER MURRAY: I have a few questions.

25 Thank you, Judge.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Mr. Pleus, why is a home red tagged?

3 A. That's a process that's defined in the HUD code
4 that we adopt that normally would prohibit a home from being
5 sold because it's been identified as having a serious defect
6 or imminent safety hazard.

7 Q. A new home?

8 A. Yes, ma'am. A new home, I'm sorry.

9 Q. And why is a red tag removed?

10 A. Well, a red tag can be removed for a variety of
11 reasons, if there's an agreement between the Commission and
12 the dealer, whoever possesses the home, as to how it's going
13 to be disposed of or if corrections to the home are made.

14 Q. If a new home is sold as a used home, does that
15 mean that the red rag is removed?

16 A. It could mean that, yes.

17 Q. Even with serious defects?

18 A. It could, yes. If it is indeed a used home.

19 Q. What if it's a new home?

20 A. If it's a new home, then it would have to
21 comply with the HUD code before it's sold to a consumer. And
22 as part of that requirement, the labels -- the HUD labels
23 would be required to be on the home.

24 Q. So a dealer can't agree to call a new home a
25 used home in order to have the red tag removed?

1 A. Pursuant to the statutes in the HUD code, I
2 think that's correct, Commissioner.

3 Q. The letter, Exhibit 7, that you sent to
4 Mr. DeLine, was the home with the serial number referenced in
5 that letter, in fact, a new home without a HUD seal?

6 A. Based on --

7 MR. HARRISON: I would like to -- I don't
8 normally object to questions from a Commissioner, but I'd like
9 to object in this case because I think that requires the
10 witness to render a legal conclusion.

11 JUDGE JONES: It's not a legal conclusion
12 whether or not this serial number has to do with a new or used
13 home.

14 MR. HARRISON: Perhaps I misunderstood the
15 question.

16 COMMISSIONER MURRAY: Let me rephrase the
17 question.

18 BY COMMISSIONER MURRAY:

19 Q. You have a serial number shown in your letter.
20 Does that serial number reference a new home?

21 A. Yes.

22 MR. HARRISON: Well, let me -- I think that --
23 maybe I misunderstood the question. If the question is as to
24 Mr. Pleus's opinion as to whether it was new, I don't think he
25 can testify to that.

1 JUDGE JONES: Why can't he testify to his
2 opinion as to whether this serial number on Exhibit 7
3 references a new home?

4 MR. HARRISON: Because I think that requires
5 him to render a legal conclusion on the ultimate fact that --

6 JUDGE JONES: A factual conclusion, but not a
7 legal conclusion.

8 MR. HARRISON: I think one of the issues in
9 this case was whether or not the home was, in fact, new and
10 that's for the Commission to decide.

11 JUDGE JONES: So your objection is on the basis
12 his answer -- or the Commissioner's question is eliciting a
13 factual conclusion?

14 MR. HARRISON: No. I think the question asks
15 for a legal conclusion and on that basis I object.

16 JUDGE JONES: I tend to disagree with you,
17 Mr. Harrison, and I'll overrule the objection.

18 BY COMMISSIONER MURRAY:

19 Q. Mr. Pleus, did that serial number, in your
20 opinion, refer to a new home?

21 MR. HARRISON: I'd like to make the same
22 objection.

23 JUDGE JONES: Your objection is noted and
24 overruled.

25 THE WITNESS: Based on the documentation that I

1 had received and reviewed, yes.

2 BY COMMISSIONER MURRAY:

3 Q. And what documentation did you review in order
4 to make that assessment?

5 A. The -- the Certificate of Title submitted, the
6 sales contract, the Form 500, the inspection reports and the
7 inspection request from the consumer, the Higgenbothams.

8 Q. What was the last thing you said?

9 A. The inspection request received from the
10 consumer, Higgenbothams.

11 Q. Is that in evidence, that inspection request?

12 A. Yes, ma'am.

13 MR. HARRISON: I don't believe it is in
14 evidence. The inspection request?

15 MR. KRUEGER: It is not yet.

16 THE WITNESS: I'm sorry. It's not entered into
17 evidence yet. My answer should be no.

18 BY COMMISSIONER MURRAY:

19 Q. All right. In terms of a violation of Section
20 700.015.1 of the Missouri statutes, as Director of
21 Manufactured Homes, would you consider it a violation if a new
22 home were sold without a HUD seal?

23 A. Yes.

24 Q. Would you consider it a violation of that
25 statute if a used home were sold without a HUD seal?

1 A. It would not appear to be a violation, no.

2 Q. Would you consider it a violation of that
3 statute if a new home were sold as a used home?

4 A. Yes.

5 Q. The serial number that's referenced in your
6 letter, how do you know that is the home that was sold to the
7 Higgenbothams?

