

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of FOYE BUILDERS, ) DOCKET NO. 890400-SU  
 INC. and FRANK and MAUREEN ESPOSITO )  
 against SANIBEL SEWER SYSTEM PARTNERS, ) ORDER NO. 22571  
 LTD. for violation of Rule 25-30.310(2) )  
 and (3), F.A.C., regarding initiation ) ISSUED: 2/19/90  
 of service in Lee County. )  
 )

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

ORDER ACCEPTING AGREEMENT DISPOSING OF CUSTOMERS'  
 COMPLAINTS AND IMPOSING FINES AGAINST UTILITY

AND

NOTICE OF PROPOSED AGENCY ACTION  
 ORDER IMPOSING FINES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein, except for the action discussed herein accepting the agreement disposing of the Complainant's complaints and imposing fines against the utility for its failure to provide timely sewer service to the Complainants is preliminary in nature, and as such, 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.

DISPOSITION OF FOYE AND ESPOSITO COMPLAINT

On March 15, 1989, the Commission received a formal Complaint from Foye Builders, Inc. and Frank and Maureen

DOCUMENT NUMBER-DATE

01585 FEB 19 1990

FPSC-RECORDS/REPORTING

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Esposito (Complainants) against Sanibel Sewer Systems, Inc. (Sanibel or utility) alleging that the utility had failed to provide sewer service to the Complainants without unreasonable delay, in violation of Rule 25-30.310(2), Florida Administrative Code. The Complaint further alleged that the utility violated the aforementioned rule by not informing the Complainants of the utility's rules and policies regarding the provision of sewer service by Sanibel. The Complainants' demands for relief were that the Commission compel Sanibel to make sewer service available to them on or before April 15, 1989, and that the Commission compel the utility to reimburse the Complainants for certain specified damages caused by the utility's alleged unreasonable delay in providing sewer service.

On April 10, 1989, Sanibel responded to the aforementioned Complaint by timely filing a Motion to Dismiss. In its Motion, Sanibel alleged that the Commission did not have the jurisdiction to assess damages and enter a judgement against the utility. The utility also alleged that the delay in providing sewer service was not the fault of the utility, but rather, such delay was caused by the utility's attempt to comply with a Consent Order which was imposed on the utility by the Florida Department of Environmental Regulation (DER) in January, 1987. Specifically, the utility alleged that the aforementioned Consent Order prohibited the utility from accepting further connections to its sewer system until the utility had installed a tertiary effluent filter system acceptable to DER. The utility's Motion to Dismiss further contended that since DER decides whether sewer connections may or may not be made, the Commission did not have jurisdiction to determine whether there had been an unreasonable delay in providing sewer service to the Complainants.

In Order No. 21562, issued July 17, 1989, we granted in part and denied in part the utility's Motion to Dismiss. Specifically, we granted the utility's motion with respect to the award of money damages to the Complainants, acknowledging that this Commission does not have authority to award money damages. However, with regard to the question of whether there had been an unreasonable delay on the utility's part in providing sewer service to the Complainants, we Commission found that we do have jurisdiction to decide this question and directed the utility to file its answer to the Complaint within ten (10) days of the date of the Order.

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The utility timely filed its answer to the Complaint alleging that certain construction delays caused the utility to be unable to obtain an operating permit from the City of Sanibel, which in turn, caused a delay in the certification by DER of the utility's tertiary filter system required by the aforementioned Consent Order. The utility further alleged that until it was in compliance with DER's Consent Order, it was precluded from hooking up new customers to its sewer system. Thus, the utility contended that since the delay in providing sewer service was not willful, such delay should therefore, not be considered to be unreasonable.

On August 21, 1989, the case was referred to the Division of Administrative Hearings (DOAH) for an administrative hearing pursuant to Chapter 120, Florida Statutes. The case was scheduled for hearing in Ft. Myers on November 27, 1989.

