

1 frame on the back door half of this one. And this one
2 here is the marriage line piers. You can see the marriage
3 line down through there.

4 Q. And the pier that you just put your finger
5 on, that is over 36 inches I take it?

6 A. Yes.

7 Q. It's required to be double stacked?

8 A. Yes, ma'am, all the way to the shim that
9 supports the item that it's supporting? All the --

10 Q. If I --

11 A. Yeah. I understand what you're saying.

12 Q. Okay. I didn't know if I was --

13 A. I understand exactly what you're saying.
14 As far as we've ever known, they've only had to have a
15 single row on the cap.

16 Q. Okay.

17 A. Now, if the manual says we have to go all
18 the way to the shim with the double stack, with the
19 double, the double caps, that's no problem.

20 Q. Okay.

21 A. That is no problem at all. But I did go
22 back and double stack all the piers that Mr. Haden said
23 needed to be double stacked.

24 Q. Okay. You stated that the Williams told
25 you that no perimeter piers were required at the exterior

1 **doors; is that what they said?**

2 A. No. I said that I talked to Mr. Williams
3 and he told me that they had paid a contractor to come in
4 and install the piers. Whether they're required at the
5 door or not I did not question him about. He said he had
6 the pier plan for the home and he hired his own contractor
7 to do the piers.

8 Q. **And you stated that you didn't set up this**
9 **home?**

10 A. No, ma'am.

11 Q. **Do you know who set up this home?**

12 A. Just off the top of my head, no.

13 Q. **Okay.**

14 A. I was just paid to -- I was just hired to
15 go back and fix the deficiencies that the Commission said
16 needed to be repaired.

17 Q. **Looking at the Williams home today, do you**
18 **believe that the Williams code -- home is in compliance**
19 **with the code?**

20 A. Your code basically shows that they need
21 to -- well, the manufacturer's code shows that it has to
22 have door piers.

23 Q. **Okay. And it does not have door piers?**

24 A. It does not have door piers, but I cannot
25 put the door piers in without a basis to put them on.

1 Q. I understand. When did you install the
2 stabilizer bars or stabilizer --

3 A. Plates.

4 Q. -- plates, thank you. The stabilizer
5 plates on the anchors?

6 A. I think I came back from Florida about the
7 second week of January, is when I got in. He had called
8 me on it previously, but I was in Florida.

9 Q. So essentially in January is when you went
10 out to the Williams' home and completed the repairs that
11 Mr. Fruend asked you to perform?

12 A. Yes, ma'am. Other than we had the -- I'd
13 talked to Mr. Haden several times on the marriage line
14 piers, and we was trying to get back and forth between the
15 manufacturer and everything, and they never could tell us
16 yes or no or whether they required it or not. So I mean,
17 the actual setup manual didn't really show that they had
18 to be double stacked, but it really didn't show that they
19 didn't. So --

20 Q. Well, would you be surprised --

21 A. And Mr. Haden told me one day, he says,
22 well, it doesn't say they don't have to be, so let's do
23 it.

24 Q. Okay. When was that phone call that you
25 made to Mr. Haden where you had confusion regarding the

1 **installation manual?**

2 A. I don't even remember. Was it in January?
3 I'm not sure. It might have been before I went to
4 Florida. It might have been the first, middle part of
5 December. I'm not really sure. I think it was before I
6 went to Florida.

7 **Q. So you didn't have a copy of the Cavalier**
8 **home manual when you were going in and making these**
9 **corrections?**

10 A. I had one at the house, and I read through
11 it. That's where I got the phone number and everything
12 for -- for them. I had the manufacturer's code at the
13 house, but I wanted to call him, because their book didn't
14 really say it had to be double stacked. It didn't say it
15 didn't. So that's why I contacted him.

16 He said his version -- in his personal
17 opinion, anything over 36 inches needed to be stacked, but
18 you know, it's -- depends on kind of how you want to look
19 at whether you want to actually consider them support
20 piers or if you want to just consider them marriage line
21 piers. It's --

22 **Q. Okay.**

23 A. I don't think Cavalier really defined
24 between the two.

25 MS. WESTON: I have no further questions.

1 JUDGE MILLS: Thank you. Questions from
2 the Bench, Commissioner Murray?

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Are you an independent contractor?

7 A. Yes, ma'am.

8 Q. And are you a setup and installation
9 contractor?

10 A. Yes, ma'am.

11 Q. Have you worked for America's Home Builders
12 on other occasions?

13 A. We used to repossess homes for Greentree
14 Finance years ago. I was -- I went out and tore a lot of
15 homes down, set some up. I've worked through Coachman
16 Homes. I've done work through I believe it was -- I think
17 I've done a few for Clayton and several others.

18 Q. Was Greentree Finance associated with
19 America's Home Builders?

20 A. No. They're -- they're one of the largest
21 finance corporations that finance mobile homes. They're
22 out of Earth City.

23 Q. Okay. Then I don't know if you answered my
24 question. I asked if you had worked on other occasions
25 for America's Home Brokers?

1 A. Yes, I used to do tear downs and setups on
2 repossessed homes a long time.

3 Q. **Have you done any work for Fruend**
4 **Investments?**

5 A. Most of it is on -- yes, I do some work for
6 Fruend Investments. Most of it is like roofing and vinyl
7 siding and stuff like that.

8 Q. **Have you done any setups or installations?**

9 A. No, not setups. We do do a few of the tear
10 downs on used homes.

11 Q. **So are you -- has your work for Fruend**
12 **Investments been in one of these two subdivisions in**
13 **Lincoln County that were referenced earlier?**

14 A. A lot of it.

15 Q. **And those are new, that's -- those are new**
16 **subdivisions?**

17 A. They've been there several years.

18 Q. **Oh, they have?**

19 A. Yeah.

20 Q. **And tell me again, you've taken down,**
21 **disassembled?**

22 A. We've taken down double-wides.

23 Q. **Double-wides?**

24 A. Yes, double and single-wides, take them
25 back apart, put the axles and tires and tongues back on,

1 prepare them for transport.

2 Q. Is that sometimes for resale?

3 A. No. Most of the time it's just for
4 private. Most of our work is for private -- private
5 individuals.

6 Q. Okay. But the times you've done this in
7 those two subdivisions in Lincoln County, you've done it
8 for Fruend Investments?

9 A. Sometimes I work through Fruend
10 Investments, but basically what it is, people would just
11 buy, like, a piece of ground and they'll have -- they'll
12 buy like a piece of ground from Todd or through a real
13 estate agent or something. They'll go over, put a
14 basement or whatever in. Then we move the home and
15 install them back up. They have them all installed back
16 up. We just do the actual tear downs most of the time.

17 COMMISSIONER MURRAY: I think that's all I
18 have. Thank you.

19 THE WITNESS: You bet.

20 JUDGE MILLS: Commissioner Clayton?

21 COMMISSIONER CLAYTON: No questions.

22 JUDGE MILLS: Commissioner Appling?

23 COMMISSIONER APPLING: One question.

24 QUESTIONS BY COMMISSIONER APPLING:

25 Q. How are you doing? I'm going to try to

1 stick to one question anyway.

2 A. Okay.

3 Q. In the name of time. Say if I went and
4 bought a new manufactured house and you were the
5 subcontractor for setting it up for the setup plan.
6 Describe to me what happens at the site in which you want
7 to set it. Would you go and I go out there and take a
8 look at the site and determine whether the lot is big
9 enough and whether we can get the home set on the lot
10 correctly?

11 A. Yes.

12 Q. Would that take place?

13 A. It's part of site, what they call site
14 preparation, yes.

15 Q. Is that -- do you actually take the owner
16 of the house out there and take a look?

17 A. Usually it's me.

18 Q. Meet them out there and take a look?

19 A. Yeah.

20 Q. And you decide on what needs to be done?

21 A. Yes, sir.

22 Q. You've been in this business how long?

23 A. Right at 20 years.

24 Q. Is it that difficult to do this?

25 A. It's a pretty good size job, yes.

1 Q. But not impossible?

2 A. No.

3 Q. You kind of feel that when people buy a new
4 home and that's probably the biggest investment they make
5 in their life?

6 A. Yes, sir.

7 Q. They have the right to expect them to be --
8 for you or whoever is doing the setup to do it correctly,
9 right?

10 A. Yes, sir.

11 COMMISSIONER APPLING: Okay. Thank you.

12 JUDGE MILLS: Is there cross-examination
13 based on questions from the Bench?

14 MS. WESTON: No, Judge.

15 MR. MASS: No, your Honor.

16 JUDGE MILLS: Redirect?

17 MR. MASS: No.

18 JUDGE MILLS: Mr. Coy, we're done with you.
19 You may step down.

20 THE WITNESS: Thank you, sir.

21 JUDGE MILLS: Mr. Mass, let's move on to
22 your last witness, please.

23 MR. MASS: Yes.

24 (Witness sworn.)

