

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 921237-WS
Amendment of Certificate Nos.) ORDER NO. PSC-93-1564-PCO-WS
298-W and 248-S in Lake County) ISSUED: October 25, 1993
by JJ'S MOBILE HOMES, INC.)
_____)

ORDER DENYING JOINT MOTION TO DESIGNATE STEVEN RAIMONDI AS THE
APPROPRIATE PERSON TO RESPOND TO DISCOVERY REQUESTS FROM JJ'S
MOBILE HOMES, INC. AND TO CONCUR IN DISCOVERY RESPONSES

AND

DENYING MOTION TO DESIGNATE STEVEN RAIMONDI AS CONTACT
PERSON FOR HOMEOWNERS

AND

GRANTING JJ'S MOBILE HOMES, INC.'S MOTION TO COMPEL DISCOVERY

Background

Order No. PSC-93-0522-PCO-WS, issued April 7, 1993, continued the controlling dates governing the key activities of this case to allow time for good faith negotiations for the sale of the utility to proceed. This occurred with the understanding of the parties that discovery would continue unabated to allow for a speedy resetting of the key activity dates on September 1, 1993, should a sale of the utility not be contracted. The parties have been unable to negotiate a sale of the utility and the key activities have been rescheduled.

On April 29, 1993, JJ's Mobile Homes, Inc. (JJ's or utility) filed a Motion to Compel Discovery seeking to compel individual homeowners (individuals) to respond to JJ's discovery requests. On May 7, 1993, the individuals filed a response to JJ's Motion to Compel in the form of a Joint Motion to Designate Steven Raimondi as the Appropriate Person to Respond to Discovery Requests from JJ's Mobile Homes, Inc. and to Concur in Discovery Requests (Joint Motion).

On May 12, 1993, Steven Raimondi filed an explanatory letter with a copy of a Motion to Designate Steven Raimondi as Contact Person for Homeowners with Country Club of Mount Dora. Mr. Raimondi asserted that this Motion was originally filed on April 5, 1993. No record of this filing exists in the Commission, although parties were served with the Motion. Therefore, the official filing date for this Motion is May 12, 1993.

On May 21, 1993, JJ's filed its response which addressed both the May 7, 1993 joint motion filed by the individuals and Mr.

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Raimondi's May 12, 1993 Motion to Designate. On May 24, 1993, the Office of the Public Counsel (OPC) filed its response to JJ's Motion to Compel which included a request that the Commission rule on the pending motions.

For clarification, the named individual parties are not customers of JJ's. They are in fact customers of an exempt entity, the Country Club of Mt. Dora Homeowners' Association, which receives bulk water and wastewater service from and is the customer of record of the utility. Each has been granted party status by the Commission in Order No. PSC-93-0363-FOF-WS, and named individually in the Motion to Compel and in the Joint Motion.

Customers' Joint Motion and Motion to Designate

On March 1, 1993 JJ's served identical Interrogatories and Requests For Production of Documents on 35 individuals who objected to JJ's application for amendment and are therefore, parties, as well as to the OPC and the City of Mt. Dora. On April 3, 1993, Mr. Raimondi and Mr. Leon Bibb, another individual party, filed a joint answer to the utility's interrogatories. As noted above, Mr. Raimondi and the named individuals subsequently filed motions intended to designate Mr. Raimondi as the key respondent to discovery requests.

As grounds for its Motion to Compel, JJ's argued that all of the remaining individuals who had not responded to the interrogatories or produced documents had retained their individual party status and thus, had retained also an individual obligation to respond to discovery. Further, the utility claimed that it was "absolutely entitled under applicable Florida law, to receive the responses to that discovery from the parties to whom it was tendered."

The Joint Motion filed in response to the Motion to Compel was counter-signed by 75% of the named individuals (the balance of parties being unavailable at the time). They declared that they had authorized Mr. Raimondi to respond to the past discovery requests and concurred in his responses. In addition, they requested that the Commission recognize Mr. Raimondi as the contact person for the group and appoint him as the designated person who would respond on behalf of the homeowners group to subsequent discovery requests by any party to the proceeding. As grounds for their motion, they argue that designating Mr. Raimondi as contact person for the individual homeowners will "advance the regulatory efficiency of

the Commission by minimizing duplicative filings and avoid unnecessary, redundant and unduly burdensome discovery".

In its Response to JJ's Motion to Compel, OPC supports the position of Mr. Raimondi and the individual homeowners. OPC first notes that when multiple customers file objections to utility applications or to Commission Proposed Agency Action, the Commission prefers that one individual be designated a "point person" to receive and disseminate information. Mr. Raimondi has already been accepted by the utility and other parties as the point person. OPC asserts that while technically each of the customers is a party in his own or her own right, it is more expedient for a single person to respond to discovery on behalf of all the "customer-parties." Further, since the utility did not compel additional responses from Mr. Raimondi it can be assumed the utility found his responses satisfactory. The individuals have authorized Mr. Raimondi to answer in their behalf and concurred in the discovery responses he made. Finally, OPC claims that JJ's insistence on individual discovery responses is a misuse of Commission time, a waste of time and expense for the other parties and harassment of the utility's customers.

In a document titled JJ's Mobile Homes' Reply to Citizens' Response, filed on May 26, 1993, JJ's acknowledged the timeliness of OPC's response. However, the reply questioned whether it was appropriate for OPC to take a position on the utility's Motion to Compel. We find that it is acceptable for the OPC to take a position in this matter. Rule 25-22.037(b), Florida Administrative Code, permits other parties to a proceeding to submit written memoranda in opposition to a written motion.

