

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 On-the-Record Presentation
7 April 13, 2004
8 Jefferson City, Missouri
9 Volume 1
10 Director of the Manufactured)
11 Housing and Modular Units Program)
12 of the Public Service Commission,)
13 Complainant,)
14 v.) Case No. MC-2004-0079
15 Amega Sales, Inc.,)
16 Respondent.)
17 KENNARD L. JONES, Presiding,
18 REGULATORY LAW JUDGE.
19
20 STEVE GAW, Chairman,
21 ROBERT M. CLAYTON,
22 COMMISSIONERS.
23
24 REPORTED BY:
25 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2 DANIEAL H. MILLER, Attorney at Law
3 10 Southampton
4 Columbia, MO 65203
5 (573) 443-1645

6 FOR: Amega Sales, Inc.

7 LAURA KRASSER, assistant Attorney General
8 P.O. Box 899
9 1530 Rax Court
10 Jefferson City, MO 65101
11 (573) 751-7007

12 FOR: State of Missouri.

13 KEITH R. KRUEGER, Deputy General Counsel
14 BRUCE H. BATES, Associate General Counsel
15 P.O. Box 360
16 200 Madison Street
17 Jefferson City, MO 65102
18 (573) 751-3234

19 FOR: Staff of the Missouri Public
20 Service Commission.

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

2 JUDGE JONES: This is Case No.

3 MC-2004-0079, Director of the Manufactured Housing and
4 Modular Units Program of the Public Service Commission vs.
5 Amega Sales. The complaint was brought by the
6 Commission's director back in August of last year.

7 At some point over time, the Commission set
8 this matter for evidentiary hearing. At about the same
9 time, however, the parties filed a Stipulation & Agreement
10 in this matter. This is a presentation on those
11 stipulation -- on that Stipulation & Agreement. As you
12 all are probably aware, hearing dates have not been
13 canceled, simply from a practical standpoint, to reserve
14 those days in case we do need to go to hearing.

15 Today it's a little after 1:30. We
16 intended to get started at 1:30. My name is Kennard
17 Jones. I'm the Regulatory Law Judge presiding over this
18 matter. And at this time I'll take entries of appearance.
19 Appearance first from Staff.

20 MR. BATES: Good morning, your Honor.
21 Excuse me. Good afternoon, your Honor. My name is
22 Bruce H. Bates. I represent the manager of the modular
23 units and manufactured housing program of the Public
24 Service Commission. My address is Post Office Box 360,
25 Jefferson City, Missouri 65102.

1 JUDGE JONES: Thank you, Mr. Bates.
2 Amega Sales?
3 MR. MILLER: Yes, your Honor. Danny
4 Miller, 10 Southamptn, Columbia, Missouri 65203. I'm
5 here on behalf of Amega Sales. And the other attorneys
6 who are involved in conjunction with this, Tom Harrison
7 from Van Matre & Harrison and Michael Berry from here in
8 Jefferson City.
9 JUDGE JONES: Thank you, Mr. Miller.
10 MR. MILLER: Thank you, your Honor.
11 JUDGE JONES: From the Missouri Attorney
12 General's Office?
13 MS. KRASSER: Yes, Judge. My name is Laura
14 Krasser, and the Attorney General's address is P.O.
15 Box 899, Jefferson City, Missouri 65101.
16 JUDGE JONES: Thank you, Ms. Krasser.
17 At this time the Commission would like to
18 have the Staff of the Commission summarize the
19 Stipulation & Agreement that has been filed in the matter
20 before we move on to questions.
21 MR. BATES: Your Honor, would you like me
22 to speak from the podium?
23 JUDGE JONES: Yes, please, Mr. Bates.
24 MR. BATES: Good afternoon, Commissioners
25 and your Honor. This Stipulation & Agreement between the

1 manager of the Manufactured Housing and Modular Units
2 Program and Amega Sales, Incorporated was entered into on
3 March 19th of this year. It is the belief of the manager
4 and the belief of the parties that this satisfactorily
5 addresses the concerns that were laid out by the manager
6 in his complaint of last year, as well as most immediately
7 and satisfactorily meeting the needs of the aggrieved
8 consumers in this matter.

9 If I may briefly, basically, Amega has
10 agreed, along with any company or entity owned or
11 partially owned by Mr. Gregory DeLine, that it shall not
12 sell or convey any new manufactured homes unless all
13 applicable HUD, U.S. Department of Housing and Urban
14 Development, labels and certificates are properly affixed
15 and attached to that said manufactured home.

16 Amega has also agreed not to sell any
17 damaged home to any consumer except in accordance with the
18 provisions of this agreement. In the event that Amega
19 should desire to sell a damaged home, it would give
20 written notice to the manager, and the remaining terms of
21 the stipulated agreement would then apply.

22 One of those would be the director or
23 manager or any entity assigned and approved by him, which
24 might include an engineer, could conduct a physical
25 inspection or examination of the damaged homes in order to

1 determine corrections, modifications or alterations which
2 might be needed to bring the damaged homes into compliance
3 with the HUD code. Amega would agree to pay the
4 reasonable costs of all such examinations and inspections
5 within 30 days.

6 Amega would agree not to sell any damaged
7 home at retail to any consumer unless and until Amega had
8 undertaken the corrective actions recommended by the
9 director with respect to the damaged homes in question.
10 Such action would be taken within the time period
11 requested by the director as long as that time period was
12 considered reasonable under the circumstances.

13 After such corrections or modifications
14 were complete, the director would be given the opportunity
15 to reinspect the damaged home in question, and if the
16 corrections and modifications had been made, approve them
17 in a prompt manner.

18 Once all those corrections and
19 modifications were made, the director would at that time
20 issue a seal, label or other necessary or appropriate
21 insignia reflecting that the particular damaged home had
22 been brought back into compliance with the HUD code and
23 any other applicable provisions of law. Amega would then
24 be free to sell that damaged home.

25 As the Commission is aware, in its

1 complaint the director alleged that the disputed home in
2 this case was sold by Amega in violation of applicable
3 law, because it was sold after the director had instructed
4 Amega not to sell it. All is more particularly described
5 in the complaint.

6 Within ten days from the date on which the
7 Commission would ratify this stipulated agreement, the
8 director will send a letter to the purchasers of the
9 disputed home in the form of a letter, which is attached
10 to Exhibit A of the stipulated agreement.

11 The customer letter would request
12 permission from the ultimate purchaser of the home and the
13 ultimate owner of the home to allow the director and Amega
14 to have access to and reinspect that home in an effort to
15 have it recertified and to affix thereto all required data
16 plates and labels. The director's sole obligation with
17 respect to the customer letter would be to send the
18 customer letter and to show Amega proof that the customer
19 letter was sent to the last known address of the purchaser
20 of the home.

21 The letter would specify the ways in which
22 the home did not comply with applicable federal or state
23 law. The letter would state that the recipients have the
24 option of having Amega or designee of Amega perform
25 repairs to the disputed home in order to bring it to

1 compliance with federal and state standards at no cost to
2 the owner of the home.

3 If the party who received the letter does
4 not respond to it or elects not to have any further repair
5 work done on the home, Amega would have no obligation to
6 perform any further or additional repairs on the home. If
7 the recipient of the letter does not respond to Amega
8 within 60 days after receipt of the letter stating that he
9 desires additional repair work to be done, then Amega
10 would also have no obligation to perform any additional
11 repair work.

12 If the owner of the disputed home makes a
13 timely election to have additional repair work done on the
14 disputed home, either the director or any entity assigned
15 and approved by the director, which might include an
16 engineer, may conduct a physical inspection or examination
17 of the home in order to determine the corrections or
18 alterations which would be needed to bring the disputed
19 home into compliance with the HUD code. Amega would be
20 responsible for paying the reasonable costs of all these
21 examinations and inspections within 30 days.

22 In addition, Amega has agreed to undertake
23 corrective actions which are recommended by the director
24 or the third-party company retained by the director, as
25 long as such corrective actions are reasonable under the

1 circumstances. Such action would have to be taken within
2 a time period requested by the director, as long as such
3 time period is reasonable under the circumstances.

4 Amega would have additional repairs and
5 modifications performed with reasonable diligence and as
6 soon as reasonably possible, not to exceed 60 days,
7 subject to extension as approved by the director for
8 matters beyond Amega's control. After those corrections
9 or modifications are completed, the director should be
10 given the opportunity to reinspect the disputed home in
11 question, and if such corrections and modifications have
12 been made, approve them promptly, and at that point would
13 issue a seal label.

14 CHAIRMAN GAW: Excuse me, Judge. We can
15 read this ourselves, if that's what we're doing. Are we
16 just reading the stip?

17 MR. BATES: Commissioner, I apologize. I
18 understood I was asked to summarize the terms, and I
19 didn't want to leave anything of importance out.

20 CHAIRMAN GAW: Okay. How much more do we
21 have?

22 MR. BATES: Very little.

23 CHAIRMAN GAW: Okay. Pardon the
24 interruption.

25 MR. BATES: Upon the final execution of the

1 agreement, Amega would pay the director a penalty of
2 \$5,000. In the future, in the event that Amega would
3 receive title to any manufactured home which does not have
4 affixed to it any required data plate or seal, in order to
5 allow it to be sold, Amega or any entity owned or
6 partially owned by Mr. DeLine would give notice to the
7 director of the fact that Amega or any such company owned
8 by Mr. DeLine had received such manufactured home.

