

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Roy A. Day) DOCKET NO. 921249-TL
against GTE FLORIDA INCORPORATED) ORDER NO. PSC-93-0892-FOF-TL
regarding alleged short ringing) ISSUED: June 14, 1993
and other service problems.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER DENYING COMPLAINT

BY THE COMMISSION:

BACKGROUND

On December 10, 1992, Mr. Roy A. Day filed a Petition (the Complaint) complaining of a "short-ring" problem on his telephone line, which he argues exists "to force, coerce, and threaten him to 'obtain' the monopolistic [monthly inside wire maintenance] services" of GTE Communications Corporation (GTECC). By his Complaint, Mr. Day also requests:

- 1) that the Commission recuse itself from proceeding with this case;
- 2) that this matter be consolidated with GTE Florida's rate case in Docket No. 920188-TL;
- 3) that GTECC be dismantled;
- 4) that Mr. Day be refunded as requested in his prior letter of complaint and demand for payment to Allen Cook and Jim Bennett, both of GTECC;
- 5) that Mr. Day be given 40 days to respond to all pleadings of opposing counsel rather than the 10 days provided for in the Rules; and
- 6) that a ruling be entered on December 14, 1992, on each and all pleadings Mr. Day has made in Docket 920620-TL (Day v. GTE).

DOCUMENT NUMBER-DATE

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FILED-RECORDED/INDEXED

In conjunction with the Complaint, Mr. Day also filed a document entitled, "I. Roy A. Day's Motion to Consolidate; II. Roy A. Day's Motion to Disqualify the Florida Public Service Commission; III. Roy A. Day's Emergency Ruling on December 14, 1992."

On January 5, 1993, GTEFL filed its answer to the Complaint denying each and every allegation made by Mr. Day in his Complaint and moving to strike the pleadings as being impertinent and scandalous in their content, pursuant to Rule 1.130(f), Florida Rules of Civil Procedure, and as being sham pleadings pursuant to Rule 1.150(a), Florida Rules of Civil Procedure. GTEFL also asserted that the Complaint had failed to state a claim upon which relief can be granted.

On January 11, 1993, Mr. Day's Complaint and the accompanying pleadings were referred to the Division of Administrative Hearings (DOAH) by direction of the Chairman of the Commission. On March 15, 1993, the DOAH Hearing Officer filed a recommended order of Dismissal in this case. The recommended order was filed with the Commission on March 26, 1993. On March 22, 1993, Mr. Day filed a Motion to Vacate the Division of Administrative Hearings' Recommended Order Of Dismissal Dated March 15, 1993.

DISCUSSION

Motion to Vacate

As noted above, on March 15, 1993, the Hearing Officer recommended that Mr. Day's Petition for relief filed in Docket No. 921249-TL be dismissed on the basis that Mr. Day's pleadings were "clearly a sham" and that "in none of the pleadings filed by Petitioner has he alleged any matters which would constitute a basis for granting him the relief sought, including the consolidation of this action with the matter of the rate increase sought by GTEFL." The Hearing Officer further noted that the pleadings were replete with allegations regarding matters over which DOAH has no jurisdiction and that they included the use of derogatory and disrespectful names for officers of the court, as well as unsupported and impertinent comments accusing state agencies of fraud and or shirking their responsibility.

Mr. Day's Motion to Vacate requests:

1. that all of Mr. Day's pleadings in this case be entertained by citizen-attorneys and not 'illegal licensed attorneys,' pursuant to Petitioner's Motion To Disqualify the FPSC and DOAH;
2. that the recommended order be vacated;
3. that the instant action be held in abeyance until Mr. Day's federal 'companion' actions have been decided; and
4. that any other such relief as may be just be granted.

