

1 STATE OF FLORIDA  
2 DIVISION OF ADMINISTRATIVE HEARINGS

3 MOTHER'S KITCHEN LTD., )  
4 )  
5 Petitioner, )  
6 vs. ) CASE NO. 97-4990  
7 ) 97-0365-GU  
8 FLORIDA PUBLIC UTILITIES COMPANY, )  
9 )  
10 Respondent, )  
11 and )  
12 PUBLIC SERVICE COMMISSION, )  
13 )  
14 Intervenor. )  
15 )

16 TRANSCRIPT OF PROCEEDINGS

17 VOLUME I

18 The above and foregoing cause having come on  
19 to be heard before the Honorable Daniel M. Kilbride, on  
20 March 4, 1998, at the hour of nine o'clock a.m., in the  
21 Seminole County Services Building, Room 3024, 1101 East  
22 First Street, in the City of Sanford, County of  
23 Seminole, State of Florida, for the purpose of taking  
24 testimony in said cause.

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1           **APPEARANCES:**

2

3           On Behalf of the Petitioner:

4           MOTHER'S KITCHEN LTD.  
5           Post Office Box 1363  
6           Sanford, Florida 32772  
7           BY: ANTHONY BROOKES, II, Qualified Representative

8           On Behalf of the Respondent:

9           GATLIN, SCHIEFELBEIN & COWDERY, P.A.  
10          3301 Thomasville Road, Suite 300  
11          Tallahassee, Florida 32312  
12          BY: KATHRYN G. W. COWDERY, ESQUIRE

13          On Behalf of the Intervenor:

14          PUBLIC SERVICE COMMISSION  
15          2540 Shumard Oak Boulevard  
16          Tallahassee, Florida 32399  
17          BY: WILLIAM COCHRAN KEATING, IV, ESQUIRE

18          **ALSO PRESENT:**

19          EDDIE HODGES  
20          ARTHUR BROOKS  
21          Mother's Kitchen Ltd.

22          DARRYL L. TROY  
23          Florida Public Utilities Company

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P R O C E E D I N G S

1  
2 THE COURT: We're here in the matter of the  
3 Petitioner, Mother's Kitchen Limited vs. Florida  
4 Public Utilities Company, the Respondent, and the  
5 Public Service Commission, Intervenor, DOAH Case  
6 Number 97-4990. I am Daniel M. Kilbride. I'm the  
7 Administrative Law Judge assigned to hear this  
8 matter.

9 For the record, would you identify yourself,  
10 please, for the Petitioner?

11 MR. BROOKS: Yes, sir. Anthony L. Brooks,  
12 Qualified Representative for the Petitioner.

13 THE COURT: And with you?

14 MR. BROOKS: With me is Eddie Hodges,  
15 partner in Mother's Kitchen, Arthur Brooks,  
16 partner in Mother's Kitchen, and Linda Jirik (ph),  
17 witness for the Petitioner.

18 THE COURT: All right.

19 MS. COWDERY: Kathryn Cowdery, Gatlin,  
20 Schiefelbein and Cowdery in Tallahassee,  
21 representing the Florida Public Utilities Company.  
22 With me is the corporate representative, Darryl L.  
23 Troy, Vice President.

24 THE COURT: All right.

25 MR. KEATING: Cochran Keating, representing

1 the Florida Public Service Commission.

2 THE COURT: All right. Mr. Brooks, are you  
3 ready to proceed?

4 MR. BROOKS: Yes, Your Honor, I am, but Ms.  
5 Cowdery said she had some preliminary --

6 THE COURT: Yes. We'll deal with that in a  
7 second. The Respondent's ready to proceed?

8 MS. COWDERY: Yes.

9 THE COURT: And, the Commission is ready?

10 MR. KEATING: Yes.

11 THE COURT: You have a preliminary matter?

12 MS. COWDERY: Yes. It's a minor matter, but  
13 because the company -- I don't anticipate that our  
14 case will go on until after lunch. Mr. Brooks  
15 isn't quite sure how long, understandably, his  
16 case will be and our office is five minutes away.  
17 I thought, to allow three or five of my witnesses  
18 to go back to the office and I was wondering if  
19 you have a specific time that you normally, if you  
20 have a lunch break, I can just say, be back at a  
21 certain time.

22 THE COURT: Okay.

23 MS. COWDERY: Is that --

24 THE COURT: We can deal with that. Mr.  
25 Brooks, how many witnesses do you anticipate

1 calling today?

2 MR. BROOKS: Total, probably a total of  
3 five, sir.

4 THE COURT: Okay. Do you expect any of  
5 those witnesses, just your -- you can't anticipate  
6 what the cross examination will be, I understand,  
7 but as far as your direct testimony, 10, 15  
8 minutes average or longer for any of them?

9 MR. BROOKS: One of them probably will be  
10 longer than 10 or 15 minutes, sir, but most of  
11 them will follow in that time frame. Yes, sir.

12 THE COURT: All right, that's fine. Any of  
13 the witnesses you're calling under subpoena that  
14 are here in the room that are not here at your  
15 request? In other words, that are employees of  
16 like, the Florida Public Utilities or someone  
17 else?

18 MR. BROOKS: Under subpoena from me?

19 THE COURT: Yes.

20 MR. BROOKS: No, sir.

21 THE COURT: All right. So, we have a  
22 reasonable expectation you'll finish your case by  
23 12:00 or 1:00 o'clock?

24 MR. BROOKS: I would say so. Yes, sir.

25 THE COURT: I'm not going to hold you to

1 that. We're guessing. All right, then as far as  
2 the Respondent's case in chief, do you anticipate  
3 more than two or three hours for your case?

4 MS. COWDERY: I would hope that that would  
5 be about right, about three hours. It depends.

6 THE COURT: And then the Commission does not  
7 anticipate calling witnesses, is that correct?

8 MR. KEATING: That's correct.

9 THE COURT: All right. So then we will plan  
10 on lunch, but when it will be, will be upon  
11 completion of the Petitioner's case in chief.

12 MS. COWDERY: All right.

13 THE COURT: So, that's probably --

14 MS. COWDERY: We can contact them then.

15 THE COURT: If they're that close then  
16 that's not a problem.

17 MS. COWDERY: Okay.

18 THE COURT: So, it's a guess after that.  
19 All right. But as far as the length of the --  
20 we'll talk about how long we need and see how  
21 we're moving. If we're moving quickly, then we  
22 can take an hour. If we're not, then we'll  
23 probably shorten it up.

24 MS. COWDERY: On that basis, I'll probably  
25 let everyone go, because they all are able to get

1 -- they're all within five minutes.

2 THE COURT: All right. Anything else?

3 MS. COWDERY: I would like to invoke the  
4 rule on excluding witnesses from the hearing room,  
5 because of the fact that this case is of a very,  
6 very factual nature and it's been awhile since the  
7 initial facts occurred and there are many  
8 inconsistencies in the testimony.

9 THE COURT: All right. Mr. Brooks, Ms.  
10 Cowdery is invoking the Rule of Sequestration, so  
11 I need to instruct the witnesses on that. For  
12 those that are partners in Mother's Kitchen, any  
13 objection to them remaining?

14 MS. COWDERY: Yes, because they are also  
15 testifying, so I would object.

16 THE COURT: Any objection to one remaining  
17 as a representative?

18 MS. COWDERY: Well, I will put it this way.  
19 Mr. Brooks is representing himself as a partner  
20 and he is going to be a main witness in the case  
21 and I would think he would be the representative,  
22 based on the fact that he's held himself out as  
23 being a partner, that he would be, even though  
24 he's a qualified representative, that would be  
25 sufficient.

1                   However, I would like to have my corporate  
2 representative here. If the Court feels he should  
3 have someone also, then so be it. But, I would  
4 personally object to having anyone else in.

5                   THE COURT: Mr. Brooks, do you need to  
6 respond?

7                   MR. BROOKS: Yes, sir. Ms. Cowdery's  
8 position is going to be that she wishes Mr. Troy  
9 to remain, then I would ask that the partners  
10 remain, also. Mr. Troy is the corporate  
11 representative of the Respondent and as such, he's  
12 representing the Respondent as a whole.

13                   The three parties here present represent  
14 Mother's Kitchen Limited as a whole and if an  
15 allowance is going to be made for Mr. Troy, and  
16 Mr. Troy, by the way, is on the Respondent's  
17 witness list, then it should also be made for the  
18 parties.

19                   THE COURT: All right. As far as the Rule  
20 is concerned, I will be invoking the Rule of  
21 Sequestration. As far as the Petitioner, since  
22 you are, even though you are a partner and you may  
23 or may not testify as a witness, since you're the  
24 qualified representative and primarily responsible  
25 for putting on the case, I'm going to allow you to



1 select one partner who may represent the  
2 partnership, basically, and assist you in  
3 preparing the case.

4 So, we're going to take a couple of minutes  
5 after I'm done instructing and you can select  
6 which one you want, but the other witnesses will  
7 have to leave. And, Mr. Troy can remain as the  
8 representative for the Respondent.

9 MS. COWDERY: Fine.

10 THE COURT: All right. Those in the back  
11 that are -- everyone that is here as a witness,  
12 would you raise your hand, please? Then let me  
13 start in the back, just for the record, and let me  
14 have your name.

15 MR. McDANIEL: William R. McDaniel.

16 THE COURT: Okay. The gentleman in the far  
17 back, last row.

18 MR. MIDDLETON: Donald Middleton.

19 THE COURT: The gentleman in front of him?

20 MR. BYRD: Alfred Byrd.

21 MS. KEITT: Diane Keitt.

22 MS. JACKSON: Susan Jackson (ph).

23 MR. KITNER: Donald Kitner.

24 THE COURT: I have Mr. Troy's name. Then  
25 over here at the table with you?

1 MR. HODGES: Ed Hodges.

2 THE COURT: And the gentleman behind?

3 MR. BROOKS: Arthur Brooks.

4 THE COURT: Ma'am?

5 MS. JACKSON: Susan Jackson.

6 MR. JOHNSON: Harry Johnson.

7 THE COURT: All right. I'm going to  
8 instruct each of you as to the Rule of  
9 Sequestration.

10 What that means is that this is a formal  
11 hearing which is just like a non-jury trial.  
12 You've been called as a witness for that hearing  
13 and you're not to speak to each other or any other  
14 person except the attorney who subpoenaed you  
15 here.

16 If you were asked to be here by Mr. Brooks,  
17 then you can only talk to Mr. Brooks about this  
18 case. If you've been asked to be here by Ms.  
19 Cowdery, then you can only talk to Ms. Cowdery  
20 about this case. You can talk to each other about  
21 anything else, but not this case for any reason or  
22 any party.

23 In addition, you are to remain outside the  
24 hearing room until you're called as a witness and  
25 until this hearing is complete, which should be by

1 the end of the day, you can't talk about your  
2 testimony or the testimony of anyone else. All  
3 right. Is there any questions? Okay. We're  
4 going to take a short -- yes, ma'am?

5 MS. JIRIK: I was under the impression I was  
6 probably the first one to be called. Is it  
7 possible that I be dismissed after my testimony or  
8 do I need to remain?

9 THE COURT: Basically, I'm going to ask the  
10 attorneys for that and if they don't need you as a  
11 rebuttal witness, then you're going to be released  
12 from your subpoena and you can go about your  
13 business, and that applies to anyone.

14 If you're subject to recall, then you need  
15 to be where we can -- where you can get back here  
16 within five minutes or so, so that you can testify  
17 if you're needed later in the day. But basically,  
18 once you testify, you're not going to have to  
19 continue to stay around.

20 Any other questions? All right. Then for  
21 those persons to my left, your right, you're  
22 excused at this time. Mr. Brooks, you may want to  
23 take a moment to decide who your representative is  
24 going to be. We'll take a short recess and then  
25 invoke the Rule.

1 (Short recess.)

2 THE COURT: Let's go back on the record.  
3 Mr. Brooks, who have you designated as your  
4 representative?

5 MR. BROOKS: Arthur Brooks, sir.

6 THE COURT: Mr. Brooks, just so you know,  
7 you can talk to Mr. Brooks about the case or pass  
8 him notes or whatever, but he's in charge of the  
9 case, basically. He asks the questions of the  
10 witness and you can help him with that, but you  
11 can't ask any questions.

12 MR. BROOKS: Okay.

13 THE COURT: All right. Any other  
14 preliminary matters? Anyone need any instruction  
15 on procedures as far as what's going to happen  
16 this morning? I think you both should be familiar  
17 by now.

18 All right. I've read the pre-hearing  
19 stipulation that's been filed by each of the  
20 parties and I appreciate your getting together and  
21 doing that. As to the stipulations of fact, the  
22 Petitioner and Respondent have stipulated to 16  
23 facts and the Commission takes no position. But,  
24 based on the stipulation, those facts are admitted  
25 and no additional proof will be needed for me to

1 rely on those facts for my findings of fact at the  
2 time I prepare my Recommended Order.

3 Also, I'm familiar with the issues involved  
4 in the case, so does either party require an  
5 opening statement?

6 MR. BROOKS: No, sir.

7 MS. COWDERY: I have one prepared, just a  
8 couple of sentences, I think, at this time.

9 THE COURT: All right. Go ahead.

10 MS. COWDERY: The evidence will show that  
11 the Petitioners have been careless with the facts  
12 they give in support of their allegations. The  
13 Petitioners have given inconsistent statements  
14 regarding the facts as they allege them and they  
15 show a continually shifting position which is not  
16 supported by credible evidence.

17 The evidence which will be presented today  
18 by the company will show that FPUC did not violate  
19 any FPSC Rules with regard to the Petitioners in  
20 the Alfred Byrd, d/b/a Mother's Kitchen Limited,  
21 and the Public Service Commission. Thank you.