25 JUDGE MILLS: You may be seated.

1 TODD FRUEND testified as follows:

2 DIRECT EXAMINATION BY MR. MASS:

3 Q. Mr. Fruend, you were the principal owner of
4 American Home Brokers, were you not?

5 A. I was one of them, yes.

6 Q. And who was the other?

7 A. My wife.

8 Q. Okay. And how many years had American
9 Homes Broker been in operation?

10 A. I believe it started in 1997.

11 Q. Okay. And is it any longer in existence?

12 A. No.

13 Q. Do you know how many homes that you sold?

14 A. In that period of time, I would have to say
15 it would be 300, in the 3 to 400 range. I don't know a
16 definite solid final number.

17 Q. Is an inspection report kind of like a
18 punch list on a house built in a subdivision, kind of
19 stick built, as we would say?

20 A. It can be, yes. Yes.

21 Q. Up until the end of 2003, did you have any
22 trouble with regard to inspection reports and complying
23 with them?

24 A. No. We had had some issues and they were
25 always addressed in a timely manner.

1 Q. And had you ever had any citations that
2 went -- or inspection reports that went unfulfilled on any
3 of these many homes?

4 A. Not that I'm aware of, no.

5 Q. What happened generally to the manufactured
6 home market towards the end of 2003?

7 A. The retail financing was almost impossible
8 to get, and therefore, unless you had a cash buyer, you
9 couldn't sell your houses, your inventory.

10 Q. Was this affecting other dealers besides
11 yourself?

12 A. Yes.

13 Q. Are there fewer manufactured home dealers
14 now in the Lincoln County/St. Charles County area than
15 there used to be?

16 A. Yes.

17 Q. Can you tell me, for example, how many used
18 to be in St. Charles County?

19 A. I believe there used to be five in
20 St. Charles County.

21 Q. How many are there now?

22 A. Two that I'm aware of.

23 Q. How about in Lincoln County?

24 A. There was three or four.

25 Q. How many are now?

1 A. There's two. Yeah, there's two that I'm
2 aware of.

3 Q. Okay. What was the financial condition of
4 American Homes Broker at the end of 2003?

5 A. It was terrible.

6 Q. What do you mean by terrible?

7 A. I was losing about 20 to \$25,000 a month.

8 Q. And were you attempting to wind up your
9 business?

10 A. I was trying to do anything I could do to
11 stop the bleeding, so to speak, just seeking to sell the
12 inventory at cost, do anything I could do to keep from
13 filing bankruptcy.

14 Q. Did you consult with a bankruptcy attorney?

15 A. On several occasions.

16 Q. Were you concerned simply about the
17 bankruptcy of American Homes Broker?

18 A. No. It would have been personal bankruptcy
19 also.

20 Q. Why was that?

21 A. The personal guarantees on lines of credit
22 and the personal guarantee on the inventory finance
23 program.

24 Q. Okay. What was the outstanding debt on the
25 inventory financing program?

1 A. About \$335,000.

2 Q. And that was to Textron?

3 A. Yes.

4 Q. Had you been able to pay sales tax at that
5 point?

6 A. No.

7 Q. And how much was owed?

8 A. I believe the number was like 35,000,
9 38,000.

10 Q. How about other debt, credit cards for the
11 company?

12 A. That was another about \$75,000.

13 Q. Okay. And was this debt that you and your
14 wife are personally involved in?

15 A. Yes.

16 Q. Did you try and give the homes back and
17 have them sold by the finance company?

18 A. We explored that option, but as soon as we
19 would have made that move, we would have had to file
20 bankruptcy because they would have liquidated the homes
21 for less than what was owed, and I had no way to come up
22 with the difference in the money, which would have been a
23 large amount of money. I don't know a dollar amount.

24 Q. Do you know whether any other dealers
25 were -- manufactured home dealers were going -- went

1 bankrupt?

2 A. Yes.

3 Q. And who do you know went bankrupt?

4 A. First Choice Homes went bankrupt down in
5 St. Peters.

6 Q. Did American Homes Brokers have any assets
7 with which to pay some of its indebtedness?

8 A. We had the sale center at 345 John Deere
9 Drive, which was four acres of real estate.

10 Q. But you couldn't convert that to cash
11 overnight, could you?

12 A. No.

13 Q. Now, did you know your registration would
14 have to be pulled or you would lose the registration
15 for -- to sell manufactured homes?

16 A. Yes.

17 Q. And why did you know that?

18 A. Because I would not be able to pay the
19 sales tax and provide that letter that was required.

20 Q. Okay. What had your sales been previously
21 on the average?

22 A. Some of the previous years we -- I know
23 2002 we did like \$3 1/2 million in sales.

24 Q. How many homes was that?

25 A. Probably in the 60 to 70 range.

1 Q. What were your sales towards the end of
2 2003?

3 A. One every month or two. You know, we
4 were -- I don't have the exact numbers, but it was four or
5 five years prior to that we would average -- when we were
6 selling a lot of repos, we would average seven, eight, ten
7 homes a month, and we'd established a debt service based
8 on that number of employees and benefits, assets,
9 equipment to do the business with, and when the industry
10 changed, I couldn't slow -- I couldn't slow the bills
11 down, I couldn't sell the stuff fast enough to cover those
12 expenses.

13 Q. Okay. Now, there's been discussion of a
14 company called Fruend Investments?

15 A. Yes.

16 Q. What is that?

17 A. That's my company that we had bought real
18 estate with to develop a subdivision.

19 Q. Now, we talked about there being two
20 subdivisions.

21 A. Yes.

22 Q. And one is only six, seven months old?

23 A. Yes.

24 Q. But there's one that's existed since what,
25 2002?

1 A. That ground was purchased I believe the end
2 of 2001. It was -- it was purchased in 2001.

3 Q. Okay. What have you done with that ground?

4 A. We've developed it, put in streets, water,
5 electric, and then divided it up into lots to be sold to
6 individuals to have their home moved out there or to -- we
7 sold some of the lots to some of the folks that we
8 mentioned today with mobile home packages.

9 Q. You mean you would put a modular home on
10 there and sell it as real estate?

11 A. Mobile home or modular home, correct.

12 Q. Okay. And so who would buy the home?

13 A. The retail or the --

14 Q. Did Fruend Investments buy the home from
15 the manufacturer?

16 A. On some occasions, yes.

17 Q. And did they permanently affix it?

18 A. Yes.

19 Q. And then was it sold as total real estate,
20 lot, home and the other?

21 A. Yes.

22 Q. And was this done under Section 700.111 of
23 the Missouri code?

24 A. I believe so, yes.

25 Q. And was that done in accordance with your

1 attorney's advice on how to do that as selling real
2 estate?

3 A. Yes.

4 Q. Did you also sell other lots in that
5 subdivision and then set up homes for people that already
6 owned the homes?

7 A. Yes.

8 Q. And did you also sell lots where other
9 manufactured homes or modular home dealers sold homes to
10 customers and they brought it in and set it up --

11 A. Yes.

12 Q. -- on the finished lot?

13 A. Yes, we did.

14 Q. Now, going back to some of these specific
15 homes and some of the issues, let's talk about the
16 Williams home. That would be in Count 3.

17 A. Okay.

18 Q. And I believe that's Exhibit 11. Is there
19 a copy of the contract there?

20 A. Yes, there is.

21 Q. Okay. And what does the contract state
22 with regard to the piers?

23 A. Set up on customer's piers.

24 Q. And did you give the Williams a copy of the
25 pier instructions and diagram where all the piers were

1 **supposed to go?**

2 A. Yes. I also gave them an estimate on
3 having us to do the piers, too, which was -- we offered
4 that service if a customer wanted us to do the piers.

5 Q. **Did they want you to do the piers?**

6 A. No. They had someone that was going to do
7 it for less money than what we offered to do it for.

8 Q. Okay. So when the home came there to be
9 set up, was it set up on the piers that had been put in
10 there by a contractor that the Williams had contracted
11 with?

12 A. Yes.

13 Q. Okay. And that was per your contract?

14 A. Correct.

15 Q. And did you suggest to them that they go
16 back and put in these other piers?

17 A. When we realized that they were not there,
18 yes, we did.

19 Q. And did they do that?

20 A. No.

21 Q. If they set up -- if they poured these
22 other piers, would you be more than willing to go back and
23 put up the concrete blocks to shore up the home underneath
24 those piers near the front and back door?

25 A. Yes. We've offered that on several

1 occasions.

