



BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
Revocation By Florida Public :
Service Commission of :
Certificates Nos. 451-W and : DOCKET NO. 930944-WS
382-S issued to Shady Oaks :
Mobile-Modular Estates, Inc. :
in Pasco County, pursuant to :
Section 367.111(1), F.S. :

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER KIESLING
PREHEARING OFFICER

DATE: JULY 22, 1994

TIME: COMMENCED AT 1:30 P.M.
CONCLUDED AT 1:50 P.M.

PLACE: ROOM 106, FLETCHER BUILDING
101 EAST GAINES STREET
TALLAHASSEE, FLORIDA

REPORTED BY NANCY S. METZKE, RPR, CCR
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FPSC-RECORDS/REPORTING

1 APPEARANCES:

2 LILA A. JABER, FPSC Division of Legal Services,
3 101 East Gaines Street, Tallahassee, Florida, 32301, on
4 behalf of the Commission Staff.

5 CHRISTIANA T. MOORE, FPSC General Counsel Office,
6 101 East Gaines Street, Tallahassee, Florida 32399-0850,
7 as Counsel to the Commissioners.

8 ALSO PRESENT:

9 NEIL BETHEA, Florida Public Service Commission staff.

10 RICK MANN, Office of the Public Counsel.

11 SAM GATLIN, Office of the Public Counsel.

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P R O C E E D I N G S

(Hearing convened at 1:30 p.m.)

COMMISSIONER KIESLING: Call this prehearing to order. Would you give notice, please?

MS. JABER: Yes, Commissioner. This time and place has been designated for a prehearing conference pursuant to notice in Docket Number 930944, revocation by the Florida PSC, Certificates 451-W and 382-S, issued to Shady Oaks Mobile-Modular Estates, Inc. in Pasco County.

COMMISSIONER KIESLING: All right. I'll take appearances. Is anyone here for Shady Oaks Mobile Home?

MS. JABER: No, Commissioner, it doesn't appear that anyone is here from the utility.

COMMISSIONER KIESLING: And have you had some conversation with Mr. Sims --

MS. JABER: Yes, Richard Sims.

COMMISSIONER KIESLING: -- regarding his appearance today?

MS. JABER: I talked to Mr. Sims yesterday, and his position was he was not going to expend the funds to come to Tallahassee for an earlier deposition we had today and for this prehearing conference. Mr. Sims has retained a bankruptcy attorney who has not made an appearance in this case, and I have not had any contact with him in the

1 last couple of days, although I have tried to call him, and
2 he has not returned my phone calls.

3 COMMISSIONER KIESLING: All right. Then in his
4 absence, would you enter your appearance please?

5 MS. JABER: Lila Jaber on behalf of the
6 Commission staff.

7 COMMISSIONER KIESLING: And?

8 MS. MOORE: Christiana Moore on behalf of the
9 Commissioners.

10 COMMISSIONER KIESLING: And I notice, Mr. Mann,
11 that you are here. You are not parties, you are just
12 monitoring?

13 MR. MANN: That's correct, Commissioner.

14 COMMISSIONER KIESLING: Okay. Are there any
15 preliminary matters that we need to take care of?

16 MS. JABER: Yes, Commissioner. I think first
17 there is a motion to strike testimony of Mike Daley, Aileen
18 Delehanty and Larry DeLucenay. For these three individuals
19 the utility did not pre-file testimony, but they did
20 identify their names in a prehearing statement that was
21 filed on behalf of the utility.

22 COMMISSIONER KIESLING: And Mr. Sims didn't show
23 up this morning for his deposition either so you couldn't
24 ask him what their testimony was?

25 MS. JABER: That's right.

1 COMMISSIONER KIESLING: All right. Well, since
2 there is no one here to object to it and there are
3 certainly due grounds shown on granting staff's motion to
4 strike the testimony of Mike Daley, Aileen Delehanty, and
5 Larry DeLucenay, something like that. Any other
6 preliminary matters?