In support for his Motion, Mr. Day asserts that the recommended order is full of falsehoods, half-truths, misrepresentations and fraud to conceal a conspiracy of so-called licensed attorneys of the FPSC and DOAH with the so-called licensed attorneys of public utilities to railroad through fraudulent rate increases using fraudulent orders not based on law and facts and evidence. Mr. Day contends that a statement is to be presented in federal court to the effect that the so-called licensed attorneys from the FPSC and GTE, as co-conspirators, control and direct and orchestrate each and all rate increases and fraudulent monopolistic practices. It is Mr. Day's position that the sole purpose of the fraudulent recommended order was to prevent disclosure and discovery from proceeding. Mr. Day states that

NOTHING HAS BEEN GAINED, IF PETITIONER PLAYS THE "FRAUDULENT GAME" OF SO-CALLED LICENSED ATTORNEYS AT THE "FPSC" AND THE "DOAH", SINCE THE "SYSTEM" IN PLACE WILL REMAIN "EXACTLY" AS IT EXIST TODAY, SPECIFICALLY, DIRECTED AND ORCHESTRATED BY SO-CALLED "LICENSED ATTORNEYS" - WE HAVE GOVERNMENT BY AND FOR THE PEOPLE, AND NOT by and for "illegal licensed attorneys."
(emphasis in original)

Mr. Day asserts that he has never used derogatory or disrespectful names for officers of the court, and has only stated the true and correct facts on the sleazy, corrupt, dishonest, unethical, illegal, licensed attorneys. He argues that his pleadings are not a sham. Mr. Day alleges that the FPSC and DOAH are

NOTHING BUT VEHICLES FOR SO-CALLED LICENSED ATTORNEYS TO MAKE ARTIFICIAL, MONOPOLISTIC LEGAL FEES OF \$300 PER HOUR, AND ROB AND RAPE THE CITIZENS OF THE STATE OF FLORIDA USING FRAUDULENT RATE INCREASES AND FRAUDULENT MONOPOLISTIC PRACTICES BASED ON FALSEHOOD, HALF-TRUTHS, MISREPRESENTATIONS AND FRAUD. (emphasis in original)

Mr. Day alleges that he has

total respect for the system of justice as provided the Constitution of the State of Florida and the United States as stated by the FOUNDING MOTHERS AND FATHERS, but the so-called licensed attorneys have usurped the judicial branch of government and the various agencies and departments of the United States and the State of Florida from the people. (emphasis in original)

It is his position that ninety percent of the citizens do not support the system which has been usurped from the people by a "privilege-class-illegal-licensed-attorney." He asks that each and every pleading in this case is repeated and realleged and incorporated in his Motion to Vacate. Mr. Day also alleges that

"illegal licensed attorneys" and "quack-chiropractors" conspired to attempt to have the Senate pass a Fraudulent statute to continue to support "quack-chiropractors" to perform fraudulent physical examines on worker's compensation patients so the so-called licensed attorneys and quack-chiropractors can ROB AND RAPE the insurance companies with FRAUDULENT AND VALUELESS AND WORTHLESS TREATMENTS. (emphasis in original)

As with all other documents received from Mr. Day, the instant Motion is, to the extent that it can be followed, acrimonious, rambling, redundant, reckless and accusatory, yet devoid of any specific factual allegations which would support the relief he seeks. Of the four requests in the motion, only the request to vacate has not already been dismissed by the recommended order. With respect to the Motion to Vacate, we note that we may not simply vacate a Hearing Officer's recommended order.

Section 120.57(1)(b)(9), Florida Statutes specifically limits a party's response to a recommended order to the submission of written exceptions. A motion to vacate a recommended order is not allowed by that Section. Moreover, Section 120.57(1)(b)(10),

Florida Statutes specifically limits the action we may take regarding a recommended order. Accordingly, a motion to vacate is not procedurally available to Mr. Day and the Commission does not have the authority to simply vacate the recommended order as requested.

Giving Mr. Day the benefit of all possible doubt and treating the Motion as a submission of written exceptions to the recommended order, Mr. Day's requests must still fail. Rule 25-22.056(4)(b), Florida Administrative Code, requires that when exceptions to a Hearing Officer's recommended order are filed, "such exceptions shall fully set forth the error claimed and the basis in law and fact therefore, with exceptions to findings of fact supported by citations to the record." Mr. Day makes no coherent exception to the recommended order. Nowhere in his Motion has Mr. Day identified a specific error in the recommended order or provided any basis in law or fact for the modification of the recommended order. Mr. Day's Motion revolves principally around the notion that all the evils in Mr. Day's world are the result of a conspiracy by licensed attorneys. Those portions of his allegations not devoted to charges of fraud and conspiracy are simply bald denials of the conclusions reached in the recommended order. Accordingly, Mr. Day's Motion to Vacate shall be denied.