2 Q. Okay. Now, with regard to those
3 fireplaces, have you personally observed the air inlet
4 into the fire boxes?

5 A. In fire boxes similar to that one. I
6 haven't pulled that fire box out of the wall to dismantle
7 their house to observe that particular one. They are all
8 constructed of the same design and method.

9 Q. And how wide is that inlet?

10 A. Two inches by two inches.

11 Q. Okay. Is there any vent to draw in air at
12 any higher rate than would normally go into a
13 two-inch-by-two-inch inlet?

14 A. There's a blower in the house that moves
15 air across the fire, but the vent itself is just a fresh
16 air, and it just draws at a natural -- a natural speed,
17 whatever combustion goes on in the fireplace, it draws
18 enough air to make that combustion through that 2x2 hole.

19 Q. Have you seen the fireplaces in the two
20 homes that have fireplaces operate?

21 A. I've seen smoke come out of the chimney. I
22 haven't gone in and sat with them at the fireplace, but I
23 have seen smoke come out of the chimney.

24 Q. And have they both functioned
25 appropriately, as far as you know?

1 A. Yeah. Neither one of the customers have
2 commented that they had problems with the function of
3 them.

4 Q. Now, with regard to the Gray home, were you
5 present when the foundation was dug or the hole in the
6 ground was dug before the foundation was put in for the
7 crawl space?

8 A. I was out there after it. I wasn't out
9 there when they dug it. I was out there after it had been
10 dug.

11 Q. Okay. How big was that dug compared to the
12 dimensions of the foundation for a crawl space?

13 A. The standard is two foot bigger on all four
14 sides, which would make the hole four foot bigger than the
15 foundation that goes in the hole, two foot on each end.
16 And that's called the overdig.

17 Q. Were you there when the hole was filled?

18 A. Yes.

19 Q. Was there a vapor barrier put in there?

20 A. There was a vapor barrier installed under
21 there. There's at least two foot of rock in there, and if
22 you look at the front door of the house from the left side
23 of the house to the right side of the house, there's about
24 three inches of slope on the flat ground on the bottom.
25 Then there's rock put on top of that, and then the

1 footings are installed on top of that. Then there's
2 actually some more rock in between the footing that they
3 filled to hold the footing in there so it does not move.

4 Q. Now, if water comes in on top of the vapor
5 barrier as it travels underground but it still kind of
6 seeps in because it's on top of where the vapor barrier
7 is, was there an outlet for how that water would get out
8 from underneath that crawl space?

9 A. There's a daylight drain and it's also
10 considered a trench drain that's from the foundation and
11 it heads across the yard out to the two-car garage on the
12 rear of the property.

13 Q. Is that underneath ground?

14 A. Yes.

15 Q. And then it comes out above?

16 A. Yes.

17 Q. What happened to that drain?

18 A. It was clogged. It was -- had rocks and
19 stuff put in the end of it.

20 Q. And who did that?

21 A. Mike, the resident of the home.

22 Q. And did he explain to you why he did that?

23 A. He didn't want the water coming out there
24 and freezing up on his driveway and making his driveway
25 muddy where he brought his motorcycle in and out.

1 Q. When that was clogged up and stopped, did
2 that effectively eliminate the drainage from being able to
3 occur under the crawl space?

4 A. It would definitely hamper that operation.
5 That pipe is -- some of that pipe is perforated so there's
6 a chance that some of the water could go out there and
7 dissipate, but it's really designed with a daylight drain
8 to -- if you get flow, to flow out there.

9 Q. Now, since that flow couldn't occur, was
10 that the reason you had to put in a sump pump?

11 A. Yes.

12 Q. Now, with regard to that Convert-A-Tub,
13 were they -- two converted tubs all installed by the
14 person you purchased it from?

15 A. The Convert-A-Tub company, yes.

16 Q. And were they as far as you know in
17 compliance with what the code should be and the
18 requirements of the manufacturers?

19 A. That's what I contracted them to do. You
20 know, that's what -- you know, I guess the general
21 assumption would be that if you pay a guy that that's his
22 business to do it, that he did it that way.

23 Q. And, in fact, at first there was some
24 exceptions on one of the inspection reports concerning the
25 electrical box and the switch. That was taken care of?

1 A. Yes. I contacted the company and requested
2 that they return out there and fix it.

3 Q. And the other thing left to do was putting
4 the electrical line in a conduit; is that correct?

5 A. Correct.

6 Q. Now, did you believe it needed to be in a
7 conduit?

8 A. The way I read the code, no.

9 Q. And why?

10 A. It says readily accessible, exposed to
11 moisture, and I don't know that anybody would crawl under
12 there and pull on the wire or do anything to it. And it
13 is three or four feet off the ground, so I don't know how
14 it would be -- would get wet or get, you know, played with
15 or tampered with.

16 Q. Was that eventually put in conduit?

17 A. Yes, it was.

18 Q. In this house and all the other uses that
19 you had a disagreement with Mr. Harden?

20 A. Yes.

21 Q. In fact, you had a disagreement with
22 Mr. Haden over the roof caps, did you not?

23 A. Yes.

24 Q. And what was that disagreement?

25 A. I'd never seen it written up before, so at

1 first it was just kind of confusion on what actually was
2 there.

3 Q. What was written up that you had never seen
4 before?

5 A. Prevailing winds and that the shingles
6 needed to be changed to the opposite direction of
7 prevailing winds. And in one instance it said that it
8 needed from the north -- or from the south, and the other
9 instance, it was from the west. Like I said, I -- really
10 basically confusion. And I asked several people, and so
11 we tried figure out what it was. At first it was pretty
12 much confusion as to what was being wrote up.

13 Q. Did Mr. Haden give you citations to any
14 regulation, instruction manual or anything of that nature
15 justifying what that was?

16 A. On the prevailing winds, no. I didn't even
17 know where the prevailing winds could come from, because
18 the wind blows different directions different times of the
19 year for continued periods of time. We'll get winds out
20 of the north, out of the south, out of the west, normally
21 not out of the east. So I don't know what direction they
22 really should be.

23 Q. Okay. Did you eventually change the roof
24 caps?

25 A. Yes. Yes.

1 Q. Are some of the caps in two of these
2 homes -- these four homes, you changed them, are they
3 pointing in different directions for the prevailing winds?

4 A. Yeah. The houses are facing different
5 directions, yes.

6 Q. So the caps would have to face different
7 directions?

8 A. Yes.

9 Q. And in those two cases, Mr. Haden was
10 inconsistent what the prevailing wind was?

11 A. Yes.

12 Q. Are they both in Lincoln County?

13 A. Yes.

14 Q. But eventually you just did what he wanted
15 you to have done?

16 A. Trying to get it resolved, yes.

17 Q. Now, with regard to other matters with
18 regard to the Gray home, is there anything else in the
19 Gray home that we haven't covered yet that you can recall?

20 A. I believe all the repairs have been made.
21 The only other thing on the Gray home was there was an
22 original inspection that a lot of things on the inspection
23 weren't noted. And that was kind of a surprise when the
24 second inspection came in. I thought we were pretty well
25 completed with the list and there was a new list added.

1 Q. Now, the second inspection, was that in May
2 of 2004?

3 A. Yes, it was.

4 Q. Was American Home Brokers pretty much out
5 of business by that time?

6 A. Yes.

7 Q. And you were just winding it up?

8 A. Yes.

9 Q. Okay. And, in fact, when was that lot
10 sold?

11 A. The final closing date was May the 20th, I
12 believe.

13 Q. So you no longer even had a sales lot?

14 A. Correct.

15 Q. Okay. And you had no place to operate?

16 A. Correct.

17 Q. And, in fact, you didn't get some of the
18 notices that the Commission sent you until months later?

19 A. Yeah. I received a certified letter to my
20 residence.

21 Q. Okay. When was that?

22 A. I believe it was in July.

23 Q. Now, let's go on to the Cameron/Sassmann
24 home.

25 A. Which count is that?

1 Q. 2.

2 A. Okay.

3 Q. Did you try on various occasions to make
4 some of the repairs or changes, repairs, services
5 requested in these inspection report that Cameron --
6 Ms. Cameron and Ms. Sassmann did not allow?

7 A. Yes.

8 Q. And what was that?

9 A. We offered to install the posts from the
10 ground to the marriage line on two or three different
11 occasions. She wanted us to explore some other options,
12 some other way to do it. I spoke to Mr. Haden on the
13 phone when I was standing in Mrs. -- in their living room,
14 Cameron and Sassmann's living room. They handed me the
15 phone and we discussed maybe building a header to span the
16 distance between the beams that were already in the home
17 so that they didn't have a post in the middle of their
18 floor.