22 THE COURT: Thank you. All right, sir,  
23 would you call your first witness.

24 MR. BROOKS: Yes, sir. Linda Jirik.

25 THE COURT: Would you ask her to come in,

1 please?

2 MR. BROOKS: Sure will.

3 MS. COWDERY: Objection, because Ms. Jirik  
4 is not listed on the witness list.

5 MR. BROOKS: Sir, on my submission of the  
6 witness list, it includes a statement that any and  
7 all other witnesses which comes to the  
8 Petitioner's knowledge after the pre-hearing  
9 conference. So, --

10 THE COURT: Okay. But, you have a duty to  
11 inform Ms. Cowdery of who that person is.

12 MR. BROOKS: Sir, I did not find out about  
13 Ms. Jirik's identity until yesterday afternoon.

14 THE COURT: What is the purpose of you  
15 calling her?

16 MR. BROOKS: Her testimony is actually a  
17 production of documents pursuant to a subpoena.  
18 It goes to production of documents, to a subpoena  
19 that was served on her yesterday afternoon when  
20 Petitioner found that she had those documents in  
21 her possession.

22 Those documents address -- they go to a  
23 deposition that was filed in this case by the  
24 Respondent, the deposition of Mr. Alfred Byrd, and  
25 it goes solely to one particular instance in that



1 deposition wherein when Mr. Byrd was testifying at  
2 that deposition, Mr. Byrd stated in that  
3 deposition that he did not open the account at the  
4 gas company, that we had.

5 Ms. Cowdery suggested that perhaps a loan  
6 that Mr. Byrd had obtained, that some of the  
7 monies from that loan went towards this deposit,  
8 one of the central issues in question here.

9 So, this lady will probably take all of a  
10 couple of seconds, a couple of minutes or so to --  
11 her company will not allow production of the  
12 documents without her physically being here at  
13 hearing and producing the information through  
14 testimony. And, since she has no --

15 THE COURT: So, she has no fact evidence,  
16 she's merely a custodian of records?

17 MR. BROOKS: Yes, sir. And she, her sole  
18 purpose will be to testify as to dates of  
19 particular transactions.

20 THE COURT: What company does she work for?

21 MR. BROOKS: American General Finance  
22 Company, sir.

23 THE COURT: Has Ms. Cowdery seen the  
24 documents she's going to produce?

25 MR. BROOKS: I haven't seen them, sir, so I

1 have not been able to produce them to Ms. Cowdery.  
2 As I stated, her sole function, and it is not the  
3 document itself so much that I would want on the  
4 record, as much as it is the dates. The dates are  
5 the central part of this issue with the security  
6 deposit, where Ms. Jirik is concerned.

7 THE COURT: Further response?

8 MS. COWDERY: Okay. I would also object on  
9 the basis that I haven't seen the document, but  
10 probably most importantly I would object that I  
11 can see no relevance in this document at all to  
12 any issue in the case.

13 I don't -- it is not relevant to my case  
14 where Mr. Byrd got money to pay the deposit.  
15 That's simply not relevant. The fact is he went  
16 in and we stipulated that Mr. Byrd received a  
17 deposit, received it March 21st, 1996, in the  
18 amount of \$200, and evidence will come on showing  
19 that he gave \$200 in order to get that receipt and  
20 to my case, it doesn't matter where he got that  
21 \$200. It's irrelevant.

22 THE COURT: What I'm going to do is allow a  
23 short recess before I rule and let you talk to the  
24 witness and examine the documents.

25 MS. COWDERY: Okay.

1 THE COURT: Are you saying there's no copies  
2 going to be available of these documents?

3 MR. BROOKS: She will allow the Court to  
4 copy the documents, sir.

5 THE COURT: Well, I don't have access to  
6 copy facilities here.

7 MR. BROOKS: Well, I can arrange for copying  
8 of them downstairs, but her company's position in  
9 response to the subpoena is that the records  
10 cannot leave her care and control and the subpoena  
11 called for her appearance here today with the  
12 records.

13 THE COURT: I understand. All right. I  
14 understand your position. All right. We're going  
15 to take a short recess, basically. My concern is  
16 that after examining the documents, if there's  
17 prejudice to the Respondent whether, you know, for  
18 further argument, then I'll rule as to whether she  
19 can testify. All right?

20 MR. BROOKS: Yes, sir.

21 THE COURT: Let's take a few minutes.

22 (Short recess.)

23 THE COURT: Mr. Brooks?

24 MR. BROOKS: Sir, I believe that Ms. Cowdery  
25 and I both can stipulate for the record that the

1 document was produced by the records custodian of  
2 General Finance, American General Finance, and  
3 eliminate the necessity to call the witness.

4 While I understand Ms. Cowdery has objection  
5 to the document, I think we can stipulate to the  
6 authenticity of the document.

7 THE COURT: Is that correct?

8 MS. COWDERY: Yes. We can stipulate to  
9 authenticity regarding prejudice. I see no  
10 particular prejudice to having this document  
11 introduced. I see no relevance to the document.

12 I see no prejudice to having it introduced  
13 for the purposes of identifying that the date of  
14 the note was 3/19/96, which I think is what  
15 perhaps Mr. Brooks is wanting it for.

16 THE COURT: Is that the critical --

17 MR. BROOKS: That's fine.

18 THE COURT: -- information on the document  
19 that --

20 MR. BROOKS: That's fine.

21 THE COURT: -- you're seeking to get in?

22 MS. COWDERY: I have no objection.

23 THE COURT: Mr. Alfred Byrd basically  
24 borrowed money from American Finance?

25 MR. BROOKS: Yes, sir.

1 THE COURT: And the note was signed or  
2 issued on the 19th of March of 1996?

3 MR. BROOKS: Yes, sir.

4 THE COURT: The objection to that primarily  
5 is relevance, not --

6 MS. COWDERY: It's relevance, yes. Ms.  
7 Jirik has an entire file folder regarding the  
8 basis for the note and all kinds of things like  
9 that, which are not being introduced. This  
10 particular document, I really don't see any  
11 prejudice, because I don't see any relevance.

12 THE COURT: All right. Then I'll reserve  
13 ruling as to relevance, since I haven't heard the  
14 case in chief, so I don't know if it's relevant  
15 yet. I'll reserve everything as to relevance and  
16 it will not be necessary to call the witness, and  
17 the parties will stipulate to the authenticity of  
18 the document.

19 On that basis, without objection, without  
20 further objection, I'll admit the document in  
21 evidence as Petitioner's Exhibit Number 1.

22 (Petitioner's Exhibit 1 was admitted in  
23 evidence.)

24 THE COURT: Okay. Then let's continue.

25 MR. BROOKS: Sir, would it be all right to



1 release Ms. Jirik then?

2 THE COURT: Yes. If there's no other  
3 purpose for her testimony other than to establish  
4 this document that's in evidence, you can release  
5 her.

6 MR. BROOKS: Okay. The Petitioner would  
7 call Eddie Hodges.

8 THE COURT: Release your witness and then  
9 ask Mr. Hodges to come in. Mr. Hodges, would you  
10 have a seat up here, please. Would you raise your  
11 right hand to be sworn.

12 WHEREUPON:

13 EDDIE HODGES  
14 being first duly sworn by the Hearing Officer, was  
15 examined and testified under oath as follows:

16 THE WITNESS: I do.

17 THE COURT: Mr. Brooks, go ahead. Get your  
18 witness' name and address, please.

19 MR. BROOKS: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. BROOKS:

22 Q For the record, sir, would you state your  
23 full name and address, please.

24 A My full name is Eddie Hodges. My address is  
25 P.O. Box 1363, Sanford, Florida, 32772.



1 Q Mr. Hodges, what is your primary line of  
2 employment?

3 A Harper Mechanical.

4 THE COURT: I'm sorry. I didn't --

5 THE WITNESS: Harper Mechanical Plumbing.

6 BY MR. BROOKS:

7 Q How long have you worked at Harper  
8 Mechanical, sir?

9 A Twelve years.

10 Q Mr. Hodges, did there come a time during the  
11 months of January and February, 1996, that you thought  
12 of entering any other type of business?

13 A Mother's Kitchen.

14 Q During the months of January and February,  
15 did you have any conversations with any particular  
16 people concerning the formation of Mother's Kitchen?

17 A Yes.

18 Q Who would those individuals be?

19 A You and Arthur and Daniele and Alfred.

20 Q Now, these conversations concerning the  
21 formation of the business, the initial conversation,  
22 can you tell me what the initial conversation consisted  
23 of regarding the formation of the business?

24 A Money, getting it started and, you know, how  
25 much money each partner, you know, put in. And, the

1 stuff we had to come up to get the business started,  
2 come up with.

3 Q Did there come a time when the individuals  
4 that you were having these discussions with decided to  
5 formalize their plans for opening the restaurant?

6 A Yes.

7 Q Did you execute any type of documents for  
8 that to occur?

9 A Yes.

10 MR. BROOKS: Your Honor?

11 THE COURT: Yes.

12 MR. BROOKS: I'd like to show the witness a  
13 document.

14 THE COURT: You may approach the witness.

15 BY MR. BROOKS:

16 Q Mr. Hodges, do you recognize this document?

17 A Yes, I do.

18 Q Would you please tell the Court what it is?

19 A It's the agreement that we signed, each  
20 partner, before we got started.

21 Q Would you look at subsection (c) of that  
22 document, page three. Do you recognize the signatures  
23 on that document?

24 A Yes.

25 Q And the signatures reflect what names?

1           A       Eddie Hodges, Alfred Byrd, Arthur Brooks and  
2       Daniele Dow and that's Tony.

3           Q       Mr. Hodges, when this document was signed,  
4       was it signed separately by the parties signing it or  
5       were all of the parties together at one time and the  
6       signatures affixed in the presence of all the other  
7       partners?

8           A       All this was together at the same time when  
9       we signed this.

10           MR. BROOKS: Sir, I'd like to have this  
11       document, and copies have been supplied, entered  
12       as Petitioner's 2. Any objection?

13           MS. COWDERY: No.

14           MR. BROOKS: I'm sorry, sir.

15           THE COURT: That's fine. Without objection,  
16       the document that has been marked for  
17       identification as Petitioner's A, I think, is  
18       moved in evidence as Petitioner's Exhibit 2,  
19       consisting of three pages.

20                   (Petitioner's Exhibit 2 was admitted in  
21       evidence.)

22           THE COURT: Continue.

23       BY MR. BROOKS:

24           Q       Mr. Hodges, on that document that you  
25       signed, it had a list showing monetary amounts by the

1 names of the individuals on page one of that document.  
2 To the best of your knowledge, how many of those  
3 individuals actually provided US currency, US funds  
4 towards that partnership?

5 A Three of us, and that was you, Arthur and  
6 me.

7 Q The fourth individual, did he provide any  
8 funds whatsoever towards the formation of that  
9 partnership?

10 A No, he didn't. He didn't have any.

11 Q What was his stated reason for not supplying  
12 funds?

13 A That he didn't have any to, you know, to  
14 give and he said the bank was taking his money and  
15 that's what it was.

16 Q The fourth individual, would you identify  
17 him by name, please.

18 A Alfred Byrd.

19 Q Mr. Byrd, when he told you that he didn't  
20 have any money to give, what did he offer to the  
21 partnership in lieu of money?

22 A He offered his pots and pans and utility and  
23 service.

24 Q Now, did there come a time during the  
25 meeting or get together the day of the signing of this

1 document that Mr. Byrd asked the other individuals to  
2 loan him money?

3 A Yes.

4 Q Why did he say he needed the money?

5 A He needed money to pay his car payment and  
6 to pay off some more debts that he was in.

7 Q Did the other individuals loan him money?

8 A Yes.

9 Q Mr. Hodges, I show you another document here  
10 and for the record, would you read what the title of  
11 that document is?

12 A Partnership Bylaws.

13 Q In the little square block to the right of  
14 the first page, would you read what that says, please?

15 A This right here (indicating)?

16 Q Yes, sir.

17 A Defendant's Exhibit A.

18 Q Okay, sir. Do you recognize that document?

19 A Yes, I think I've seen it before.

20 Q Would you turn to the last page of that  
21 document, please, and I will call your attention to the  
22 very -- the handwritten items there below the last  
23 paragraph of the last page. Do you recognize that?

24 A Are you talking about down here  
25 (indicating)?

1 Q All of where there is handwritten entries.

2 A Yeah. Uh-huh. Yeah.

3 Q What do you recognize those to be?

4 A Initials in front of the names.

5 Q Was there a time when you and other  
6 individuals read that particular document and placed  
7 your initials there?

8 A Yes.

9 Q Who were the individuals present when that  
10 occurred?

11 A All four, all four of these.

12 Q When you say, all four of these, who --

13 A Daniele Dow, Eddie Hodges, Arthur Brooks and  
14 Alfred Byrd.

15 Q And Mr. Byrd was there present at that time?

16 A Yes.

17 Q And Mr. Byrd did affix his initials to that  
18 document?

19 A Yes.

20 THE COURT: Are you offering that?

21 MR. BROOKS: Yes, sir. I'd like to offer  
22 that as Petitioner's 3, sir.

23 THE COURT: Okay. And without objection,  
24 the document is admitted in evidence as  
25 Petitioner's Exhibit 3.



1 (Petitioner's Exhibit 3 was admitted in  
2 evidence.)

3 BY MR. BROOKS:

4 Q Mr. Hodges, as a result of the formulation  
5 of the partnership agreement with the bylaws, what was  
6 the next step that the partnership took concerning the  
7 establishment of the restaurant?

8 A Getting the supplies.

9 Q What individual did the partnership place on  
10 did the partnership give authority to do that?

11 A All of them.

12 Q So at different junctures, each partner took  
13 on a particular job to get the restaurant open?

14 A Yes.

15 Q The licensing, the necessary licensing and  
16 the certificates needed to open the restaurant, who did  
17 the partnership place that responsibility on?