By specifically objecting to the application of JJ's certificate, the homeowners have opted to participate directly in this case. On March 9, 1993, by Order No. PSC-93-0363-FOF-WS, we denied JJ's motion to dismiss the homeowners on the grounds that their substantial interests would be affected by the decision in this matter. In doing so, we granted the individuals party status.

The individual homeowners have now requested that Mr. Steven Raimondi be designated "as the contact person for the group to respond to subsequent discovery requests by JJ's and any other party to the proceeding." This sentence illustrates the confusion between the concepts of contact person and legal representative. While it is permissible, and even beneficial for Mr. Raimondi to

act as an informal contact person, he cannot assume the rights or representation of the rights of the other individual homeowners.

The designation of one person as a "point-person," more commonly referred to as a contact person, for the purpose of disseminating information is strictly a ministerial function which enhances the administrative process and reduces administrative costs. Mr. Raimondi, who is a party in this matter, has acted as a contact person. He has received and disseminated information to the other individual homeowners on several occasions. This has no doubt been a convenience to the parties involved.

In essence, Mr. Raimondi and the individuals now ask that Mr. Raimondi be appointed their legal representative in order to answer the discovery requests. Mr. Raimondi has not demonstrated that he is qualified under Rule 25-22.008(1)(c), Florida Administrative Code, to act as a practitioner before this Commission. Even if Mr. Raimondi or any other person represented the individuals before the Commission, each homeowner would still be required to answer discovery as an individual party.

A corporate officer may appear without legal counsel on behalf of his corporation in an administrative hearing. Magnolias Nursing, etc. v. Dept. of Health, 428 So.2d 256 (Fla. 1st DCA 1982). However, Mr. Raimondi is not acting in that capacity, nor is he acting on behalf of an association or organization of any kind. In actuality, he has asked to represent numerous individuals who are each parties in this docket.

Even though it may be expedient to permit the individuals to respond to discovery and pleadings by and through Mr. Raimondi, judicial economy cannot overshadow the rights and responsibilities of the parties. As stated earlier, the individual homeowners were granted the status of parties. JJ's served discovery upon them as individual parties. These individual parties cannot lessen their legal obligations by appointing one person to respond in their behalf. Each party in this matter has the right to serve discovery requests upon another party and receive an answer from that party.

The adequacy of the responses to discovery provided by Mr. Raimondi and concurred in by the individual parties is not at issue. If Mr. Raimondi requested merely to act in a ministerial posture to codify and identify each of the individual parties' separate responses and then serve them in one combined packet, we would have a different situation. However, that is not the case.

The request is to act in behalf of all of the parties to respond to discovery with the parties merely concurring in his responses.

While the individual homeowners may concur at this point with Mr. Raimondi's answers to discovery requests, this may not always be the case. Furthermore, the utility may file further interrogatories which request information either outside the scope of Mr. Raimondi's knowledge, or require different answers from each individual homeowner. For example, the utility may ask each homeowner about his or her particular knowledge of an issue, the homeowner's billing information, or the homeowner's specific complaints or observations about the utility's service.

In its Response to JJ's Motion to Compel, OPC raised concerns about the expedience of requiring each of the homeowners to respond to discovery. Since these individuals retained their individual party status, it is not inappropriate for the utility to require these parties to individually provide discovery responses. Furthermore, it is not unreasonable for the utility to presume that among so many individuals, the filings would not be duplicative, but that one or more individuals would provide different or more expansive discovery responses.

For the foregoing reasons, the Prehearing Officer finds that it is not appropriate for Mr. Raimondi to be designated contact person for the legal purpose of responding to past or future discovery requests in this proceeding for the group of individual homeowners. He may, however, retain the informal designation of the contact person to help disseminate information between the parties and the Commission.

Motion to Compel

JJ's has requested that each party be required to answer discovery. For the same reasons noted above, the motion is granted and each of the individual parties shall respond to the discovery within 20 days of the date of this Order.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Luis J. Lauredo, as Prehearing Officer, that Steven Raimondi's Motion to Designate Steven Raimondi as Contact Person for Homeowners with Country Club of Mount Dora and the Individual Homeowners' Joint Motion to Designate Steven Raimondi as the Appropriate Person to Respond to Discovery Requests

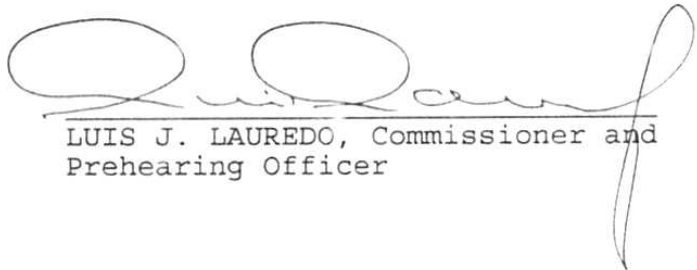
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From JJ's Mobile Homes, Inc. and to Concur in Discovery Responses be denied. It is further

ORDERED that Mr. Steven Raimondi may retain his informal designation of "contact person" with the Commission merely for the purpose of disseminating information between the parties and the Commission. It is further

ORDERED that each of the individual parties served with discovery is hereby directed to respond to interrogatories and to produce the documents requested previously by the utility within twenty days of the date of this Order.

By ORDER of Commissioner Luis J. Lauredo, as Prehearing Officer, this 25th day of October, 1993.



LUIS J. LAUREDO, Commissioner and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.