

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

November 16, 2005
Jefferson City, Missouri
Volume 2

Director of the Manufactured Housing)
and Modular Units Program of the)
Public Service Commission) Case No.
vs.) MC-2004-0078
A&G Commercial Trucking, Inc.,)

KENNARD JONES, Presiding,
Regulatory Law Judge

REPORTED BY:
Jennifer L. Leibach, RPR, CCR
MIDWEST LITIGATION SERVICES

A P P E A R A N C E S

THOMAS M. HARRISON, Attorney at Law
VAN MATRE & HARRISON
P.O. Box 1017
Columbia, Missouri 65205
(573) 874-7777

FOR: A&G Commercial Trucking, Inc.

KEITH KRUEGER, General Counsel
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-4140

FOR: Staff of the Public Service
Commission

1 PROCEEDINGS

2 JUDGE JONES: Good morning, this is a
3 prehearing conference for Case No. MC-2004-0078, Director of
4 the Manufactured Housing and Modular Units Program of the
5 Public Service Commission versus A&G Commercial Trucking,
6 Incorporated. My name is Kennard Jones, I'm the judge
7 presiding over this matter. At this time, I'll take entries
8 of appearance, beginning with the Director.

9 MR. KRUEGER: Keith Krueger for the Director
10 of the Manufactured Housing and Modular Units Program of the
11 Public Service Commission. My address is P.O. Box 360,
12 Jefferson City, Missouri, 65102.

13 JUDGE JONES: And A&G Commercial Trucking.

14 MR. HARRISON: Tom Harrison for the
15 respondent. My office address is P.O. Box 1017, Columbia,
16 65205.

17 JUDGE JONES: Thank you, all. Normally, these
18 prehearing conferences are to get the parties together to
19 work on a settlement. You-all already did that. You had an
20 agreement, which the Commission rejected. And I'll note --
21 and this is without guidance from the Commission, but I'll
22 note that the -- the stipulation and agreement was rejected
23 primarily because the Commission didn't feel it was
24 appropriate to encourage A&G to function as a manufactured
25 housing dealer. Well, you know, I don't know what would

1 happen if that -- if that portion of the agreement were not
2 in the -- in the stipulation, so you might think about that.

3 Beyond that, it seems like prior to this
4 proceeding being stayed by the circuit court, there were
5 interrogatories and data requests from A&G Commercial
6 Trucking. There was a Notice of Deposition from Staff, and a
7 Notice of Deposition from A&G Commercial, so it looks like
8 you-all just need to pick up from that point, if it's even
9 necessary. I suspect prior to this -- this proceeding being
10 stayed, you-all had conducted some discovery in order to
11 reach an agreement; is that correct?

12 MR. HARRISON: I don't think we did anything
13 formal. We might have done some informal discovery, but by
14 the time we got -- I don't think we've done any formal
15 discovery yet.

16 JUDGE JONES: Okay. Well, this is the dilemma
17 I'm thinking of. If the Commission would approve a
18 stipulation and agreement that did not include a provision
19 that A&G Commercial Trucking apply for a dealer registration,
20 I wouldn't want you-all to start working on discovery. So
21 that might be something we might want to try first, see if
22 they'll accept something that simply doesn't include that
23 provision, before time and money starts getting spent to move
24 towards a hearing.

25 Now, if there's something you-all can do in

1 the meantime, I mean, I should say parallel to seeing if we
2 can get this resolved by agreement that also moves towards a
3 hearing, then I'll leave that to you-all to figure out, if
4 there's more discovery that you want to do or what have you.
5 Mr. Harrison, I feel like there's some unresolved motions
6 that you made.

7 MR. HARRISON: I think there are. I frankly,
8 Judge, am not prepared to argue them today. I don't know if
9 you want to hear argument. If you want to hear argument, I'd
10 very much like to postpone the argument so I can have some
11 time to prepare, because --

12 JUDGE JONES: Well, I understand. You weren't
13 put on notice that that's what we were going to do today.
14 We'll just to try to clean the record up to some degree. I
15 know you have a Demand for a Jury Trial and Motion to Dismiss
16 the Complaint or Motion to Strike. And that looks like -- I
17 can certainly tell you that a jury trial is denied.

18 To be quite honest with you, Mr. Harrison, I
19 feel like you're just throwing the kitchen sink in with your
20 arguments. A jury trial is not even heard of in
21 administrative proceedings. And I know when we argued this,
22 I guess it must have been last year sometime, you argued that
23 because this is criminal in nature, that a jury trial is
24 warranted.

25 The Commission makes its findings according to

1 Chapter 700, and any -- any action taken toward you, civil
2 penalties, that would be meted out in circuit court. And it
3 might be my suggestion to request a jury trial at that stage
4 of the proceedings, if that's necessary, if it even goes that
5 far. But at this stage, the Commission just makes findings.
6 We don't issue civil penalties, so ...