18 A You.

19 Q Did there come a time in March 1996, to the  
20 best of your recollection, that you, Mr. Byrd, Arthur  
21 Brooks and Anthony Brooks had a meeting in front of  
22 Anthony Brooks' mother's home?

23 A Yes.

24 Q At that particular meeting, do you remember  
25 what was discussed?

1           A       We discussed things about, you know, getting  
2       the restaurant business established and what we needed  
3       to get and the equipment we needed and everything.

4           Q       Was there ever, during that particular  
5       conversation, was there ever mention of a security  
6       deposit for any utility?

7           A       Yes. Me and Newt had to give a hundred  
8       dollars. I gave a hundred and Newt gave a hundred.

9           Q       When you say, Newt, you're speaking of  
10      Arthur Brooks?

11          A       Arthur. I forgot. Okay.

12          Q       Now, what was your understanding of what  
13      this \$200 was to be used for?

14          A       Used for the utilities, to turn the  
15      utilities on.

16          Q       Was there any specific utility mentioned?

17          A       The gas.

18          Q       Who did you and Arthur give the \$200 to?

19          A       Al.

20          Q       Why did you give it to Al?

21          A       We gave it to him because he had like, he  
22      claimed during the past he had, you know, he did  
23      business with the gas company, you know, and he had  
24      opened up accounts and, you know, stuff and he had, you  
25      know, it was easier for him to, you know, do it.

1 Q Did you ever go, personally go to the gas  
2 company --

3 A No.

4 Q -- and pay a deposit?

5 A No, never.

6 Q Did you have any reason to believe that the  
7 monies you gave for that deposit went anywhere else?

8 A No.

9 Q Mr. Hodges, I'd like for you to take a look  
10 at this document and tell the Court whether you've ever  
11 seen them before.

12 A Yes.

13 Q This is a Composite Exhibit and then it goes  
14 through these, all of the pages.

15 A Yes.

16 Q Would you state for the record what the  
17 first document is?

18 A Department of Revenue.

19 Q Department of Revenue --

20 A Oh, Clarification (sic) of Registration.

21 Q Okay. And this Certificate of Registration  
22 has an issue date on it. Would you please state what  
23 that issue date is?

24 A Okay. That's an eight, ain't it?

25 MR. BROOKS: I'm sorry. The copy of this

1 thing is rather obscure at various points on it,  
2 sir.

3 THE COURT: Uh-huh.

4 MS. COWDERY: I think I might have a good  
5 copy, if you give me just a second.

6 MR. BROOKS: Ms. Cowdery, it's --

7 MS. COWDERY: Isn't that the same one?

8 MR. BROOKS: Yeah. This is the same  
9 document.

10 BY MR. BROOKS:

11 Q Would you read what the issue date is on  
12 that?

13 A 3/11/96.

14 Q On this document where it says, "This  
15 certifies that," would you read the portion under that  
16 heading, please?

17 A Oh. "Mother's Kitchen Limited, Alfred Byrd,  
18 Daniele Dow, Eddie Hodges, 1744 West Airport Boulevard,  
19 Sanford, Florida, 32771."

20 Q Okay, sir.

21 And on the second page of the Composite  
22 Exhibit, what does the second page depict?

23 A Department of Revenue, Tallahassee, Florida.

24 Q The first sentence, the first sentence in  
25 the text of the exhibit, what does it say, sir?

1 A Right here (indicating)?

2 Q Yes.

3 A "You have been registered with the  
4 Department of Revenue at the Maitland Tax Offices. The  
5 following clarification (sic) number has been issued to  
6 your business."

7 Q And then underneath it shows?

8 A The number.

9 Q Okay, sir. Page three of this Composite  
10 Exhibit consists of?

11 A The Mother's Kitchen name and the address,  
12 and the restaurant --

13 Q What type of document is it, sir?

14 A A license for the business.

15 Q Where it says "name", what is the name shown  
16 for the business?

17 A Mother's Kitchen.

18 MS. COWDERY: I'm looking at a copy of these  
19 documents and I would note for the record that the  
20 copy that Mr. Brooks is presenting has had the top  
21 of one of the pages cut off in the copying  
22 process, but I think Mr. Brooks can agree that the  
23 top of that cut off document says, City of Sanford  
24 Occupational License. Is that correct?

25 MR. BROOKS: That's correct. That's what it

1           says.

2                   MS. COWDERY: That's as opposed to the one  
3 below that, that is the Sanford Fire Inspection  
4 Fee document.

5                   MR. BROOKS: Yes, ma'am.

6                   MS. COWDERY: Okay.

7                   MR. BROOKS: I'd like to enter that in, sir,  
8 as Exhibit 4, I believe.

9                   THE COURT: With no objection and with the  
10 clarification, the document is admitted in  
11 evidence as Petitioner's Exhibit 4, a Composite  
12 Exhibit consisting of four pages.

13                           (Petitioner's Composite Exhibit 4 was  
14 admitted in evidence.)

15 BY MR. BROOKS:

16           Q       Mr. Hodges, at any time did you or any other  
17 partner that you're aware of give anyone permission to  
18 issue an account or license or any official document  
19 whatsoever in the name of Alfred Byrd, doing business  
20 as Mother's Kitchen?

21           A       No.

22                   MR. BROOKS: I have no further questions,  
23 Your Honor.

24                   THE COURT: Cross examine?

25                   MS. COWDERY: Yes, sir.



## CROSS EXAMINATION

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BY MS. COWDERY:

Q Mr. Hodges, Mr. Brooks showed you a copy of a document which was called the Partnership Bylaws, is that correct?

A Yes.

Q Was your testimony that you recognized those initials?

A Yes.

Q Did you simply recognize them or do you have a personal recollection, do you have a personal recollection that people signed those initials all together in the same room?

A I was there when they signed them.

Q And you remember that meeting?

A Uh-huh. Yes, ma'am.

Q Mr. Hodges, do you remember having your deposition taken on December 17th, 1997?

A Yes, ma'am.

Q Do you remember that at that deposition, you testified that you were not sure that you remembered the Partnership Bylaws Agreement, do you remember testifying to that?

A Yes.

Q I asked you if you remembered talking about

1 the need for any kind of bylaws or having a meeting  
2 where you talked about bylaws and do you remember you  
3 testified, no?

4 A Yes, I did.

5 Q So, at that deposition, you, at that time,  
6 you did not remember having the meeting with the  
7 bylaws?

8 A Not the exact time.

9 Q How is it today that you can testify that  
10 you do remember that meeting and you do remember  
11 everyone who was at the meeting?

12 A Because my partner, he have -- he have dates  
13 of everything that we did.

14 Q Okay. So you are relying on Mr. Brooks?

15 A No. I relied, I just remembered the dates.  
16 When we started discussing it, I remembered everything.

17 Q So, after he talked to you about it, then  
18 you remembered everything?

19 A Yes.

20 Q Do you also remember on that same date that  
21 you testified at your deposition that you may have --  
22 you testified that those were your initials?

23 A Yes.

24 Q And you testified that you may have signed  
25 it, but you just don't remember when you testified yes?

1 A Yes.

2 Q Is that the same thing, you just didn't  
3 remember signing that document?

4 A Ma'am, could I say something?

5 Q Of course.

6 A I have dyslexia and I don't catch stuff  
7 right off the bat and that's -- that's how I am, and it  
8 will take a while for me to, you know, catch on.

9 Q At your deposition, did you mention that you  
10 had dyslexia to me?

11 A No. You didn't ask me.

12 Q True.

13 Do you remember I did show you a copy of  
14 that partnership agreement and the bylaws in the file  
15 at your deposition?

16 A I remember.

17 Q Mr. Hodges, today you testified that you  
18 gave, was it \$100 to set up the gas account to Al Byrd?

19 A Yes.

20 Q When did you give that money to him?

21 A It was in March. No, not in March. It was  
22 in -- yeah, it was in March.

23 Q You know Al Byrd, your partner?

24 A Yeah. I know him real good. He knows me  
25 real good, too.

1 Q And you're sure you gave it to Mr. Byrd?

2 A I did give it to Mr. Byrd.

3 Q All right. Do you remember that at your  
4 deposition on December 17th, that you testified that  
5 you gave that money to Mr. Brooks?

6 A Ma'am, I -- my partners, I gave money so  
7 many times for stuff for the restaurant closing down.  
8 I had to get money out of the bank to restock  
9 everything and, you know, I done gave so much money  
10 that I don't, you know, know who, you know, that I gave  
11 -- I know who I gave it to and I gave Mr. Brooks money  
12 and I gave Al money and I gave Arthur Brooks money.

13 Q Are you saying at this point that you don't  
14 know for sure who you gave the money to?

15 A I gave -- I gave Al money and Mr. Brooks. I  
16 gave all two of them money for bills.

17 Q But, the \$100 for setting up the security  
18 deposit, you don't remember who you gave it to?

19 A Yes, I do.

20 Q And who was that?

21 A I gave it to Al.

22 Q So, your testimony that you gave it to Mr.  
23 Brooks is not correct?

24 A Ma'am, I don't -- I can't -- like I just  
25 told you, I have dyslexia and I can't just tell you

1 things. My mind just, you know, it's --

2 Q Would it be fair to say --

3 A And I couldn't, in my deposition I couldn't  
4 -- I don't remember, I can't remember telling you that.  
5 I'm sure you have it on the paper that I told you that,  
6 but I, you know, it is just, you know, there has been  
7 so much stuff, you know, I mean, talked about and, you  
8 know, it just like, it's all scrambled and twisted.

9 Q Okay. Do you recall also that as part of  
10 this case, that you signed a notarized affidavit and  
11 that in that notarized affidavit you stated that you  
12 gave Al Byrd and Anthony Brooks a \$100 bill to pay the  
13 deposit?

14 A Ma'am, I have gave them \$100 bills for this  
15 and I gave them \$100 bills for that, you know, for  
16 other stuff.

17 Q So, you're saying that you've had a lot of  
18 payments and a lot of dates and those dates and  
19 payments get scrambled up in your mind?

20 A For a person with dyslexia, it do.

21 Q And are you saying your answer is, yes, that  
22 those dates and payments have gotten scrambled up in  
23 your mind?

24 A Yeah.

25 Q That's a yes?

1 A Yes.

2 Q Mr. Hodges, when you were shown what was  
3 identified as Petitioner's Hearing Exhibit Number 4,  
4 which had these business documents on it, --

5 A Uh-huh.

6 Q -- were you involved in getting those  
7 business documents, going down and getting them?

8 A No. Tony was.

9 Q So, do you remember ever seeing them?

10 A Yes, I have.

11 Q When do you remember seeing them?

12 A I know I can't tell you exactly the dates.

13 Q Could it have been since Mr. Brooks has  
14 brought this case against the company or you can't say?

15 A It was before that.

16 Q All right. You testified as to the  
17 Department of Revenue, Certificate of Registration?

18 A Yes, ma'am.

19 Q That there's a registration date on here of  
20 3/11/96. Is there also another date on this document  
21 near the top? It's hard to read.

22 A That's 3/22/96, is that what that says?

23 Q Right. The 3/22/96.

24 Do you know what that number, that date  
25 represents?



1           A     No.

2           Q     Do you know if that's the date that this  
3 certificate was printed by the Department of Revenue?

4           A     No.

5           Q     Because you weren't involved in getting this  
6 document?

7           A     No. Tony was.

8           Q     Is it true that on that Department of  
9 Revenue Certificate of Registration, that the mailing  
10 address that was used, this P.O. Box 1034 in Sanford,  
11 is that the mailing address?

12          A     That 1034, Sanford, Florida?

13          Q     Right, that P.O. Box. Is that the mailing  
14 address?

15          A     Yes. That's not -- yes, ma'am.

16          Q     Are you familiar with whose P.O. Box that  
17 is? From your personal knowledge, do you know?

18          A     Not that one.

19          Q     Is that Mr. Byrd's P.O. Box or you don't  
20 know?

21          A     I couldn't -- no, I don't even know Mr.  
22 Byrd's P.O. Box.

23          Q     All right. Mr. Hodges, I believe that you  
24 were asked a question from Mr. Brooks, if you had ever  
25 given permission to anybody in the business to open an

1 account in the name of Alfred Byrd, d/b/a Mother's  
2 Kitchen, and you said, no. Is that correct? Is that  
3 your testimony?

4 A Yes. Uh-huh. Yes.

5 Q But, were you ever involved in opening up  
6 any accounts or was that Mr. Brooks?

7 A It was Mr. Brooks. We gave him authority to  
8 do so.

9 Q Okay. So, you just weren't involved in  
10 setting up any accounts?

11 A Right.

12 MS. COWDERY: Okay. I have no further  
13 questions.

14 THE COURT: Anything else, Mr. Brooks, of  
15 the witness?

16 MR. BROOKS: Yes, sir. Two questions, if I  
17 may.

18 THE COURT: Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q Mr. Hodges, with regards to the Certificate  
22 of Registration and the City Occupational Licenses that  
23 were shown to you, were these documents a permanent  
24 fixture to the interior walls of Mother's Kitchen  
25 Restaurant?

1 A Yes.

2 Q Isn't it true that the City of Sanford  
3 requires that those documents be placed on the wall in  
4 a prominent place in the restaurant?

5 A Yes.

6 Q So, when you stated that you had seen those  
7 documents before, you saw them on the wall in the  
8 restaurant, is that correct?

9 A On the wall, yeah, in the restaurant.

10 Q Just about every time you came in there, is  
11 that correct?

12 A We had to have them.

13 MR. BROOKS: Nothing further, sir.

14 THE COURT: Anything else?

15 MS. COWDERY: Nothing.

16 THE COURT: Can this witness be released?

17 MR. BROOKS: Yes, sir.

18 THE COURT: Thank you, sir. You're  
19 released. You can go about your business or you  
20 can remain. It's up to you. Is he subject to  
21 recall?