7 MS. JABER: As I've told you, Mr. Sims did not
8 attend his deposition this morning. Pursuant to the
9 Florida Rules of Civil Procedure, the Commission staff
10 would like to seek sanctions against him in the form of
11 cost for the court reporter, and I do have an estimate of
12 the cost although the court reporter has told me that an
13 invoice will come later when the transcript is completed.
14 And staff would also like to move for whatever sanctions
15 the prehearing officer deems appropriate. For example, we
16 would like to show that his issues and positions have been
17 waived in addition, also because of the fact that he has
18 not attended the prehearing conference, and would like to
19 have his testimony deleted or stricken.

20 COMMISSIONER KIESLING: And that's the pre-filed
21 direct that he filed?

22 MS. JABER: His pre-filed direct and rebuttal
23 testimony.

24 COMMISSIONER KIESLING: Well, I certainly think
25 that sanctions are appropriate for his failure to attend

1 his own deposition. And you did discuss this with him and
2 he understood that he needed to be here but just chose not
3 to be?

4 MS. JABER: Not only have I discussed it with him
5 over the phone yesterday when I told him he needed to be
6 here, I know because I have copies of letters that the
7 former attorney, Gerald Buhr and Cheryl Lister, that firm
8 sent him a letter when they withdrew from representation
9 telling him of the dates that he needed to comply with.
10 And I also sent the bankruptcy attorney and Mr. Sims a copy
11 of the motion to strike and a copy of the draft prehearing
12 order.

13 COMMISSIONER KIESLING: All right. I'd say you
14 covered all bases, and if you would formalize your motion
15 for sanctions in writing just so that the record is clear,
16 I will grant the motion for sanctions which will include
17 the cost for the court reporter's appearance, and I will
18 strike the pre-filed testimony filed by Mr. Sims.

19 MS. JABER: I think with that we could probably
20 go page by page on the draft prehearing order because there
21 will be some changes now.

22 COMMISSIONER KIESLING: Okay. I would just
23 indicate that I have a copy of Mr. Buhr's withdrawal,
24 notice of withdrawal in which he asserts that Mr. Sims is
25 aware that he is withdrawing and that Mr. Sims acknowledged

1 to him the propriety of that withdrawal, and there is
2 attached to it a letter to Mr. Sims which details the
3 necessity of, or the requirement that he appear at the
4 deposition and the prehearing, so that's already a matter
5 of record.

6 All right. We can start here with the
7 prehearing. Any modifications or corrections to the case
8 background?

9 MS. JABER: The case background, on Page 5, I
10 have handed out some additions to the background in light
11 of today's events. I would like to add just a couple of
12 paragraphs. If you would like me to read this into the
13 record, I would be glad to. I have handed out hard copies,
14 and since I'll be making the changes to the prehearing
15 order, I could incorporate this.

16 COMMISSIONER KIESLING: Okay. Did you provide a
17 copy of this to public counsel's office even though they
18 are not parties, just so that they know what is going on?

19 MS. JABER: We will.

20 COMMISSIONER KIESLING: Okay.

21 MS. JABER: And, Commissioner --

22 COMMISSIONER KIESLING: Go ahead and read it into
23 the record so they can at least know the nature of the
24 amendment.

25 MS. JABER: Sure.

1 "On July 19th, 1994, Attorney
2 General T. Buhr filed a Notice of
3 Withdrawal of Counsel wherein
4 Mr. Buhr notified the Commission
5 that his firm no longer represents
6 Shady Oaks. Further, Mr. Buhr
7 notified the Commission that
8 Shady Oaks filed for bankruptcy
9 in the Tampa Division of the United
10 States District Court for the
11 Middle District of Florida, under
12 Case Number F94-6876-8G1. The
13 utility has retained a bankruptcy
14 attorney.

15 "By Order Number PSC-94-0809-PCO-WS,
16 the prehearing officer ordered Shady
17 Oaks to file a status report on the
18 Circuit Court action by July 20th, 1994.
19 As of the date of the Prehearing
20 Conference, the status report has not
21 been filed. Additionally, the utility
22 owner, Richard D. Sims, failed to attend
23 his deposition noticed on July 11th, 1994,
24 to be taken at 10:00 a.m. July 22nd, 1994,
25 at the Florida Public Service Commission

1 in Tallahassee, Florida."