On or about November 20, 1989, counsel for the utility and the Complainants entered into a settlement agreement resolving the parties' differences, wherein the utility admitted that it failed to provide sewer service to the Complainants without reasonable delay, in return for the Complainants withdrawing their Complaint. A copy of the agreement is attached hereto as Attachment A and incorporated herein. On December 13, 1989, the Hearing Officer from the Division of Administrative Hearings issued an Order closing its case and relinquishing jurisdiction to the Commission with respect to the Complaint.

From our review of the complaints and the proposed settlement agreement, we find that such agreement is a reasonable resolution to the dispute, thus it is hereby accepted. In view of the utility's admission of violation of our rule, we believe it appropriate to fine the utility \$1.00 per day for each day it unreasonably delayed connection to the Complainants (313 days). The utility has stated in a letter to this Commission that it has no objection to said fine.

#### PROPOSED AGENCY ACTION

During our Staff's investigation and preparation for the DOAH hearing, discussed above, Staff found evidence that there had been unreasonable delay by the utility in providing sewer service to its certificated territory. In fact, it appeared to our Staff that a recommendation to initiate a general show cause proceeding against the utility might be appropriate due

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to the fact that several hundred customers, or potential customers, may have experienced such delay in receiving sewer service from the utility. Our Staff communicated the results of its investigation and its accompanying concerns to the utility in early November, 1989.

By way of letter dated November 21, 1989, the utility through its counsel, informed the Commission that the utility wished to avoid an "expensive, time consuming and unnecessary" general show cause proceeding before the Commission. The utility further stated that it would not object to being assessed a fine in an amount equalling one (1) percent of the utility's 1988 gross annual revenues, for the utility's admitted failure to provide sewer service to its certificated territory in violation of the previously cited statute and rule. This amounts to \$6,809.63. We find the fine amount to be appropriate for the severity of the admitted infractions, and thus hereby assess such fine against the utility.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Settlement Stipulation between the Complainants, Foye Builders, Inc. and Frank and Maureen Esposito, and Sanibel Sewer System Partners, Ltd., a copy of which is attached hereto as Attachment A and incorporated herein, is hereby accepted as properly disposing of the Complainants' Complaint against the utility filed herein on March 15, 1989. It is further

ORDERED that a fine in the amount of \$313 is hereby assessed against Sanibel Sewer System Partners, Inc. for its admitted failure to provide sewer service to Complainants, Foye Builders, Inc. and Frank and Maureen Esposito, within a reasonable time in violation of Rule 25-30.310(2), Florida Administrative Code, and Section 367.111, Florida Statutes. It is further

ORDERED that a fine in the amount of \$6,809.63 is hereby assessed against Sanibel Sewer System Partners, Ltd. for its admitted failure to provide sewer service to its certificated territory within a reasonable time in violation of Rule 25-30.310(2), Florida Administrative Code, and Section 367.111, Florida Statutes. It is further

ORDERED that this docket shall remain open until the payment of the fines imposed herein, and such fines shall be



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paid within sixty (60) days of the date of this Order. It is further

ORDERED that the provision of this Order assessing a fine against the utility in the amount of \$6,809.63 is issued as proposed agency action, and as such, shall become final 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, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto.

By ORDER of the Florida Public Service Commission  
this 19th day of FEBRUARY, 1990.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JRF

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.

As identified in the body of this order, our action assessing a fine against the utility in the amount of \$6,809.63 is preliminary in nature and will not become effective or

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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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 12, 1990. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 the relevant portion of this order becomes final and effective on the date described above, any party adversely 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 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 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.

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

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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.