22 MR. BROOKS: No, sir.

23 THE COURT: Okay.

24 MR. BROOKS: Sir, now that --

25 THE COURT: Yes, let's take just a moment.

1 If he's released from his subpoena and not subject  
2 to recall, if he wants to stay in the room, he can  
3 do so, but he can't talk to anybody about the  
4 case.

5 MR. BROOKS: Okay, sir. Fine.

6 THE COURT: If you think he wants to stay,  
7 take a moment and go talk to him.

8 MR. BROOKS: Okay, sir. Thank you.

9 THE COURT: We're off the record.

10 (Short recess.)

11 THE COURT: Call your next witness, please.

12 MR. BROOKS: Yes, sir. I call Arthur  
13 Brooks, please.

14 THE COURT: Have a seat, please. Raise your  
15 right hand.

16 WHEREUPON:

17 ARTHUR L. BROOKS

18 being first duly sworn by the Hearing Officer, was  
19 examined and testified under oath as follows:

20 THE WITNESS: I do.

21 THE COURT: Go ahead.

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Sir, would you state your full name and  
25 address for the record, please?

1           A       Arthur Lee Brooks, P.O. Box 1363, Sanford,  
2 Florida, 32772.

3           Q       Sir, you are a partner in Mother's Kitchen  
4 Limited, is that correct?

5           A       Yes, sir.

6           Q       For the record, to your knowledge, would you  
7 please state the names of the complete members of the  
8 partnership.

9           A       Eddie Hodges, Alfred Byrd, Daniele Dow,  
10 Anthony Brooks and Arthur Brooks.

11          Q       Sir, did there ever, did there come a time  
12 when the restaurant was established that there became  
13 apparent problems with any one particular person in the  
14 partnership?

15          A       Yes. Alfred Byrd.

16          Q       Sir, I show you this document consisting of  
17 four pages. For the record, would you please read what  
18 the bold print says this document is?

19          A       Mother's Kitchen Utility Assessment Order  
20 Number 4-0032.

21          Q       Mr. Brooks, do you have any knowledge of how  
22 that document came to be issued?

23                 MS. COWDERY: I'm sorry, Mr. Brooks, I don't  
24 know which document that is.

25                 MR. BROOKS: The Utility Assessment Order.

1 MS. COWDERY: Thank you.

2 THE WITNESS: The question again?

3 BY MR. BROOKS:

4 Q Do you have any knowledge of how that  
5 document came to be issued?

6 A Yes. Alfred Byrd called these people and  
7 told them that we had seven or eight employees working  
8 for us at the time and in actuality, we only had two  
9 that were part time working for us.

10 Q When this particular order was issued, was  
11 there any conversation by you with anyone concerning  
12 Mr. Byrd telling the members of this office, this  
13 particular office, State of Florida, Department of  
14 Labor and Employment Security, that we were a  
15 construction company?

16 A I don't think so. I don't recall. I don't  
17 recall that.

18 MR. BROOKS: Sir, I'd like to offer this  
19 document as Petitioner's 5, I think it's 5.

20 THE COURT: With no objection, the  
21 document's admitted in evidence as Petitioner's  
22 Exhibit 5, consisting of four pages.

23 (Petitioner's Exhibit 5 was admitted in  
24 evidence.)

25 THE COURT: Okay. Go ahead.



1 BY MR. BROOKS:

2 Q Mr. Brooks, was that the only such incident  
3 that created a problem with Mr. Byrd?

4 A No, sir.

5 Q Can you relate any others that you can  
6 recall?

7 A Yes. I remember one time we sent him down  
8 to Sam's Supply House to get some supplies for the  
9 company and he got maybe \$150 or \$200 worth of supplies  
10 and he wrote a check for 1,000-and-some dollars for the  
11 supplies, which he only brought back the \$200 worth of  
12 supplies. He also was taking money out of the cash  
13 register. And, supplies coming up missing a lot.

14 Q Now, all of the particular things that you  
15 mentioned, as well as the document that was offered as  
16 an exhibit, do any of those things have anything to do  
17 with Florida Public Utilities Gas Company?

18 A No.

19 Q Any contention that you or any other  
20 partners were having a dispute with Mr. Byrd over the  
21 account of the gas company, would there be a basis to  
22 any such assertion?

23 A No.

24 Q Is it not true that all of the problems and  
25 the confrontations with Mr. Byrd centered around

1 incidents such as you have just described in your  
2 testimony?

3 A Yes.

4 Q At any time did you or any other partner, in  
5 your presence, have a confrontation, an argument or any  
6 words whatsoever with Mr. Byrd concerning Florida  
7 Public Utilities?

8 A No.

9 Q Is it not true that Mr. Byrd asserted to you  
10 and other partners that he had friends at the Florida  
11 Public Utilities Gas Company?

12 A Yes, he did.

13 Q Did he not refer to these people as good  
14 friends?

15 A Yes, he did.

16 Q Did he not prepare special meals at the  
17 restaurant for individuals from that company?

18 A Yes, he did.

19 Q Do you recall a time when an individual that  
20 Mr. Byrd referred to as Dino ever coming to that  
21 restaurant?

22 A Yes.

23 Q And you were there present when Dino came to  
24 the restaurant?

25 A Yes, I was.

1           Q       In your presence, did it appear that Mr.  
2 Byrd and Dino had just a passing knowledge of each  
3 other or did it appear that they knew each other real  
4 well?

5           A       Well, they knew each other real well,  
6 because when Dino came in, Mr. Byrd introduced us all  
7 to him and said he'd been coming to his other  
8 restaurant for many number of years.

9           Q       Did Mr. Byrd have a seat at a table with  
10 Dino?

11          A       Yes, he did.

12          Q       Did Mr. Byrd serve Dino a meal at that  
13 table?

14          A       Yes.

15          Q       While Dino consumed his meal, did Mr. Byrd  
16 remain at the table with Dino?

17          A       Yes, he did.

18          Q       Now, Mr. Brooks, the building, this 1744  
19 West Airport Boulevard, this building where the  
20 restaurant was housed, how many doors are there to the  
21 front, the entranceway to the restaurant?

22          A       One.

23          Q       And above that door is there not a sign  
24 stating Mother's Kitchen?

25          A       Yes, there is. It's a big sign with lighted

1 letters. It's got Mother's Kitchen in the middle of it  
2 and all the partners around the side of it.

3 Q So, that sign would have shown your name,  
4 Eddie Hodges' name, --

5 A Yes.

6 Q -- Daniele M. Dow, Brooks' name, Anthony  
7 Brooks' name, as well as Alfred Byrd?

8 A Yes, it would have.

9 Q Anyone entering that restaurant, could they  
10 help but see that sign?

11 A No.

12 Q Now, did there come a day in May of 1996  
13 when you came into the restaurant and observed a  
14 Florida Public Utilities serviceman at the restaurant?

15 A Yeah. There was a time I came in there.

16 Q Do you remember the exact date?

17 A No, I sure don't.

18 Q Did you have a conversation with that  
19 serviceman?

20 A Yes. I think I asked him what was wrong  
21 with the stove or something. And he was asking me  
22 something about what kind of food we were going to  
23 serve or something, if I remember correctly.

24 Q Did that serviceman ask you who the owners  
25 were?

1           A       Yes. Yeah, he did. He did ask that. He  
2       asked who the owners were and I told him.

3           Q       And in response to his question, what did  
4       you tell him?

5           A       I told him it was a partnership; Eddie  
6       Hodges, myself, Anthony and Daniele Dow and also,  
7       Alfred Byrd.

8           Q       This serviceman was at the stove of the  
9       restaurant?

10          A       Yes, he was.

11          Q       What did you understand him to be doing at  
12       the stove of the restaurant?

13          A       I thought he was getting it ready to cut  
14       back on. No, he was working on the stove. That's when  
15       I came there for lunch one time, he was working on the  
16       stove. What he was doing to it, I don't know. He  
17       asked him what was wrong and he said he was repairing  
18       it.

19                THE COURT: Mr. Brooks, do we have a time  
20       frame for any of this?

21                MR. BROOKS: May '96. He stated, Your  
22       Honor, that he could not remember the exact date,  
23       so I can't give it to him.

24                THE COURT: I mean, the month and the year?

25                MR. BROOKS: Yes, he stated May of '96.

1 MS. COWDERY: Is that what --

2 THE COURT: I didn't recall that testimony.

3 THE WITNESS: Somewhere around there.

4 MR. BROOKS: I'm sorry.

5 BY MR. BROOKS:

6 Q Mr. Brooks, were you present in September  
7 with particular reference to September 12th and  
8 September 13th of '96, when a serviceman entered the  
9 restaurant, a gas company serviceman entered the  
10 restaurant?

11 A Yes, I was.

12 Q Was this a different serviceman from the one  
13 that you were referring to in your prior testimony?

14 A Yes, sir. He was there. He came there to  
15 change the gas lines over to their company, because  
16 Florida Public Gas Company kept cutting the gas off and  
17 on and off and on and off. So, he came there and he  
18 was going to change from that company to another gas  
19 company.

20 While I was there, I remember asking him  
21 what was wrong with the stove, and he was saying that  
22 there was something wrong with a little screw, because  
23 they had shut it down. He said something was wrong  
24 with the little screw, that somebody had backed it out  
25 or something.



1                   He said all he had to do was just tighten it  
2 up a little bit and our stove was fine. But, their  
3 serviceman said that something was major wrong with it  
4 and they had to order a part or something. But, the  
5 one that hooked it up just came right in, hooked the  
6 lines up and tightened up the screw and said it was  
7 fine and turned the gas on.

8                   Q       The incidents that you were just referring  
9 to, are you certain that these occurred during the time  
10 frame of September 12 and September 13, '96?

11                   A       I should think so.

12                   Q       The company to which you're referring, the  
13 serviceman to which you were referring, could that be a  
14 Discount Propane serviceman that you're talking about?

15                   A       Yes.

16                   Q       Does that sound familiar?

17                   A       Uh-huh.

18                   Q       Have you looked at any of the records  
19 concerning the connection of Discount Propane and the  
20 disconnection of Florida Public Utility Gas Company  
21 during the month of September, lately or within the  
22 last few months?

23                   A       No, sir.

24                   Q       So, if your not sure of the dates and stuff,  
25 it's because you have not seen the actual documentation

1 for some time, is that it?

2 A That's it.

3 Q On September 28th, 1996, do you recall  
4 having a conversation with any gas company servicemen,  
5 whether --

6 MS. COWDERY: I'm going to object to leading  
7 questions with dates in them, because I want to  
8 see what the witness recalls regarding dates.

9 MR. BROOKS: I'm about to ask him, Your  
10 Honor, if he recalls --

11 THE COURT: You've been doing a lot of  
12 leading without objection and times and dates are  
13 pretty important, so rephrase the question.

14 BY MR. BROOKS:

15 Q Mr. Brooks, during the month of September,  
16 did you have a conversation --

17 MS. COWDERY: I'm going to object again and  
18 ask if you can phrase it without regard to even  
19 the months.

20 THE COURT: Well, I'm going to overrule  
21 that.

22 MR. BROOKS: But if it's a particular  
23 incident --

24 THE COURT: That's not necessary. I'm going  
25 to overrule the objection. Go ahead.

1 BY MR. BROOKS:

2 Q During the month of September 1996, do you  
3 recall having a specific conversation with a  
4 representative of Florida Public Utilities Gas Company?

5 A Yes, I think it could have been I talked to  
6 him around about that time.

7 Q Do you also recall in September of '96,  
8 having a conversation with representatives of Discount  
9 Propane Gas Company?

10 A Yes.

11 Q So within the month of September, you  
12 actually had conversations with two different  
13 representatives of two different gas companies?

14 A Yes.

15 Q To the best of your recollection, as you sit  
16 here today, those two conversations, can you affix a  
17 specific date for each particular conversation?

18 A No, I cannot.

19 Q Do you recall having to produce a \$100 bill  
20 for a deposit for gas services?

21 A Yeah.

22 Q Where did this occur?

23 A Over at my mother's house when Eddie Hodges  
24 and myself was there with you and Alfred Byrd and we  
25 both handed you all \$100 to pay the security deposit.

1 Q Now, when you say, handed you all, are you  
2 referring to myself or Mr. Byrd?

3 A Well, we handed it to you, but you turned  
4 around and gave it right to Alfred Byrd, though, to  
5 make the deposit to go and open up the lights.

6 Q So, you handed your monies to me?

7 A Yeah. And you, in turn, handed it to  
8 Alfred.

9 Q Mr. Brooks, did there come a time in 1996  
10 when you were advised that the gas company was asking  
11 for an additional deposit?

12 A Yes.

13 Q Do you recall what month that was?

14 A I couldn't give you the exact month or date,  
15 but I recall the time when we gave you money to go and  
16 make a payment and you were supposed to change over the  
17 name out of Alfred Byrd's name into Mother's Kitchen's  
18 name, since they was claiming that it was Alfred Byrd's  
19 account and you went over to change it over to Mother's  
20 Kitchen.

21 You said the lady down there wanted a \$500  
22 deposit or something like that, so we had to end up  
23 coming up with the \$500 for the deposit for to switch  
24 it over, which it was supposed to be switched over.

25 Q Prior to that, that particular time, had

1 anyone ever told you that the account at the gas  
2 company was not in Mother's Kitchen Limited's name?

3 A No. No one but you when you were arguing  
4 about how they could put it in Alfred Byrd's name when  
5 it should have been in Mother's Kitchen Limited.

6 Q Did you ever receive calls from any  
7 representative from the gas company?

8 A I think I might have got one and I stopped  
9 by there at lunchtime one time and nobody was there. I  
10 think I might have got the one.

