

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)
proceedings against GRAYBORN ENTERPRISES,)
INC. d/b/a PIZZERIA UNO for)
violation of Rule 25-24.520, Annual)
Report Requirement.)
_____)

DOCKET NO. 910244-TC
ORDER NO. 25104
ISSUED: 9/24/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

FINAL ORDER RESOLVING
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Grayborn Enterprises, Inc. d/b/a Pizzeria Uno (Grayborn or the Company) has been a certificated pay telephone service (PATS) provider since May 1, 1989. As a certificated PATS provider, Grayborn is subject to our jurisdiction.

On May 8, 1991, we issued Order No. 24502 requiring Grayborn to show cause why it should not be fined \$250 for failure to file an Annual Report for 1990 as required by Rule 25-24.520, Florida Administrative Code. Order No. 24502 also provided that if Grayborn elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24502 provided that if Grayborn failed to file a timely response, its certificate would be canceled and this docket closed.

On May 21, 1991, Grayborn filed a response to Order No. 24502. In its response, Grayborn essentially admitted that it was late in filing its 1990 Annual Report. Beyond asserting that the violation was inadvertent, Grayborn offered no arguments that might be construed as a defense to the allegations set forth in Order No. 24502.

We have repeatedly ruled that timeliness is an essential element of Rule 25-24.520, and that a late-filed Annual Report does not relieve a PATS provider of liability for violating the Rule.

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Furthermore, we have ruled that simply overlooking the requirement does not relieve the PATS provider from liability to comply.

Grayborn has failed to assert any legal or factual argument sufficient to set aside the fine proposed in Order No. 24502. Essentially, Grayborn's response is an admission of the allegations, a default, and a waiver of the right to a formal hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Grayborn Enterprises, Inc. d/b/a Pizzeria Uno shall, within 30 days, pay the \$250 fine proposed in Order No. 24502 or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 2290. It is further

ORDERED that if Grayborn Enterprises, Inc. d/b/a Pizzeria Uno elects to voluntarily cancel its certificate, the \$250 fine shall not be imposed, but the Company shall still be liable for the 1991 Regulatory Assessment Fee. It is further

ORDERED that if Grayborn Enterprises, Inc. d/b/a Pizzeria Uno fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 2290 shall be canceled and this docket closed.

By ORDER of the Florida Public Service Commission, this 24th day of SEPTEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JKA

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

MEMORANDUM

September 18, 1991

TO : DIVISION OF RECORDS AND REPORTING
FROM : DIVISION OF LEGAL SERVICES (ADAMS)
RE : DOCKET NO. 910244-TC

JKA *[Signature]*

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Attached is a FINAL ORDER RESOLVING SHOW CAUSE PROCEEDINGS in the above-referenced docket, which is ready to be issued.

JKA/ttl
Attachment
cc: Division of Communications

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