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State of Florida



Public Service Commission

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

DATE: December 28, 1995
TO: Evelyn H. Sewell, Chief of Fiscal Services, Division of Administration
FROM: Lila A. Jaber, Chief of Water & Wastewater, Division of Legal Services *LJ*
RE: Docket No. 930944-WS - Revocation by Florida Public Service Commission of Certificates Nos. 451-W and 382-S issued to SHADY OAKS MOBILE-MODULAR ESTATES, IN., in Pasco County, pursuant to Section 367.111(1), F.S.

On May 15, 1995, the Commission issued Order No. PSC-95-0603-FOF-WS, in which it ordered that the collection of regulatory assessment fees in the amount of \$13,127 and of fines in the amount of \$62,572 from Shady Oaks Mobile-Modular Estates, Inc., (Shady Oaks or utility) be referred to the Comptroller's Office for further collection efforts.

By Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, the Commission fined the utility in the amount of \$60,572 for failure to comply with Orders Nos. 24084 and 25296 regarding timely installation of water meters; to implement specific directives to improve quality of service; to file appropriate name change and restructuring documents; to meet preventative maintenance requirements; and to meet escrow requirements. In Order No. PSC-94-0976-FOF-WS, issued August 11, 1994, the Commission ordered Shady Oaks to remit delinquent regulatory assessment fees, plus penalties and interest, in the total amount of \$13,127 for the years 1990, 1991, 1992, and 1993. By Order No. PSC-92-0367-FOF-WS, the Commission re-imposed a \$2,000 fine that had been suspended. Shady Oaks failed to make the payment of the fines or the fees, as ordered. Thereupon, Commission staff sent the utility a letter by certified mail on February 8, 1995, and a second letter by certified mail on March 15, 1995, requesting that the utility remit \$75,699, then the total amount of the outstanding fines and fees. The utility responded in no way to these collection measures, which we determine have exhausted a reasonable collection effort. Hence, we submit this matter to your office for approval to forward the account to the Department of Banking and Finance, Comptroller's Office, for further collection efforts or permission to write-off the account. According to the records of the Secretary of State, Division of Corporations, on December 29, 1995, Shady Oaks is presently an active-status corporation.

The events leading to the Commission's referral order are outlined below for your convenience.

1. On January 10, 1990, Shady Oaks applied for a staff-assisted rate case. In Docket No. 900025-WS, on February 8, 1991, the Commission issued Proposed Agency Action Order No. 24084, approving a rate increase and requiring the utility to do the following:
 - a) file a request for acknowledgement of restructuring and

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- name change;
 - b) improve the quality of service to a satisfactory level;
 - c) expend at least 85 percent of the allowance for preventative maintenance, or submit a written schedule showing what monthly maintenance will be implemented, along with a statement of the reasons such funds were not spent for preventative maintenance;
 - d) install meters for all of its customers; and
 - e) escrow a certain portion of the monthly rates.
- 2. The utility did not apply for a construction permit as required by a March 7, 1989, Department of Environmental Protection (DEP) Consent Final Judgment, under which the utility agreed to construct an additional effluent disposal system, to eliminate discharge from its plant, and to establish a new percolation pond. Therefore, on July 8, 1991, based on a stipulated settlement of a motion for contempt brought against the utility by DEP, the circuit court ordered the utility to interconnect its wastewater system with Pasco County, rather than construct new disposal facilities.
- 3. On November 4, 1991, the Commission issued Order No. 25296, which determined the utility's noncompliance with Order No. 24084. Order No. 25296 required the utility to:
 - a) submit all necessary information for changing its certificated name, or revert to operating under its currently certificated name;
 - b) immediately place in the escrow account all funds necessary to bring said account to its proper balance;
 - c) install water meters for all of its customers; and
 - d) improve the quality of service and interconnect with the Pasco County wastewater treatment system;
- 4. By Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission imposed a \$2,000 fine, which it had first imposed in Order No. 24084 for unsatisfactory quality of service but suspended, and ordered the utility to show cause why it should not be fined for each item of noncompliance found in Orders Nos. 24084 and 25296. At the utility's request, these matters were set for hearing.
- 5. A hearing regarding the utility's noncompliance with Orders Nos. 24084 and 25296 was held on January 7, 1993 in

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Zephyrhills, Florida. The utility, although it requested the hearing, did not attend the hearing. By Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, the Commission:

- a) fined the utility in the amount of its rate base, or \$60,572;
 - b) ordered that a proceeding be initiated to reduce the utility's rates by the amount of pro forma plant not constructed and the amount of preventative maintenance not spent; and
 - c) ordered that revocation proceedings be initiated.
6. On September 23, 1993, the Commission, pursuant to Section 367.111(1), Florida Statutes, and in accordance with Order No. PSC-93-0542-FOF-WS, noticed its Intent to Initiate Revocation of Certificates Nos. 451-W and 382-S issued to Shady Oaks, Docket No. 930944-WS, to which Shady Oaks timely objected.
 7. By Order No. PSC-93-1396-FOF-WS, issued September 27, 1993, the Commission denied the utility's motion for reconsideration of Order No. PSC-93-0542-FOF-WS and ordered Shady Oaks to sell or transfer the utility within 120 days of the issuance date of the Order. The Commission also voted to suspend the fine if a completed application for a transfer was submitted. The utility failed to transfer or interconnect the system within the 120 days.
 8. On October 19, 1993, the utility filed a Notice of Administrative Appeal of Order No. PSC-93-0542-FOF-WS, ultimately alleging that the Commission exceeded its discretionary bounds in fining the utility an amount equal to its rate base, \$60,527.
 9. By Order No. PSC-93-1733-FOF-WS, issued December 1, 1993, the Commission reduced Shady Oaks' rates to reflect removal of proforma plant not constructed and preventative maintenance not spent and required a refund.
 10. On February 18, 1994, the circuit court ordered Shady Oaks to interconnect its wastewater treatment facility with Pasco County or sell the system within 120 days of the date of the Order, or June 18, 1994. On June 15, 1994, the court modified its order to require Shady Oaks to sell or convey its wastewater treatment facility free and clear of any encumbrances by July 18, 1994.

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11. On June 10, 1994, Commission staff sent the utility a collection letter requesting payment of the \$60,572 fine and the earlier \$2,000 fine imposed by Order No. PSC-92-0367-FOF-WS.
 12. On June 29, 1994, Shady Oaks filed with the Commission a Motion for Stay Pending Review. The utility requested a stay of the provision imposing the \$60,572 fine in Order No. PSC-93-0542-FOF-WS, until final disposition of its appeal.
 13. On July 14, 1994, the utility filed a Chapter 11 bankruptcy petition.
 14. On August 11, 1994, in Order No. PSC-94-0976-FOF-WS, the Commission revoked the utility's certificates, Certificates Nos. 451-W and 382-S, and once again ordered the utility to remit its delinquent regulatory assessment fees, \$13,127, and outstanding fines, \$62,572.
 15. In Order No. PSC-94-1015-FOF-WS, issued August 23, 1994, the Commission denied the utility's motion for stay of the fine provision in Order No. PSC-93-0542-FOF-WS.
 16. On September 1, 1994, the circuit court appointed Pasco County temporary receiver for Shady Oaks.
 17. On January 4, 1995, the bankruptcy court dismissed the utility's Chapter 11 petition.
 18. Commission staff sent the utility two collection letters by certified mail, requesting that the utility remit the total amount owed of \$75,699, the first on February 8, 1995, P 407 857 499, and the second on March 15, 1995, P 931 359 388. The utility responded to neither one. In Order No. PSC-95-0603-FOF-WS, issued May 15, 1995, the Commission, as already noted, ordered that the collection of the delinquent regulatory assessment fees in the amount of \$13,127 and the outstanding fines in the amount of \$62,572 be referred to the Comptroller's Office for further collection efforts.
 19. On May 22, 1995, the First District Court of Appeal, in Case No. 93-3339, in an opinion written by Zehmer, J., and concurred in by Davis, J., and Wentworth, S.J., affirmed the Commission's order imposing the fine of \$60,527 on the utility.
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Please find the following attached hereto:

- (a) Order No. 24084
- (b) Order No. 25296
- (c) Order No. PSC-92-0367-FOF-WS
- (d) Order No. PSC-93-0542-FOF-WS
- (e) Order No. PSC-93-1396-FOF-WS
- (f) Order No. PSC-93-1733-FOF-WS
- (g) Certified Letter, June 10, 1994, Receipt No. P 407 857 479.
- (h) Order No. PSC-94-0976-FOF-WS
- (i) Order No. PSC-94-1015-FOF-WS
- (j) Order No. PSC-95-0603-FOF-WS
- (k) Certified Letter, February 8, 1995, Receipt No. P 407 857 499
- (l) Certified Letter, March 15, 1995, Receipt No. P 931 359 388
- (m) *Shady Oaks Mobile Modular Estates, Inc. v. Florida Public Service Commission*, 654 So.2d 678, (Fla. 1st DCA, 1995)
- (n) State of Florida Office of the Comptroller Bureau of Auditing Delinquent Accounts Receivable Transmittal

Shady Oaks' mailing address is:

Mr. Richard Sims
Shady Oaks Mobile Modular Estates, Inc.
1315 Eckles Drive
Tampa, Florida 33612

LAI/mw

cc: Division of Records and Reporting ✓
Division of Water and Wastewater (N. Bethea)