9 Amega would agree not to sell any such
10 manufactured home that is red tagged, which is
11 generally -- which is referred to when such a notice is
12 given, at the time of the sale, and not sell any
13 manufactured home which does not contain or have affixed
14 to it a HUD data plate or label. In the event that Amega
15 or any such company owned by Mr. DeLine violates this, a
16 penalty of \$10,000 per occurrence would be paid to the
17 director.

18 Your Honor, I believe that effectively
19 summarizes the terms of the stipulated agreement. I do
20 not believe I've left out any point of importance. If I
21 have, I apologize, and of course, the entire Stipulation &
22 Agreement is set out in the filing with the Commission.

23 JUDGE JONES: Thank you, Mr. Bates.
24 Mr. Miller, did you have anything you'd like to --

25 MR. MILLER: Absolutely.

1 JUDGE JONES: I want to forewarn you, try
2 not to rehash what Mr. Bates has said.

3 MR. MILLER: I promise you I won't.

4 JUDGE JONES: Okay.

5 MR. MILLER: I don't have the technical
6 knowledge to be able to do that, and that wouldn't be my
7 nature anyway.

8 Judge and Mr. Commissioner, the facts which
9 give rise to this and the backdrop against which it's laid
10 is the following, that mobile homes are manufactured in
11 one place and hauled to another. By definition and part
12 of the process there are damage to some of the homes, much
13 like there's damage to automobiles during manufacture that
14 are fixed in the body shop owned by Ford Chrysler,
15 whatever manufacturer it is.

16 That's exactly what we have here. We have
17 homes that were damaged after they'd been inspected and
18 after the label and seal had been affixed by the
19 manufacturer. In the process of transit and re-setup,
20 they had been damaged. The director of the division of
21 manufactured homes in their inspection, as they properly
22 should do, red tags them and says don't sell them.

23 That's what we had occur on December 8th, because of the
24 fact that those had been damaged in conjunction with
25 transit after they had been stickered.

1 My client says, okay, what do we do, and
2 can't find out what it is that you are to do, and based
3 upon that, he does what technically is wrong, but is kind
4 of understandable, is goes -- he discloses it to the
5 customer and tells them that they have a home that may be
6 less salable as a result. One, he discloses it; two, he
7 discounts it, and he sells them.

8 And the director comes back and says, where
9 are those? He says, they've been sold. And that was in
10 violation of the direct instruction. But -- and so the
11 director brings the suit and enters into the stipulation.
12 Got no problem with any of that. It simply boils down to
13 this, and I am very glad that we have this hearing and I
14 would ask, you know, in conjunction with this proceeding
15 that if the Commission is satisfied that this is the
16 appropriate and acceptable way to do it, I'd like an Order
17 if there's something else added on.

18 Because what has happened is we've got an
19 engineer from Allstate Consultants, Dave Weber, a
20 structural engineer, lined up to do it as soon as we know
21 what there is to do, but really, you know, as I said, if
22 there's something else that needs to be done, make it part
23 of the Order. If we're supposed to do something different
24 or in addition, let us know.

25 The for why is this, and that's not because

1 we're a charitable eleemosynary institution, but rather at
2 this point you get -- a damaged home is a fact of life.
3 It's going to happen. We're going to have them.

4 So when we get them, we either have a
5 damaged piece of goods that we have to discount and
6 disclose or if we have a procedure by which the red tag is
7 removed and by which it is pronounced non-defective, then
8 he doesn't have to discount it, he doesn't have to
9 disclose it, and in the event that he is sued, it's going
10 to be a scenario wherein -- because I'm going to get a
11 copy of the transcript and copy of the Order and go, guys,
12 bottom line of it is we asked for guidance, we got
13 guidance.

14 So what I'm asking is, is make the Order
15 global enough to the point where it achieves what I think
16 are reasonable objectives on behalf of the PSC's part and
17 are reasonable objectives on behalf of my client's part
18 and, therefore, we think the agreement has done that. If
19 either side missed, tell us where we missed, and that way
20 it gives us direction for the future.

21 Thank you.

22 JUDGE JONES: Thank you, Mr. Miller. Now
23 we'll have questions from the Bench. Commissioner Gaw?

24 CHAIRMAN GAW: Thank you, Judge. Help me
25 to understand first of all here from Staff, what is it

1 that Staff -- just the big picture, what is it that Staff
2 says that the Respondent did wrong, that led to the -- led
3 to this case, that they alleged initially?

4 MR. BATES: Right. That there was a
5 damaged home and it was sold improperly.

6 CHAIRMAN GAW: And what do you mean by
7 improperly?

8 MR. BATES: That -- may I get my file? I
9 just want to make sure I don't say anything that's not --

10 CHAIRMAN GAW: Sure.

11 MR. BATES: -- absolutely correct.

12 Your Honor, on March 13th, 2002, the
13 director had put the prohibited sale notice, what we've
14 been referring to as a red tag, on a particular
15 manufactured home. It was a 2000 Skyline Corporation
16 manufactured home located at Amega's lot in Ashland. The
17 reason the director did this is that there were no HUD
18 labels affixed to this home, in violation of the rule and
19 the statute.

20 Amega subsequently, the director argues,
21 falsely represented to the director that the home was a
22 used home and would be sold as a used home. Now, on May 2
23 of that year, Mr. Don Higgenbotham purchased that home
24 from Amega, and according to the bill of sale obtained
25 from Amega, the Higgenbotham home was sold as a new home

1 and applicable new home sales tax was then charged to
2 Mr. Higgenbotham.

3 CHAIRMAN GAW: All right. Is that -- is
4 that the only -- I'm talking about the general facts that
5 would be alleged by the Staff in the case that's in front
6 of us.

7 MR. BATES: Right. The home did not have
8 the applicable HUD labels reflecting proper compliance
9 with the code on it.

10 CHAIRMAN GAW: And how many -- how many
11 violations of rule or statute did Staff allege occurred
12 with this incident, or what were they?

13 MR. BATES: We allege they sold a
14 manufactured home to him in violation of 700.100, 700.045
15 and 407.020.

16 CHAIRMAN GAW: Okay.

17 MR. BATES: And thank you for letting me
18 get that. I wanted to make sure I had the dates correct.

19 CHAIRMAN GAW: No problem. All right.
20 Mr. Miller, do you have anything to correct about that as
21 far as the -- I'm just saying from an allegation
22 standpoint, not from whether or not they were true or
23 false or otherwise?

24 MR. MILLER: No. I believe that accurately
25 states what the allegations in the petition were.

1 CHAIRMAN GAW: Attorney General's Office?

2 MS. KRASSER: Yes, Commissioner.

3 CHAIRMAN GAW: You may be a reluctant

4 participant in this, but it helps me if I can get some

5 perspective on this. They may want you to come up here.

6 JUDGE JONES: Would you step up to the

7 podium?

8 MS. KRASSER: May I approach?

9 JUDGE JONES: Yes. Thank you.

10 MS. KRASSER: How can I be of help,

11 Commissioner?

12 CHAIRMAN GAW: I'm trying to understand the

13 big picture on what's going on with this company in part

14 because, at least, there is some jurisdiction with the

15 Commission in regard to the issuance of a license on this

16 company. And I'd like to hear a little bit of a

17 perspective as to what the Attorney General's Office

18 believes this Commission should be examining whenever it

19 looks at an allegation that, in part, could impact that

20 company's licensure or certificate or whatever you want to

21 call it.

22 I recognize that there is another action

23 that the Attorney General's Office has filed elsewhere in

24 Circuit Court, and I believe, Judge, it might not be

25 inappropriate for us to take notice of at least the fact

1 that case exists and what it's about.

2 JUDGE JONES: It's referenced in the motion
3 filed by the AG's Office and that is public record. We
4 can take official notice of it.

5 CHAIRMAN GAW: There is -- what I'd like to
6 know is whether or not in dealing with -- from the
7 Attorney General's Office perspective, in dealing with
8 these cases when they come in here, one fact set at a
9 time, or some of them don't come here but may be in
10 existence, what does the Attorney General's Office believe
11 that this Commission should be looking at when it comes to
12 examining the status of a continuing certificate or
13 license from the Commission? Is it limited just to the --
14 can we only look at the facts that are in front of us on a
15 particular case or are we able to look at other things
16 that are out there that have happened in the past in
17 deciding how to handle that license?

18 MS. KRASSER: I'll be honest with you,
19 Commissioner. I'm not sure if I can opine about whether I
20 think you're able to consider things outside of the action
21 that's currently in front of you, and that may simply be
22 ignorance on my part of the full authority of the
23 Commission.

24 I can tell you this, that in looking at
25 these cases, I think right now we've set up sort of a

1 cooperative partnership where we are attempting to work
2 together when we have a pattern of possible consumer
3 violations along with violations that could implicate
4 dealer licensing.

5 In this particular case, with the civil
6 suit that we have filed, we have a unique set of remedies
7 that are available to us that are obviously wholly apart
8 from the remedies that are available to the Commission. I
9 think that it's appropriate for us to work together. I'm
10 not sure if the Commission can consider the existence of
11 our action as part of, I don't know, part of its
12 decision-making process with respect to what to do with
13 this particular licensee in this particular instance.
14 Have I answered your question?

15 CHAIRMAN GAW: Well, the reason I'm asking,
16 I don't know that it -- I don't know that you have, but I
17 understand the difficulty in answering.