11 Q Do you remember what the nature of that call  
12 was?

13 A Yes. This lady was saying that we was  
14 behind on the payment, the gas payment or something,  
15 that she was getting ready to cut it off or something.  
16 I remember calling you and explaining to you what she  
17 explained to me and you took it from there and you were  
18 supposed to handle it.

19 Q When you answered that particular phone  
20 call, did the party on the other end ask for Alfred  
21 Byrd?

22 A No. She asked for one of the owners and  
23 that's when one of the workers there handed me the  
24 phone, because I was the only one there at the time.

25 Q The party calling asked for one of the

1 owners?

2 A Yes, sir.

3 Q You don't remember the month, day or year  
4 that this occurred?

5 A I think it occurred in '96, but I can't tell  
6 you the months or the dates or anything like that.

7 Q Do you remember a time in '96 where you, Mr.  
8 Byrd, Mr. Hodges and myself had a meeting on the bench  
9 in front of the restaurant?

10 A Yes, I do.

11 Q Do you recall what that meeting was about?

12 A It was about a few things, about -- we asked  
13 him about the supplies and stuff coming up missing and  
14 the checks that he was writing that were bouncing and a  
15 number of stuff. A number of stuff came about in that  
16 meeting.

17 Q At that particular meeting, did Mr. Byrd  
18 promise to straighten those items up?

19 A I don't recall him saying he was going to  
20 straighten them up. I think I recall him getting mad  
21 and talking about leaving the company, leaving the  
22 business or something.

23 Q You don't recall the month, day or year that  
24 this occurred?

25 A I sure can't.



1 Q Did there come a time when this business was  
2 operating that Anthony Brooks was hospitalized?

3 A Yes. Yes, there was.

4 Q When Anthony Brooks was hospitalized, who  
5 took over primary responsibility for the day-to-day  
6 operation of the restaurant?

7 A I did.

8 Q When you did this, what were some of the  
9 activities you performed?

10 A Well, I administered the business itself and  
11 did a lot of depositing of money into the bank accounts  
12 and pretty much just handled the daily-daily operation  
13 of that, of the business itself.

14 Q While you were doing this, do you ever  
15 recall a time that Mr. Byrd made a deposit at the bank?

16 A No, he didn't.

17 Q Did Mr. Byrd ever give you any funds for any  
18 costs or company billings?

19 A No, he didn't.

20 Q Did this include billings from Florida  
21 Public Utilities?

22 A No, he didn't.

23 Q Did Mr. Byrd ever state to you that the  
24 Florida Public Utilities account was in the name of  
25 Alfred Byrd, doing business as Mother's Kitchen?

1 A No, he didn't.

2 Q The phone call that you received from the  
3 gas company's representative, did they mention Alfred  
4 Byrd's name at all?

5 A No, she didn't.

6 Q Did you accompany other members of Mother's  
7 Kitchen Limited to any pre-hearing conferences with the  
8 Florida Public Service Commission?

9 A Yes, two.

10 Q Who were they?

11 A The members with us or the members with  
12 them?

13 Q No. Who did you accompany there?

14 A Anthony Brooks and Eddie Hodges.

15 Q Do you recall a time at one of those  
16 meetings, do you recall any incidents at any of those  
17 meetings concerning a \$290 receipt from the gas  
18 company?

19 A Yes. We had a \$290 receipt, but his records  
20 couldn't show where we paid that \$290 receipt.

21 Q When you say, his records?

22 A Mr. Troy.

23 Q So do you mean -- Mr. Troy is the  
24 representative of the gas company, so are you saying  
25 the gas company's records or Mr. Troy's records

1 individually?

2 A I guess the gas company, since he's the  
3 representative. I know he was the one talking about  
4 the -- gave them the papers, so I figured it was Troy's  
5 records. I don't know.

6 Q Aside from Mr. Troy, was there anyone else  
7 present who claimed to represent or be employees of he  
8 gas company, Florida Public Utilities?

9 A At one meeting he had a lot of people with  
10 him and at the other one, I think he was by himself  
11 pretty much.

12 Q On the particular meeting with this \$290  
13 receipt, were there any other people present with Mr.  
14 Troy?

15 A I think that receipt came up in both of  
16 them, but I know at one it was with Diane Keitt, the  
17 serviceman and another manager, Dino, and himself and I  
18 think there was somebody else, but I don't know his  
19 name.

20 Q Do you recall at either of those meetings,  
21 my asking if the records presented to Mother's Kitchen  
22 Limited of the gas company receipt of payments was  
23 complete?

24 A Yes.

25 Q Who responded to that?

1           A     Mr. Troy.

2           Q     When this \$290 receipt was presented, did  
3 Mr. Troy or Ms. Keitt seem shocked at the receipt being  
4 shown?

5           A     Yes. They couldn't tell where that came  
6 from. They said they had to go back and go back  
7 through the paperwork or something to figure out how  
8 they missed it or something, but they didn't know, they  
9 couldn't tell at that meeting how the \$290 came about.

10          Q     Did they deny that that receipt was genuine?

11          A     No, they did not.

12          Q     At any time that you spoke with -- at any  
13 time between April of '96 through the present date that  
14 you spoke with anyone from Florida Public Utilities,  
15 did you ever authorize any account to be set up in the  
16 name of Alfred Byrd, doing business as Mother's  
17 Kitchen?

18          A     No, I did not.

19          Q     Did anyone, anyone at all, between April of  
20 '96 and July of '96, tell you or state in your presence  
21 that the account at Florida Public Utilities Gas  
22 Company was in the name of Alfred Byrd, doing business  
23 as Mother's Kitchen?

24          A     No, they did not.

25                MR. BROOKS: No further questions, Your

1 Honor.

2 THE COURT: Cross exam?

3 MS. COWDERY: Yes, sir.

4 CROSS EXAMINATION

5 BY MS. COWDERY:

6 Q Mr. Brooks, how did you say you were  
7 employed?

8 A Harper Mechanical (ph).

9 Q You've worked there for quite a long time?

10 A For 13 years, yes.

11 Q That's a full-time job, isn't it?

12 A Yes.

13 Q Isn't it true that you did not handle the  
14 business angle of this business?

15 A True.

16 Q And it's true that --

17 A The only time I had a part in handling it,  
18 when he had the heart attack that time and was in the  
19 hospital.

20 Q Okay. Make sure the court reporter can hear  
21 you. And how many days was that?

22 A Probably about two, three weeks at the most,  
23 I guess.

24 Q Did you take time off from work?

25 A Yes.

1 Q Other than that time period, was it Mr.  
2 Anthony Brooks who handled all the business stuff?

3 A Yes. He still handled all the business  
4 stuff, legal business stuff, he still handled it,  
5 revenues and all that. I just took care of the daily-  
6 daily operations to keep the business going until he  
7 was back on his feet.

8 Q You were not involved in setting up the  
9 account in March?

10 A Setting up the account?

11 Q At the gas company, were you?

12 A I gave money for setting up the account.

13 Q But you didn't go over there?

14 A No, I did not.

15 Q And your testimony today is that at your  
16 mother's house, --

17 A Uh-huh.

18 Q -- you handed Mr. Brooks a \$100 bill?

19 A Yes, ma'am.

20 Q And then, at that same time, Mr. Brooks  
21 handed that money over to Alfred Byrd?

22 A Yes, ma'am.

23 Q And you remember that clearly?

24 A Yes, I do.

25 Q Your own recollection?



1           A       I remember when we was getting started in  
2 the business, yes.

3           Q       Right at your mother's house?

4           A       Yes.

5           Q       Okay.

6           A       Because before we had the business, that's  
7 where we always talked at, right at my mother's house.

8           Q       So, Mr. Byrd had that money at that time?

9           A       Yes.

10          Q       Would it be fair to say that your belief is  
11 that you don't know whether or not Mr. Alfred Byrd did  
12 any of the things he did with money on purpose or not?

13          A       I don't -- I can't say if it was on purpose.  
14 I know he went down to turn off the gas on purpose,  
15 because he said he was going to go down there and have  
16 his friends at the gas company turn off the gas to get  
17 his name off of it, so we couldn't do any cooking.

18                   But, whether he did all that other stuff on  
19 purpose or he didn't know no better, I couldn't tell  
20 you that.

21          Q       So, you don't think that he would have had a  
22 conspiracy with the gas company?

23          A       Again, I can't say he had -- what he did  
24 with the gas company. All I can say is that he said he  
25 had friends down there and his intention was to have

1 Mother's Kitchen, the gas company cut Mother's  
2 Kitchen's gas off.

3 Q But you don't know if the gas company was  
4 involved with that? You don't have any personal  
5 knowledge, do you?

6 A All I know, they went to calling about the  
7 gas bills an awful lot from that point on.

8 Q You also know that when they called that the  
9 gas was being cut off, they also said that there was  
10 money due on the account?

11 A Yes.

12 Q Now, you said that Mr. Byrd introduced some  
13 friends from the gas company. Do you know who those  
14 people were?

15 A He introduced them to all the partners. He  
16 introduced Dino and then he went and sat down with Dino  
17 and they -- well, Dino had some guys with him, but I  
18 don't know if they were from the gas company or not. I  
19 don't know exactly where they were from, but --

20 Q And you're sure about that testimony?

21 A Yeah. I'm sure he sat down, you know --

22 Q All right. Do you know Mr. Kramski (ph)  
23 personally, Mr. Dino Kramski personally?

24 A No.

25 Q Would you be able to recognize him today?

1 A I think so.

2 Q You think you could, okay.

3 Mr. Brooks you stated that in comparing the  
4 two times there were Florida Public Utilities Company  
5 servicemen at the kitchen, --

6 A Uh-huh.

7 Q -- were those different servicemen or were  
8 you saying they were two different incidents?

9 A It was two different incidents. They  
10 weren't there at the same time.

11 Q Were they two different people or do you  
12 know?

13 A Yes, they were two different people. One  
14 came there and he was from the gas company, cutting it  
15 off, and the other one came to change it over.

16 Q Did you testify that at a different time, a  
17 Florida Public Utilities Company serviceman was there  
18 working at the stove or is that not what you meant?

19 A That's not what I meant.

20 Q Okay. Now, when you talked to the  
21 serviceman from Discount Propane, --

22 A Yes.

23 Q -- now that was after you were switching  
24 over from Florida Public Utilities Company, right?

25 A Yes.

1 Q All right. Are you sure that he told you  
2 that the problem was just that screw and all you had to  
3 do was tighten it up and that took care of the problem?

4 A Yes, because I was looking to get -- as a  
5 matter of fact, I was bring money up there thinking we  
6 was going to have to pay the Discount man for some  
7 major thing he had to do to it, but he never had to do  
8 anything. He said he had to tighten up a screw and  
9 there was nothing wrong with it.

10 Q Just tighten up the screw and that was the  
11 only problem, to tighten the screw?

12 A Uh-huh.

13 Q And you're sure about that?

14 A Yes.

15 Q Okay. Did a lot of your understanding of  
16 the facts of this case come from Mr. Anthony Brooks?

17 A No. The majority of this, what I'm saying  
18 now, come from my recollection. That's why I can't  
19 give you the dates and the times or the months, exactly  
20 the time and stuff.

21 Q Okay. So, from your own recollection, you  
22 don't have knowledge about dates of payments or dates  
23 of conversations or things like that?

24 A No, but I can go through the records and  
25 look at it, get the dates and stuff, but right off the

1 top of my head, no, I couldn't just tell you.

2 Q When you say you can go to the records, what  
3 records do you mean?

4 A Go to Anthony's, the records that he -- the  
5 statements and stuff that he's been keeping.

6 Q So that's the handwritten or the typed  
7 documents that he's been putting together for this  
8 case?

9 A Yes.

10 Q Those are the records you're talking about?

11 A Yeah, the records that he keeps.

12 Q But, you're talking about those handwritten  
13 or typed documents that he has prepared?

14 A And also, receipts and stuff that he kept  
15 from when he was making the payments and all that  
16 stuff.

17 Q Okay. And the receipts?

18 A Yeah.

19 Q All right. Mr. Brooks, you made mention in  
20 your testimony today about having an understanding that  
21 a lady from the gas company wanted a \$500 deposit.

22 A Yes.

23 Q Now, do you remember that in your deposition  
24 of December 17th, 1997, you said that you couldn't  
25 remember how much the deposit was for or when it was or

1           how it was?

2           A       Yes.

3           Q       When you're talking about that today then,  
4           does that \$500 amount come from your personal  
5           recollection or from your knowledge of the facts and  
6           from the allegation in the complaint?

7           A       No, from the facts.

8           Q       You have a personal recollection of a phone  
9           call and discussions way back then?

10          A       Like I said then, the reason why I know it  
11          was the \$500 is remembering a conversation with Anthony  
12          about getting the gas company changed from Alfred Byrd  
13          into Mother's Kitchen.

14          Q       Right.

15          A       And, they told me there was going to be a  
16          \$500 deposit. That's the reason why I can remember, I  
17          remember the conversation with Anthony there.

18          Q       You remember the original conversation?

19          A       Not the original. We had that conversation  
20          a couple of times. I remember the conversation in  
21          getting together, trying to get the money, to come up  
22          with the \$500.

23          Q       But, do you remember the original time that  
24          you talked to him about it?

25          A       No, I do not remember that.



1           Q       So, it was sometime after that, that you  
2 remember talking to him about what had happened in the  
3 original conversation, is that what you're saying?

4           A       Well, wait a minute. What do you mean, the  
5 original conversation? Let me get that straightened  
6 out.

7           Q       I'm going to go back to your deposition.

8           A       Uh-huh.

9           Q       I asked you, "What is your understanding or  
10 what do you remember from any phone calls having to do  
11 with the \$500 security deposit or any monies about  
12 \$500?"

13          A       Uh-huh.

14          Q       Answer, "All I know, all I recall is that  
15 Anthony told us we was going to get the gas company to  
16 take it out of Alfred Byrd's name and put it in our  
17 name."

