

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 921237-WS
Amendment of Certificate Nos.) ORDER NO. PSC-94-0331-PCO-WS
298-W and 248-S in Lake County) ISSUED: March 24, 1994
by JJ'S MOBILE HOMES, INC.)
_____)

ORDER DISPOSING OF JJ'S MOBILE HOMES MOTION FOR SANCTIONS

AND

ORDERING PARTIES TO COMPLY WITH DISCOVERY

On March 1, 1993 JJ's Mobile Homes, Inc., (JJ's or the utility) served identical Interrogatories and Requests For Production of Documents on 35 individuals who objected to JJ's application for amendment and are therefore, parties, as well as to the Office of Public Counsel (OPC) and the City of Mt. Dora. On April 3, 1993, Mr. Steve Raimondi and Mr. Leon Bibb, filed a joint answer to the utility's interrogatories on behalf of the other individuals who had been served with the discovery requests.

On April 29, 1993, JJ's Mobile Homes, Inc. filed a Motion to Compel Discovery seeking to compel individual homeowners (individuals) to respond to JJ's discovery requests. On May 7, 1993, the individuals filed a response to JJ's Motion to Compel in the form of a Joint Motion to Designate Steven Raimondi as the Appropriate Person to Respond to Discovery Requests from JJ's Mobile Homes, Inc. and to Concur in Discovery Requests (Joint Motion).

During the pendency of these motions, the case was placed in abeyance while the parties negotiated the possible sale of the utility. When it became apparent that the parties would not be able to reach an agreement by the deadline of September 1, 1993, the matter was scheduled to be heard as a formal hearing on December 15, 1993.

By Order No. PSC-93-1564-PCO-WS, issued October 25, 1993, the Commission found that it was inappropriate for Mr. Raimondi to respond to discovery on behalf of the other individuals, and ordered the individuals to respond to the interrogatories and request for production within twenty days of the Order.

In November of 1993, the parties again informed the Commission that a sale of the utility to the City of Mt. Dora was probable, and requested a continuance. The continuance was granted and the matter was placed in abeyance until March 1, 1994.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On November 19, 1993, JJ's filed a Motion for Sanctions on the grounds that none of the individuals who were ordered to comply with discovery had responded to the utility's discovery requests. JJ's Motion seeks to dismiss each of the individual homeowners who have refused to obey Order No. PSC-93-1564-PCO-WS. In support of the motion, JJ's states that because the individuals have not responded to its discovery requests, JJ's will be prejudiced by their continued participation because JJ's will not be able to properly respond to the individuals' protests or adequately conduct cross examination. JJ's also avers that a dismissal of the remaining individuals would not harm the individual's interests in that they have not been active participants in this hearing. Furthermore, Mr. Raimondi and Mr. Bibb, who are similarly situated homeowners, have adequately presented their positions. JJ's also claims that judicial economy would be furthered by no longer having to serve parties who have not participated in the case.

On December 1, 1993, OPC filed a Memorandum in Opposition to JJ's Motion. OPC objects to JJ's motion on the grounds that JJ's argument is contradictory to its earlier claims that Mr. Raimondi should not serve as the contact person for the other individuals. OPC also claims that JJ's is attempting to deny the individuals their rights to participate in the process. OPC states that dismissal of the parties is a severe sanction that should not be imposed on the individuals in this case. On December 1, 1993, OPC also filed a Request for Oral Argument to address JJ's motion.

None of the 33 individuals have filed a response to JJ's motion, or have in any way indicated to this Commission their opposition to JJ's motion.

The Public Service Commission's rules permit the imposition of sanctions against a party who does not comply with discovery procedures. Rule 25-22.034, Florida Administrative Code, expressly adopts Rules 1.280 through 1.400 of the Florida Rules of Civil Procedure. Furthermore, Rule 25-22.042, Florida Administrative Code, states that "the failure or refusal of a party to comply with any lawful order may be cause for dismissing the party from the proceeding."