The Recommended Order

As discussed more fully above, we may modify a recommended order only under certain circumstances. In dismissing Mr. Day's complaint and other associated pleadings, the Hearing Officer found, as a matter of law, that Mr. Day's pleadings did not sufficiently allege an adequate basis to grant him any of his requested relief. Upon review, we agree with the reasoning and conclusions contained in the recommended order and adopt the same in its entirety as our final order in this proceeding. The aforementioned recommended order is included as Attachment A of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Roy A. Day's Motion To Vacate the Division of Administrative Hearings Recommended Order of Dismissal Dated March 15, 1993, is hereby denied. It is further

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ORDERED that the Hearing Officer's recommended order is hereby adopted in its entirety. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission this 14th day of June, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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

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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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ORIGINAL
FILE COPY

921249-TL

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROY A. DAY.)
)
Petitioner,)
)
vs.)
)
GTE FLORIDA INCORPORATED,) CASE NO. 93-0118
)
Respondent,)
)
and)
)
FLORIDA PUBLIC SERVICE COMMISSION)
)
Intervenor.)
_____)

RECOMMENDED ORDER OF DISMISSAL

This matter came before the undersigned on Respondent, GTE of Florida, Inc.'s, (GTEFL), Motion to strike Petitioner's pleadings as being in conflict with the Commission Chairman's Order, and to dismiss Petitioner's pleadings because, it is alleged, they fail to state a claim upon which relief can be granted and state no jurisdictional base on which he is entitled to the relief requested. Any analysis of the parties' requests may be properly analyzed only after the recitation of a history of this actions by all sides herein.

BACKGROUND:

On December 10, 1992, Petitioner herein, Roy A. Day, filed a Petition with the Florida Public Service Commission, (FPSC), in which he demanded:

1. That the FPSC recuse itself from proceeding in this case;
2. That this matter be consolidated with GTE Florida, Inc.'s request for rate increase;

DOCUMENT NUMBER-1
03346 MAR 2

FPSC-HEARINGS-RECORD

3. That GTE Communications Corp., (GTECC), be dismantled;
4. That he be "refunded" by GTE and GTECC as requested in his prior letter of complaint and demand for payment to Allen Cook and Jim D. Bennett, both of GTECC;
5. That he be given 40 days to respond to all pleadings of opposing counsel rather than the 10 days provided for in the Rules; and
6. That a ruling be entered on December 14, 1992, on each and all pleadings he has made in FPSC case 920620-TL, (Day v. GTE).

With regard to 4, supra, Petitioner claims that GTE's failure to correct the "short-ring problem", of which he complains in his letter to Messers. Cook and Bennett, after December 3, 1992, should be compensated by a lump sum payment of \$100,000.00 in compensatory damages, and sanctions of \$5,000.00 per day after that date, (in his letter to Bennett, he seeks sanctions of \$10,000.00 per day.) He also seeks \$50,000.00 in pain and suffering damages and \$1,000,000.00 in punitive damages. In his letter to Mr. Allen, he offers to settle all the above for a payment of \$1,000.00 if made by December 9, 1992.

On the same date, Petitioner filed with the FPSC a document entitled, "I. Roy A. Day's Motion to Consolidate; II. Roy A. Day's Motion to Disqualify the Florida Public Service Commission; III. Roy A. Day's Emergency Ruling on December 14, 1992." As to III, the matter is moot since the file was not forwarded to the Division of Administrative Hearings, (DOAH), until January 11, 1993, subsequent to the date denoted by Petitioner.

On January 5, 1993, Respondent, GTE, replied, denying each and every allegation made by Petitioner in his Petition, and

moving to strike the pleadings as being impertinent and scandalous in their content, pursuant to Fla. R. Civ. P. 1.130(f), and as being sham pleadings, pursuant to Fla. R. Civ. P. 1.150(a). Respondent also asserted that Petitioner had failed to state a claim upon which relief can be granted.

By letter dated January 11, 1993 from the Florida Commission on Human Relations, reflecting the approval of the Chairman, the matter was forwarded to DOAH, and by Initial Order dated January 15, 1993, the parties were advised of the assignment of the undersigned.

