

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Globe) DOCKET NO. 941297-EI
International Realty and) ORDER NO. PSC-95-0144-FOF-EI
Mortgage Corporation against) ISSUED: January 31, 1995
Florida Power and Light Company)
regarding refusal to provide)
service)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On September 6, 1994, the Consumer Affairs Division of the Florida Public Service Commission filed a complaint against Florida Power and Light Company (FPL) on behalf of Globe International Realty and Mortgage, Inc. (Globe) and Mr. Matthew Renda, the president of Globe. In his complaint, Mr. Renda contended that FPL had interrupted his service that morning for non-payment of the delinquent bill of his landlord, Hemmerle Development Corporation.

In a report provided to the PSC, FPL stated that the electric service that was interrupted at 808 N.E. 3rd Avenue, Ft. Lauderdale, Florida, was in the name of Hemmerle Development Corporation. On July 26, 1994, Kenneth Hemmerle gave an FPL field collector a check for \$2,216.37. That check was returned to FPL for insufficient funds on August 10, 1994. On August 22, 1994 FPL mailed a final notice to Hemmerle advising that a payment of \$2,216.37, plus associated late payment/returned check charges was required by August 29, 1994 to prevent interruption of service. Payment was not received in a timely manner and service was interrupted on September 6, 1994.

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FPL records indicated that Mr. Matthew Renda contacted FPL on August 29, 1994, to make application for electric service at this address in the name of Globe. Upon verifying the corporation, Globe, with the Secretary of State, it was determined that the directors of Globe were Matthew Renda and Kenneth Hemmerle. Kenneth Hemmerle was also a director of Hemmerle Development Corporation, which was administratively dissolved on October 9, 1992. Kenneth Hemmerle also owns the property at this address under the corporate name Southern Atlantic Construction Corporation of Florida. This corporation was also dissolved on October 9, 1992.

Based upon the records of the Secretary of State's office indicating that Kenneth Hemmerle is 1) a director of the dissolved corporation that owns the building; 2) a director of the dissolved corporation that has a delinquent account with FPL; and 3) a director of the corporation that has applied for service under the name Globe International Realty and Mortgage, Inc., FPL stated that it would not restore service until the delinquent amount of \$2,661.20 was paid in full.

The building at 808 N.E. 3rd Avenue in Fort Lauderdale is a one story, grey stucco building with approximately 3,000 square feet of space. There is one electric meter serving the entire building. Globe occupied one of four office suites in the building. The other offices are and have been vacant. The only exterior sign on the building is a For Sale sign. A political bumper sticker with the name "Hemmerle" is on the front door.

On November 15, 1994, the Bureau of Complaint Resolution sent a letter to Mr. Renda advising him of its initial finding that FPL appeared to be in compliance with Rule 25-6.105 (8)(a), Florida Administrative Code, in its denial of service to Globe. Mr. Renda subsequently requested that an informal conference be held. Mr. Renda waived the ten day notice requirement in order to expedite the scheduling of the conference.

The informal conference was held in Ft. Lauderdale on November 30, 1994. In attendance at the informal conference were Matthew Renda and Kenneth Hemmerle on behalf of Globe, Tom Eichas, Robert Stone, Deborah Self, and Roseanne Lucas on behalf of FPL, and Robert Elias and Richard Durbin representing the PSC.

At the informal conference Mr. Hemmerle stated that the delinquent FPL charges were not for electric services, but for a judgement obtained by FPL against Mr. Hemmerle personally some years earlier. A billing summary provided by FPL indicated that the charges associated with the judgement, \$1,829.43, had been

debited to the account on March 5, 1993. Those charges, and all late payment charges accrued while that amount was on the bill, had been removed from the account on July 26, 1994. Mr. Hemmerle insisted that the billing summary was not accurate and that he had been billed for the judgement prior to March 5, 1993. Mr. Hemmerle was advised that if he could produce evidence of such billing it would be taken into consideration. Mr. Hemmerle has not produced any documentation supporting his claim of prior billing.

Mr. Hemmerle also expressed concern that all payments to the account in question had not been posted. He produced a number of cancelled checks which were compared to the billing summary. All of the appropriate checks were found to have been correctly credited to the account.

FPL representatives stated that, since its customer of record, Hemmerle Development Corporation, had been dissolved as a corporation since 1992, Kenneth Hemmerle could be held personally responsible for payment of charges associated with the provision of electric service under the name of the corporation subsequent to the dissolution of that corporation. FPL contended that its billing summary demonstrated that the delinquent charges for which the service was interrupted were for electric service and not for court-related costs.

FPL reiterated its contention that, since Mr. Hemmerle is also a director of Globe, electric service could be denied to Globe under Rule 25-6.105 (8)(a), Florida Administrative Code. Mr. Hemmerle insisted that FPL had not "pierced the veil" of the corporation and that he could not be held personally responsible for debts incurred under the corporate name. No agreement was reached at the informal conference.