18 In dealing with -- in dealing with the big
19 picture of how to handle what appears to be dual
20 jurisdictions, at least potentially is, it seems to me
21 that you get -- you could get placed into a box of saying,
22 okay, we're not -- we're only supposed to look at this set
23 of facts, and in dealing with determining whether or not
24 those are true or not, that's appropriate. But when it
25 gets to the point of making a decision about what the

1 appropriate status of a license or certificate is, it
2 seems to me that that's more global or at least arguably
3 is.

4 And so while each case in and of
5 themselves, if they were the only act that were found to
6 have occurred, if that indeed were determined to be the
7 case, might not rise to one level of response,
8 cumulatively it might. So I'm trying to understand how --
9 how the Commission is supposed to respond when we have
10 allegations of multiple incidents that are obviously out
11 there and are there currently.

12 I don't know what, if any, things past
13 conduct might ought to be taken into account in making
14 those assessments, and I really need to know the answer to
15 those things. And I'm not placing all of that on you, but
16 I think that it's important that you-all are an important
17 element in this whole picture here, and particularly since
18 we've got a stipulation that's in front of us which
19 you-all have not entered into, is my understanding.

20 MS. KRASSER: That's correct.

21 CHAIRMAN GAW: And I assume that you're not
22 planning on doing that?

23 MS. KRASSER: That's correct.

24 CHAIRMAN GAW: So if you don't have the
25 answer today, perhaps you might contribute something to

1 that after we get done today --

2 MS. KRASSER: Certainly.

3 CHAIRMAN GAW: -- with some sort of a

4 filing, as well as the rest of the parties.

5 And I'm going to ask you all the same basic

6 question so you can give me your take on it, and if you

7 don't have an answer right now, maybe you can follow it up

8 with something in a short memo or memorandum or brief, but

9 thank you. I don't know if he's going to come back maybe.

10 Commissioner Clayton may have some questions here, too,

11 but I'll go ahead and ask the same question to Staff and

12 to Respondent.

13 MS. KRASSER: May I return to my seat,

14 Commissioner?

15 CHAIRMAN GAW: Yes, thank you.

16 MR. BATES: Commissioner.

17 CHAIRMAN GAW: If you don't know the answer

18 to the question, that's all right. You can provide it to

19 me later.

20 MR. BATES: Quite frankly, I'm not certain

21 of the answer to the question. Certainly the statutes

22 give both the Commission through the director and the

23 Attorney General some authority in matters relating to the

24 licensing of manufactured homes. On those occasions when

25 there are -- when they might be conceivably concurrent or

1 might have a common fact in respective cases that have
2 been filed by both parties, I'm not certain. All I can
3 tell you at this point with certainty is what the manager
4 is allowed to do and what he's allowed to ask the
5 Commission to allow him to do.

6 CHAIRMAN GAW: Just briefly, from the Staff
7 or from the Attorney General, are there any similarities,
8 commonalities in the facts alleged in the Circuit Court
9 case or in this one or are they totally separate?

10 MR. BATES: I don't know that, your Honor.

11 MS. KRASSER: Commissioner, I think I can
12 enlighten you on that. Yes. In fact, the subject of the
13 stipulation is part of our civil suit.

14 CHAIRMAN GAW: It is?

15 MS. KRASSER: Yes.

16 CHAIRMAN GAW: Okay. How much overlap is
17 there? Are they one and the same or is it just -- is this
18 one of a series of allegations that's in the Circuit
19 Court?

20 MS. KRASSER: Yes. The consumer who's the
21 subject of the director's complaint is also a consumer
22 that is part of our civil suit for whom we will be seeking
23 restitution, et cetera. So the conduct that is the
24 subject of the stipulation has been alleged in our civil
25 suit as well.

1 CHAIRMAN GAW: And the civil suit, is it
2 primarily a merchandising practices suit?

3 MS. KRASSER: Yes, sir. And of course, we
4 have also asked the -- petitioned the Circuit Court for
5 revocation of the Defendant's dealer license pursuant to
6 700.115.

7 CHAIRMAN GAW: If this Commission were to
8 approve the stipulation, does the Attorney General's
9 Office believe that it at least raises an argument as to
10 whether or not the revocation, then, is rendered -- the
11 request is rendered moot by the action of this Commission?

12 MS. KRASSER: Yes, Commissioner. Now, in
13 our civil suit we have a number of consumers, so it would
14 still be possible for us to petition the court for that
15 remedy. But if this alone were the basis for our request
16 for revocation, then yes, I would have some serious
17 concerns.

18 CHAIRMAN GAW: Respondent?

19 MR. MILLER: Thank you. Basically, my view
20 of the world is as follows: In Circuit Court, you can
21 seek penalties. The only thing that a Circuit Court can
22 do with regard to license revocation is act on an action
23 by the Commission, because the court is not the licensing
24 agency. This is the licensing agency. That's my view of
25 the world.

1 Now, I mean, I've got an idea of how we
2 skin this little cat. Namely, I think that we consent to
3 jurisdiction of the Commission with regard to the civil
4 penalties that are set forth in that. That way we get to
5 do it once. Because here's the problem we're facing that,
6 one, I can't figure out what the allegations are in the
7 pleading. I'm not picking on them for that. If you want
8 to see sloppy pleadings, just see anything I filed until a
9 week before I go to trial. That's whenever I clean it up.
10 So I'm not picking on them because I do the same thing.

11 But we've got allegations that say some of
12 the acts occurred in Boone County, so I'm sure I'm going
13 to be in probably four or five different venues, because
14 if some of them occurred there, by definition some of them
15 occurred somewhere else. And, therefore, we get five
16 different Circuit Courts -- I'm just picking a number --
17 that we're trying to coordinate. We're trying to
18 coordinate what this Commission's doing and we're trying
19 to get to the point of where we've got some cohesive
20 coordination of what it is that occurred and what should
21 happen as a result.

22 I'm the last person on the face of this
23 planet who would tell you that high fees to one's
24 attorneys aren't a good thing in life, especially whenever
25 they're coming to 10 Southampton. However, as a practical

1 matter, my thought of it is is this, is that under the law
2 of the case, we can do this, we can consent to this
3 Commission setting the civil penalties to be enforced
4 by -- and I'm not saying that there are any, because I
5 really don't think it's that bad, from what I've heard,
6 but I haven't really seen what it is that may have
7 occurred. I can't tell you what occurred from their
8 pleading.

9 But at any speed, if we do that and allow
10 this Commission to set the penalties and any restitution,
11 because you guys have got a small claims proceeding with
12 regard to the issue of any restitution, so these people
13 who are relatively limited means don't have to go get
14 attorneys to come in if they're not happy with that, let
15 them go through this proceeding, and in the event that
16 we -- that there's a determination that there's anything
17 done wrong, you can assess the internal cost of that
18 proceeding as costs. So that way the Commission breaks
19 even, these people ain't out of pocket and DeLine doesn't
20 pay for my next auto.

21 But -- and then we have the concept that if
22 you guys determine as a result of hearing all of that --
23 which I'm going to let you hear the good, bad and the
24 ugly, I don't care what it is -- that you can determine
25 what it is, if anything -- and I do emphasize the if

1 anything -- that is done as a result of it, and I've got
2 an interim plan available, I've got a guy who's a CPA who
3 we're going to implement as, in essence, a file auditor
4 and consumer ombudsman that we have who works for me -- I
5 mean, he's not my employee, but it's me who's going to cut
6 the check -- to go through and see what the problems are
7 with the files and try to clean them up.

8 The bottom line is I'd like to get it all
9 done in one bundle, in one fell swoop here, because
10 otherwise we'll be at this five years from now. That's my
11 view of the world.

12 CHAIRMAN GAW: Thank you, Mr. Miller.

13 MR. MILLER: Thank you, your Honor.

14 MS. KRASSER: Commissioner, may I respond?

15 CHAIRMAN GAW: Yes, please.

16 MS. KRASSER: Would you like me to approach
17 the podium?

18 JUDGE JONES: Yes, please.

19 MS. KRASSER: I'd just like to clarify a
20 couple of things. One of those is, obviously, one of the
21 reasons that Mr. DeLine would like to have this taken care
22 of in one fell swoop is because the Public Service
23 Commission does not have some of the unique authority that
24 the Attorney General's Office has. We can order
25 restitution. We can recover our costs of prosecution. We

1 can recover our own civil penalties for merchandising
2 practices violations. And that is why we think it is so
3 important in this case that we be allowed to proceed on
4 our own.

5 As to what Mr. Miller said about having to
6 try the case in a bunch of different venues, obviously
7 Chapter 407 allows that this entire case will be tried in
8 Boone County, so that's really not an issue. And we're
9 happy with whatever the Commission decides on this. I
10 just want to make sure that you understand that's not --
11 that's not an issue for us.

12 CHAIRMAN GAW: It is somewhat an issue for
13 me, anyway, because I'm trying to -- I'm reluctant to go
14 down the road of approving a stipulation without
15 understanding all of the elements that are going on with
16 this business. And that's what's -- that's a -- it's a
17 major problem for me in knowing whether or not we should
18 move forward with approval of this stipulation or if we
19 should hear evidence about the case and make a decision
20 based upon the evidence, because I don't know whether or
21 not this stipulation takes into account the global picture
22 here.