19 We talked about wooden headers. We talked
20 about laminated beams. We talked about several different
21 options. We could not get anyone to provide us a
22 structural engineer's certificate that would say that that
23 would meet the guidelines that Mr. Haden is required to
24 make me meet. So we couldn't do that.

25 They -- they went back and forth. I needed

1 to have the beams cus-- the posts custom made because of
2 their length, and I told them, I said, I need to know that
3 you want these. I don't want to go buy them and have them
4 and you refuse to let me put them in. So tell me that you
5 want them or tell me that you don't want them. They said
6 they didn't want them. I left it at that at that point.
7 Came back that they did want them. So we went ahead and
8 ordered them, had them made, and they are installed at
9 this point.

10 Q. Now, in that home there was an issue of
11 damage to some of the -- this one I-beam; is that correct?

12 A. Yes.

13 Q. And did you believe that structurally
14 impaired the house?

15 A. I didn't. I mean, I'm not a structural
16 engineer, but I got the report. I read it.

17 Q. You got a report from a structural
18 engineer?

19 A. At this point I do, yes.

20 Q. Okay. And that was just last week?

21 A. Yeah.

22 Q. And that's in the exhibit that's
23 Exhibit 10?

24 MS. WESTON: Object to that report, it's
25 hearsay. I'm going to object to it being offered as an

1 exhibit as well.

2 MR. MASS: It hasn't been offered yet. Let
3 me -- I'm not sure exactly what the question was going to
4 be.

5 BY MR. MASS:

6 Q. Well, did you get that report in order to
7 make sure that the safety of that home, the integrity of
8 the home as it's placed as real estate is complete?

9 A. Yes.

10 Q. Are you willing to comply with all the
11 terms of that home?

12 A. Yes.

13 Q. And did you know that --

14 JUDGE MILLS: Hang on. Slow down. Slow
15 down. The fact that he solicited and got a report I don't
16 believe is hearsay. Once you get started into the
17 specifics of what the report says and what Mr. Fruend is
18 willing to do in response to the report, then I think
19 you're getting into that ground.

20 And I want you to slow down enough that
21 Ms. Weston has a chance to object to your questions if she
22 chooses. So I'm not sure that we've gotten into hearsay
23 yet, but I think you're heading that way, and I want to go
24 slow enough that Ms. Weston has a chance to respond.

25 MR. MASS: I don't have the structural

1 engineer here. I'll offer as an offer of proof that it's
2 a stamp, the man has sealed the report, it's a -- sealed
3 by a professional engineer who says that structurally this
4 house is safe and it's sound and all he would suggest is
5 that there would be a shim in a sense put in in the
6 opposite side where there's a little gap between that beam
7 and the other steel beam and that it be welded, and that
8 this house will be secure and there is no problem there. \

9 And that's what I -- so we can take it as
10 hearsay, not hearsay, but I'll try and get it out of the
11 hearsay. But that's kind of the essence of it, if the
12 court wants to hear it and then say we strike it,
13 whatever.

14 JUDGE MILLS: I understand your offer of
15 proof.

16 MR. MASS: All right.

17 BY MR. MASS:

18 Q. Mr. Fruend, in order to determine the
19 integrity of the home and to say that the owner got what
20 they wished to get, would you normally get a structural
21 engineer's report?

22 A. No.

23 Q. Okay. Would you in this case get that
24 report to satisfy the homeowner?

25 A. Yes.

1 Q. And was that structural engineer under a
2 duty to report to you accurately on what was appropriate
3 to do with regard to that beam?

4 A. Yes.

5 Q. Okay. And you're willing to satisfy all
6 the requirements of that report?

7 A. Yes.

8 Q. And, in fact, if you would go into court
9 because Mrs. Cameron and Ms. Sassmann say they didn't get,
10 quote, the benefit of the bargain, would you bring that
11 structural engineer and do the same thing in order to
12 prepare for court to show them that you were going to
13 secure the safety of their home?

14 A. Yes.

15 Q. Now, then, with regard to the leveling of
16 the doorway to the master bedroom, have you gone in and
17 seen that, the master bedroom, the doorway?

18 A. Yes.

19 Q. And have you generally observed the --
20 whether it's even or uneven?

21 A. Yes.

22 Q. And what have you observed?

23 A. It's right at about an eighth of an inch
24 difference in the transition. And again, that is where
25 the grab strip, gold bar, the carpet pad and the carpet

1 terminate and they go to a piece of linoleum, which is a
2 nice flat level surface. That's all happening in that
3 doorway at the marriage line.

4 Q. Okay. Did you offer to go back and even
5 change the marriage line?

6 A. Yes, I did.

7 Q. And what did you tell Ms. Cameron and
8 Ms. Sassmann you could do?

9 A. I told her in the conversation with Paul
10 Kittle present, I said, we can try to adjust those
11 doorways and openings. And she asked what was involved in
12 that. I said, there will be a person downstairs with a
13 jack and we'll have to unlag the area. We'll do one area
14 at a time, one person upstairs, and we will get it level,
15 and then relag it. And she said, okay. And I said, do
16 you want us to do that? And she said, not at this time.

17 Q. Okay. Now, going on to the -- we covered
18 the Williams home -- the Kennon home. Going to the Kennon
19 home, on the venting in the Kennon home.

20 A. Yes.

21 Q. Okay. Did you discuss whether or not the
22 window was a proper vent with the -- with anyone at the
23 Public Service Commission?

24 A. One of the preliminary hearing things I
25 asked Ron Pleus if the window counted and he stated that

1 it did count.

2 Q. Okay. Now, even though it has a glass, did
3 he say it counted?

4 A. I asked him if it counted. He said it
5 counted.

6 Q. Okay.

7 A. I took it to believe that if you can open
8 and close a bathroom window to vent in a house, that you
9 can open and vent a window in a crawl space to vent the
10 crawl space.

11 Q. With regard to that window, if for instance
12 the Public Service Commission insists that it can't count
13 because it has glass in it, would you be willing to go in
14 there and put in a permanent screen --

15 A. Sure.

16 Q. -- that would sit there so that it can
17 vent?

18 A. Yes.

19 Q. Would that serve -- would it serve any
20 additional purpose to go in and put in another six, seven,
21 eight, nine vents around the house any different than
22 putting a screen in that window?

23 A. The problem would be the homeowner won't
24 let me do any -- put any more vents in his house.

25 Q. Did you ask the homeowner?

1 A. Yes, I did.

2 Q. How many vents are in that house?

3 A. I believe at this time there's 12 with the
4 window, or 12 and the window.

5 Q. Are those 12 vents of the 8x16?

6 A. Yes.

7 Q. And how much is the opening of an 8x16,
8 square footage wise?

9 A. The plastic vents I figured up to be .89
10 square feet.

11 Q. Per vent?

12 A. Yes.

13 Q. And 12 of them comes up to 10.68 square
14 feet?

15 A. Yes.

16 Q. And then if you added the venting from the
17 window that would add it over 16 square feet?

18 A. Yes.

19 Q. Now how many square feet did you calculate
20 needed to be vented?

21 A. We actually used -- the formula that we
22 keep referring to is for homes that are skirted. This
23 home is not skirted. We actually used the building code
24 and the Architectural Handbook. It comes out with a
25 different formula, and it actually comes up to be a lot

1 less vents.

2 Q. Do you have a copy of the formula from the
3 Architectural Handbook?

4 A. Yes, I do.

5 Q. And that says if it's covered soil, you
6 only need a square -- one square foot per 1600 square foot
7 of crawl space?

8 A. That's the way I read it, correct.

9 Q. Okay. Is there covered soil in the Kennon
10 home?

11 A. Yes, it has a vapor barrier.

12 Q. Now, even without the covered soil, though,
13 it has enough venting to satisfy the requirement of one
14 square foot per 160 square feet for uncovered soil?

15 A. I believe so, yes.

16 Q. Now, when we go to the end of 2003 and with
17 the situation you were facing --

18 A. Yes.

19 Q. -- at that point in time, did you end up
20 with a lot of extra debt personally after all the homes
21 were sold and all the homes were moved and the lot was
22 sold?

23 A. Yes.

24 Q. And how much was that?

25 A. In excess of \$150,000.

1 Q. And has some of that been paid down since
2 then?

3 A. Yes. I pay \$3,000 a month to Textron
4 Financial, and I pay another about \$2,200 a month on lines
5 of credit and credit cards.