On August 29, 1994, Mr. Renda called FPL customer service and made application for service in the name of Globe International Realty & Mortgage, Inc. at this same address. The application was not accepted since it was determined that, according to the Secretary of State's records, Mr. Kenneth Hemmerle, a director of Hemmerle Development Corporation, is also a director of Globe. No account was ever established in Globe's name. Therefore, we find that Hemmerle Development Corporation was the customer of record on September 6, 1994, when FPL interrupted service to 808 N.E. 3rd Avenue, Ft. Lauderdale, FL.

As evidenced by the cancelled checks he signed payable to FPL, Mr. Hemmerle continued to transact business in the name of Hemmerle Development Corporation. Mr. Hemmerle was an officer (president) and director of Hemmerle Development Corporation. Mr. Hemmerle was

also the registered agent for service of process of the corporation, using the 808 N.E. 3rd Ave. address. Section 607.1421(4), Florida Statutes provides in part:

A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he has actual notice of the administrative dissolution at the time such action is taken...

Florida Courts have consistently interpreted "actual notice" to mean "knew or should have known" in construing this and the predecessor statute. See, for example, Barrie v. Buchsbaum, 547 So.2d 1009 (Fla. 3rd D.C.A. 1989), or Mobile Oil Corp. v. Thoss, 385 So.2d 726 (Fla. 1st D.C.A. 1980). Given Mr. Hemmerle's positions as director, president and registered agent of this small corporation, he is fairly attributed with actual knowledge of the dissolution. Thus, he is personally liable for the debts of Hemmerle Development Corporation, including its past due balance to Florida Power and Light Company.

Mr. Hemmerle vigorously asserted that the "corporate veil" of Hemmerle Development Corporation had not been "pierced" by FPL. He contends that, without such a showing, he cannot be held personally liable for Hemmerle Development Corporation's debts. However, it is not necessary to make such a determination in this instance. By failing to maintain this corporation as a legal entity, Mr. Hemmerle abandoned the protection from personal liability afforded by that business form. Therefore, we find that Kenneth Hemmerle can be held personally liable for charges for electric service provided by FPL subsequent to the dissolution of Hemmerle Development Corporation and billed to Hemmerle Development Corporation.

Rule 25-6.105 (5)(g) provides that a utility may interrupt service for non-payment of regulated charges if the company has provided a written notice to the customer, separate and apart from any bill for service, that allows the customer five working days to pay the delinquent amount. The delinquent amount of \$2,661.20 was for regulated charges, proper notice was given, and payment was not received in a timely manner. Therefore, we find that FPL acted in accordance with the Rules of the Florida Public Service Commission when it interrupted service at 808 N.E. 3rd Avenue, Ft. Lauderdale.

Rule 25-6.105 (8)(a), Florida Administrative Code, states:

(8) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(a) Delinquency in payment for service by a previous occupant of the premises unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous occupant continues to occupy the premises and such customer shall benefit from such service. (emphasis added)

Mr. Kenneth Hemmerle owns the building at the address in question under the name Southern Atlantic Construction Corporation which was dissolved October 9, 1992. Mr. Hemmerle was the previous customer of record/occupant of the premises under the name of the dissolved corporation, Hemmerle Development Corporation. The current occupant, Globe, has, admittedly, occupied the premises continuously from February, 1993 through September 6, 1994. This is the time period in which the delinquent charges were incurred by Hemmerle Development. The previous occupant, Mr. Hemmerle, continues to occupy the premises as the owner of the building (with a possessory right) and, as a director of the corporation which is the current occupant/applicant for service, Globe. Therefore, we find that FPL was in compliance with applicable Commission rules and its tariffs in refusing to establish service in the name of Globe International Realty and Development.

Based on the foregoing, it is

ORDERED that Hemmerle Development Corporation was the customer of record on September 6, 1994, when FPL interrupted service to 808 N.E. 3rd Avenue, Ft. Lauderdale, FL. It is further

ORDERED that Kenneth Hemmerle can be held personally liable for charges for electric service provided by FPL subsequent to the dissolution of Hemmerle Development Corporation and billed to Hemmerle Development Corporation. It is further

ORDERED that FPL acted in accordance with the Rules of the Florida Public Service Commission when it interrupted service at 808 N.E. 3rd Avenue, Ft. Lauderdale. It is further

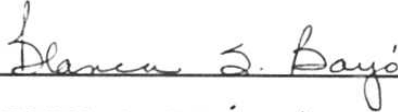
ORDERED that FPL was in compliance with applicable Commission rules and its tariffs in refusing to establish service in the name of Globe International Realty and Development. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket should be closed.

By ORDER of the Florida Public Service Commission, this 31st day of January, 1995.



BLANCA S. BAYÓ, 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 21, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.