23 MS. KRASSER: Well, we'll be happy to
24 provide you with whatever you'd like, Commissioner.

25 CHAIRMAN GAW: Okay. Thank you. Let me --

1 MR. MILLER: Commissioner, if I may?

2 CHAIRMAN GAW: Yes.

3 MR. MILLER: If I wasn't crystal clear a

4 little earlier, because I just heard a presentation which

5 basically said what I'm trying to do is go hide with

6 regard to that stuff, if I wasn't clear, my position is

7 this: I will consent to venue here. I will stipulate

8 that we can be bound by that, and under the law of the

9 case, that this Commission can enter its order as if it

10 were a Circuit Court. If I wasn't clear on that, I

11 apologize. I thought I was, but if I wasn't, I hope that

12 is clear.

13 CHAIRMAN GAW: Let me ask a question in

14 regard to penalties that are available. What are the

15 parties' positions in regard to what authority we have to

16 assess penalties and what the range of penalties are?

17 There are penalties mentioned in the stip. Some of the

18 penalties I'm not clear whether they are authorized by

19 statute or just something that's been agreed to by the

20 parties without any specific authorization.

21 MR. BATES: Commissioner, we believe that

22 the range of penalties is set out in Section 700.115,

23 paragraph 2. The particular penalties that were agreed to

24 by the parties in this case fall within that range, and

25 both parties believe that they were appropriate to the --

1 to the allegations and that they were the best numbers
2 that could be found to both satisfy those allegations and
3 to conclude the stipulation in a fair manner.

4 CHAIRMAN GAW: So how many -- how many
5 violations, then, do you allege to result in a \$5,000
6 penalty in this?

7 MR. BATES: Basically, there's one
8 violation that the director felt and the respondent agreed
9 that that would be an appropriate figure to satisfy that.

10 CHAIRMAN GAW: Okay. I'm not getting my
11 point across. I'm not asking the question correctly. You
12 point me to a thousand dollar penalty provision in
13 700.115.2, correct?

14 MR. BATES: Correct.

15 CHAIRMAN GAW: So how do I get from 1,000
16 to 5,000? How do I move from that figure to the 5,000
17 figure? That's what I'm asking.

18 MR. BATES: Except that also states that
19 their maximum civil penalty may not exceed \$1 million for
20 any related series.

21 CHAIRMAN GAW: I'm asking what's the
22 series? How many incidents -- do you have five incidents;
23 is that what you're telling me?

24 MR. BATES: No, Commissioner. Really what
25 I'm saying is that this was simply a figure that we

1 thought -- both parties thought was an appropriate
2 resolution for this and would fit within the realm of
3 reasonableness.

4 CHAIRMAN GAW: That's not my question.
5 That's not answering my question. What I'm asking you is,
6 if we try this case, what is the -- what is the maximum
7 amount of penalty that you could receive from this
8 Commission, if you know?

9 MR. BATES: Well, there's -- I would say
10 \$1,000.

11 CHAIRMAN GAW: I thought that you had
12 alleged multiple violations.

13 MR. BATES: I may be misunderstanding you,
14 and if I am, I apologize. This was not a number that was
15 arrived at by some mathematical calculation.

16 CHAIRMAN GAW: Do you wish to talk to your
17 clients and see if they can tell you how many times, how
18 many violations we're dealing with in your allegations?

19 MR. BATES: I understand that, but in a way
20 that's not the way that we came up with this. We thought
21 that that would be a reasonable figure. We did not
22 calculate it mathematically based on a number.

23 CHAIRMAN GAW: What I'm asking you, though,
24 is if you tried the case, what's the maximum amount that
25 you could seek in penalties under the statutes?

1 MR. BATES: Can I have a moment?

2 CHAIRMAN GAW: Yes.

3 MR. BATES: Thank you.

4 Thank you, Commissioner. Again there's

5 really one violation here. There are several bases for

6 the violation, but there's only one violation. The 5,000

7 figure was come up was simply between the parties in

8 negotiation because we thought that would be reasonable,

9 and if both parties agreed to it consensually, then it

10 would be proper so long as it was within the general range

11 as set out in the statute, which would go up to \$1

12 million.

13 CHAIRMAN GAW: That's a series of

14 violations, Mr. Bates.

15 MR. BATES: I understand.

16 CHAIRMAN GAW: Which could not exceed -- a

17 series could not exceed \$1 million.

18 MR. BATES: That is correct.

19 CHAIRMAN GAW: So isn't the real risk here

20 the loss of license?

21 MR. BATES: Well, that's true.

22 CHAIRMAN GAW: Is that the reason why this

23 penalty was -- is what it is, as opposed to what you're

24 telling me the penalty would be, which I hear you saying

25 \$1,000 if we're not talking about a potential revocation

1 or suspension of license.

2 MR. BATES: Well, there certainly is a risk
3 of revocation of the license. The reason the director
4 believed it would be better to enter into the
5 Stipulation & Agreement at this point is because
6 without -- if the license were lost, there would be no
7 incentive for the Respondent to do any of the things that
8 he has agreed to do in the stipulation.

9 CHAIRMAN GAW: That's -- my question is,
10 though, in regard to how you get the Respondent to pay
11 more, the only risk he's got other than the amount of the
12 penalty in this case is the loss of a license; is that
13 correct or not?

14 MR. BATES: Well, yes, and the stipulation
15 does state that the director will not dismiss his
16 complaint until after such time as all parties, including
17 Respondent, has executed all the covenants set out in the
18 stipulation. So that remains over his head until he's
19 performed.

20 CHAIRMAN GAW: You also have a provision
21 that speaks in terms of additional penalties for not
22 complying with the stipulation; is that correct?

23 MR. BATES: Yes.

24 CHAIRMAN GAW: Is that the \$10,000 --

25 MR. BATES: Yes.

1 CHAIRMAN GAW: -- penalty?

2 And again, this is something that has been

3 agreed to, but there is really -- there's really no way

4 the Commission could impose that outside of some sort of

5 an agreement, I assume?

6 MR. BATES: Well, that's correct, and

7 that's what you have before you as an agreement.

8 CHAIRMAN GAW: I guess I'm asking -- I

9 guess I'm asking the question. I should have said it as a

10 question. Do you think that's accurate that we could not

11 do that?

12 MR. BATES: Well, I think it can be imposed

13 and that the complaint would not be dismissed until

14 this -- all the covenants of the agreement had been

15 satisfied. So that remains the enforcement tool, and

16 certainly if there were further incidents even after that

17 time, the director may file new complaints.

18 CHAIRMAN GAW: What is the status of the --

19 of the license of Amega subsequent to the Stipulation &

20 Agreement if the agreement and stipulation are approved?

21 What's the status of their license?

22 MR. BATES: Well, it remains in force.

23 Only the Commission -- the Commission would be able to

24 cancel that or rescind it.

25 CHAIRMAN GAW: There's no agreement to any

1 probationary period or -- is that --

2 MR. BATES: No. The agreement --

3 CHAIRMAN GAW: What's the status in regard

4 to probation or anything along that line?

5 MR. BATES: The four corners of the

6 document set out all the agreements and all the penalties

7 that the parties have agreed to.

8 CHAIRMAN GAW: So there's no probationary

9 agreement in this document?

10 MR. BATES: In this case, it was considered

11 better to have the fines and the other -- and the other

12 agreements.

13 CHAIRMAN GAW: Am I correct, there is no --

14 MR. BATES: That is correct.

15 CHAIRMAN GAW: -- probationary period?

16 Is Staff aware of the allegations made by

17 the Attorney General's Office in the Circuit Court case?

18 MR. BATES: The Staff is generally aware of

19 them, yes.

20 CHAIRMAN GAW: Does that mean that the

21 Staff does not have information in regard to those

22 allegations or the facts that may be behind them?

23 MR. BATES: Staff has some information, but

24 Staff did not participate with the Attorney General's

25 Office in the filing or any of the preparatory work for

1 that.

2 CHAIRMAN GAW: Judge, I'm going to stop, I
3 think, temporarily.

4 JUDGE JONES: Commissioner Clayton?

5 COMMISSIONER CLAYTON: I had some questions
6 written down, and I know that you-all covered some of
7 these while I stepped out of the office, but I'd like to
8 go through them real quick, and if it's repetitive, I
9 apologize to the parties.

10 First of all, the agreement is that the
11 penalty will be \$5,000, correct?

12 MR. BATES: Yes.

13 COMMISSIONER CLAYTON: And what is the
14 maximum penalty that in this case the Staff could get, the
15 maximum that you-all could request and that this
16 Commission could order?

17 MR. BATES: Well, we believe the maximum,
18 as there was one occurrence, would be \$1,000.

19 COMMISSIONER CLAYTON: Okay. So in this
20 case, the Staff has only filed one violation?

21 MR. BATES: In this case, yes.

22 COMMISSIONER CLAYTON: And in this case,
23 we're referring to the case against Amega Sales?

24 MR. BATES: That's correct.

25 COMMISSIONER CLAYTON: And then there's

1 that companion case against A&G Trucking, I believe?

2 MR. BATES: That is correct.

3 COMMISSIONER CLAYTON: How many violations

4 are in that one?

5 MR. BATES: Could you excuse me a minute?

6 I'm not sure of the exact number.

7 MR. MILLER: I think it's five.

8 MR. BATES: I think that's right. That's

9 correct. It is five.

10 COMMISSIONER CLAYTON: So in that case, the

11 maximum will be \$5,000 penalty?

12 MR. BATES: Theoretically, yes.

13 COMMISSIONER CLAYTON: Well, theoretically

14 or not, that would be the maximum?