By letter dated January 19, 1992, Petitioner responded to the Initial Order and advised, inter alia, he was proceeding in forma pauperis and, therefore, could not provide copies of his pleadings to opposing parties. He stated he was unable to participate in any hearing on any Monday through Friday - only on Saturdays or Sundays, preferably the latter. Petitioner suggested the hearing be held in the Federal Court House in Tampa and he volunteered to make those arrangements.

On January 20, 1993, by letter, Petitioner requested this matter be held in abeyance until resolution of the action he filed in federal court to which he intended to file a supplemental complaint seeking money damages from GTE. In the same letter, Petitioner also requested the Hearing Officer provide him with a resume covering the undersigned's background since age 18, (the undersigned is now 59), and whether the undersigned is a "so-called licensed attorney."

Thereafter, on January 27, 1993, the FPSC moved to intervene in this matter and by Order dated January 29, 1993 the

undersigned granted intervention and also granted Petitioners request to place the matter in abeyance pending resolution of the federal court action. On January 29, 1993, GTE filed its response to the Initial Order and objected to Petitioner's motion to hold this matter in abeyance. On February 1, 1993, Petitioner's objection to FPSC's Motion to Intervene was received by the undersigned. By letter accompanying that Response in Opposition, Petitioner again requested that the undersigned provide him with a copy of the Hearing Officer's resume.

On February 1, 1993, Petitioner, by letter, claimed the Division of Administrative Hearings "... willfully, intentionally, maliciously, wantonly and fraudulently ..." failed to follow the Florida Rules of Civil Procedure by failing to allow him time to respond to the FPSC's Motion to Intervene. Petitioner thereafter stated he "need[ed] an immediate order issued on the aforesaid motion to vacate" and directed the Hearing Officer to list each and all agencies and departments which have filed Motions to Intervene at DOAH from January 1, 1982 to date. Petitioner claimed that DOAH was "... doing nothing more than 'duplicating' functions and jobs which other agencies and departments shirked their legal and social responsibility."

Thereafter, on February 2, 1993, Petitioner filed a Response to Respondent's Response to Initial Order, and a motion to strike respondent's pleadings which have not been sent to him. He also requested that:

1. GTE's response be declared to be "covered with fraud and half-truths and falsehoods";

2. His motion to strike GTE's pleadings not previously sent to him be granted;
3. The Hearing Officer provide the personal data requested;
4. The instant action be held in abeyance pending final decision in his federal action, and
5. That DOAH obtain copies of all Petitioner's pleadings at the Florida Supreme Court, the FPSC and the federal courts.

On February 5, 1993, Petitioner then filed a Motion to Disqualify "... each and all so-called licensed attorneys including Arnold Pollock." One of the bases for that motion was his receipt of a letter from the undersigned declining to provide a resume, which was, in the absence of the Hearing Officer, signed by his secretary. In the motion, Petitioner claims this letter of denial was "bias and prejudice", "orchestrated and directed by 'illegal' licensed attorneys so [they] can maintain an artificial monopolistic legal fee rate of \$300.00 ... and to exclude 90% of the citizens from being involved in the governmental business."

In this motion, Petitioner also requested that all licensed attorneys be disqualified from proceeding on the instant action and each and all actions at the DOAH, and asserted that all statutes written by licensed attorneys are "bias and prejudice."

On February 15, 1993, GTE moved for a reconsideration of the January 29, 1993 Order of Abatement on the grounds that of all the federal court actions filed by Petitioner, only one involved GTEFL or its affiliates. In that one case, GTE has never been served with process. Petitioner responded to GTE's Motion for

Reconsideration, accusing GTE of having illegal contact with the Federal District Court Judges. Though he claims the issue of the sufficiency of his complaint in the one GTE case identified is still on appeal, he admits the parties have not been served due to his pauper status.

Whereas in his initial Petition Mr. Day seeks to have the FPSC recuse itself, in his response to GTE's reconsideration motion, he claims GTE seeks to deny him meaningful access to the FPSC and DOAH. Here again, Petitioner utilizes an acronym, "SCDUILA", (sleazy, corrupt, dishonest, unethical, illegal, licensed attorneys) which he used on numerous occasions throughout documents filed with this agency. He claims it is not his filing which has clogged the courts but the actions of the "SCDUILA" who "have stolen the judicial branch of the government from the people."