7 MR. HARRISON: I can assure you that every
8 motion I filed in this case is serious, and it's not filed
9 for the purpose of throwing it at the wall to see what
10 sticks. And I assure you and counsel that that's the case.
11 Every motion I filed is a serious motion based upon what I
12 think are serious issues in the case.

13 JUDGE JONES: Okay. All right. Let's see.
14 Another thing I wanted to bring up with you-all, I realize
15 that Mr. Deline, Greg Deline, is an essential witness -- or I
16 don't want to say party, because he's associated with both
17 A&G Trucking and Amega, a companion case with this, I would
18 say, and Amega is still in the appellate process. What do
19 you-all think about holding this process off while we work on
20 an agreement, perhaps, and waiting until Amega clears or is
21 resolved on the appellate level and then trying to run those
22 things together? How do you-all feel about that?

23 MR. HARRISON: When you say run them together,
24 you don't necessarily mean consolidate them?

25 JUDGE JONES: No, I don't mean consolidate

1 them.

2 MR. HARRISON: I guess as a general
3 proposition, I have no objection to that. What you've
4 suggested this morning about modifying the stipulation is
5 interesting. It's certainly something that I'll talk to my
6 client about. And frankly, I predict it's something that my
7 client would be interested in pursuing. Obviously I haven't
8 talked to counsel about it. And I understand your point
9 about the potential perils, I guess, of proceeding in this
10 case while the Amega case is still in limbo.

11 JUDGE JONES: I guess I don't know. I mean,
12 we've had a hearing in the Amega case. We haven't had one in
13 this case. So I don't know to what extent these facts are in
14 common at all, or even if they are at all in common. I don't
15 know if, you know, from you-all's various strategic
16 standpoints how that might disadvantage or advantage one
17 party or another, but I certainly would like things to be run
18 efficiently, if at all possible.

19 If not, I mean, if these two cases were filed
20 as two separate complaints, then perhaps they should be --
21 they should be -- they should proceed in that fashion. And I
22 don't know what bearing of finding in one may have in a
23 finding of another. These are just questions that I have
24 that can't be answered at this point because we don't have
25 evidence in this 0078 case.

1 MR. KRUEGER: I think the facts and issues in
2 this case are substantially different from -- from the Amega
3 case. They just involve different transactions, different
4 parties. There's the commonality of ownership between Amega
5 and A&G as the principle similarity.

6 I'm not in a great rush to -- to dispose of
7 this, and it might work better to take some time to try to
8 work out an agreement, if the Commission might -- might
9 entertain that. Obviously we thought that the agreement that
10 we had before was a good agreement, but -- and we're not
11 interested in submitting another one that the Commission
12 doesn't -- doesn't approve.

13 But if there's a hope that that might --
14 making this change might lead to a -- an agreement that the
15 Commission would approve, then I think we'd be interested in
16 that, I think. But I think that we would want to continue
17 with discovery, which has -- had only just begun. There had
18 been Notice of Deposition and some Interrogatories
19 propounded, but no answers given. And I think it would be
20 our intention to answer those interrogatories and possibly
21 notice up the deposition again.

22 JUDGE JONES: Mr. Harrison.

23 MR. HARRISON: Yeah, I guess I don't see that
24 the two cases are linked factually anyway. I think he's
25 right that they're different transactions, different

1 occurrences. So linking the two procedurally, at least -- at
2 least on the basis that they're connected or have some nexus
3 in determining the facts is probably not warranted.

4 JUDGE JONES: Okay.

5 MR. HARRISON: I'd like to talk to him about a
6 stipulation. As I said earlier, we haven't spoken about that
7 before the hearing here. And you know, maybe we couldn't --
8 maybe we could work something out, I don't know.

9 JUDGE JONES: Well, the reason I bring that
10 up, and I don't want you-all to work on any agreement in
11 vain, but in this order rejecting stipulation and agreement,
12 the Commission says, and I quote, as part of the agreement,
13 A&G is required to register and qualify as a dealer of
14 manufactured homes. If the allegations of the complaint are
15 true, it would be -- it would not be appropriate for the
16 Commission to approve a settlement which encourages A&G to
17 function as a dealer of manufactured homes. The Commission
18 will therefore reject the stipulation. That's a very narrow
19 basis. So that's why I offered if it's carved out, maybe
20 that will make a difference. I don't know. So beyond that,
21 that's why I suggested that you-all may work towards that
22 end.

23 MR. KRUEGER: I think it's worth pursuing.

24 JUDGE JONES: Okay. Let's see. I don't --
25 well, that's all I had. Did either of you have anything else

1 you'd like to discuss?

2 MR. HARRISON: No, sir.

3 MR. KRUEGER: No, your Honor.

4 JUDGE JONES: Okay. Hearing nothing else,
5 then we're off the record. Thank you.

6 WHEREUPON, the recorded portion of the
7 prehearing conference was concluded.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25