15 MR. BATES: I'm sorry. Yes.

16 COMMISSIONER CLAYTON: Okay. How did you

17 determine that \$5,000 was a reasonable settlement in this

18 case?

19 MR. BATES: Commissioner, I don't recall

20 the exact conversations, but there was some negotiation

21 back and forth between the parties. I know that more than

22 one number was discussed, and that was the number that the

23 parties finally settled on. I'm sorry. I don't -- this

24 was several months ago.

25 COMMISSIONER CLAYTON: Did the customer who

1 bought the home in question which is subject to this
2 violation, did they suffer adverse financial -- suffer an
3 adverse financial impact because of this sale?

4 MR. BATES: Yes, I'd say we'd say so.

5 COMMISSIONER CLAYTON: And what was
6 their -- what were their damages or how much did they
7 incur in expenses? Do you know that?

8 MR. BATES: I don't believe I do know. I
9 believe there's been a separate agreement between the
10 owners of that home and the Respondent, and I'm not privy
11 to all the final details of that agreement.

12 COMMISSIONER CLAYTON: Can you tell me
13 whether or not that financial impact was more or less than
14 \$5,000?

15 MR. BATES: I don't know.

16 COMMISSIONER CLAYTON: There are a number
17 of conditions that are associated with the sales of new
18 homes and sales of used homes in this agreement, correct?

19 MR. BATES: Correct.

20 COMMISSIONER CLAYTON: And there's a
21 mechanism of what will happen in the event of a problem
22 arising, correct?

23 MR. BATES: Yes.

24 COMMISSIONER CLAYTON: Without the
25 agreement right now, what avenues of enforcement of state

1 law and Commission rule does Commission Staff have in
2 protecting customers if it doesn't have this stipulation?

3 MR. BATES: If it doesn't have the
4 stipulation, then we have the existing complaint that's
5 been filed in which we've alleged the violation of
6 700.100, 700.445, and 407.020, and as well as two sections
7 of manufactured home procedural and enforcement
8 regulations as adopted by the Commission. And, of course,
9 the Commission has the authority to suspend Amega's
10 registration.

11 COMMISSIONER CLAYTON: I understand.
12 That's not really what I'm asking. What I'm asking is,
13 if -- if a customer buys a home today and there's a
14 defect, the circumstances arise that would cause the
15 covenants in the stipulation to kick in?

16 MR. BATES: Yes.

17 COMMISSIONER CLAYTON: If you had that
18 circumstance without the Stipulation & Agreement, what
19 power does the Staff have, what can it do? Does it have
20 to just file a complaint? Is that the only enforcement
21 mechanism that they have?

22 MR. BATES: Without the stipulation, yes, I
23 believe it would be.

24 COMMISSIONER CLAYTON: Okay. So everything
25 that was -- all the covenants that are listed within this

1 agreement are new items of enforcement, correct?

2 MR. BATES: Yes.

3 COMMISSIONER CLAYTON: Commissioner Gaw

4 asked a question about probation or a probationary

5 scenario. Do you recall that question?

6 MR. BATES: Yes.

7 COMMISSIONER CLAYTON: If there is a

8 violation of this agreement, does the Staff have an

9 ability to suspend or revoke the certificate or license of

10 this dealer in a more timely fashion than the traditional

11 method of filing a complaint? Is there a trigger in this

12 stipulation that would allow their registration to be

13 suspended?

14 MR. BATES: Yes, there is, Commissioner.

15 COMMISSIONER CLAYTON: Would you point that

16 to me.

17 MR. BATES: The complaint is in

18 paragraph 9, and that provides the director shall not

19 dismiss the complaint or any portion thereof until such

20 time final execution of the agreement and all the

21 covenants and conditions stated herein are completed by

22 the parties. So the case remains alive.

23 COMMISSIONER CLAYTON: So then we would

24 come back to this point right here, exactly where we are

25 in time, correct?

1 MR. BATES: I suppose, yes.

2 COMMISSIONER CLAYTON: Okay. Is it

3 possible to condition this stipulation on a violation on

4 the part of the dealer of this agreement would

5 automatically suspend or revoke their dealer registration?

6 MR. BATES: There is nothing as far as the

7 terms.

8 COMMISSIONER CLAYTON: I know it's not in

9 there. Is that possible under Commission rule?

10 MR. BATES: Yes, I think you -- I think you

11 could do that.

12 COMMISSIONER CLAYTON: Okay. Staff was

13 agreeable to entering into this stipulation with a recital

14 allowing for the company to deny liability; is that

15 correct?

16 MR. BATES: Yes.

17 COMMISSIONER CLAYTON: And why did Staff

18 believe that that was in the public interest?

19 MR. BATES: Because it allowed a

20 stipulation to be reached wherein Respondent would be --

21 would take responsibility for taking certain actions to

22 correct the defects to the home and, therefore, the

23 homeowner would be in a more immediate and efficient

24 manner satisfied.

25 COMMISSIONER CLAYTON: So is that the goal

1 of this complaint is to satisfy this particular homeowner?

2 MR. BATES: Well --

3 COMMISSIONER CLAYTON: I thought you said

4 that they were in a different case, that they had

5 different negotiations going on?

6 MR. BATES: The goal, of course, of the

7 Commission is to serve the public. In this case the

8 aggrieved member of the public is the ultimate owner of

9 this home.

10 COMMISSIONER CLAYTON: But you said they're

11 in a different action right now.

12 MR. BATES: I don't think they're in a

13 legal action.

14 COMMISSIONER CLAYTON: So they don't have

15 their own legal case right now?

16 MR. BATES: Mr. Miller would be able to

17 answer that. I don't know. I don't believe so.

18 MR. MILLER: Mr. Miller could, and he will

19 when it's his turn or now, depending on what you want.

20 COMMISSIONER CLAYTON: So Staff believes

21 that it's more important to allow the company to deny

22 liability and deny any wrongdoing to expedite the

23 implementation of this Stipulation & Agreement?

24 MR. BATES: Yes, because they are taking

25 responsibility to go ahead and pay a penalty and also to

1 go ahead and do certain actions that would rebound to the
2 benefit of the homeowner.

3 COMMISSIONER CLAYTON: Is there a process
4 now for certifying damaged homes at all as it's referenced
5 in paragraph 4?

6 MR. BATES: Yes, although Mr. Pleus knows
7 much more about the mechanics of that than I do.

8 COMMISSIONER CLAYTON: The provisions of
9 paragraph 3 right before that, is the Respondent agreeing
10 to do something that they aren't already required to do?

11 MR. BATES: They are already required by
12 law to do those things, but this simply sets that out
13 within the -- within the four corners of the agreement.

14 COMMISSIONER CLAYTON: Friendly reminder?

15 MR. BATES: Yes.

16 COMMISSIONER CLAYTON: They're not giving
17 anything up there?

18 MR. BATES: No.

19 COMMISSIONER CLAYTON: Okay. I assume that
20 this agreement, if it is approved by the Commission, will
21 be filed in the Circuit Court for enforcement purposes, or
22 tell me what would happen if this Commission were to
23 approve the agreement.

24 MR. BATES: No. I believe that it would be
25 filed here and it would re-- has been filed. If the

1 Commission should approve it, it would remain in this
2 case, which would remain open in front of this Commission
3 until such time as all the covenants had been discharged
4 and the director had then dismissed it.

5 COMMISSIONER CLAYTON: If we were to not
6 have a settlement, a stipulation in this case, and the
7 case were to proceed all the way through the process to a
8 conclusion to where the Commission enters an Order
9 requiring the company to do something, whether it include
10 these conditions or not, would the next step of the
11 procedure be that you would take it and file it in the
12 Circuit Court for enforcement purposes?

13 MR. BATES: If the terms of the stipulation
14 were not carried out, the Commission --

15 COMMISSIONER CLAYTON: If there was no
16 stipulation. If you just have an Order requiring --
17 setting out these terms, is the next step going to the
18 Circuit Court?

19 MR. BATES: No. I believe the Commission
20 has the power invested in it to enforce the terms of the
21 stipulation.

22 COMMISSIONER CLAYTON: Okay. What happens,
23 just hypothetically what happens if he didn't pay the
24 \$5,000, what would Staff do?

25 MR. BATES: Staff would make the

1 appropriate filing in this case to reopen it for hearing.

2 COMMISSIONER CLAYTON: If there was no

3 stipulation?

4 MR. BATES: You mean no approved

5 stipulation, Commissioner?

6 COMMISSIONER CLAYTON: Say there's no

7 stipulation, this case were to proceed to hearing.

8 MR. BATES: Yes.

9 COMMISSIONER CLAYTON: Evidence is put on,

10 all that testimony, direct testimony is filed, we proceed

11 to hearing, cross-examination. The conclusion of that,

12 the Commission issues an Order that has no agreement.

13 There's not an agreement. You have to make that

14 assumption for me.

15 Okay. Does the Commission have the ability

16 to implement the covenants that are listed within? Could

17 we put the language of the paragraphs that reference

18 covenants in our Order? Do we have the ability to order

19 these without the agreement of the Respondent?

20 MR. BATES: Assuming that you issued an

21 Order in the director's favor, I believe that you would

22 have the power to order any of this that you see before

23 you.

24 COMMISSIONER CLAYTON: Is there a statute

25 which specifically authorizes it or would we be doing this

1 in the stipulation solely because they've agreed to
2 consent to the jurisdiction of this Commission and its
3 abilities to implement these?