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RECOMMENDATION - SANIBEL SEWER SYSTEM PARTNERS, LTD.  
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ATTACHMENT 1  
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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

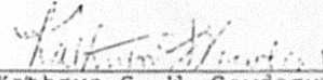
FOYE BUILDERS, INC. and	)	
FRANK and MAUREEN ESPOSITO,	)	
	)	Case No. 89-004573
Petitioners,	)	
vs.	)	
SANIBEL SEWER SYSTEM PARTNERS, LTD.,	)	
	)	
Respondent.	)	
_____	)	
FLORIDA PUBLIC SERVICE COMMISSION	)	
	)	
Intervenor.	)	
_____	)	

SETTLEMENT STIPULATION

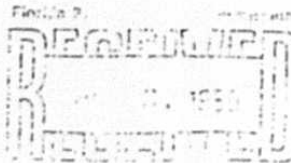
IT IS HEREBY AGREED AND STIPULATED between Foye Builders, Inc. and Frank and Maureen Esposito, petitioners, and Sanibel Sewer System Partners, Ltd., respondent, that:

1. The parties wish to resolve this matter without proceeding to administrative hearing.
2. Foye Builders, Inc. and Frank and Maureen Esposito, petitioners, hereby withdraw their complaint and petition for an administrative hearing in this case.
3. Respondent hereby admits that as to petitioners it did not initiate service without unreasonable delay.
4. Petitioners and respondent shall each bear their own costs and attorneys fees.

Executed as it appears below.

  
\_\_\_\_\_  
Kathryn G. W. Cowdery  
Gatlin, Woods, Carlson & Cowdery  
1709-D Mahan Drive  
Tallahassee, FL 32308

Attorneys for Respondent  
Sanibel Sewer System, Ltd.

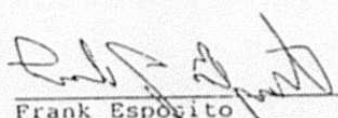




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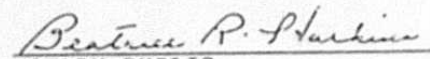
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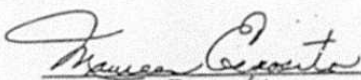
  
\_\_\_\_\_  
Frank Esposito  
2350 S. Avenue  
Scotch Plains, NJ 07090

STATE OF *New Jersey* )  
COUNTY OF *Union* )

Sworn to, subscribed, acknowledged, and executed, freely and voluntarily, for the purposes described in this Settlement Stipulation, by Frank Esposito, in the county and state aforesaid, this 22<sup>nd</sup> day of November, 1989.

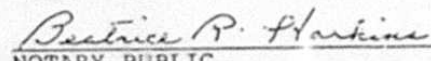
  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commissioner Expires:

BEATRICE R. MARKINS  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 5, 1994

  
\_\_\_\_\_  
Maureen Esposito  
2350 S. Avenue  
Scotch Plains, NJ 07090

STATE OF *New Jersey* )  
COUNTY OF *Union* )

Sworn to, subscribed, acknowledged, and executed, freely and voluntarily, for the purposes described in this Settlement Stipulation, by Maureen Esposito, in the county and state aforesaid, this 22<sup>nd</sup> day of November, 1989.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commissioner Expires:

BEATRICE R. MARKINS  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 5, 1994

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JAN 27 1990

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RECOMMENDATION - SANIBEL SEWER SYSTEM PARTNERS, LTD.  
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Erika Foye  
Erika Foye  
Foye Builders, Inc.  
P. O. Box 1416  
Sanibel, FL 33957

STATE OF FLORIDA )  
COUNTY OF LEE )

Sworn to, subscribed, acknowledged, and executed, freely and voluntarily, for the purposes described in this Settlement Stipulation, by Erika Foye, in the county and state aforesaid, this 20 day of November, 1989.

John C. Vengler  
NOTARY PUBLIC  
My Commissioner Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. APR. 15, 1992  
BONDED THRU GENERAL INS. UND.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by hand delivery to Mr. James R. Frier, Staff Counsel, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0850, and by U.S. mail to Foye Builders, Inc., P.O. Box 1416, Sanibel, FL 33957, and to Mr. and Mrs. Frank Esposito, 2350 South Avenue, Scotch Plains, New Jersey, 07090, DATED this 27th day of November, 1989.

Kathryn G. Cowdery  
KATHRYN G.W. COWDERY

