

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Initiation of show cause |) | DOCKET NO. 910280-TC |
| proceedings against L.A.W. DEVELOPMENT, |) | |
| d/b/a TARK'S RESTAURANT, for violation |) | ORDER NO. 25488 |
| of Rule 25-24.520, F.A.C., 1990 Annual |) | |
| Report, and Rule 25-4.043, Response |) | ISSUED: 12/17/91 |
| Requirement. |) | |
| |) | |

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

L.A.W. Development d/b/a Tark's Restaurant (L.A.W. or the Company) has been a certificated pay telephone service (PATS) provider since January 1, 1987. As a certificated pay telephone service provider, L.A.W. is subject to Commission jurisdiction.

On May 10, 1991, we issued Order No. 24510 requiring L.A.W. to show cause why it should not be fined \$250 for failure to file an Annual Report as required by Rule 25-24.520, Florida Administrative Code. Order No. 24510 also provided that if L.A.W. elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24510 provided that if L.A.W. failed to file a timely response, its certificate would be canceled and this docket closed.

On May 28, 1991, L.A.W. filed a response to Show Cause Order No. 24510. In its response, L.A.W. alleged that it had contacted the "wrong office" requesting the Annual Report form and had missed the filing date.

At the September 10, 1991 Agenda Conference, we considered L.A.W.'s response and deemed it insufficient on its face. On October 10, 1991, we issued Final Order No. 25197 requiring L.A.W. to pay the proposed fine, request voluntary cancellation of its PATS certificate, or face involuntary cancellation of its certificate.

On October 23, 1991, L.A.W. filed a Motion for Reconsideration of Order No. 25197. L.A.W.'s motion can be summarized as follows:

DOCUMENT NUMBER-DATE

12405 DEC 17 1991

FPSC-RECORDS/REPORTING

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1. In Count 1, L.A.W. asserts that it has operated a pay telephone for five years and has "...received a Notice for paying and filing the annual report..." each year. This year the Company "...ran out of application forms."
2. In Counts 2 and 3 of the Motion for Reconsideration, L.A.W. asserts that its President, Lawrence Weiser "...called Tallahassee and asked for information as to where to apply for the forms." L.A.W. also asserts that the recipient of that call promised to forward the forms to L.A.W., but that person failed to do so.
3. In Count 4, L.A.W. asserts that upon receipt of a Notice of Violation, Mr. Weiser contacted "the foregoing representative Mr. Tribble who said he would send the forms." L.A.W. asserts that Mr. Tribble did not send the forms and such forms were never received.
4. In Counts 5 and 6, L.A.W. alleges that it attempted to comply with the requirement and that it should not be fined based on its good faith efforts to comply with Rule 25-24.520.

With regard to Count 1 of the Motion, it is apparent that L.A.W. continues to confuse the Regulatory Assessment Fee Return required by Rule 25-4.016, Florida Administrative Code, and the Annual Report Form required by Rule 25-24.520, Florida Administrative Code. These are two separate and distinct requirements. We have on numerous occasions, ruled that confusing one of these requirements with the other does not constitute a defense to noncompliance with either rule.

Counts 2 and 3 are so vague and nonspecific as to relevance or timing. Furthermore, to this point in its motion, L.A.W. has failed to state any facts beyond those set forth in its initial response.

In Count 4, L.A.W. alleges that upon receiving Notice of Violation, it contacted Mr. Tribble and he agreed to forward the appropriate forms, but he failed to do so. Even if this factual scenario were true, the Company was already in violation of the requirement that the Annual Report be filed by January 31 of the following year.

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An examination of the information before us indicates that L.A.W.'s allegations are not entirely congruent with the documented record in this case. In his capacity as Director of the Division of Records and Reporting, Mr. Tribble does not provide Annual Report forms. He routinely refers such requests to the Division of Communications or in the case of a docketed matter, to the Division of Legal Services. In point of fact, counsel for staff appears to have had a conversation with Mr. Weiser and memorialized that conversation in a letter. Included with that letter was a copy of the Annual Report Form. L.A.W. included the completed form with its response. However, we have frequently ruled that timely filing is an essential element of Rule 25-24.520, and a late-filed report, particularly a report filed after the opening of a show cause docket, is not an adequate defense to such a show cause.

L.A.W.'s response fails to make out any arguments of fact or law which, even if assumed to be true, would constitute an error of either factual or legal reasoning in Order No. 25197. The Company fails to cite any error of law or fact that would justify approving the Motion for Reconsideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration filed by L.A.W. Development d/b/a Tark's Restaurant is hereby denied. It is further

ORDERED that the findings and rulings made in Order No. 25197 are hereby reaffirmed. It is further

ORDERED that L.A.W. Development d/b/a Tark's Restaurant shall pay the \$250 fine imposed in Order No. 25197 or voluntarily cancel its certificate. It is further

ORDERED that if L.A.W. Development d/b/a Tark's Restaurant voluntarily cancels its certificate, no Regulatory Assessment Fees shall be due and no fine imposed. It is further

ORDERED that if L.A.W. Development d/b/a Tark's Restaurant fails to respond to this Order, within 30 days, Certificate No. 1375 shall be cancelled and this docket closed. It is further

ORDERED that this docket shall remain open 30 days to allow L.A.W. Development d/b/a Tark's Restaurant to respond and then this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 17th
day of DECEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.