4 MR. BATES: I would say that the -- I would
5 say that the Commission has the power to do any of those
6 things. It is conceivable that the Commission might order
7 a different fine, as opposed to a penalty.

8 COMMISSIONER CLAYTON: You would agree that
9 the Commission wouldn't have the ability to implement a
10 penalty greater than \$1,000, correct?

11 MR. BATES: I think that's right.

12 COMMISSIONER CLAYTON: Is there any
13 statutory authority authorizing the Commission to have
14 this covenant, this covenant concerning disputed homes
15 that's referenced in paragraph 5 and the language in
16 paragraph 4, paragraph 7? If there was no agreement,
17 would the Commission have the ability to actually
18 implement those? Do we have statutory authority to do
19 that?

20 MR. BATES: Commissioner, I think the
21 authority comes from the fact that, under the Commission's
22 rules, a respondent is allowed to request mediation upon
23 the filing of a complaint.

24 In this case, Respondent did so, the
25 manager agreed to it, the director ordered us to

1 mediation. That implies that there can be an agreement
2 formed which the Commission would then have to approve.
3 So I think the answer has to be yes.

4 COMMISSIONER CLAYTON: Which statute
5 authorizes -- would authorize us to order these covenants,
6 do you know?

7 MR. BATES: I would have to check on that,
8 your Honor.

9 COMMISSIONER CLAYTON: Do you know? Keith
10 may know. He was looking that up.

11 MR. KRUEGER: Your Honor, I'm not thinking
12 that it's something authorized by statute or rule, but
13 this is an agreement which, if approved by the Commission,
14 is a binding agreement, binding on all parties, and the
15 Commission could sue for the enforcement of that agreement
16 in Circuit Court. You would have the authority to require
17 performance of the agreement.

18 COMMISSIONER CLAYTON: But that wouldn't
19 happen in this instance, because you basically reopened
20 the case before the Commission. You would not proceed to
21 Circuit Court.

22 MR. BATES: That's correct, by the terms of
23 the stipulation.

24 MR. KRUEGER: It wouldn't happen --
25 describe the -- can I ask you to clarify the question as

1 far as the premise?

2 COMMISSIONER CLAYTON: If there's a default
3 in the agreement, enforcement of the agreement, you would
4 enforce the agreement or you would just come back here and
5 say, let's go to hearing?

6 MR. KRUEGER: I think the way that it would
7 have to be enforced is by an Order of the Circuit Court.

8 COMMISSIONER CLAYTON: That's opposite of
9 what he said. Mr. Bates said we wouldn't go to Circuit
10 Court.

11 MR. BATES: Your Honor, I think it could be
12 enforced here. First of all, there would be no point in
13 the Respondent not abiding -- excuse me -- in abiding by
14 the terms of the stipulation, because according to the
15 stipulation, if they did not, then we would reopen the
16 case and it would go at that point.

17 Now, of course, any agreement like that can
18 be enforced in Circuit Court, but it would -- that would
19 not be the first step at that point. They would have to
20 then go ahead pursuant to the terms of the stipulation and
21 we'd have to finish this case out.

22 COMMISSIONER CLAYTON: Did you-all just say
23 opposite things?

24 MR. KRUEGER: I don't think so. I think
25 that before suit could be filed in the Circuit Court, the

1 Commission would have to make a decision to go to Circuit
2 Court. The Commission would have to make a determination
3 that there was a breach of the agreement. That would
4 probably be done in this case, and then the Commission
5 would authorize the General Counsel's Office to go file a
6 petition in Circuit Court for the breach of the agreement.

7 COMMISSIONER CLAYTON: So if there was a
8 breach of the agreement -- I had a law school professor
9 who always said anticipate the worst possible scenario,
10 anticipate the down side and prepare for it.

11 If you have a default on the part of the
12 respondent in not complying with the Stipulation &
13 Agreement, assuming that we would approve it, would the
14 step be to come back to the Commission and the Commission
15 order direct General Counsel to go to Circuit Court to
16 file a motion to enforce the settlement, or -- or would it
17 to be set aside the stipulation before the Commission and
18 proceed to hearing?

19 MR. BATES: Well, I think --

20 COMMISSIONER CLAYTON: Or would it be up to
21 us either way?

22 MR. BATES: I think it's up to the
23 Commission. The director could make a motion either way.
24 It's my understanding having -- during this negotiation
25 process, that the understanding of the parties was that

1 the case would then continue on which, perhaps not very
2 well, I've been trying to relate.

3 COMMISSIONER CLAYTON: The prayer of the
4 Staff complaint says under the authority provided the
5 Commission in Section 700.100.3, may suspend or prays to
6 suspend the dealer registration of Amega. Does Staff
7 believe that that's not in the public interest at this
8 point?

9 MR. BATES: Not as relates to this case.
10 We believe it can be more satisfactorily resolved through
11 the terms of the stipulation.

12 COMMISSIONER CLAYTON: I know it would
13 resolve the case. I'm talking about what's in the best
14 interest of the public.

15 MR. BATES: We believe it's in the best
16 interest of the public to have this particular case, this
17 particular incident regarding the Higgenbotham home
18 resolved for the -- to the satisfaction of the ultimate
19 owner of the home, and that in this case is in the best
20 interest of the public.

21 COMMISSIONER CLAYTON: I rec-- I'm
22 confused.

23 I recognize that the Higgenbotham home is
24 the subject of this complaint, but do we have the ability
25 to make whole the Higgenbothams? Do we have the ability

1 to give them a judgment for damages or require the company
2 to fix the home, or is our role basically to set penalties
3 or suspend the license? What is our role here?

4 MR. BATES: The role is what the manager
5 and the Respondent can agree to, to try to bring a
6 satisfactory end here. If this were only a matter of what
7 the Commission can do in the matter of the two things that
8 you had mentioned, the Commission would have no mediation
9 process.

10 COMMISSIONER CLAYTON: So you're saying
11 that we -- the whole point of this adversary proceeding is
12 to settle it? Is that what you're saying?

13 MR. BATES: No. If the parties believe
14 that they can settle it in a manner that's satisfactory to
15 both sides, otherwise the Commission would not have
16 created the mediation process, which implies that there
17 could be a settlement, presuming the parties can reach
18 one.

19 COMMISSIONER CLAYTON: Okay. Thank you,
20 Mr. Bates.

21 Mr. Miller, can I ask you a couple of
22 questions?

23 MR. MILLER: Absolutely.

24 COMMISSIONER CLAYTON: You can either stay
25 seated or come up, whatever the Judge would prefer.

1 MR. MILLER: I get a little chance to get
2 on camera. I'm not that good looking.

3 Yes, sir.

4 COMMISSIONER CLAYTON: How familiar are you
5 with Chapter 700?

6 MR. MILLER: I know that 700 comes after
7 600. Judge, Tom Harrison and Mike Berry are the real
8 lawyers. I'm just carrying water today.

9 COMMISSIONER CLAYTON: I understand. This
10 may be brief because I just want to make sure that I
11 understand what our role, if we have a role, in this is.

12 The company has agreed to pay more in
13 penalties than what we could order in the event we were to
14 go to hearing; is that correct?

15 MR. MILLER: Fair.

16 COMMISSIONER CLAYTON: Fair?

17 MR. MILLER: That's accurate. I'm sorry.
18 I use the word fair and accurate interchangeably. Sorry.

19 COMMISSIONER CLAYTON: And is it the
20 company's position that if there were no settlement, we
21 were to proceed to hearing, does the Commission have the
22 authority to order the covenant language that is within
23 the settlement or is that covenant language only allowed
24 because you-all consent to it?

25 MR. MILLER: It's the latter. I mean, it's

1 kind of like any other -- this part of it I believe I have
2 a handle on. It's kind of like any other ruling, it's
3 automatically right if nobody appeals it.

4 And do I think that if we were to go to a
5 contested hearing, that you could order it? No. Do I
6 believe that it is in the best interest of the consuming
7 public and, quite frankly, mobile home dealers and
8 manufacturers to have some certainty about what to do in
9 this situation? Yes.

10 There's some correspondence in the file
11 between the guys from the Manufactured Housing Association
12 and HUD going, hey, what do we do here? And I can tell
13 you that in -- never like to defend my opponent too
14 hard, but in their defense, they didn't get what I would
15 call crystal clear guidance.

16 And so my concept is, is that if we can get
17 some guidance in an area where, A, there's none from HUD,
18 B, there's none from the Legislature, that it's
19 probably -- it's actually probably about the best thing
20 that anybody could do in the best interests of the
21 consumer, the Commission, the dealer. There's nobody that
22 gets hurt by having certainty in terms of what you do.

23 And if I may, in terms of money that's paid
24 in, sir, the money's already been paid. So I mean, it's
25 on deposit. So --

1 COMMISSIONER CLAYTON: I use it as one
2 example. There's also a fine in here for \$10,000 per
3 subsequent violation; is that correct?

4 MR. MILLER: Yes, sir.

5 COMMISSIONER CLAYTON: What would have to
6 happen for that \$10,000 fine to kick in, or penalty?

7 MR. MILLER: Okay. And that really kicks
8 into another area. You asked about the concepts and it
9 fits into this probation. Anybody who's got a
10 professional license, any kind of license issued by a
11 regulatory authority is on probation from the moment they
12 get it until the day they die or it's revoked.