After suggesting that "citizen attorneys" return the judiciary "back to the people and rewrite the Rules of Procedure and the Rules of Evidence", he again moves to disqualify the undersigned and all licensed attorneys from proceeding on "this and all actions at DOAH; demands a resume from each individual who has input in this action; demands that all statutes written by licensed attorneys be declared "bias and prejudice"; and demands a ruling on all his "motions and responses and letters" sent to DOAH. He also again requests this matter be held in abeyance until a final decision is entered by the U.S. Supreme Court in his federal lawsuit. In addition, he wants this tribunal to declare that for the parties to perform discovery twice, (both

in the federal lawsuit and here) would be "fraud of the first order"; that GTE is engaging in character assassination of the Petitioner; that the real reason the courts are clogged is that "illegal licensed attorneys can make artificial, monopolistic legal fees of \$300.00 per hour; and that each and all complaints filed by Petitioner with FPSC and DOAH are meritorious and state a cause of action.

DISCUSSION:

Respondent has listed as one of its grounds for urging dismissal of the Petition that the Chairman of the FPSC previously entered an Order which prohibits Petitioner from filing any pleadings without the express permission in writing of the Chairman. Petitioner submitted no evidence to indicate such permission has been granted, but it must be noted that that letter of transmittal referring this matter to the DOAH specifically states that the referral action is being taken with the Chairman's approval. That action, though not exactly consistent with the prior Order is, nonetheless, sufficient indicia of Chairman's approval of the filing and, for that reason, Respondent's motion based on an alleged violation of the Chairman's Order is denied.

Rule 1.130(f), Fla. R. Civ. P., (1992), permits a party to move to strike, and the court may strike, redundant, immaterial, impertinent or scandalous matter from any pleading. The pleadings filed herein by the Petitioner are replete with matter of that nature and allegations regarding matters over which this tribunal has no jurisdiction. This includes the prayer to

disband GTEFL; to disqualify any licensed attorney from handling any facet of this case; to require the appointment of citizen judges; and the demand to set aside any statute or rule drafted by licensed attorneys. Petitioner's pleadings also include the use of derogatory and disrespectful names for officers of the court, SCDUILA; and unsupported and impertinent comments accusing state agencies of fraud and of shirking their responsibility. By the same token, Rule 1.150(a), Fla. R. Civ. P., (1992), authorizes, upon motion of a party, the striking of pleadings which are deemed a sham. Petitioner's pleadings are clearly a sham.

Moreover, Petitioner has displayed a basic disrespect for the system of justice as provided for by the Constitutions of the United States and the State of Florida. He has also indicated a total disinterest in any position other than his own and, notwithstanding all the courtesies afforded him by the Commission and this tribunal, has repeatedly demonstrated his contempt for the system and those who strive to work within it.

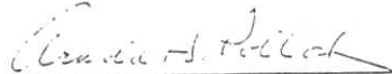
More to the point, however, is the clear fact that in none of the pleadings filed by Petitioner has he alleged any matters which would constitute a basis for granting him the relief sought, including the consolidation of this action with the matter of the rate increase sought by GTEFL.

Based on the foregoing matters, it is, therefore: recommended that Petitioner, Roy A. Day's, Petition for relief filed in FPSC Case No. 921249TL be dismissed.

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ATTACHMENT A

RECOMMENDED this 15th day of March, 1993, in Tallahassee,
Florida.


ARNOLD H. POLLOCK, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of MARCH, 1993.

COPIES FURNISHED:

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✓ Charles W. Murphy, Esquire
Florida Public Service Commission
1001 E. Gaines Street
Tallahassee, Florida 32399-0863

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

ALL PARTIES HAVE THE RIGHT TO SUBMIT TO THE
FLORIDA PUBLIC SERVICE COMMISSION WRITTEN
EXCEPTIONS TO THIS RECOMMENDED ORDER. ALL
AGENCIES ALLOW AT LEAST TEN DAYS IN WHICH TO
SUBMIT WRITTEN EXCEPTIONS. SOME AGENCIES
ALLOW A LARGER PERIOD WITHIN WHICH TO SUBMIT
WRITTEN EXCEPTIONS. YOU SHOULD CONSULT WITH
THE FLORIDA PUBLIC SERVICE COMMISSION
CONCERNING ITS RULES ON THE DEADLINE FOR
FILING EXCEPTIONS TO THIS RECOMMENDED ORDER.