2 I would just like to add one sentence, also that the
3 utility failed to attend the prehearing conference held on
4 Friday, July 22nd, 1994, in Tallahassee, Florida.

5 COMMISSIONER KIESLING: All right.

6 MS. JABER: The next change that I have is on
7 Page 8, and that is to show that the testimony of Richard
8 Sims, Mike Daley, Aileen Delehanty and Larry DeLucenay has
9 been stricken.

10 COMMISSIONER KIESLING: All right. And when you
11 make your modifications you will indicate that that was
12 stricken based on the prehearing order?

13 MS. JABER: Right, and rebuttal of Mr. Sims.

14 COMMISSIONER KIESLING: Right. You had indicated
15 something about striking the positions that had been
16 asserted by the utility. Could you --

17 MS. JABER: Yes.

18 COMMISSIONER KIESLING: -- tell me a little bit
19 more about that and what the effect of it is?

20 MS. JABER: Starting on Page 9, pursuant to Rule
21 25-22.038(5)(b), Florida Administrative Code, Shady Oaks
22 was required to attend this prehearing conference. And I
23 would like to request that in lieu of having the utility's
24 positions set forth there as they are, that we be allowed
25 to state something like the utility has waived all issues

1 and positions raised in its prehearing statement because of
2 the fact that they failed to attend the prehearing
3 conference.

4 COMMISSIONER KIESLING: That seems to me to be
5 another, or an additional sanction. I think I'd probably
6 be more comfortable with just leaving whatever positions
7 the utility has stated in the prehearing while recognizing
8 that since they are not going to be putting on a case,
9 they won't be in a position to actually prove up any of
10 those positions because their testimony has been stricken,
11 but I don't want to take away from the utility its
12 opportunity that it's exercised to at least state what its
13 position is.

14 MS. JABER: All right.

15 COMMISSIONER KIESLING: So on the basic
16 positions, is there any change to staff's?

17 MS. JABER: No.

18 COMMISSIONER KIESLING: And how about Issue 1,
19 any change on staff?

20 MS. JABER: No.

21 COMMISSIONER KIESLING: Issue 2?

22 MS. JABER: No.

23 COMMISSIONER KIESLING: Issue 3?

24 MS. JABER: There is a change to Issue 3. And
25 again, I've typed it out and handed it out to the court

1 reporter, and I believe public counsel has a copy.

2 COMMISSIONER KIESLING: And --

3 MS. JABER: The concern that I have on Issue 3,
4 we have reworded the issue, and the position that was
5 submitted by the utility no longer corresponds to that
6 issue. Since the utility is not present, I would like to
7 request that we at least delete the position that the
8 utility has reflected there.

9 COMMISSIONER KIESLING: Isn't the utility's
10 position at least responsive to the third question of what
11 is the appropriate disposition that they have requested
12 release of the funds to them?

13 MS. JABER: Yes, Commissioner, it probably does
14 answer the very last section of our issue.

15 COMMISSIONER KIESLING: Okay. Just go ahead and
16 leave the utility's response in and just make it clear that
17 it relates to the third portion of the restated issue. And
18 then insert your no changed position or your position on
19 the amended issue.

20 MS. JABER: Thank you.

21 COMMISSIONER KIESLING: Issue 4, the utility
22 didn't take any position so I guess they aren't.

23 MS. JABER: Right.

24 COMMISSIONER KIESLING: Okay. And any change to
25 staff?

1 MS. JABER: No.

2 COMMISSIONER KIESLING: On four, five, six?

3 MS. JABER: No.

4 COMMISSIONER KIESLING: Seven?

5 MS. JABER: With respect to Issue 7, staff is
6 taking the position that this is not a legitimate issue,
7 and this was an issue that was raised in the utility's
8 prehearing statement. To that extent, I would like to
9 request that Issue 7 be dropped.