6 Q. How much is left to be paid?

7 A. In excess of \$100,000.

8 Q. And you're still undertaking to do that?

9 A. Yes, we are.

10 Q. Did that include paying on the sales tax
11 obligation?

12 A. That was paid on closing. When we sold the
13 real estate, they were the first people to get paid.

14 Q. So when the real estate was sold, you paid
15 off the mortgage?

16 A. Yes.

17 Q. And then the sales tax?

18 A. Yes. It was all taken right off the
19 closing statement before I could get any money.

20 Q. And then the rest of the money went to?

21 A. Paid 80 or \$90,000 to Textron at that time.

22 Q. Now, with regard to the list of homes that
23 was Exhibit 6, it's part of our exhibit from Count 5 on
24 the used homes, were some of those homes not yours and not
25 yours for sale?

1 A. Yes, they were not mine.

2 Q. For instance, the first one, whose home was
3 that?

4 A. I believe that to be a double-wide that was
5 owned by Chase Finance.

6 Q. And how come it was on your lot?

7 A. We had several months, almost a year
8 earlier done a repossession, a sheriff eviction on that
9 home, and it was brought there to be resold, not by us,
10 but Chase was -- they brought it there to resell.

11 Q. Did you ever resell it?

12 A. No.

13 Q. How did it end up getting taken off your
14 lot?

15 A. Chase finally after call after call of --
16 had arranged to get it picked up.

17 Q. Okay. How about the next two, those next
18 two used ones, what happened to those?

19 A. Those two were taken to the junk yard by
20 Swann's Transport.

21 Q. Did they take a couple others to the junk
22 yard?

23 A. There were some very raggedy old ones,
24 eight and ten and twelve wide on the back lot, and they
25 took most of them.

1 Q. Did they give you a bill for having
2 transported those?

3 A. Yes.

4 Q. Did -- the next Clayton one there was a
5 contract on that --

6 A. Yes.

7 Q. -- that you'd already given?

8 Now, the second to last one used, it's a
9 modular 12 wide?

10 A. That's my own personal office trailer.

11 Q. Okay. Do you still have that?

12 A. Yes, I do.

13 Q. Did it ever get sold?

14 A. No.

15 Q. The next one down there is a used double?

16 A. To the best of my records, that home would
17 have been sold to Tom Furman (ph. sp.) prior to the red
18 tag.

19 Q. Okay. Did you include a copy of this to
20 Tom Furman?

21 A. Yes.

22 Q. Now, it says it was sold in October, and it
23 sold used?

24 A. Yes.

25 Q. Why was it still on the lot in February?

1 A. Waiting for soil to get -- or septic to get
2 installed. It was going to Warren County, and in Warren
3 County the home can't be moved to the site until the
4 septic has been installed and passed inspection, and that
5 can only be done when the weather's permittable (sic) for
6 the septic. So that septic had delayed that home being
7 delivered.

8 Q. Okay. Now, with regard to these other
9 homes, the next one was the Phillips?

10 A. I believe so, yes.

11 Q. Okay. Do you know when that was sold?

12 A. On or about the middle of February.

13 Q. Okay. You have a sales contract as part of
14 the exhibit to the Phillips, but it doesn't have a date?

15 A. Correct.

16 Q. And you don't recall the specific date?

17 A. No. That was a land/home deal, and they'd
18 been in, they'd put some money down on the home, and the
19 home was definitely still there when it was red tagged
20 because it was waiting on foundation, it was waiting on
21 sewer, it was waiting on everything, all the site
22 improvements to be done.

23 Q. Okay. The next one was a home. Who was
24 that eventually sold by?

25 A. Fruend Investments.

1 Q. Okay. How did that come about?

2 A. I went to the bank and got a construction
3 loan and purchased the home and tied it with a piece of
4 real estate and sold it as a real estate.

5 Q. And you had a sales contract to Mr. Paul
6 Schmidt?

7 A. Yes.

8 Q. And you sold it as a package of \$135,000?

9 A. Yes.

10 Q. And what would that normally have sold if
11 it was just a mobile or manufactured home?

12 A. We normally sold that house for I believe
13 \$35,900.

14 Q. The next one was a contract to a
15 Mr. Cutright?

16 A. Yes.

17 Q. And when was that contract entered into?

18 A. January the 23rd of 2004.

19 Q. Was that eventually delivered for
20 Mr. Cutright?

21 A. Yes, it was.

22 Q. And how about the next one, Mr. Barkley?

23 A. Yes, that was February the 1st of 2004.

24 Q. Okay. That was sold for kind of a lower
25 price. Why was that?

1 A. I mean, I was either selling them or I was
2 going to have to file bankruptcy. And, you know, sell
3 them for any price was better than to come up where we
4 ended up 70,000 short, was better to end up there than
5 150, 300,000 short. So we were pretty much kind of fire
6 sale at the end, anything we could sell them for we sold
7 them.

8 **Q. And how about the last one to Mr. and**
9 **Mrs. Ballard?**

10 A. I believe the last one is the Ballard home.
11 The numbers are off, but I believe that to be the Ballard.

12 **Q. What do you mean the numbers are off?**

13 A. The serial number on the inspection report
14 and the sales contract are different, but I didn't have
15 any other homes. My line of credit with the company had
16 been shut off for months, so I didn't have any new homes
17 coming in. So it has to be right. I mean somebody made
18 an error in the documentation, but it has to be that home,
19 to the best of my knowledge.

20 **Q. You have no other home?**

21 A. No.

22 **Q. And the one for the Ballards, how long had**
23 **that been on your lot?**

24 A. It had been there probably seven or eight
25 months.

1 Q. Okay. Did you do the best you could to
2 comply with all of the requirements?

3 A. I did everything I could do with the
4 financial situation that we were under.

5 Q. Okay. With regard to the repairs of some
6 of these homes under the contract -- these four homes
7 under the current inspection report, some of them have
8 been kind of late in coming. Why was that?

9 A. A lot of it was the financial situation,
10 having to pay to get, you know, materials and parts and
11 pay labor to facilitate the repairs. And some of it was a
12 discrepancy in what needed to be done, what was required,
13 and at the end we finally -- just to make it right, we
14 just did it all.

15 Q. If there's anything remaining that still
16 could be done or that's an issue, are you willing to go
17 out and make those repairs?

18 A. Sure.

19 Q. Okay. And this is not coming from
20 America's Home Brokers which had the license but from you
21 personally; is that correct?

22 A. Correct. Yes.

23 MR. MASS: No further questions.

24 JUDGE MILLS: Cross-examination,

25 Ms. Weston?

1 MS. WESTON: Yes. May I have five minutes,
2 please?

3 JUDGE MILLS: Sure. We'll take a
4 five-minute recess and be back on the record at quarter
5 'til four.

6 (A BREAK WAS TAKEN.)

7 JUDGE MILLS: Let's go back on the record.
8 While we were off the record, Mr. Mass mentioned that he
9 had one question left. Since we haven't yet started
10 cross-examination, I'll allow you to go ahead.

11 MR. MASS: There may be one other.

12 BY MR. MASS:

13 Q. Okay. The home in Count 5 that you sold to
14 Mr. Schmidt, was that financed as real estate?

15 A. Yes.

16 Q. By Mr. Schmidt?

17 A. Yes.

18 Q. And what kind of financing was it?

19 A. FHA.

20 Q. Was there an FHA inspection?

21 A. Yes.

22 Q. Huh?

23 A. Yes.

24 Q. And did you have to pass all the
25 FHA requirements?

1 A. Yes.

2 Q. There was one other issue that Mr. Haden
3 brought up that -- when he went to red tag the home,
4 somebody couldn't produce various documents. What
5 happened at that time as you recall?

6 A. I was in Florida. A lot of the
7 documentation was at the bankruptcy attorney's as he was
8 reviewing it, and some of it was at my residence in
9 transition to go there to try to make an educated decision
10 on which direction to head with the situation we were in.

11 Q. What was happening on the phone that was
12 going on at your office that you could tell from over the
13 phone?

14 A. Angie Ruckel called me very disturbed that
15 she didn't know if she should go home or what she should
16 do, that Mr. Haden came to the office and said that he was
17 shutting us down. She was very --

18 MS. WESTON: I object. This is hearsay.

19 JUDGE MILLS: I think you can testify to
20 what -- from your perspective, what was going on. I don't
21 think you can -- you can't testify to what your office
22 person was talking about. So confine it to your
23 perspective,

24 what you were -- how you were involved in the --

25 THE WITNESS: I can't say what she told me,

1 or I -- I mean, what can I -- I mean, that's --

2 JUDGE MILLS: That's hearsay. You can't --
3 if she were here, she could talk about what she said.
4 According to the rules of evidence, you can't tell us what
5 she said, except for some limited exceptions that I don't
6 believe this falls into.

7 BY MR. MASS:

8 Q. What was going on between you and
9 Mr. Haden?

10 A. I asked him to leave because I wasn't there
11 to deal with the situation, and Angie -- Angie couldn't
12 deal with it.

