



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: May 23, 1995

TO: SUSAN F. CLARK, CHAIRMAN
 J. TERRY DEASON, COMMISSIONER
 JULIA L. JOHNSON, COMMISSIONER
 DIANE K. KIESLING, COMMISSIONER
 JOE GARCIA, COMMISSIONER
 BILL TALBOTT, EXECUTIVE DIRECTOR
 JAMES WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.
 MARY BANE, DEPUTY EXECUTIVE DIRECTOR/TECH

906025

FROM: DAVID E. SMITH, DIRECTOR OF APPEALS

DES

RE: SHADY OAKS MOBILE MODULAR ESTATES, INC. V. FLORIDA PUBLIC SERVICE COMMISSION, CASE NO. 93-3339

In a terse opinion filed May 22, 1995, the First District Court of Appeal, per Zehmer, Chief Judge, affirmed the Commission's order imposing a fine equal to rate base on Shady Oaks Mobile Modular Estates. The Court noted that, even though the Appellant argued that the Commission's final order did not contain a specific finding of a "willful or knowing" violation of a Commission order, that issue was never raised below and could not be raised on appeal.

As a post script to this case, it should be noted that Shady Oaks was later decertified by the Commission.

- ACK _____
- AFA _____
- APP _____
- CAF DES
- CMU Attachment
- CTR cc: All Division Directors
- EAG _____ All Attorneys
- LEG _____
- LIN _____
- OFC _____
- ROH _____
- SEC 1
- WAS _____
- OTH _____

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DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMM.
DIVISION OF APPEALS

SHADY OAKS MOBILE MODULAR
ESTATES, INC.,

Appellant,

v.

FLORIDA PUBLIC SERVICE
COMMISSION,

Appellee.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 93-3339

Opinion filed May 22, 1995.

An appeal from an order of the Florida Public Service Commission.

Robert A. Antista and John L. Wharton of Rose, Sundstrom & Bentley,
Tallahassee, for Appellant.

Robert D. Vandiver, General Counsel, and David E. Smith, Director
of Appeals, Florida Public Service Commission, Tallahassee, for
Appellee.

ZEHMER, C.J.

The final order of the Public Service Commission imposing a
fine against the appellant utility company is affirmed. See
Florida Real Estate Commission v. Webb, 367 So. 2d 201 (Fla.
1978). Although Appellant argues that the final order fails to

find specifically that Appellant knowingly refused to comply with, or willfully violated, a provision of chapter 367 or any lawful rule or order of the commission, that issue was never raised in the proceedings before the commission or in Appellant's motion for reconsideration of the final order and therefore cannot be raised for the first time on appeal.

AFFIRMED.

DAVIS, J., and WENTWORTH, Senior Judge, CONCUR.