10 COMMISSIONER KIESLING: Well, it does appear to
11 be irrelevant as to the revocation, and so I will go ahead
12 and grant your request to strike Issue 7 as not being a
13 relevant issue in this proceeding.

14 MS. JABER: Thank you.

15 With respect to the exhibits, because we have
16 stricken the testimony of Mr. Sims, I will remove all of
17 the exhibits that he has listed there.

18 COMMISSIONER KIESLING: All right.

19 MS. JABER: And staff has no changes to their
20 exhibits.

21 COMMISSIONER KIESLING: All right. And what
22 about, are there any proposed stipulations? I guess since
23 we can't even get him to show up, I'm sure we haven't
24 gotten him to stipulate anything.

25 MS. JABER: No.

1 COMMISSIONER KIESLING: All right.

2 MS. JABER: And under the rulings section I will
3 show the appropriate rulings.

4 COMMISSIONER KIESLING: All right. And if you
5 want to run the language past me on those areas where I
6 ruled on your ore tenus motion, I'd appreciate that just to
7 be sure that it conforms to what I think I said.

8 MS. JABER: Okay. All right. Now you want a
9 separate order on the motions though? You don't want the
10 rulings to be reflected here?

11 COMMISSIONER KIESLING: You can do them in here,
12 yeah.

13 MS. JABER: Okay.

14 COMMISSIONER KIESLING: I mean if not here --
15 This seems to be an adequate place to do it.

16 MS. JABER: Okay.

17 COMMISSIONER KIESLING: Unless you have another
18 thought on that or unless Ms. Moore has another thought on
19 that.

20 MS. MOORE: No, I don't.

21 COMMISSIONER KIESLING: Okay.

22 MS. JABER: That's fine.

23 COMMISSIONER KIESLING: Okay. Since you're here,
24 I will just see, is there anything that you want to
25 contribute to this discussion?

1 MR. MANN: I appreciate the opportunity,
2 Commissioner. We are here simply to monitor for the
3 customers. I have been dealing with the customer since the
4 staff assisted rate case was first filed in 1991 on this
5 matter, and they have expressed confidence in the work that
6 staff has been doing. And rather than gathering, Number,
7 1, raising the possibility of rate case expense but more
8 importantly allow staff to go ahead and pursue its job, we
9 are staying out of it at this time. We intend to be at the
10 hearing as well.

11 COMMISSIONER KIESLING: All right.

12 MR. MANN: But I have nothing really to add to it
13 today.

14 COMMISSIONER KIESLING: All right. My assumption
15 is the hearing is going to be really short. Staff has to
16 put on a prima facie case since it is an enforcement
17 action, and their pre-filed testimony essentially is their
18 pre-filed case since there won't be -- it doesn't look like
19 there will be anyone showing up for the hearing on the
20 other side. I'd say we'd be out of here fairly quickly, if
21 that helps you any.

22 MR. MANN: From what I have seen of Mr. Sims, it
23 wouldn't surprise me if he did pop in to the hearing.

24 COMMISSIONER KIESLING: Okay. Well, if he does
25 pop in, I will give him the right to cross examine. You

1 know, I have not struck his ability to do that or dismissed
2 his request for a hearing. So if he shows up after the
3 customer testimony, I'll certainly give him that
4 opportunity.

5 MR. MANN: Thank you, Commissioner.

6 MS. JABER: Thank you.

7 COMMISSIONER KIESLING: I guess I won't have the
8 say at the hearing, I realize now. I won't be conducting
9 the hearing, but I would assume that he would have the
10 opportunity to cross examine. If there is nothing else --

11 MS. JABER: Nothing else.

12 COMMISSIONER KIESLING: Then this prehearing is
13 concluded.

14 MS. JABER: Thank you, Commissioner.

15 COMMISSIONER KIESLING: Thank you.

16 (WHEREUPON, THE PREHEARING CONFERENCE WAS
17 CONCLUDED AT 1:50 P.M.)

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