13 MR. MASS: I have no further questions.

14 JUDGE MILLS: Thank you. Ms. Weston,
15 cross-examination?

16 CROSS-EXAMINATION BY MS. WESTON:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. We're just about done here. I want to go
20 back to the Gray home and talk about that a little bit.
21 You did not install the Convert-A-Tub?

22 A. Correct.

23 Q. Did you hire someone to install the
24 Convert-A-Tub?

25 A. America's Home Brokers hired Convert-A-Tub

1 company to install the tub.

2 Q. Who paid for Convert-A-Tub to do the -- to
3 do the work?

4 A. America's Home Brokers.

5 Q. Did you submit an application to the
6 Commission?

7 A. Yes, I did.

8 Q. Was it -- was it approved?

9 A. No.

10 Q. Why not?

11 A. Because I wouldn't -- I wouldn't guarantee
12 that it would be done up to code because I didn't know
13 what that would entail. And I contacted my counsel at
14 that time, and he said, you can't guarantee that because
15 you don't know, and I don't know.

16 Q. Didn't you testify earlier that if you
17 hired a company, that you would make sure -- didn't you
18 say that you would assume or make sure that they would
19 meet the codes and standards?

20 A. I would think that they were doing that,
21 and that's what they do for a living, you know.

22 Q. So you believe that the application that we
23 asked you to fill out somehow makes you liable for the
24 installation work and that's why you would not provide
25 that documentation?

1 A. I guess so, yes.

2 Q. Are you aware that many other dealers on a
3 daily basis provide this documentation and appear to do it
4 and fulfill the requirements on items similar to this?

5 A. I really have no knowledge of what another
6 dealer would do. I can't put myself in their shoes.

7 Q. Okay. You testified that the centerline --
8 I'm sorry. Let's go back.

9 Count 2, Cameron/Sassmann you testified
10 that there was some sort of gap in the centerline and you
11 said that it was an eighth of an inch?

12 A. I said something about a gap. We're
13 talking about a hump, the transition between carpet pad,
14 carpet bar and linoleum.

15 Q. Okay. And how do you know it's an eighth
16 of an inch?

17 A. I got down on my hands and knees and rubbed
18 my hand over it.

19 Q. Okay. And that hump is from -- you're
20 contending that it's from just carpeting and carpet bars
21 and things of that nature and it has nothing to do with
22 the actual leveling of the home?

23 A. No, I didn't say that. Those are all
24 contributing factors to that eighth of an inch.

25 Q. Okay. I know that the roof cap is not on

1 the list of issues but it's been brought up, so I just
2 have to ask a question regarding that. I understand from
3 previous testimony that the roof cap, I think it was on
4 the Williams home, blew off on a couple of different
5 occasions?

6 A. Yes.

7 Q. And that also it's been noted today that
8 there was an inspection performed by Mr. Haden March of
9 '04 where he indicated that there was some issues
10 regarding the roof cap. And in that report I do believe
11 that he indicated the proper direction for those roof --
12 for that roof cap to be installed. Did you go through and
13 install the roof cap based upon that recommendation?

14 A. The recommendation was made on that. It
15 was also made on a different direction on a different
16 home. I got confused because it was blowing two different
17 directions.

18 Q. I'm talking about the Williams home I do
19 believe right now.

20 A. The correction's been made.

21 Q. Okay. Now, so you made the correction
22 based upon Mr. Haden's recommendation --

23 A. Yeah.

24 Q. -- for the Williams home?

25 Do you know if it's blown off since then?

1 A. I have no idea.

2 Q. Okay. When we were discussing the
3 ventilation issue, you mentioned that the ventilation was
4 being installed in accordance with the IRC?

5 A. The architectural alignment.

6 Q. Yeah, if you could please tell me what that
7 was.

8 A. Architectural handbook, a formula
9 discussed, and tables and mathematical calculations. I'd
10 be more than happy to put 250 vents in Mr. Kennon's home
11 if he'd allow me to.

12 Q. Okay. He might not want that, but I
13 understand. This architectural handbook, so it's a HUD
14 code or standard and that's what's used to ventilate
15 manufactured housing?

16 A. I have no idea, no knowledge of what you're
17 trying to ask.

18 Q. Well, my understanding is that manufactured
19 homes fall underneath HUD standards. That's the standards
20 and the codes that are used to do certain things for
21 manufactured housing, and I think that we've talked about
22 that earlier today.

23 A. The formula that we keep referring to is
24 for skirted homes. It specifically says homes with
25 skirting, it talks about putting the venting in the four

1 corners. It doesn't address homes on foundations at all.

2 Q. Does it give -- so it doesn't address it at
3 all, so then you didn't have to do anything, is that what
4 you're --

5 A. No. I didn't say that. I'm just saying
6 that what we're referring in the installation manual is
7 for homes on skirting. This home, as all the pictures
8 will show you, is not on skirting.

9 Q. Did you contact the manufacturer to find
10 out what the appropriate alternative ventilation would be
11 for the building?

12 A. We talked to them, and they didn't have
13 anything for houses on foundations.

14 Q. So the manufacturer only provides standards
15 for ventilation for homes that have skirts. Is skirt a
16 technical term?

17 A. Skirting is the vinyl material that would
18 be enclosing the underside of the home while it was on
19 piers and blocks, similar to Williams' home, the white --
20 if you looked at the pictures, the white stuff under the
21 house is skirting.

22 Q. So it's going to -- the definition would
23 say some sort of vinyl material that's used to enclose on
24 piers, so skirting doesn't mean just the materials that's
25 used to go from the home down to some -- to grade, if you

1 will, or to the foundation? It's not that space in
2 between the bottom of the home and the grade?

3 A. I don't know. I don't know what Webster's
4 Dictionary says is skirting. I don't know. I mean, the
5 skirting material is bought in ten foot sheets from the
6 supply house and it attaches to the mobile home and
7 attaches to a ground track.

8 Q. So you did contact the manufacturer and
9 they had no response regarding ventilation of this -- of
10 this particular home, or someone in your employ?

11 A. We contacted them regarding the issue of
12 venting in a crawl space as opposed to venting on
13 skirting.

14 Q. I've seen the sales contract regarding the
15 Williams home, and it does say that the setup would be on
16 the customer's piers. Who did the setup of this home?

17 A. I don't know which contractor set the home.
18 I really don't.

19 Q. You sold the home --

20 A. Yes.

21 Q. -- to the Williams?

22 A. Yes.

23 Q. You did not transport that home to their
24 property, nor did you set it up?

25 A. We contract that out.

1 Q. You contracted that out?

2 A. Yes.

3 Q. To who?

4 A. I don't recall. I mean, I don't -- I mean,
5 I don't recall.

6 Q. Who paid for the -- who paid -- did you pay
7 that person to set up that home?

8 A. Yes. I'm sure I did, yeah.

9 Q. That person's not an employee?

10 A. I don't recall at this time. It's been
11 some time ago. I mean, if you know who set it and you can
12 tell me, refresh my memory.

13 Q. No, I don't know either. That's why I'm
14 asking.

15 A. And I don't. I mean, we sold a lot of
16 homes. There's a lot of things that have happened between
17 then and now, you know.

18 Q. I've heard it referred to numerous times
19 that you've been in the process of winding down the
20 America's Home because of financial difficulties. When
21 you were in the winding down process, did you make
22 notification to the Missouri Public Service Commission
23 that you were going to be closing down your lot and that
24 you were going to be getting rid of inventory and things
25 of that nature as part of the winding down process of your

1 **business?**

2 A. Like a formal notification letter?

3 Q. **Yes.**

4 A. No.

5 Q. **Did you -- as part of that winding down,**
6 **did you make a formal notification in any sort of**
7 **newspaper or publication of winding down of a business?**

8 A. I'm not aware that I was required to.

9 Q. **Okay.**

10 A. Most people when they're in financial
11 trouble don't advertise that.

12 Q. **Regarding the red tagging, Mr. Haden came**
13 **to your sales lot on the 12th of February and did an**
14 **inspection and determined that, well, you had no license**
15 **and, therefore, your inventory was to be red tagged, and**
16 **he did that. I understand there was a little commotion**
17 **about it. You were out of town?**

18 A. Uh-huh.

19 Q. **When did you return back to town?**

20 A. I don't know the exact date.

21 Q. **Okay. Did you file your paperwork to**
22 **become a registered dealer the next day with the**
23 **Commission?**

24 A. I mean, I don't know if it was the next
25 day, I did make an attempt and I knew that I could not

1 produce the paperwork.