18          A       Yes.

19          Q       "Okay." Answer, "I remember telling us  
20 that. Then I remember again, amount of money, I can't  
21 recall how much it was at the time or when it was or  
22 how it was."

23                   Question, "But you remember that?" Answer,  
24 "But I remember him saying that we had to change it  
25 from Alfred Byrd's name to our name."

1           A       Yes, ma'am. But at the time, you was asking  
2 a lot of questions about money from this point and that  
3 point and that point, and I couldn't remember. Just  
4 like the same exact time, because there's been a lot of  
5 questions, asking a lot of questions and a lot of  
6 things, I couldn't recollect right at the moment.

7           Q       So right at that time, you couldn't remember  
8 the amount of money they were talking about?

9           A       Uh-uh. Uh-uh.

10           MS. COWDERY: Okay. I'm sorry. I need just  
11 a minute.

12           THE COURT: Okay.

13 BY MS. COWDERY:

14           Q       Do you recall, Mr. Brooks, which informal  
15 staff conference you were referring to when you were  
16 talking about the \$290 receipt? Do you remember what  
17 month that might have been in or if it was the first or  
18 the second one? Do you remember that?

19           A       No, I sure don't. Like I said, I think the  
20 -- I think it came up in both of them. I'm not for  
21 sure.

22                   The first one went to the board and stuff.  
23 I think a receipt came up there and they didn't have an  
24 answer for it and they was supposed to let us know the  
25 answer by the second one or something. I can't recall

1 that exactly, but I know it came up in the meeting.

2 MS. COWDERY: I have no further questions.

3 THE COURT: Anything else for the witness?

4 MR. BROOKS: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q Mr. Brooks, when Ms. Cowdery asked you about  
8 the individual at the gas company calling and they're  
9 saying money was due on the account, --

10 A Uh-huh.

11 Q -- was there ever a time -- do you know  
12 Harry Johnson?

13 A Yes.

14 Q Was there ever a time that you sent Harry  
15 Johnson to that gas company with the instructions to  
16 ask for the complete total of everything that was owed  
17 that gas company?

18 MS. COWDERY: Objection. I don't see that  
19 this is related to cross. It's outside the scope  
20 of cross.

21 MR. BROOKS: It's related to the money due  
22 issue, ma'am, the money due issue that you raised.

23 THE COURT: I'm going to overrule the  
24 objection.

25 THE WITNESS: Yes.

1 BY MR. BROOKS:

2 Q Did that company ever produce to Mr. Johnson  
3 at that time or to you later, a complete statement of  
4 the total amount of monies that they were claiming were  
5 due?

6 A No, they did not.

7 Q Have you or any partner, any other partner,  
8 to your knowledge, ever received a written statement  
9 from that gas company about a total amount of monies  
10 due?

11 A No.

12 Q Have you ever received any statement at all  
13 from that gas company?

14 A No.

15 MR. BROOKS: No further questions, sir.

16 THE COURT: Anything else?

17 MS. COWDERY: More questions.

18 RE CROSS EXAMINATION

19 BY MS. COWDERY:

20 Q Did you ever see a gas bill? Did you ever  
21 look at a gas bill from the company?

22 A Once or twice.

23 Q Once or twice.

24 Do you remember what the gas bill had on it?

25 A I sure don't.

1 Q Do you remember if it showed the amount of  
2 money that was due?

3 A I sure don't.

4 MS. COWDERY: No further questions.

5 THE COURT: Thank you, sir. You can return  
6 to your seat.

7 MR. BROOKS: Sir?

8 THE COURT: Yes.

9 MR. BROOKS: I'd like to reserve the right  
10 to recall this witness.

11 THE COURT: You may do so. You can return  
12 to your seat. That's fine. Do you have a real  
13 short witness or we'll take a short recess.

14 MS. COWDERY: Maybe Linda Jackson. I don't  
15 know. Is Linda Jackson pretty quick?

16 MR. BROOKS: Yes, I think so.

17 THE COURT: Do you want to do her first and  
18 then we'll take a short break? We're not taking  
19 lunch now, we're just taking a break.

20 MS. COWDERY: Oh, okay. All right.

21 MR. BROOKS: A break, please.

22 THE COURT: Okay. Let's be back by 11:30,  
23 please.

24 (Short recess.)

25 THE COURT: Call your next witness.

1 MR. BROOKS: Yes, sir. Sir, before I do  
2 that, I'd like to bring something to the Court's  
3 attention. Now, after Linda Jackson, my next  
4 witness is going to be myself and I believe Ms.  
5 Cowdery will agree that when I take the stand,  
6 it's going to be a lengthy -- it's going to be  
7 quite, quite long.

8 THE COURT: Uh-huh.

9 MR. BROOKS: I know that the Court had said  
10 that it did not want to do lunch until after the  
11 case in chief.

12 THE COURT: Right.

13 MR. BROOKS: But, that's going to be a  
14 rather extensive and long period with my  
15 testimony. And then, Harry Johnson's is going to  
16 be fairly long afterwards, too. So, I don't know  
17 if we want to stick to that after the case in  
18 chief or if the Court might want to reconsider or  
19 not.

20 THE COURT: Not for now. We might have a  
21 late lunch, but I want the case to be moved along.

22 MR. BROOKS: Okay, sir.

23 THE COURT: Maybe some hunger pangs will  
24 move this along. We need to pick up the pace, so  
25 let's go.



1 MR. BROOKS: Okay. My next witness will be  
2 Linda Jackson then, sir.

3 THE COURT: Ma'am, would you have a seat up  
4 here, please. Would you raise your right hand to  
5 be sworn.

6 WHEREUPON:

7 LINDA JACKSON  
8 being first duly sworn by the Hearing Officer, was  
9 examined and testified under oath as follows:

10 THE WITNESS: I do.

11 THE COURT: Go ahead, Mr. Brooks.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q Would you state your full name and address  
15 for the record, please?

16 A Linda Diane Brooks Jackson, 1204 Pomegranate  
17 Avenue, Sanford, Florida.

18 Q Ms. Jackson, are you familiar with Eddie  
19 Hodges, Arthur Brooks, Anthony Brooks and Daniele  
20 Brooks and Alfred Byrd?

21 A Yes.

22 Q How do you know these individuals?

23 A Arthur Brooks, Tony Brooks are my brothers.  
24 Hodges is a friend. Al Byrd is a friend. And, Daniele  
25 Dow is my sister-in-law.

1 Q Ms. Jackson, at your residence you have a  
2 telephone, correct?

3 A Yes.

4 Q On that particular telephone, did you ever  
5 receive telephone calls from Florida Public Utilities  
6 Gas Company?

7 A Yes.

8 Q When these telephones were received by you,  
9 did you know the other party on the other end?

10 A Well, my daughter answered the phone and one  
11 time, Diane Keitt called.

12 Q So, the time when your daughter answered the  
13 phone, you didn't speak to them?

14 A No.

15 Q The time that you did speak to them and the  
16 time that your daughter answered the phone, do you know  
17 what the subject matter of those phone calls were?

18 A Paying a bill.

19 Q When these telephone calls came in to your  
20 residence, did they ask for Alfred Byrd?

21 A No.

22 Q They never asked for Alfred Byrd?

23 A No.

24 Q And you remember specifically them stating  
25 that it was regarding payment of a bill?

1           A     Yes.

2           Q     Did they say whose bill?

3           A     Mother's Kitchen.

4           Q     Did there come a time when you had to loan  
5 anyone from Mother's Kitchen money?

6           A     Yes.

7           Q     Can you please state for the Court, the  
8 circumstances surrounding that time?

9           A     Ms. Keitt called, you and her was on the  
10 phone and having a heated conversation about a bill  
11 getting paid or they was going to cut the gas off. So,  
12 I lent you 200-and-some dollars to pay it.

13          Q     Did you loan the money to me personally?

14          A     Mother's Kitchen.

15          Q     Did you give the money to me personally?

16          A     Yeah, I think it was you, because you and  
17 Luke was there. It was you, I think, and Luke gave me  
18 the money back -- well, Arthur, I'm sorry. Arthur, I  
19 call him Luke.

20          Q     Aside from the mention of payment of a bill,  
21 was there any other reason given for needing the money  
22 right away?

23          A     No.

24               MR. BROOKS: No further questions, sir.

25               THE COURT: Cross exam?

## CROSS EXAMINATION

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BY MS. COWDERY:

Q Ms. Jackson, that one phone call you're talking about, did you know at the time that it was Ms. Keitt on the phone? Did you talk to her?

A No, I didn't.

Q So, you didn't know who was on the phone?

A No, but my daughter did.

MS. COWDERY: Okay. I have no further questions.

THE COURT: Ms. Jackson, do you have an approximate date or month or year that this happened?

THE WITNESS: (inaudible)

THE COURT: How much was the amount?

THE WITNESS: It was 200-and-some, between 200 and 250. I know that much, because that was my car payment.

THE COURT: Thank you.

MS. COWDERY: May I ask her --

THE COURT: Anything else? Mr. Brooks first. Anything else for the witness?

MR. BROOKS: No, sir.

THE COURT: Go ahead.

BY MS. COWDERY:

1 Q Ms. Jackson, do you remember making a  
2 statement in this case that you signed and had  
3 notarized when you said that the amount was \$260?

4 A I know it was something like that, between  
5 200, 250, something like that, because my car payment  
6 was 280 at the time.

7 Q So, it could have been any of those amounts?

8 A Yeah, yeah.

9 MS. COWDERY: Okay. Thank you.

10 THE COURT: Anything else? All right.

11 Thank you, ma'am.

12 THE WITNESS: I can go?

13 THE COURT: You're excused.

14 THE WITNESS: Thank you very much.

15 THE COURT: You may go about your business.

16 THE WITNESS: Thank you.

17 MR. BROOKS: I call Anthony Brooks.

18 THE COURT: Okay. Mr. Brooks, take whatever  
19 documents you need to refresh your memory to the  
20 witness stand.

21 I'm not going to ask you to ask yourself  
22 questions, so I'm just going to have yo just state  
23 your name and -- raise your right hand to be  
24 sworn.

25 WHEREUPON:

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ANTHONY BROOKS

being first duly sworn by the Hearing Officer, was  
examined and testified under oath as follows:

MR. BROOKS: I do, sir.

THE COURT: Go ahead.

DIRECT TESTIMONY

MR. BROOKS: My name is Anthony Leonard  
Brooks, II. My address is 109 Lamplighter Road,  
Altamonte Springs, Florida.

I, primarily through the interests of my  
wife, Daniele M. Dow Brooks, became a partner in  
Mother's Kitchen Limited on March 7, 1996. That's  
when the partnership was formalized.

It was agreed by the partners that Mr. Eddie  
Hodges would, for initial operating capital, would  
provide \$1,000 in cash, which he did. Arthur  
Brooks provided \$1,000 --

MS. COWDERY: I'm going to start off with an  
objection. This testimony about who provided what  
and what they did is irrelevant. In the interest  
of moving the case along, I'd like us to --  
there's just no relevance. It has no bearing on  
the issues. We had a pre-hearing stipulation that  
sets forth the issues and they are itemized as to  
rule violations. Who contributed what to the



1 partnership has no bearing on the issues.

2 THE COURT: I'm going to reserve ruling on  
3 relevance, but let's move it along.

4 MR. BROOKS: Monies were provided in the  
5 fashion in which I was describing for the  
6 operation of the business.

7 Now, there came a time in March 1996, when  
8 it became necessary to start the payment of  
9 deposits for utilities for the business to  
10 operate. The leaseholder provided water services,  
11 so primarily all the partnership had to do was  
12 obtain the lights and the gas for the operation of  
13 the business.

14 In line with that, on or about March 22nd,  
15 1996, myself, Harry Johnson --

16 MS. COWDERY: Objection. That's contrary to  
17 the stipulation which says, "On March 21st, 1996,  
18 the account was set up."

19 MR. BROOKS: It's not contrary to it, ma'am.  
20 It just reaffirms it and since your defenses in  
21 the stipulation goes to who actually set the  
22 account up is very relevant, I would think, in  
23 this matter.

24 MS. COWDERY: I didn't say it was  
25 irrelevant. I said it was contrary --

1 THE COURT: Well, counsel, we're not going  
2 to go back and forth.

3 MS. COWDERY: Okay.

4 THE COURT: I'm going to overrule the  
5 objection. Go ahead.

6 MR. BROOKS: On or about March 22nd, 1996,  
7 myself, Alfred Byrd and Harry Johnson, went to the  
8 Sanford office of Florida Public Utilities.  
9 There, with \$200 supplied to Mr. Byrd by the  
10 partnership, in addition to the City of Sanford  
11 Occupational License, City of Sanford Fire  
12 Inspection Application License, along with the  
13 never noticing the registration of the Department  
14 of Revenue Certificate Number, which were offered  
15 into evidence as Petitioner's 3, I believe it was,  
16 were taken with us to that office, because the  
17 other utilities, the light company had asked for  
18 documents showing that the business was licensed  
19 to operate, were taken along with us.

20 There at the utilities office, \$200 was  
21 given for a security deposit for the gas company,  
22 gas services to be turned on. Once this was done,  
23 myself and Harry Johnson left Mr. Byrd at the gas  
24 company and proceeded on to pick up other  
25 equipment for the restaurant.

1 Prior to June 1996, the latter part of June  
2 1996, at no time was any mention made by any  
3 representative of the gas company, and they were  
4 out there on two occasions. One time for a repair  
5 to the range. The second time was for a problem  
6 we were having with the coupling being knotted on  
7 the line going from the rear of the range to the  
8 fry-co-lator, which sat next to the range, almost  
9 abutting the range.