8 A. I -- Commissioner, based on the information
9 that I received from the inspection reports that were done on
10 the lot at the site and verification by the inspectors, the
11 documents I think that were discussed by the appraiser reflect
12 that is the home. However, I did not see it personally.

13 Q. The statute 700.025 regarding alterations, your
14 letter makes reference to the home having been altered in
15 violation of state law. And that is referring to the home
16 with serial number shown on your letter; is that correct?

17 A. Yes.

18 Q. Do you know when the alteration was done?

19 A. No, I do not know the date of the alteration.

20 Q. The statute requires that the alteration -- let
21 me phrase that differently. That no person shall alter or
22 cause to be altered any manufactured home or modular unit to
23 which a seal has been affixed.

24 If a seal had been -- all right. What
25 circumstances would allow a seal to be removed?

1 A. The circumstances that would allow a -- the
2 seals to be removed from a new home could be done by the
3 manufacturer, the manufacturer's engineer, their IPIA or
4 DAPIA, as a result of implant problems with the home or damage
5 to the home in transit, etc., which would cause a home to be
6 in violation of the HUD code, than the labels could be
7 removed.

8 Q. And with the label removed, it could not be
9 sold as a new home. Correct?

10 A. That's my understanding, yes.

11 Q. And it could not be sold as a used home. Is
12 that also correct?

13 A. It appears that would prevent the home from
14 being sold for habitation. It would have to be sold for
15 salvage or junk.

16 Q. On the violation of set-up, 700.100.3,
17 subsection 6 that you cite in your letter, Exhibit 7 --

18 A. Yes.

19 Q. -- in reviewing the contract for sale, which
20 you said that you reviewed -- and I don't know what I've done
21 with it -- here it is. It was Exhibit 1. It appears on that
22 contract that the price is -- it's written in there that the
23 price does not include anchoring, heat tape, vapor barrier,
24 gas and electric hook-up, wheels and access. Are those things
25 what is considered -- what are considered set-up?

1 A. Normally those are material that go along with
2 the set-up or anchoring of the home.

3 Q. So in accordance with that written document
4 that we have here, Exhibit 7, does it appear that an amount
5 for set-up was deducted from the sales price?

6 A. Commissioner, I don't think I can determine
7 that.

8 Q. And, to your knowledge, do you have anything
9 that would indicate to you that the Higgenbothams waived the
10 set-up?

11 A. No, ma'am.

12 Q. When a modular home is sold in connection with
13 a piece of land and there's a lender involved, is the home and
14 the land -- are the home and the land transferred at the
15 closing?

16 A. Normally this -- the transactions that I've
17 been involved in, they are. There can be some exceptions, but
18 if they're rolled together in a land/home package, normally
19 they're both transferred at the same time. And I will repeat
20 normally.

21 Q. Do you know what was the case with the sale of
22 the home to the Higgenbothams?

23 A. No.

24 Q. Is it your understanding that Amega is saying
25 that they -- that the home was, in fact, owned by A&G

1 Trucking?

2 A. I understand that's their claim, Commissioner.
3 However, based on the documents we received, it appears it was
4 sold by Amega.

5 Q. And whoever sold the home would have been at
6 closing, would they not?

7 A. I can't answer that for sure. I -- I don't
8 know. I think normally that that does occur.

9 Q. Do we have anything in evidence here regarding
10 any closing documents on this piece of property?

11 A. I do not, Commissioner. I don't think that's
12 in the evidence that we have.

13 COMMISSIONER MURRAY: Okay. I think that's all
14 I have at this time. Thank you.

15 JUDGE JONES: Commissioner Davis?

16 COMMISSIONER DAVIS: No further questions.

17 JUDGE JONES: Commissioner Appling?

18 COMMISSIONER APPLING: None at this time.

19 JUDGE JONES: Cross-examination, Mr. Harrison?

20 MR. HARRISON: Yes, sir.

21 CROSS-EXAMINATION BY MR. HARRISON:

22 Q. In the letter you wrote that's in evidence as
23 Exhibit 7, your letter of November 12, 2002, I -- do you have
24 those exhibits in front of you?

25 A. Yes, sir, I have that exhibit.

1 Q. All right. In that letter you wrote, you gave
2 no time period in which to correct or remedy any of these
3 alleged problems; is that correct?

4 A. No, sir.

5 Q. That is not correct?

6 A. If I read a line -- the second sentence of
7 paragraph one, two, three, four, five, I have a statement in
8 there that says, A written response must be submitted within
9 10 days from the date of this letter to avoid further action
10 from the Commission.

