

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 950216-WS
from Florida Public Service) ORDER NO. PSC-97-0133-FOF-WS
Commission regulation for) ISSUED: February 10, 1997
provision of water and)
wastewater service in Broward)
County by Julian Apartments)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING NOTICE OF WITHDRAWAL AND REQUIRING THAT THE
STATE ATTORNEY'S OFFICE BE NOTIFIED OF POSSIBLE VIOLATIONS OF
SECTION 837.06, FLORIDA STATUTES

BY THE COMMISSION:

BACKGROUND

On February 24, 1995, an application for exemption from Florida Public Service Commission regulation was filed on behalf of Julian Apartments (Julian) pursuant to Section 367.022(8), Florida Statutes. The application was filed by Mr. Robert F. Oulton (Robert Oulton), as the president of U.S. Water & Sewer, Inc. (USW), and agent for Julian. At approximately the same time, two other applications for reseller exemptions were filed in the same manner by Robert Oulton. The application for Lauderdale Place Apartments was filed on February 13, 1995, and assigned Docket No. 950168-WS; and the application for Spanish Trace Apartments was filed on April 17, 1995, and assigned Docket No. 950428-WS.

At the time of the filings, Robert Oulton was known to our staff as the president of H₂Oulton Metering Systems, Inc., d/b/a Water and Sewer Services of Florida (H₂Oulton). Also, at the time of the filings, staff was attempting to determine why H₂Oulton had not filed the annual reseller reports required by Section 367.022(8), Florida Statutes, and Rule 25-30.111, Florida Administrative Code, for three of its clients.

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FPSC-RECORDS/REPORTING

Using information provided in USW's filings, staff located Robert Oulton who stated that H₂Oulton had run out of money mid-way through 1994 and had ceased its operations. Robert Oulton was certain that all reseller monies and deposits held by H₂Oulton were lost, but was vague regarding the location of any company records. Robert Oulton was emphatic that USW was a completely separate entity from H₂Oulton and, as such, USW could not furnish any information regarding H₂Oulton.

In processing these applications, our staff served formal discovery on Robert Oulton as President of USW. However, the response was filed by Mr. Bryan P. Oulton (Bryan Oulton) as President of USW. Bryan Oulton claimed that Robert Oulton's use of the title of "president" was in error and that Robert Oulton was neither the president of USW nor an officer of USW. Instead, Bryan Oulton stated that Robert Oulton was a part-time employee with limited duties. Based on these assertions, our staff did not pursue further discovery in regard to Robert Oulton and the operations of H₂Oulton.

After review of the applications, our staff initially prepared recommendations for the February 20, 1996, agenda conference. In these recommendations, our staff proposed that the applications for exemption be denied. However, on the day of agenda, USW requested that the three dockets be deferred so that it could correct the violations and deficiencies cited in staff's recommendation. The corrected applications were never received.

Therefore, our staff again prepared to file their recommendations for the July 30, 1996, agenda conference. However, just prior to the filing, USW notified the Commission that it was no longer associated with Lauderdale Place Apartments and Spanish Trace Apartments. Staff subsequently verified that USW had withdrawn its services from Julian as well. By letter dated January 7, 1997, the owner of Julian requested that its application be withdrawn.

ACKNOWLEDGMENT OF WITHDRAWAL

As stated above, an application for an exemption pursuant to Section 367.022(8), Florida Statutes, was filed on behalf of Julian by USW on February 24, 1995. By letter dated January 7, 1997, the owner of Julian Apartments, Mr. Max Eida, of Mixam, Inc., stated that he was not working with USW any longer and requested that the application be withdrawn.

Based on the above, we acknowledge Julian's request for withdrawal. With this withdrawal, this docket shall be closed.

NOTIFICATION OF THE STATE ATTORNEY'S OFFICE OF POSSIBLE
VIOLATIONS OF SECTION 837.06, FLORIDA STATUTES

Julian may no longer be working with USW, but it appears that USW continues to operate as a billing and metering agent for other reseller utilities. Further, we are concerned with the statements of Robert Oulton and Bryan Oulton at the time each claimed to be the President of USW.