2 Q. But you made the attempt to try to?

3 A. Yeah.

4 Q. Okay.

5 A. And I was exploring to see if there was any
6 option for a hardship or any way I could work it out to
7 make the sales tax payments. I did get on a payment plan
8 with the sales tax people at that time, but there was no
9 way to -- with that payment agreement to maintain the
10 license.

11 Q. But at the time that he came to your sales
12 lot, it was still an active business, you had a
13 salesperson there, the doors were open?

14 A. She --

15 Q. Doors were open?

16 A. Yeah.

17 Q. Open for business, had a number of
18 manufactured homes on the lot, used and new. If someone
19 would have walked into that lot, how would Angie Ruckel
20 have known which one of those homes had already been sold
21 or wasn't yours? Can you help me understand that since at
22 the day that the inspection was done she couldn't help our
23 inspector determine what was what?

24 A. She just didn't have the paperwork is the
25 only way she couldn't help him. And I wasn't there, so it

1 would be hearsay for me to tell you how it transpired.
2 Like I said, the paperwork was at an attorney's office.
3 He was reviewing the contracts that I had sold based on
4 the number of what I owed, and we were kind of making a
5 decision at that point.

6 Q. So in other words, when someone came on
7 your lot that day to buy a home, they wouldn't have been
8 able to buy a home or they could have bought any of the
9 homes?

10 A. They couldn't have bought any of them
11 because some of them were sold.

12 Q. And how did -- how would she know that?

13 A. She was the only salesperson, so I mean,
14 she would have probably had to have sold it, process of
15 elimination.

16 Q. Okay. But there was nothing on these homes
17 that said sold or not mine or -- they're just sitting
18 there available?

19 A. Yeah. We never put sold signs on the
20 windows. We never had signs that said not mine in the
21 window either.

22 Q. Okay.

23 A. I mean, there was a period of time when
24 every home on the lot was on consignment from a finance
25 company, so we never got in a position to distinguish

1 between whose home was whose.

2 Q. So when did you file bankruptcy?

3 A. I never said I did.

4 Q. I just wanted to make sure. I heard a lot
5 of talk about it. I just wanted to make sure whether you
6 did or you did not.

7 You talked a little bit earlier about
8 Fruend Investment purchasing land, purchasing homes and
9 then placing those homes on land and then selling them as
10 real estate?

11 A. Yes.

12 Q. Who was the homeowner of those homes when
13 they were converted to real estate?

14 A. I don't know what you're asking there.

15 Q. Well, I know that it was mentioned that
16 Section 700.111 talks about the transference of a
17 manufactured home into real estate. The statute
18 specifically talks to the owner being able to affect that
19 transaction and not necessarily a dealer. So I guess I'm
20 wondering, were you -- were you trying to -- were you
21 trying to skirt having a registration with the Commission
22 by using this particular method?

23 A. No.

24 Q. Does Fruend Investment, are they a
25 registered dealer with the Missouri Public Service

1 **Commission?**

2 A. No. I don't believe they're required to
3 be.

4 Q. And why don't you believe they're required
5 to be --

6 A. I mean --

7 Q. -- registered?

8 A. -- I haven't seen anything that would state
9 that buying land and selling land and selling real estate
10 requires a manufactured home dealer's license.

11 Q. But you're not selling manufactured homes
12 or modular homes?

13 A. No.

14 Q. You're selling real estate with
15 manufactured modular homes on them?

16 A. At times we do. Sometimes we sell just the
17 real estate. If somebody comes and wants just the lot and
18 they already own a home, we do that, too.

19 MS. WESTON: I have no further questions.

20 JUDGE MILLS: Questions from the Bench,
21 Commissioner Gaw?

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. I think just a few things. The status of
24 the license of American -- is it America's Home Brokers,
25 with the Commission is what?

1 A. I don't have a license with America's Home
2 Brokers. America's Home Brokers really doesn't exist at
3 this time.

4 Q. It doesn't exist, and you say you don't
5 have a license. When did -- did it expire? Was it
6 suspended, revoked?

7 A. I was able to -- I was unable to renew it.

8 Q. All right. When was it due to be renewed?

9 A. Would have been, I think, January the 15th
10 of 2004.

11 Q. So there hasn't been any license from the
12 Commission for that company for over a year and -- well,
13 over a year anyway?

14 A. Right.

15 Q. Okay. Do you have -- is that the company
16 that you discussed earlier as having considered a
17 bankruptcy filing for?

18 A. Yes.

19 Q. But you did not file bankruptcy for that
20 company?

21 A. Correct.

22 Q. Is it dissolved --

23 A. Yes.

24 Q. -- do you know that?

25 A. Yes.

1 Q. Legally is it dissolved with the Secretary
2 of State's Office?

3 A. Yes.

4 Q. What happened to the assets of the company?

5 A. Really the asset was that real estate that
6 was sold in May of 2004.

7 Q. And it did not own any manufactured homes
8 at the time it was dissolved?

9 A. When it was dissolved it wasn't -- the
10 dissolution wasn't until October or November of 2004, I
11 believe.

12 Q. Did it own any at that time?

13 A. I don't think so, no.

14 Q. Were there any homes sold by America's Home
15 Brokers subsequent to January 15th of 2004?

16 A. Yes.

17 Q. And how many?

18 A. The date was the 15th.

19 Q. I think so, yes, sir.

20 A. At least two, and then there's a third one
21 that doesn't have a date on it that could make it three.

22 Q. Were they sold to private individuals?

23 A. Yes.

24 Q. Do you own any interest in any other
25 corporations?

1 A. Yes.

2 Q. Are any of those corporations -- do any of
3 those corporations sell manufactured homes?

4 A. No. I have a corporation that doesn't have
5 a license at this time that was selling modular homes.
6 That's factory crafted housing.

7 Q. And it did sell modular homes?

8 A. Yes.

9 Q. And it is no longer selling modular homes?

10 A. No.

11 Q. Is it in business?

12 A. We have a problem with the renewal on that,
13 the registration.

14 Q. With the Commission?

15 A. With the Secretary of State.

16 Q. Oh, okay.

17 A. My previous counsel dropped the ball, so to
18 speak.

19 Q. And so that company is currently not doing
20 business?

21 A. Right.

22 Q. Do you have others that do?

23 A. Just the Fruend Investments and another LLC
24 that buys and sells property.

25 COMMISSIONER GAW: That's all I have.

1 Thank you.

2 JUDGE MILLS: Commissioner Appling?

3 QUESTIONS BY COMMISSIONER APPLING:

4 Q. Todd, this has been a long day.

5 A. Yes, it has.

6 Q. What are you doing for a living now?

7 A. Developing real estate.

8 Q. Are you working for someone else or is it
9 your own business?

10 A. My own business.

11 Q. Your own business. Okay. On this list
12 here that I received this morning, there's 27 complaints
13 that was lodged against American Home Brokers. It's the
14 same complaints, I'm sure you've seen them, but it's the
15 list of complaints on here from the people sitting in the
16 audience today. Do you know what percentage of these
17 complaints has been taken care of?

18 A. I believe everything with the exception of
19 the beam in the Sassmann house, the door piers on the
20 Williams house.

21 Q. What do you plan to do about those?

22 A. I have made several offers to Sassmann and
23 Cameron, even to the extent of refunding their money and
24 buying the house back. I offered to turn it in to my
25 insurance company, even though I didn't damage it, and let

1 the insurance companies work it out and see where that got
2 them, and I'm willing to do whatever. I even went out and
3 got the structural engineer's report to see how bad it
4 was.

5 Q. Why don't you just -- I'm just having a
6 problem understanding. You sell a brand-new home and you
7 contract to have it set up?

8 A. Uh-huh.

9 Q. And the person that buys it from you, he
10 pays you or she pays you for setting this house up. All
11 of that is put into the deal?

12 A. Right.

13 Q. And it doesn't get set up correctly. Why?

14 A. Contractor's cutting corners trying to get
15 it done faster so they can get on to the next house for
16 this dealer or the next dealer.

17 Q. But you own the dime?

18 A. Right.

19 Q. So what do you do to go out there and take
20 a look at it and make sure? Was there any procedure
21 within America's Home Brokers to ensure that these houses
22 are set up correctly? Another lead-on question to that,
23 is customer service important to you?

24 A. Yes, it is. Prior to this period of time,
25 I had a full-time employee that that was their job.

1 Couldn't -- I couldn't afford that person anymore, and
2 that's probably why it got to this point is I was trying
3 to do too much on the business end and not getting out
4 there to check what that guy was checking.

5 But prior to that I had a full-time
6 employee that his job was site evaluation. Prior to setup
7 and he would report back to me and tell me -- if there was
8 a problem, he'd say, hey, you need to go look at this one,
9 it's going to be tough. During the setup process he was
10 out there when the contractor was out there, kind of
11 looking over their shoulder to point out the things that
12 were problems. He would do a final walk through with the
13 customer prior to giving them the keys to notice anything
14 that was wrong with the house.