13 What I think would have to happen is this:
14 Is that you would have to have a new violation and that,
15 under the law of the case, basically we go back here and,
16 as opposed to 1,000 bucks, we've put ourselves in a
17 position where I believe it could be enforced in a court
18 order that says, guess what, being we entered this order,
19 you didn't appeal it, we've got the authority to go to
20 10,000 bucks.

21 COMMISSIONER CLAYTON: Was it your
22 understanding that this agreement would be filed with the
23 Circuit Court for enforcement purposes?

24 MR. MILLER: I can't tell you that I had an
25 understanding with regard to that. I don't have any

1 objection to it, but I didn't have an understanding.

2 COMMISSIONER CLAYTON: I think that's all I
3 have for right now. Do you have, Commissioner Gaw?

4 MR. MILLER: Could I have 30 seconds,
5 please, with regard to two issues?

6 One, in terms of the denial of wrongdoing,
7 any time you settle a case, I've never, no matter how much
8 money that I have been paid, had anybody ever admit
9 liability because of its collateral consequences with
10 regard to other cases.

11 Two -- and I'm going to take one bit of
12 exception with regard to one thing that he said. He was
13 asked a question, and I think he was shooting from the
14 hip, which is okay with one exception. He said -- he was
15 asked whether or not that there was any adverse financial
16 impact.

17 That's a question that I don't believe that
18 he really had the answer to, because if somebody has taken
19 a haircut in terms of what they got for it in the first
20 place and it was disclosed and a discount was taken,
21 whether or not that they made money by taking that
22 discount or lost money by taking that discount is
23 something that I don't think anybody knows. So if it had
24 been sold for street price, would they have had an adverse
25 financial impact? Yeah. Was it sold for street price?

1 No.

2 So I don't think that that information is
3 accurate, because I don't think that anybody knows whether
4 or not the financial impact was adverse.

5 COMMISSIONER CLAYTON: Can I follow up on
6 that?

7 MR. MILLER: Absolutely.

8 COMMISSIONER CLAYTON: While we're talking
9 about this financial impact, is there other litigation
10 that the -- I guess I want to know, are the Higgenbothams
11 made whole?

12 MR. MILLER: Yes, sir.

13 COMMISSIONER CLAYTON: They are not part of
14 this agreement? They haven't signed off on it, and I
15 don't believe they're a part of the stipulation, are they?

16 MR. MILLER: No, sir, they're not.

17 COMMISSIONER CLAYTON: Okay. Is their home
18 fixed?

19 MR. MILLER: Fixed and some -- and they
20 were compensated, but my concept is that they're going to
21 have had -- if you approve this, they're going to have an
22 extremely good day, inasmuch as they got a discount, a
23 resolution, and if you approve this, they will have a home
24 that's just as salable as one that arrived at 2:30 there,
25 because it will be capable of being put into the stream of

1 commerce as -- you know, it's kind of like a totaled
2 vehicle. It's not totaled anymore. It's now got the
3 stamp back on it. So they've been compensated twice, and
4 I mean, there's no problem with that, we're happy to do
5 it, but they are going to be in good shape.

6 COMMISSIONER CLAYTON: What was the amount
7 of their -- of their damages?

8 MR. MILLER: Wait a second.

9 I apologize for that. I now know a bunch
10 more. As I said, that's simply the product of being the
11 waterboy, as opposed to the real lawyer.

12 COMMISSIONER CLAYTON: I've been there.

13 MR. MILLER: But the situation with the
14 Higgenbotham home, I've been informed, is this: It was
15 what is in the industry called topped, apparently, which
16 is it hit part of a low overpass. The home was fixed to
17 the -- after the Public Service Commission contacted them,
18 they contacted Amega, thinking that something else was
19 supposed to happen in addition to their previous discount.

20 the home was fixed to their satisfaction,
21 and they, through an attorney, requested additional
22 compensation, and that matter was the subject of a
23 separate settlement which has been achieved, paid and the
24 matter resolved without litigation.

25 COMMISSIONER CLAYTON: Do you know why the

1 \$5,000 was -- how that amount was derived or how it was --
2 why is it determined to be reasonable in this case?

3 MR. MILLER: For a flip answer, I would
4 say --

5 COMMISSIONER CLAYTON: Give me a straight
6 answer.

7 MR. MILLER: I was going to say, because he
8 doesn't like to look at bills of lawyers. Realistically,
9 these guys put in a bunch of time. They asked for that
10 amount of money and it was determined, based upon the
11 expense and risk of litigation, that that amount was fair
12 to both sides of the table. Simple as that.

13 COMMISSIONER CLAYTON: Okay. Thank you.

14 MR. MILLER: Thank you, sir.

15 JUDGE JONES: Commissioner Gaw?

16 CHAIRMAN GAW: Thank you, Judge. I asked
17 earlier as a matter of principle for information in regard
18 to what the Commission might take into account in
19 determining whether or not an appropriate resolution to
20 the case is had in this kind of a case.

21 I want to ask Staff, is this -- is this
22 resolution -- resolution that the Staff deems satisfactory
23 based upon information in this case alone or based upon
24 other things besides the information the Staff has
25 available from this case alone?

1 MR. BATES: I believe just regarding this
2 case.

3 CHAIRMAN GAW: And if that is the case,
4 then at what point in time would the Commission ever be
5 made aware of a series or a course of action or actions by
6 someone with a license or -- that this Commission issues
7 so that this Commission might make an appropriate
8 assessment of whether or not that licensure should
9 continue?

10 MR. BATES: By the filing of a complaint by
11 the director.

12 CHAIRMAN GAW: Saying what? Saying that
13 these -- this list of things has happened over the last
14 five years and, therefore, we believe it's no longer
15 appropriate for this Respondent to continue to be licensed
16 to sell manufactured homes in this state?

17 What would they say? Would they say
18 something that says -- in this case you ask for suspension
19 of license based upon what you have in the allegations in
20 this complaint. You asked for suspension of the license
21 initially. You're not asking for it in this stipulation.
22 You have agreed not to suspend their license?

23 MR. BATES: Yes.

24 CHAIRMAN GAW: This Commission does not
25 have information in front of it in regard to whether or

1 not other incidents have occurred with this -- with this
2 particular Respondent or whether or not there are other
3 things that should be taken into account in determining
4 whether or not licensure should continue.

5 Is the Commission going to be made aware of
6 that at any point in time under the contemplated
7 settlement that you have in this case?

8 MR. BATES: Well, of course, shortly after
9 we end this discussion today, there'll be a discussion on
10 another case involving the same Respondent, and that
11 indeed does detail other allegations and a stipulated
12 settlement.

13 CHAIRMAN GAW: What case is that?

14 MR. BATES: MC-2004-0078.

15 CHAIRMAN GAW: That doesn't deal with this
16 Respondent, does it?

17 MR. BATES: Yes, it does, another one of
18 the Respondent's companies.

19 CHAIRMAN GAW: The Respondent is the
20 company, not the individual who owns them, isn't it?

21 MR. BATES: Not effectively in this case,
22 but I take your point. But, of course, the director can
23 always file further complaints against this Respondent if
24 there is further allegations uncovered.

25 CHAIRMAN GAW: Well, the Attorney General's

1 Office has allegations out there that I know are in
2 existence. I don't know what other allegations may or may
3 not exist in assessing whether or not this is the
4 appropriate resolution in regard to the licensure of this
5 company. I do not have any more information than what you
6 have provided me in this stipulation.

7 MR. BATES: I believe the director has
8 filed complaints now against Amega for the incident that
9 it believes rises to the level where a complaint ought to
10 be filed.

11 CHAIRMAN GAW: So does that mean that the
12 director does not believe the incidents alleged by the
13 Attorney General rise to that level?

14 MR. BATES: I'm afraid you would have to
15 ask the director that, but I assume not, or he would have
16 requested us to file another complaint or he may not be
17 aware of them because the information hasn't come to him.
18 As I -- as I recall, both these cases were filed some
19 months before the Attorney General filed his cases. I
20 believe the director only became aware of the Attorney
21 General's actions around the middle of last month.

22 CHAIRMAN GAW: And you're telling me that
23 the director doesn't believe those allegations rise to the
24 level to warrant anything or you don't know?

25 MR. BATES: I don't know.

1 CHAIRMAN GAW: In the event that there
2 might -- if we would speculate, in the event there were
3 some future allegations and a case would be brought in
4 front of this Commission about additional things that
5 would -- that might occur, could the -- could this case be
6 taken into account in the resolution of those future
7 cases?

8 MR. BATES: It would be -- it would not be
9 made a part of a future case but, of course, the director
10 would be aware of it and would be aware of a pattern of
11 activity at that point.

12 CHAIRMAN GAW: Part of your paragraph 8
13 says no effect of future cases, and I'm just curious about
14 what that's intended to --

15 MR. BATES: Well, that is meant as a legal
16 statement that any -- that this particular stipulation
17 completely deals with this particular allegation. It
18 certainly does not preclude the director from filing
19 against this Respondent on unrelated future allegations.

20 CHAIRMAN GAW: That's not my question. My
21 question is whether or not any of the facts that might
22 have been alleged in this case would be available to be
23 taken into account in a future case in dealing with
24 whether or not a license should be suspended or revoked or
25 the appropriate level of a penalty.

1 MR. BATES: If you mean by -- I'm not sure
2 what you mean by available, Commissioner.

3 CHAIRMAN GAW: Are you precluded from
4 raising any of these past acts in a future case as a part
5 of the penalty, of the determination of an appropriate
6 penalty in a future case, including the potential
7 suspension or revocation of the license of the Respondent?