10 At no time during any of those visits or any  
11 contacts that I had with the gas company, were we  
12 told that this account was in any other way,  
13 fashion or form, set up in any name other than  
14 Mother's Kitchen Limited. The exhibit that was  
15 entered already showing the receipt for the \$200  
16 security deposit that was made on March 22,  
17 clearly shows that the name of the account was  
18 Mother's Kitchen Limited. It does not state  
19 anywhere on that document, anything about Alfred  
20 Byrd doing business as Mother's Kitchen.

21 Now, it shows on that document a mailing  
22 address for Mr. Byrd because -- I'm sorry, Mr.  
23 Byrd's mailing address, because at the time, no  
24 specific address had been set up for the business,  
25 no specific mailing address had been set up for

1 the business. As a matter of fact, we were  
2 utilizing not only that P.O. Box, but on a  
3 temporary basis, we were using the 1204  
4 Pomegranate address as mailing addresses for the  
5 business.

6 Of each and every receipt obtained from  
7 Florida Public Utilities when cash was taken into  
8 the Sanford office, and particular reference is  
9 made to the ones of 8/12 and 9/12, they reflect  
10 the same thing as the original deposit receipt,  
11 with the name of the company or the name of the  
12 account as Mother's Kitchen Limited or Mother's  
13 Kitchen.

14 Two such receipts, one that was made 7/11/96  
15 and 6/10/96, the company chose to put where it  
16 says "name", A. Byrd on those two particular  
17 receipts, for some reason. But, the other  
18 receipts all clearly show Mother's Kitchen. So,  
19 the company on the 7/11/96 receipt shows a receipt  
20 a total of \$160 in cash.

21 On this particular date, the \$160 in cash  
22 was the one and only time that I actually took, I  
23 physically took a cash payment into that company's  
24 office.

25 On this particular date, I went into that

1 office with the purpose in mind of confronting  
2 Diane Keitt, because I was told by Harry Johnson  
3 and Bonnie, two of the employees at the  
4 restaurant, that Ms. Keitt had called there the  
5 day before stating that the gas service to the  
6 restaurant was going to be discontinued at the  
7 request of Mr. Byrd.

8 Mr. Byrd had come to the restaurant on July  
9 the 2nd and he had stated that he was going to  
10 have his friends at the gas company disconnect the  
11 service to the restaurant, because we had  
12 confronted him about a lot of inappropriate  
13 actions on his part that were injurious to the  
14 partnership.

15 Now, when I went into that office on July  
16 11th, 1996, Ms. Keitt started to tell me that I  
17 had to pay, that Mr. Byrd had every right to turn  
18 -- to ask for the disconnection of the thing,  
19 because it was in his name. This was the first  
20 time that I or any other party that I knew of had  
21 heard of this.

22 She stated that he had requested the  
23 disconnection and that in order for us to keep the  
24 gas at the restaurant, that we would have to give  
25 her \$500, which she termed a security deposit, pay

1 some kind of fee, and as well as pay the entire  
2 amount that was owed by Mr. Byrd.

3 Now, my problems with Ms. Keitt and that  
4 office at that point centered around two things.  
5 One, this demand that we do both. I made it quite  
6 clear to her that if she was going to treat the  
7 account as Mr. Byrd's account and she was going to  
8 require us to pay a deposit, then what she was  
9 terming Mr. Byrd's account, we should not be  
10 forced to pay if we were going to be forced to pay  
11 a deposit to open up a new account.

12 I told her that I didn't think it was proper  
13 and at that time, I didn't really know. I told  
14 her I didn't think it was proper for her to insist  
15 that we pay somebody else's bill, plus a deposit  
16 to have another account opened up because of an  
17 error that they had made, as far as I was  
18 concerned, at that point.

19 Ms. Keitt simply told me that was the way it  
20 was going to be or she was going to have the gas  
21 disconnected. I then asked to speak to a manager,  
22 a supervisor. Ms. Keitt said that she was the  
23 manager. So, I asked her if there was a regional  
24 manager or some other type -- her boss is the way  
25 I put it. She told me that there was a Dino, a



1           guy she referred to as Dino who was, I think she  
2           said, a district manager in response to my asking  
3           about a regional manager.

4           We proceeded to go into a little office just  
5           to the left of where I was standing talking with  
6           Ms. Keitt. In there was a gentleman who  
7           identified himself as a Mr. Kramski and they  
8           called him Dino. I explained to him the problem I  
9           was having with his office manager and the fact  
10          that I did not believe that they could make us pay  
11          for what they were terming was somebody else's  
12          account and pay a deposit for a new account at the  
13          same time.

14          I told him that I had \$160 on me at that  
15          time, that I would pay that \$160, and that I would  
16          return later that day with the monies to make up  
17          the remainder of this security deposit that they  
18          wanted, but I would not pay Alfred Byrd's bill.

19          Mr. Kramski, at that time, stated that -- to  
20          Diane, to issue a receipt for the \$160, which I  
21          have here with the other receipts. And, they  
22          started asking me when I would get back in there  
23          with the remainder of the money. I told both  
24          Kramski and Keitt that I had an appointment at  
25          10:00 o'clock in Orlando with the Black Business

1 Fund. The company, we were trying to expand the  
2 restaurant and we were seeking a small business  
3 loan to do that with.

4 There, the officers of the Black Business  
5 Fund, at approximately 12 -- I believe it was  
6 12:10, somewhere around there, Mr. Harry Johnson  
7 paged me and he told me that Ms. Keitt had been  
8 calling over to the restaurant and threatening to  
9 come over and disconnect service because I had  
10 told her that someone would be back in there with  
11 the remainder of this money, of these monies they  
12 were demanding.

13 I went into a small office in the offices of  
14 the Black Business Fund and I utilized the  
15 telephone there. In doing so, I recorded the  
16 conversation with Ms. Keitt. Now, before I go on,  
17 I would like to enter Petitioner's Exhibit  
18 Composite receipts of \$290, \$261.04, \$160, to  
19 which I made reference, \$170 and actually, there's  
20 two of the \$160.

21 MS. COWDERY: Do you have an extra copy?

22 MR. BROOKS: I supplied you with those,  
23 ma'am.

24 MS. COWDERY: Well, I never got copies of  
25 them. He didn't give me copies, but I have copies

1 and I just compared them.

2 I was not supplied with copies of these  
3 particular receipts and had the receipts  
4 identified to me, but I know I have copies of the  
5 receipts and at this time, I am comparing my  
6 copies with the copies that Mr. Brooks has with  
7 him today.

8 THE COURT: So you need another minute?

9 MS. COWDERY: Just another minute, sir.

10 THE COURT: Go ahead. You have a question  
11 for Mr. Brooks?

12 MS. COWDERY: For Mr. Brooks.

13 THE COURT: All right.

14 MS. COWDERY: Are you submitting --

15 MR. BROOKS: No, ma'am. I said these two  
16 are the same (indicating).

17 MS. COWDERY: Okay. 160 is the same.

18 MR. BROOKS: The other one is put there  
19 because it came out more visible.

20 MS. COWDERY: Okay. This is just the two  
21 different ones. This was your copy -- okay All  
22 right.

23 I would note for the record that there are  
24 two receipts for 7/11/96. It appears that one was  
25 the customer copy that was stamped in a different

1 place than the same receipt for the company, and  
2 it appears that the first copy, which is on the  
3 first page of the exhibit for \$160 is simply a  
4 very light copy.

5 So, the indication that payment in cash had  
6 been made doesn't show up. As long as they're  
7 representing the same transaction, I don't have  
8 any problem with that. But, I don't have copies  
9 and I will need a copy of yours. It can be at a  
10 later break or something.

11 THE COURT: All right. Do you wish to offer  
12 it at this time?

13 MR. BROOKS: I'd like to enter that as  
14 Petitioner's Exhibit --

15 THE COURT: The next exhibit is six, I  
16 believe. Yes. So, we have --

17 MR. BROOKS: In there, sir, on the front  
18 page, the 160 at the bottom was very light in the  
19 copy of it.

20 THE COURT: Yes.

21 MR. BROOKS: So, on the back page, the same  
22 place that that one is, there's a darker copy.  
23 That's what she was referring to.

24 THE COURT: All right. What about the --

25 MR. BROOKS: There was a place there for so

1 that you'd be able to read what was on the one  
2 that we got anyway.

3 THE COURT: What are the other receipts for?

4 MR. BROOKS: Those are all payments that we  
5 made to the gas company.

6 THE COURT: Are you offering those at the  
7 same time? Is that relevant to this?

8 MR. BROOKS: Yes, sir. They are.

9 THE COURT: Any objection to the other --

10 MS. COWDERY: No objection.

11 THE COURT: So, there's a total of five  
12 receipts, one of which is a duplicate, basically,  
13 for a \$160 cash payment made on July 11th, 1996.  
14 Without objection, it's admitted in evidence as  
15 Petitioner's Exhibit 6.

16 (Petitioner's Composite Exhibit 6 was  
17 admitted in evidence.)

18 THE COURT: All right. Continue with your  
19 testimony.

20 MR. BROOKS: Yes, sir. As I was stating, at  
21 the time that I was in the offices of the Black  
22 Business Fund in Orlando for the purpose of  
23 seeking a small business loan for expansion of the  
24 restaurant, the restaurant has a small seating  
25 capacity. Every day we were overflowing that

1 capacity and we had a lot of customers leaving  
2 because there wasn't seating available, so we were  
3 looking to expand it.

4 Ms. Keitt called the restaurant, evidently,  
5 because I got a page from Harry Johnson who  
6 advised that Ms. Keitt had been calling there  
7 constantly concerning the remainder of the monies  
8 being brought down to the utility and she had been  
9 calling her asking specifically for me.

10 I went into a small office, one of the  
11 offices that the people were kind enough to lend  
12 me, and from there I called Ms. Keitt. That call  
13 went to Ms. Keitt on 7/11/96 at approximately  
14 12:10, 12:15.

15 As I stated previously, I made a recording  
16 of that conversation, because I was very concerned  
17 with the fact that they were trying to get us to  
18 pay two things in regard to this account as  
19 opposed to either paying the account and admitting  
20 that the account was in Mother's Kitchen's name or  
21 paying the deposit at their maintaining that it  
22 was in Alfred Byrd's name. So, I was ready, we  
23 were prepared to do one or the other, but not  
24 both.

25 Now, as a result of that, I made this



1 recording of that conversation on July 11, '96  
2 with Ms. Keitt and with the Court's permission,  
3 would like to play it.

4 MS. COWDERY: Objection. We have absolutely  
5 no knowledge of this tape recording. In December  
6 -- let me finish. In December, as part of my  
7 subpoena duces tecum to each of the partners, I  
8 asked for all business records and I specifically  
9 asked for any tapes, because Mr. Brooks had  
10 mentioned tapes during the course of the Public  
11 Service Commission proceeding. No tapes showed  
12 up.

13 I asked Mr. Brooks and Mr. Brooks told me  
14 that he had not had a chance to get to the Nations  
15 Bank safety deposit box to get tapes. So, okay,  
16 he'd submit them to me. I made phone calls. Mr.  
17 Brooks told me that his granddaughter had put the  
18 tape into the dishwasher without his wife's  
19 knowledge and his wife had run the dishwasher and  
20 the tape had been ruined. He'd be glad to put it  
21 into an evidence bag for me to look at and, yeah,  
22 I said, you know, okay, that's fine.

23 Then last week we got a notice of filing  
24 that one of the tapes, plural had been found under  
25 the granddaughter's bed and he wanted to let us

1 know about that.

2 Ms. Keitt is aware that on September 13th,  
3 1996, after that particular incident, Mr. Brooks  
4 came to the gas company and without her knowledge,  
5 until the conversation was over, recorded their  
6 conversation. That is the only tape recording  
7 that I have any knowledge of.

8 And, there's absolutely no way for me to  
9 know the authenticity of this or anything about  
10 it, whether or not it's even legal is another  
11 matter. So, I would object. I mean, it might  
12 help my case, I don't know, but I can't have any  
13 knowledge of these.

14 THE COURT: I'm not going to have a need for  
15 a reply. I'm sustaining the objection. If you  
16 want to testify as to what the conversation was,  
17 fine. If Ms. Keitt's called as a witness and you  
18 ask her about the conversation, fine. If at that  
19 time, her recollection of the conversation is  
20 different than your testimony, we may revisit that  
21 as far as the tape, but not now.

22 MR. BROOKS: All right, Your Honor. There  
23 in the office in the conversation with Ms. Keitt,  
24 I told her or reminded her that I was over in  
25 Orlando. She asked me when I was returning from

1 Orlando and when someone would get down there with  
2 these monies.

3 I told her that this whole thing with this  
4 Alfred Byrd account and Mother's Kitchen account  
5 the next minute, I was concerned about. She  
6 yelled at me. She was not concerned with Mr. Byrd  
7 and she was not concerned with anything that Mr.  
8 Byrd did. She was concerned with Dino, something  
9 or other Dino had done, where we were concerned  
10 with this so-called deposit.

11 She was telling me that Dino had extended us  
12 credit and if we did not get the monies down there  
13 that we were going to find that it was going to be  
14 very difficult to deal with Dino and things along  
15 those lines.

16 I promised her -- in the end, I promised her  
17 that someone would get down there with those  
18 monies prior to 5:00 o'clock or closing time. She  
19 told me if they did not, they were going out there  
20 and they were going to cut the meter off and they  
21 weren't even going to go inside of the place.

22 Consequently, I got a hold -- I called Harry  
23 back. Harry got a hold of Eddie. Harry got a  
24 hold of Arthur. They went down, they got the  
25 money, they sent \$521 and some weird cents that

1 she was saying she came up with, because of some  
2 fee that we were supposed to pay with it. They  
3 took the monies to the Sanford -- Harry did, took  
4 the money to the Sanford office of the Florida  
5 Public Utilities Company.