15 **Q. What were your percentage of complaints**
16 **prior to -- your business started -- I think you named the**
17 **time that manufactured housing things had a tendency to go**
18 **downhill. Did you have a lot of complaints before that?**

19 A. No. No. I would say that 5 percent maybe,
20 5 to 8 percent, somewhere in there, you know.

21 **Q. Prior to that time on the average, how many**
22 **houses were you selling a month?**

23 A. Anywhere from 6 to 10 or 12 a month.

24 **Q. So you had plenty of time to visit the**
25 **sites really?**

1 A. At that time it was -- it was probably, you
2 know, enough time to go out and visit the sites earlier
3 on, yes.

4 Q. Okay. What do we do about these owners
5 that were sitting here this morning still complaining
6 about Home Brokers? What do we do to help these guys?
7 This is the largest financial outlay they have ever made
8 in their life.

9 A. In regard to Sassmann/Cameron and the beam,
10 I am willing to do what the structural engineer says to
11 do. Like I said, I made the offer to buy the house back
12 for what they paid for it if they don't want it. If they
13 feel that they can't sell it, you know, the way it is, I
14 offered to buy it back from them.

15 The door piers, I mean, if the concrete was
16 under there, I'd have the door piers installed in the
17 morning. It's not a big expense. It's 20, \$30 worth of
18 block. The tough thing is figuring out how to get the
19 concrete under the doors on Williams' house. Other than
20 that, everything has been fixed and repaired.

21 COMMISSIONER APPLING: Thank you, sir.

22 JUDGE MILLS: Okay. Do we have recross --
23 I mean, further cross-examination based on questions from
24 the Bench?

25 MS. WESTON: No, Judge.

1 JUDGE MILLS: Redirect?

2 MR. MASS: A couple things.

3 JUDGE MILLS: Could you come to the podium,
4 please?

5 MR. MASS: Sorry. I'm tired. It's the end
6 of the day and I resorted back to the usual. I apologize.

7 REDIRECT EXAMINATION BY MR. MASS:

8 Q. Factory Crafted Homes, the only reason that
9 was administratively dissolved is because your attorney at
10 the time didn't send in the registration?

11 A. Correct.

12 Q. And that was an oversight, you were never
13 given that to sign?

14 A. Correct.

15 Q. And so the corporation's now being
16 reinstated?

17 A. Correct.

18 Q. And it has no other -- it operated for
19 several years with appropriate registration?

20 A. Appropriate.

21 Q. With the Public Service Commission?

22 A. It only had a dealer license for one year.
23 It was a corporation for several, but it was only
24 registered for one year.

25 Q. Now, when you were asked who owns the

1 homes, Fruend Investment or Fruend Investment purchased
2 the homes and then put them on their real estate; is that
3 correct?

4 A. On several occasions, yes.

5 Q. And then sold them as a package?

6 A. Yes.

7 Q. Were almost all of those FHA financed?

8 A. Most all of them. That's about the only
9 way you can get them financed these days.

10 Q. And when they're sold as real estate, does
11 FHA do inspection?

12 A. Yes.

13 Q. And is that a very thorough inspection?

14 A. Yes, it can be very thorough.

15 Q. And sometimes there are things you have to
16 correct?

17 A. Yes.

18 Q. And do you correct them?

19 A. Yes, you have to before you can sell it.

20 Q. Now, with regard to the issue of
21 notification to the PSC, did you tell Mr. Haden what your
22 situation was?

23 A. Yes.

24 Q. On more than one occasion?

25 A. I know for one -- one occasion for sure.

1 Q. Okay. And that would have been around the
2 May time when there were reinspections and you were
3 selling your lot?

4 A. I believe it was in March, sometime in
5 March of 2004.

6 MR. MASS: Okay. No further questions.

7 JUDGE MILLS: Thank you. Anything further
8 from the Bench?

9 (No response.)

10 JUDGE MILLS: Just one moment, folks.

11 Mr. Fruend, you may step down. The only
12 thing we have left to address is the question of a
13 briefing schedule. I'd just as soon brief this fairly
14 quickly. I don't think there are any complicated legal
15 issues. In fact, I'm not sure that there's really a great
16 deal of disagreement on the relevant facts. It's more a
17 question of perspective, I think, rather than a
18 disagreement on what happened.

19 Can we do Initial Briefs in two weeks and
20 Reply Briefs in ten days?

21 MS. WESTON: Yes, from my perspective, yes.

22 JUDGE MILLS: Is that sufficient time,
23 Mr. Mass?

24 MR. MASS: Yes.

25 JUDGE MILLS: Let's do that. I'll issue a

1 notice probably in the morning that sets out -- because I
2 don't have a calendar that if those fall on holidays or
3 weekends or whatever, but I will set it roughly 14 days
4 and then 10 days.

5 Anything further?

6 MS. WESTON: Yes, Judge. When will the
7 transcript be available?

8 JUDGE MILLS: Normally it will be available
9 roughly seven business days. We can certainly expedite it
10 if that's not going to be sufficient time.

11 MS. WESTON: That's fine. Also I do
12 believe there were some exhibits.

13 MR. MASS: I apologize. I move the entry
14 of the Exhibits 9, 10, 11,

15 JUDGE MILLS: I'm anticipating an objection
16 to at least one of them, so let's take them one at a time.
17 The first one that you had marked, Mr. Mass, was No. 9?

18 MR. MILLS: Yes.

19 JUDGE MILLS: Are there any objections to
20 admission?

21 MS. WESTON: No, Judge.

22 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE MILLS: Exhibit No. 10, any objection
24 to the admission?

25 MS. WESTON: Yes, I have an objection

1 regarding a letter that appears to be from a Joe Strain,
2 and also something that looks like it's from Ms. Todd
3 Fruend to Mrs. Cameron and Mrs. Sassmann. I don't believe
4 that foundation has been laid for these, and I also
5 believe that the letter's hearsay, content of the letter's
6 hearsay.

7 MR. MASS: The letter's not hearsay. The
8 letter says I offer to do work. That's not hearsay.

9 JUDGE MILLS: With respect to the letter
10 from Strain Engineering, this has been tendered, it's been
11 offered, and it's also been tendered as part of an offer
12 of proof. I will allow it to go into the record as
13 subject to the offer of proof so that it's preserved in
14 the record. It will not be considered as part of the
15 evidence in the case. It will be preserved in the record
16 for purposes of appeal pursuant to the offer of proof.

17 With respect to the letter that appears to
18 be from Mr. Fruend to Cameron and Sassmann, I don't find
19 that to be hearsay. I think that the letter speaks for
20 itself. It's simply an offer from Mr. Fruend to make some
21 repairs, and I think it's admissible on that basis. So
22 with respect to Exhibit 10, all of it will be made -- will
23 be made part of the record. Although the portion that's
24 subject to the offer of proof will not be considered as
25 evidence in this case, it will be simply be preserved in

1 the record in case of an appeal.

2 (EXHIBIT NO. 10 WAS RECEIVED INTO
3 EVIDENCE.)?

4 Okay. Exhibit 11, any objections to
5 Exhibit 11?

6 MS. WESTON: No.

7 JUDGE MILLS: Exhibit 11 is admitted into
8 the record.

9 (EXHIBIT NO. 11 WAS RECEIVED INTO
10 EVIDENCE.)

11 JUDGE MILLS: Exhibit 12, any objections?

12 MS. WESTON: No.

13 JUDGE MILLS: Exhibit 12 is admitted into
14 the record.

15 (EXHIBIT NO. 12 WAS RECEIVED INTO
16 EVIDENCE.)

17 JUDGE MILLS: And I think that is all of
18 them.

19 MR. MASS: 13.

20 JUDGE MILLS: 13 was?

21 MR. MASS: To Count 5, sales contracts and
22 whatever. I apologize if I didn't state it as such.

23 JUDGE MILLS: I'm sorry. Help me out here,
24 what does Exhibit 13 look like?

25 MR. MASS: It's the one that would

1 reference Count 5.

2 JUDGE MILLS: I'm not sure I have a copy of
3 that one.

4 Okay. Exhibit 13, were there any
5 objections to 13?

6 MS. WESTON: No, Judge.

7 JUDGE MILLS: Exhibit 13 is admitted.

8 (EXHIBIT NO. 13 WAS RECEIVED INTO
9 EVIDENCE.)

10 JUDGE MILLS: Okay. Anything further?

11 MS. WESTON: No.

12 JUDGE MILLS: Hearing nothing, we're off
13 the record.

14 WHEREUPON, the hearing of this case was
15 concluded.

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