8 MR. BATES: I would have to say in this
9 case yes, because the stipulation settles this particular
10 incident.

11 CHAIRMAN GAW: So if we approve this
12 stipulation, that cannot be taken into account, this case
13 could not be taken into account?

14 MR. BATES: I don't think it could play any
15 part in the basis of a future complaint.

16 CHAIRMAN GAW: Not in regard to the
17 determining the truth or falsity of the allegations. I'm
18 not talking about that. I'm talking about in terms of
19 deciding whether the appropriate response is a suspension
20 or revocation of a license. You're telling me it would
21 not be appropriate to look at this?

22 MR. BATES: I'm sorry if I misunderstood.
23 I was confining my answer to a factual allegation. I do
24 believe that the fact that there was a complaint at one
25 time could be taken into account.

1 CHAIRMAN GAW: Let me ask Mr. Miller,
2 what's your view on that?

3 MR. MILLER: Yeah. My view is this: If I
4 can liken it to a criminal case, that would not qualify
5 him as a prior or persistent offender. I don't think it's
6 usable for that purpose. The purpose that I think that it
7 is usable for is if they violate the terms of this
8 agreement, insofar as it relates to dealing with damaged
9 homes --

10 CHAIRMAN GAW: Yes?

11 MR. MILLER: -- that it would be a
12 violation of this Commission's regulations where it
13 wouldn't -- may not be otherwise. That's my thought of
14 the usability.

15 CHAIRMAN GAW: Let me go to the next part
16 of that. Ignore that as being the question. In some
17 future -- in some future case, if there were new
18 allegations, I don't know what they might be, but let's
19 say they were allegations that were made and the
20 Commission found them to be true after a hearing, and the
21 question then was, is the appropriate response to that to
22 suspend or revoke the license, could this case, this
23 incident be taken into account in deciding what the
24 appropriate remedy was with the license of the company?

25 MR. MILLER: One clarifying question,

1 because I think I know where you're headed, but do we
2 presume for the purposes of that question that it is an
3 entirely different type of activity?

4 CHAIRMAN GAW: Let's do that for purposes
5 of clarity.

6 MR. MILLER: Okay. From a legal sense, do
7 I think it can be used? No. Do I think a judge who's had
8 Herbie Joe Figwater in front of him three times for
9 stealing cars who then comes in front of him for a -- pick
10 a card, any card, whatever it is -- do I think that he
11 recognizes him and may think that a different sanction is
12 appropriate because he kind of sort of knows his
13 proclivities? Yeah, because it happens every day.

14 CHAIRMAN GAW: Now, would your answer
15 change if this stipulation were not approved, if this --
16 if this Commission heard the case and determined the
17 allegations were true, would your answer to my question
18 then on my hypothetical change? I'm trying determine
19 whether your answer is dependent upon the terms of the
20 stip.

21 MR. MILLER: You know, and I'm struggling
22 with that.

23 CHAIRMAN GAW: And, Mr. Miller, you don't
24 have to answer that question right now, but it's a part of
25 what I'd like for you-all to answer for me in the next few

1 days maybe. When I started out my inquiry at the
2 beginning of the afternoon, it relates to that. I'm
3 trying to understand and get a better sense of the bounds
4 of this Commission's view in dealing with issues regarding
5 licensure.

6 MR. MILLER: I think in -- why I'm
7 struggling with that is this: If it were something that
8 were within the -- get back to the old jurisdictional
9 issue. If it were something within the jurisdiction of
10 the Commission by law versus by consent under the law of
11 the case, then I think it would have a precedential value.

12 If it is outside the scope -- and presume
13 you go through a hearing, if it is outside the scope of
14 the Commission's authority and you enter an Order anyway,
15 I do not think for judicial purposes that it has any
16 precedential value.

17 I mean, that's the -- I mean, that's --
18 actually, I take a ride on that. That's the best I could
19 get.

20 CHAIRMAN GAW: I'm trying to gather whether
21 or not looking at these things, and I suspect there's a
22 lot of case law out there not dealing with manufactured
23 housing but other licensure questions, as to whether or
24 not when determining continued licensure or perhaps even
25 determining setting a penalty, whether this is -- whether

1 it's more like what we would see in criminal court on a
2 sentencing and a pre-sentence investigation and some
3 additional factors in regard that justified the sentencing
4 or is it something different than that?

5 And I don't know the answer, and that's --
6 that's kind of what I'm looking for here is some guidance
7 from the parties.

8 MR. MILLER: And I don't know the answer to
9 that. Can you take the gestalt that you get with regard
10 to an individual who was out there doing business with the
11 public or are you bound by the specific strictures of the
12 complaints before you in determining an appropriate
13 penalty just based upon that particular fact? And I don't
14 know.

15 CHAIRMAN GAW: Or something in between?

16 MR. MILLER: I don't know. I don't know.

17 CHAIRMAN GAW: I'm looking for that, and if
18 you-all could provide something to us on it, it would be
19 helpful.

20 MR. MILLER: And I would ask in the event
21 that -- and I'm not indicating or intimating that there's
22 been anything that would suggest that you not approve it.
23 I still believe that it is fair for both parties and it
24 was negotiated in good faith.

25 But presuming with me for an instant that

1 you go, stop the presses because of the new case or for
2 whatever reason, I think that getting to -- that we would
3 want to be in a position where we tried it on a different
4 day, because it's going to take a -- we're, in essence,
5 trying --

6 CHAIRMAN GAW: Other than the days set?

7 MR. MILLER: Yeah. If we're trying a case
8 based upon the fact of what the AG's done over here and it
9 basically changes the stakes you're litigating for and
10 you've got to act appropriately.

11 But I think and I believe, though, that it
12 is in the best interest of the consumers to have entered
13 into the stipulation, and I think it's in their best
14 interests for this Commission to approve it and for it to
15 be performed. Thank you.

16 CHAIRMAN GAW: AG's Office believe that the
17 status of the consumer that's real -- I mean, really, this
18 is -- this is a very important part. What's the status of
19 the consumer? Is the consumer -- at this point is the
20 home fixed as far at consumer goes? Do you know the
21 answer to that?

22 MS. KRASSER: Yes, actually I do. I know
23 that.

24 JUDGE JONES: Ms. Krasser, will you
25 approach the stand?

1 MS. KRASSER: Yes, your Honor. I'm sorry.
2 Yes, I just got a note from one of our investigators who's
3 present today and I'll try to decipher this. We know that
4 the home was sold for about \$73,000, and I think what
5 happened is Amega paid about \$40,000 to the consumer for
6 the difference, because it was a damaged home.

7 CHAIRMAN GAW: All right. So as far as we
8 know, that element has been taken care of and there's
9 no -- nothing further that needs to be done in particular
10 as far as the consumer themselves, the consumers
11 themselves are concerned?

12 MS. KRASSER: Correct. I mean, obviously
13 it's our position we still believe that a violation
14 occurred and we want to extract a civil penalty and
15 possibly injunctive relief based on that complaint. But
16 as far as the consumer and consumer's finances, this is
17 what I know has happened.

18 CHAIRMAN GAW: On the financial side?

19 MS. KRASSER: Yes.

20 MR. BATES: And, Commissioner, if I may
21 interject one thing. The stipulation does speak as to the
22 ultimate homeowner, so there is still someone who might
23 have an interest here.

24 CHAIRMAN GAW: I don't understand what that
25 means.

1 MR. BATES: I assume the person who owns
2 the home now.

3 CHAIRMAN GAW: Is that different than who
4 we were just discussing?

5 MR. BATES: I don't know.

6 CHAIRMAN GAW: I'm not sure what that
7 means.

8 JUDGE JONES: It sounds like it addresses
9 the possibility that Mr. Higgenbotham might sell the home,
10 that these agreements still follow to that subsequent
11 owner.

12 MS. KRASSER: I don't have any information
13 about whether he has sold the home or not.

14 CHAIRMAN GAW: Is there anything else that
15 you wanted to comment on as a result of discussion while
16 you were sitting in the back?

17 MS. KRASSER: No.

18 CHAIRMAN GAW: Okay. Thank you.

19 MS. KRASSER: Thank you, Judge.

20 JUDGE JONES: Very quickly, we've gone way
21 past time, but I want to at least make a comment on
22 several motions that were filed.

23 The motion filed by Amega to dismiss this
24 complaint or in the alternative to strike certain
25 paragraphs is denied. The demand for jury trial is not

1 yet ripe, because we may or may not -- we have to rule on
2 the stipulation first and decide whether that's even an
3 issue. And the motion filed by the Attorney General's
4 Office to be dismissed from this case will be ruled on
5 after April 18, giving at least 10 days following the 8th
6 on which it was filed for other parties to respond.

7 Also, with regard to the pending questions
8 that were from the Bench, I will issue an Order
9 delineating those questions and that will be coming out
10 within -- probably today or tomorrow morning.

11 And at this time, we will take, let's say,
12 a ten-minute break until a quarter after before we
13 reconvene for the MC-2004-0078.

14 With that, we will now go off the record.

15 MR. MILLER: Judge, may I inquire briefly?
16 Judge, is it going to be possible to ask you to take
17 notice of the presentations in this proceeding to shortcut
18 the second one?

19 JUDGE JONES: Yes, it is possible and
20 that's what we will do.

21 MR. MILLER: Great. Thank you, sir.

22 WHEREUPON, the on-the-record presentation
23 was adjourned.

24

25