11 Q. Right. But you didn't state -- you didn't
12 direct anyone to correct any of the alleged problems in that
13 letter. Correct?

14 A. No. The -- no, I did not.

15 Q. That is not correct? My statement is correct?

16 A. Your statement is correct.

17 Q. You testified that one of the documents you
18 reviewed was a -- I think you called it -- I don't know if you
19 called it a Form 500 or a purchase contract. Do you remember
20 that testimony?

21 A. Yes, sir.

22 Q. I don't know if you've seen Exhibit 1 that's in
23 evidence. If you haven't, I can give a copy to you, but is
24 that the document you were talking about as one of the -- as
25 the purchased contract that you had seen?

1 A. Yes.

2 Q. You would agree with me that in that document,
3 I'm talking about Exhibit 1, it, by its express terms, refers
4 to a 2001 home?

5 A. Yes.

6 Q. It also does not refer to any serial number?

7 A. That's correct.

8 Q. You're not alleging in this case, are you, that
9 the home -- whatever home it was that was sold to the
10 Higgenbothams, was sold while it had a red tag on it? You're
11 not alleging that in this case, are you?

12 A. No.

13 Q. In fact, it's true that the red tag, if it was
14 ever applied to the home, was removed prior to its sale?

15 A. That's correct.

16 Q. And you would agree with me that -- well, Tim
17 Haden works for you?

18 A. Yes.

19 Q. What's his job?

20 A. He's a field inspector for the Manufactured
21 Housing and Modular Units Program.

22 Q. And he agreed and gave his consent to have the
23 home that was ultimately sold to the Higgenbothams -- he said
24 that that could, in fact, be sold as a used home. Correct?

25 A. Some of those statements occurred before I was

1 employed with the Commission, so I can't attest to that.

2 Q. But it's your understanding that that's what he
3 said; is that true?

4 A. Under certain conditions, yes.

5 Q. If it was sold as a used home and if the
6 Certificate of Title were obtained for it. Are those the
7 conditions?

8 A. That's what I understood at that time.

9 Q. What model year is the home that the
10 Higgenbothams actually purchased?

11 A. Model year that they actually purchased?

12 Q. The model year of the home that they actually
13 purchased, as far as you know.

14 A. Pursuant to the sales contract or the Form 500?

15 Q. I want to know the one that they live in -- if
16 you know. Maybe you don't know, but if you know, the home
17 that they live in, just with reference to that home, what's
18 the model year of that home?

19 A. The model year, based on the inspections that
20 we have done, appears to be a 2000 home.

21 Q. Not a 2001?

22 A. That's correct.

23 Q. You were asked, pardon me, some questions about
24 your letter in regard -- your letter of November 12 again,
25 Exhibit 7, in regard to your statements about alterations to

1 the home?

2 A. Yes.

3 Q. I want to make sure I heard you correctly, but
4 I think you were asked when the alteration -- the claimed
5 alteration occurred. And I think your testimony was you don't
6 know?

7 A. That's correct.

8 Q. I assume, therefore, that you also don't know
9 who altered the home if --

10 A. No.

11 Q. Assuming it was altered, you don't know who did
12 it?

13 A. Okay.

14 Q. All right. The basis of your belief that the
15 home that was sold to the Higgenbothams was new, I want to ask
16 you about that. I think you testified that you based your
17 belief on your review of some documents. Right?

18 A. Yes.

19 Q. Correct?

20 A. Yes.

21 Q. And I think you listed four documents?

22 A. Yes.

23 Q. One was a Form 500. Is that Exhibit 1?

24 A. Yes.

25 Q. One was an inspection report, I assume

1 undertaken by some of your people?

2 A. Yes, sir.

3 Q. One was an inspection request?

4 A. Yes.

5 Q. And one was a Certificate of Title --

6 A. Yes.

7 Q. -- is that true?

8 A. Yes.

9 Q. Okay. It's true, isn't it, that you don't know
10 if a seal -- you never saw on the home that the Higgenbothams
11 actually purchased -- you don't know of your own knowledge
12 whether a seal was ever affixed to that home?

13 A. Not personal knowledge, no.

14 MR. HARRISON: No further questions right now.

15 JUDGE JONES: Thank you, Mr. Harrison.

16 Mr. Krueger, do you have redirect?

17 MR. KRUEGER: No questions, your Honor.

18 JUDGE JONES: Do you have questions?

19 You may step down, Mr. Pleus.

20 Mr. Krueger -- actually at this point why don't
21 we take a quick, short, five-minute break. So we'll go off
22 the record now and we'll return with your next witness.

23 (A RECESS WAS TAKEN.)

24 JUDGE JONES: Mr. Krueger?

25 MR. HARRISON: If I might, when we were off the