Robert Oulton's corporate position with USW

As the former president of H₂Oulton and as the alleged president of USW, staff served Robert Oulton with formal discovery regarding the transference of reseller information and customer deposits from H₂Oulton to USW at the time of the dissolution of H₂Oulton and the formation of USW. The discovery was answered, instead, by Bryan Oulton as president of USW. Bryan Oulton claimed that Robert Oulton's use of the title of President was in error and that Robert Oulton was neither the president of USW nor an officer of USW. Instead, Bryan Oulton claimed that Robert Oulton was only a part-time employee with limited duties. However, we note the following:

- The three applications for reseller exemption were signed and filed, separately, over the course of two months. On each occasion, Robert Oulton signed as the president of USW;
- On the February 21st and March 9th (1995) applications, the title of "Pres." and "Pres & Agent", respectively, was handwritten next to Robert Oulton's signature. On the April 13th reseller application, the title "President, U.S. Water & Sewer, Inc(.)" had been incorporated onto the form along with and directly below the name "Robert F. Oulton";
- The applications were initially assigned to separate staff who repeatedly contacted Robert Oulton over the course of several months. At no time did Robert Oulton indicate that he had signed the applications in error; and

- ° In its Articles of Incorporation filed on August 5, 1994, USW did not list any corporate officers. However, on October 18, 1995, after staff had served USW with discovery asking explicit questions regarding the presidency of USW, USW filed a change request with the Division of Corporations to list Bryan P. Oulton as president.

Conditions Surrounding the Signing of Contracts

In addition to serving discovery on USW, staff also sent questionnaires to reseller utilities affected by the dissolution of H₂Oulton and the formation of USW. Because he claimed that Robert Oulton was neither the president nor an officer of USW, Bryan Oulton stated that USW could not respond to discovery concerning the dissolution of H₂Oulton. However, to the extent that USW did respond to discovery with regard to the formation of USW, there were several instances of what appears to be contradictory information.

The first instance of contradictory information involved Innsbruck Apartments. USW stated that it notified the owner of the Innsbruck Apartments on or about July 28, 1994, via a personal visit from Robert Oulton (representing H₂Oulton) and Craig Henschel & Bryan Oulton (representing USW) concerning the dissolution of H₂Oulton, and the availability of a contract with USW. USW went on to state that the owner wanted to provide its own reseller services. However, in his response to staff's questionnaire, the owner stated that staff's April 26, 1995, notification was the first "formal notification" or communication, whatsoever, the owner had received from H₂Oulton since on or about December 1993. The owner voiced considerable concern regarding his experience with H₂Oulton. According to the owner, H₂Oulton had "abandoned" metering and billing the residents of Innsbruck Apartments several years before. The owner stated that he had never received any monies whatsoever from H₂Oulton and was continuing to pay the full cost of furnishing water and wastewater services to the tenants. The owner did not know whether any customer deposits had been collected and, if so, what had happened to those deposits.

The second instance of contradictory information involved Park Crest Apartments. USW responded to a staff interrogatory that it has always been a distinctively separate business from all other businesses. Any service agreements which USW signed with property owners were separately negotiated and in no way associated with assumption of any other company's agreements. However, the owners

of Park Crest Apartments responded to staff's questionnaire by stating that when they met with Robert Oulton about not getting paid, he told them that if they went with the new company (USW) everything would be "ok." The owners state that they did not sign with USW and lost all monies owed.

The owners further state that they first became aware there was a problem with H₂Oulton in April of 1994 when they ceased receiving any monies from H₂Oulton and began receiving complaints from tenants regarding their deposits. Since the owners did not know how much money had been collected and held by H₂Oulton, they gave every tenant free water for two months. Eventually the owners state that they acquired title to the meters due to breach of contract and have since contracted with another submetering company to provide services.

A third instance of contradictory information related to USW's ability to file the annual reports required by Section 367.022(8), Florida Statutes, and Rule 25-30.111, Florida Administrative Code, for former clients of H₂Oulton during the period of time in 1994 in which H₂Oulton served the clients. Our staff requested annual reseller reports from USW for Innsbruck Apartments, Palm Lake Apartments and Park Crest Apartments for any and all months in 1994 in which H₂Oulton billed and collected payments. USW responded that they were not in possession of any H₂Oulton documents and therefore could not provide the information. However, prior to discovery, USW had furnished annual reseller reports during the months in 1994 in which H₂Oulton billed and collected payments for four other former clients of H₂Oulton which had executed a new contract with USW.

Section 837.06, Florida Statutes

It appears that the statements regarding Robert Oulton's corporate status and the possible contradictions regarding the conditions surrounding the signing of a new contract with USW may be in violation of Section 837.06, Florida Statutes. Therefore, we find it appropriate to notify the State Attorney's office of the above information to allow that office to take whatever action it deems appropriate.

Based on the foregoing, it is

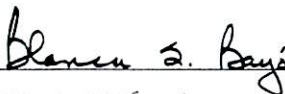
ORDERED by the Florida Public Service Commission that each of the findings made in the body of this order is hereby approved in every respect. It is further

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ORDERED that the notice of withdrawal filed by Julian Apartments is hereby acknowledged, and this docket shall be closed. It is further

ORDERED that the State Attorney's office shall be advised of possible violations of Section 837.06, Florida Statutes, as set out in the body of this order.

By ORDER of the Florida Public Service Commission, this 10th day of February, 1997.



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 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.