

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revocation by Florida) DOCKET NO. 930944-WS
Public Service Commission of) ORDER NO. PSC-95-0603-FOF-WS
Certificates Nos. 451-W and 382-) ISSUED: May 15, 1995
S issued to SHADY OAKS MOBILE-)
MODULAR ESTATES, INC. in Pasco)
County, pursuant to Section)
367.111(1), F.S.)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
DIANE K. KIESLING

ORDER REFERRING COLLECTION OF FINES AND
FEES TO THE OFFICE OF THE COMPTROLLER

BY THE COMMISSION:

BACKGROUND

Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility) is a Class C water and wastewater utility located in Pasco County. The utility has provided service since 1971, and currently provides service to 181 customers in a 242-lot mobile-modular home park.

In providing service, the utility has had a history of noncompliance with Commission statutes, rules, and orders. Having failed to comply with Orders Nos. 24084, issued February 8, 1991, and 25296, issued November 4, 1991, the utility requested and was granted a hearing which was held on January 7, 1993 in Zephyrhills, Florida. However, the utility did not attend the hearing, and the Commission, by Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, ordered the utility to pay a fine in the amount of \$60,572, and directed staff to initiate revocation proceedings.

The utility filed a Motion for Reconsideration of this order, but the motion was denied by Order No. PSC-93-1396-FOF-WS, issued September 27, 1993. By this later order the Commission also ordered the utility to sell or transfer the utility within 120 days of the issuance date of the order, and offered to suspend the fine if a completed application for a transfer was timely submitted.

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FPSC-RECORDS/REPORTING

On October 19, 1993, the utility filed a Notice of Administrative Appeal of Order No. PSC-93-0542-FOF-WS, and moved for a stay of the provision imposing the fine. By Order No. PSC-94-1015-FOF-WS, issued August 23, 1994, the Commission denied Shady Oaks' motion for a stay of the provision imposing the fine. The District Court of Appeal heard oral argument on the appeal of Order No. PSC-93-0542-FOF-WS on January 11, 1995, but has not yet made a decision.

On September 23, 1993, the Commission, pursuant to Section 367.111(1), Florida Statutes, and in accordance with Order No. PSC-93-0542-FOF-WS, noticed its Intent to Initiate Revocation of Certificates Nos. 451-W and 382-S issued to Shady Oaks. On October 18, 1993, Shady Oaks timely filed an objection to the Notice, and an administrative hearing was scheduled for August 4, 1994.

However, on July 14, 1994, prior to the hearing, the utility filed for bankruptcy in the Tampa Division of the United States District Court for the Middle District of Florida, under Case No. F94-6876-8G1. Asserting that the Commission would violate the automatic stay provisions of the Bankruptcy Code by going forward with the revocation proceeding, the utility, on July 26, 1994, moved for the Bankruptcy Court to issue an Order to Show Cause to the Florida Public Service Commission.

Despite the bankruptcy proceedings, the revocation hearing was held on August 4, 1994, as scheduled. Approximately forty customers attended the hearing, and eleven customers testified concerning customer relations and poor quality of service. Although the utility owner was present at the hearing, he refused to cross-examine any customers or any of the three staff witnesses. After hearing all of the evidence presented at the hearing, the Commission made a decision from the bench to revoke Shady Oaks' water and wastewater certificates. This decision was set out in Order No. PSC-94-0976-FOF-WS, issued on August 11, 1994, and upon being notified of the decision, Pasco County began operating the utility on an emergency basis.

On August 19, 1994, the Department of Environmental Protection filed, in Bankruptcy Court, a Motion to Appoint Trustee, Convert to Chapter 7, or Dismiss. On September 1, 1994, Judge Wayne Cobb awarded Pasco County temporary receivership of Shady Oaks. On January 4, 1995, Judge Paul M. Glenn dismissed the utility's bankruptcy filing and denied Shady Oaks' Motion to Order the Commission to Show Cause. In its Memorandum of Decision on Debtor's Motion for Order to Show Cause, the Court found the Commission did not violate the automatic stay provisions found in Section 362(b)(4) of the Bankruptcy Code.

OUTSTANDING REGULATORY ASSESSMENT FEES AND FINES

By Order No. PSC-94-0976-FOF-WS, issued August 11, 1994, the Commission ordered Shady Oaks, inter alia, to remit delinquent regulatory assessment fees in the amount of \$13,127, and outstanding fines totalling \$62,572. By letters dated February 8, 1995 and March 15, 1995, sent via Certified Mail to Mr. Richard D. Sims, utility owner, Commission Staff requested that the utility remit \$75,699 in outstanding regulatory fees and fines. Mr. Sims did not respond to the collection letters and the utility has not made any payments.

It has been almost nine months since the Commission issued its order requiring the payment of the fees and fines set out above, and almost two months since our last attempt to collect the amount due. Also, the utility's bankruptcy filing was dismissed on January 4, 1995, and the utility has had ample time in which to make payments, but has not done so. Therefore, reasonable attempts have been made to collect the \$75,699 due, and we find it appropriate to refer this matter to the Office of the Comptroller for further collection efforts.

In light of the Bankruptcy Court decision and Pasco County's temporary authorization to act as receiver, there are outstanding issues which must be resolved in a subsequent Order. Therefore, this docket shall remain open pending the final disposition of the escrow monies and the receivership.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the collection of the delinquent regulatory assessment fees in the amount of \$13,127, and the outstanding fines in the amount of \$62,572 shall be referred to the Office of the Comptroller for further collection efforts. It is further

ORDERED that this docket remain open for further proceedings as required.

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By ORDER of the Florida Public Service Commission, this 15th
day of May, 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.

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 and/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 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.