The dismissal of any party is a severe sanction, in that the party may no longer participate in the case. However, the courts have long held that if a party does not properly answer discovery, and does not comply with an order to compel discovery, a party or the entire action may be dismissed. Fla.R.Civ.P. 1.380(b)(2)(C);

Allendorfer v. Wood, 449 So.2d 1312 (Fla. 5th DCA 1984); Hurley v. Werley, 203 So.2d 530 (Fla. 1967). That decision lies within the discretion of the court, Carr v. Dean Steel Buildings, Inc., 619 So.2d 392 (Fla. 1st DCA 1993), but should only be undertaken in extreme situations, and not without affording the non-complying party an opportunity to cure the non-compliance. Hurley at 537.

OPC has raised concerns about the seriousness of dismissing a party from an action, and strenuously objects to any attempt to remove the individuals from the proceeding. While the Commission recognizes that dismissal would be the most severe sanction to impose upon the individuals, it is also clear that parties who participate in Commission proceedings must fulfill the obligations required of parties. Parties are expected to comply with lawfully issued orders. The individuals have failed to do that by not responding to discovery as mandated in Order No. PSC-93-1564-PCO-WS. Neither OPC or the individuals have offered any excuse for not answering discovery, nor have they offered any alternative for ensuring that they do comply. Furthermore, unlike the cases cited above, the entire action would not be dismissed by dismissing the non-complying parties.

While dismissal of the individuals may be appropriate at this point in the proceeding, it is also appropriate to allow them one more opportunity to fulfill their obligations so they may continue to participate in this case as parties. If they intend to continue their participation in this matter as parties, the individuals who have not yet complied with JJ's discovery requests and Order No. PSC-93-1564-PCO-WS, shall respond to the discovery requests within 20 days of this Order. If the individuals do not comply within that time period, they will have clearly demonstrated a willful disobedience to this Order and Order No. PSC-93-1564-PCO-WS, and that they do not wish to participate in the case as parties, and they will be considered dismissed from this proceeding.

This measure is not being undertaken in order to punish the non-complying parties, nor is it done in the interest of judicial economy. Each party has rights which must be protected. However, each party also owes certain responsibilities to the other parties and to the Commission. The individual homeowners are fully entitled to participate in this proceeding as a party, but must also respond to discovery requests and comply with Commission orders.

ORDER NO. PSC-94-0331-PCO-WS
DOCKET NO. 921237-WS
PAGE 4

OPC has also filed a request for oral argument on this matter, on the grounds that oral argument would aid the Commission in evaluating the seriousness of the outright dismissal of parties. Because OPC and JJ's have adequately addressed this issue in their motions, oral argument on this matter is unnecessary. Furthermore, this Order does not dismiss the parties outright. It simply provides that will be the result if the parties fail to comply.

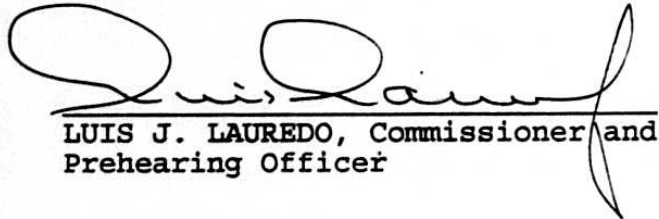
Based on the foregoing, it is, therefore,

ORDERED by Commissioner Luis J. Lauredo, as Prehearing Officer, that the individuals who have not answered JJ's Mobile Homes, Inc.'s discovery requests shall respond to the discovery requests within 20 days. It is further

ORDERED that if the individuals who have not answered JJ's discovery requests do not comply with this Order within 20 days, they shall be considered to be dismissed from this matter as parties. It is further

ORDERED that the Office of Public Counsel's request for oral argument is denied.

By ORDER of Commissioner Luis J. Lauredo, as Prehearing Officer, this 24th day of March, 1994.



LUIS J. LAUREDO, Commissioner and
Prehearing Officer

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ORDER NO. PSC-94-0331-PCO-WS
DOCKET NO. 921237-WS
PAGE 5

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.