6 Now, shortly after this occurring, we, when  
7 I say we, I mean the partners, expected this  
8 situation with the gas company to be over with.  
9 No more of these phone calls, no more interrupting  
10 business and no more interruptions of service  
11 which was costing us quite a bit of money, not to  
12 mention it was turning out to be an embarrassment  
13 since we were having bank officials and people  
14 with the SBA coming out to the business.

15 However, during August and all the way up to  
16 September 13th, these calls kept coming from Ms.  
17 Keitt almost weekly with these demands for monies,  
18 always these demands for money.

19 At no time during this entire episode here,  
20 at no time would Ms. Keitt produce or give to any  
21 partner, not even myself, a detailed billing or a  
22 complete billing of what was actually owed to  
23 them. Her response whenever asked was, the  
24 company in West Palm Beach sent it to Mr. Byrd.  
25 Go get with Mr. Byrd and get it from Mr. Byrd.

1           Those were the type of responses we would  
2 get when we demanded to know the full amount of  
3 what -- because the amounts that they were  
4 requesting, she was requesting when she was doing  
5 these callings, were always something like \$100  
6 here, \$160 here, \$170 there. We were not dealing  
7 with huge amounts being requested, something that  
8 you would expect when a commercial facility is  
9 past due on an account.

10           I personally had a total of six telephone  
11 conversations with Ms. Keitt between July 11, '96  
12 to July -- let me rephrase that. They did not all  
13 occur within this space. They occurred over a  
14 time, but there was a break in between, because on  
15 July 22nd I was hospitalized and I stayed in the  
16 hospital until July 27th and I was put on two  
17 weeks complete bed rest with sticks/stints (ph)  
18 that had been placed to the interior of my heart.  
19 So, I was incapacitated and during that juncture  
20 was the time that Eddie and Arthur took everyday  
21 control of the business.

22           However, the next time I had contact with  
23 Ms. Keitt came on August 19th, '96, so about  
24 August 19th, '96, wherein a made another request  
25 for a complete billing, because I wanted to see



1 the separation between what they were terming  
2 Alfred Byrd's account and the separation towards  
3 the new Mother's Kitchen Limited account. I never  
4 got such a document. Even, and I believe that  
5 time was like the fifth, the fifth such request  
6 that had been made of Ms. Keitt.

7 In a chronological response from Florida  
8 Public Utilities dated March 13, 1997 --

9 MS. COWDERY: Excuse me, Mr. Brooks. I'm  
10 not quite quick enough. I don't recall that being  
11 on your witness list. It may be on your direct  
12 witness list, but I just --

13 MR. BROOKS: There are two references to --  
14 I don't know why the utility decided to do it  
15 twice on March 1, but there are two, actually two  
16 letters dated March 13th there.

17 MS. COWDERY: Right. Thank you. If you  
18 could identify or just show it to me so I know  
19 which one.

20 MR. BROOKS: This is the one -- are you  
21 straight on that one?

22 MS. COWDERY: Yes.

23 MR. BROOKS: What was becoming apparently  
24 clear in dealing with this utility is demonstrated  
25 in the following documents obtained from them. I



1 have from the utility, a letter that's dated March  
2 13, 1997, that was directed to Mr. John Presco,  
3 Florida Public Service Commission.

4 MS. COWDERY: I'm going to object just  
5 because this is a document which Mr. Brooks did  
6 not prepare and he doesn't have any of the  
7 background explanations as to why anything was  
8 entered in here.

9 This is something that was prepared by  
10 Darryl Troy and he certainly has the ability to  
11 cross examine Mr. Troy. I mean, he's going to  
12 have to anyway. I assume he'll do that. So, this  
13 seems like this is just a -- the time is not well  
14 spent, since he cannot -- he doesn't have any of  
15 the bases for the information. He can cross  
16 examine Mr. Troy as to this letter.

17 THE COURT: Sustained. Mr. Brooks, just  
18 tell me facts. Not what you think the company did  
19 or didn't do or whatever, as far as the central  
20 facts that I need to know supporting your case.

21 MR. BROOKS: Sir, this particular incident,  
22 instance, is a fact that goes to a request made by  
23 -- what is central to one of the central issues  
24 here is this distinction between Alfred Byrd's so-  
25 called account and the contention of the Mother's

1 Kitchen Limited account.

2 Now, any documents that they supply in  
3 response to our -- we made repeated requests for  
4 specific information concerning these phone calls  
5 we kept getting from them asking for money.

6 Now, everything in response towards those  
7 demands for money and towards that account,  
8 whether they were at the still at the time calling  
9 it Alfred Byrd's or whether there had been changes  
10 to Mother's Kitchen's position, they have -- they  
11 have, at one point, they have at one point denied  
12 there ever was a Mother's Kitchen account.

13 Then they come back and they say that, well,  
14 it was an Alfred Byrd doing business as Mother's  
15 Kitchen account. So, any responses to any  
16 requests -- we were making the monetary payments.  
17 Alfred Byrd was not.

18 THE COURT: Fine. You're going to get an  
19 opportunity when the Respondent puts on their  
20 case, you'll have a time to cross examine their  
21 witnesses.

22 MR. BROOKS: Okay, sir. All right, sir.

23 THE COURT: If you're referring to a letter  
24 written by someone else, Mr. Troy or anybody else,  
25 that's hearsay. Right now, it's hearsay until Mr.

1 Troy testifies and tells me about the letter.

2 MR. BROOKS: Okay. All right, sir.

3 THE COURT: Continue.

4 MR. BROOKS: The weekly calling and demands  
5 for monies continued until September 13th, 1996,  
6 when Florida Public Utilities sent a Mr. McDaniel  
7 out to supposedly reconnect services, gas service  
8 to the restaurant. The service had apparently  
9 been disconnected on the 12th of September, '96,  
10 without prior notice and for what was being  
11 claimed now on 9/13/96 as a past due payment  
12 amount.

13 Now, Mother's Kitchen could not have been  
14 past due in any payment having rendered a security  
15 deposit for \$500 in July 11, '96, to start a new  
16 account. Florida Administrative Code Rules  
17 prohibit Florida gas or any natural gas utility  
18 from disrupting service to a business solely for  
19 the purpose of uncollected amounts of a previous  
20 account holder and this is what they were trying  
21 to do to us.

22 At the time they came out on September 12,  
23 this account, what should have been the Mother's  
24 Kitchen account after receipt of that deposit, was  
25 not past due and they had no legal right to

1 disconnect the service. They did so however.  
2 This led to Mr. McDaniel coming out there on the  
3 13th supposedly to reconnect service.

4 Mr. McDaniel arrived at the restaurant at  
5 about nine -- it was right at 9:15 a.m. I know  
6 this for a fact, because I was there. I was also  
7 watching the clock, because we had a big promotion  
8 scheduled for that day that required a tremendous  
9 amount of cooking. So, I was quite anxious for  
10 Mr. McDaniel to turn the gas service back on.

11 Mr. McDaniel drove up to the back of that  
12 restaurant at about 9:15. He got out of his truck  
13 and immediately walked in through the rear door of  
14 the restaurant. He came into the kitchen services  
15 area and his first comment was that someone needed  
16 to call Diane Keitt right away.

17 I asked Mr. McDaniel if he was there to turn  
18 the gas back on or if someone was coming to turn  
19 the gas back on. He said he was there for that  
20 purpose. I told him, would you please do so and  
21 would you please do so as quickly as possible,  
22 because we have a whole bunch of food to prepare  
23 in a short time to do it.

24 Mr. McDaniel kneeled down to the front of  
25 the range. Mr. McDaniel pulled out a screwdriver

1 and commenced to take the front of the range  
2 apart. He looked back at me a total of four times  
3 and each time he stated, you need to call Diane  
4 Keitt at the gas company. I told him that payment  
5 had been, whatever that she had been demanding had  
6 been sent down there. I did not wish to speak to  
7 Diane Keitt. Would you please restore my service.

8 Mr. McDaniel continued to tinker around with  
9 the front of the stove. Mr. McDaniel had not,  
10 while he was doing that, he had not been to a  
11 meter on the outside. He had no pressure gauges  
12 or anything on his person while he was there  
13 taking that stove apart in the front.

14 I became upset, because he had been down  
15 there for about 15 to 20 minutes there in the  
16 front of that stove looking back every so often  
17 saying somebody needed to call Ms. Keitt. I told  
18 Mr. McDaniel that I was going to call his  
19 headquarters. I was not going to call Ms. Keitt,  
20 I was going to call his headquarters, because he  
21 did not turn on the gas.

22 I then called a West Palm Beach number that  
23 I got from after going through information three  
24 times, I called that West Palm Beach number and I  
25 asked to speak to a regional supervisor or someone

1 in charge of who would be over this Sanford  
2 office. I was connected to Mr. Troy.

3 In my conversation with Mr. Troy, I told him  
4 that he had a serviceman here kneeling before my  
5 stove, that they were supposed to have turned the  
6 gas back on, onto this stove, and this man made no  
7 effort to do so.

8 When Mr. McDaniel saw that I was talking and  
9 addressing somebody through the telephone, because  
10 I was standing right there over him, addressing  
11 somebody through the telephone, that was Troy, he  
12 got up, he went outside to his truck and he came  
13 back in. At that juncture he had two little dial-  
14 type things. He placed a hose onto the stove.

15 He got up, went outside, went over by the  
16 meter, came back inside and he looked at me and he  
17 told me, the stove has a leak on the oven. I  
18 asked Mr. McDaniel, how could that be when the  
19 stove worked fine before they shut the gas off.

20 He lit the thing and a little flame about so  
21 high (indicating) came up off of a little screw-  
22 type knob and he said, there's the leak. I cannot  
23 turn the gas back on to this apparatus until  
24 that's repaired.

25 I asked Mr. McDaniel, in his opinion, what



1 was involved in repairing it. He started telling  
2 me things about parts and stuff that he didn't  
3 have with him on the truck. He'd have to go to  
4 the company office and this type of thing and I  
5 told him, and I screamed it to Mr. Troy over the  
6 telephone, that I wanted that stove fixed right  
7 away.

8 I explained to Mr. Troy about the promotion  
9 we had and that I thought that the time that his  
10 man spent there in front of the stove, opening it  
11 up and messing with it, that his man had caused  
12 whatever the problem was with that stove, because  
13 it was functioning fine before the gas was cut  
14 off.

15 Mr. Troy, he stated that he was not familiar  
16 with the problems up there in response to my  
17 talking with him about Keitt and these constant  
18 interruptions and stuff. Mr. Troy asked to speak  
19 to the serviceman. About that time, the  
20 serviceman turned around and he had a hazardous,  
21 dangerous and hazardous notice document that he  
22 had completed and he laid it there in front of me  
23 and said that he was going to need my signature on  
24 it, because he was going to have to seal up the  
25 stove because of the leak.

1 I refused to sign that dangerous and  
2 hazardous thing because it was my opinion at the  
3 time that he had done whatever was done to that  
4 stove because I would not call Ms. Keitt. His  
5 constant insistence that I call Ms. Keitt had led  
6 me to believe that they had something planned  
7 there and that was the reason he was not coming in  
8 and turning that gas on like the parties had done  
9 before him.

10 They had come in, turned that gas on. It  
11 took the serviceman all of 10 minutes to come in  
12 and turn that gas on before. And even when the  
13 guy came out to connect, initially to connect the  
14 connectors to that range, it did not take them but  
15 20 minutes to get that stove up and running and  
16 that's where they had to put big couplings and  
17 stuff around on the stove. So, it didn't escape  
18 me that there was something strange with the way  
19 this guy was behaving when he came in there.

20 I told Mr. Troy to tell this guy to go ahead  
21 and restore the service to the stove, to do what  
22 he had to do to fix that stove and that we would  
23 pay for it, if necessary, and argue about it  
24 later, because I knew that we were going to suffer  
25 about a \$12,000 to \$14,000 loss if we did not get

1 to cooking those foods. That's why I told Mr.  
2 Troy to go ahead, tell his man to fix that stove,  
3 and if they demanded that we pay for it, we would  
4 pay for it and I would argue with him about it  
5 later, who was responsible for it.

6 Mr. Troy admitted that at a PSC hearing  
7 conference that we had over in Orlando, the first  
8 conference that we had over in Orlando with PSC  
9 staff. He admitted that I was telling him to go  
10 ahead and fix that stove. As a matter of fact,  
11 his exact comment was when asked by one of the  
12 staff members if what I was saying was correct,  
13 his exact comment was, I've got no reason to doubt  
14 what Mr. Brooks is saying there.

15 Now, once -- I did not sign the hazardous  
16 thing for the stove. Mr. McDaniel told us that he  
17 could not reconnect the stove, but because the  
18 fryer was working and there was no leak, he was  
19 leaving the gas on to it. He left the hazardous  
20 notice thing on the top of the stove. At no time  
21 did he give me a job order or was a job order  
22 completed for repair of the stove, or did he  
23 demand that I complete a job order for the repair  
24 of the stove.

25 He left the hazardous condition report on

1 the surface of the stove. The fry-o-lator was on  
2 and he walked out the door, got into his truck and  
3 started to leave. As he started to pull away, Mr.  
4 McDaniel put on his brakes, got out of the truck,  
5 he came back over to me and he told me that Ms.  
6 Keitt was telling him to now kill all the gas to  
7 the restaurant.

8 Another violation, since there was a  
9 serviceable piece of equipment there and even if  
10 their alleged -- even if their alleged reason for  
11 the disconnection in the first place was factual,  
12 that alleged reason had been resolved by the  
13 payment of those \$261. So, there was absolutely  
14 no justification to kill the service to the fry-o-  
15 lator that was sitting there. But, Mr. McDaniel  
16 came back and he said that Ms. Keitt told him to  
17 do away with the gas completely to the facility,  
18 which he did and then he left.

19 This thing with the stove and that  
20 particular part to that stove, I called first  
21 Peoples Gas Company, because I wanted another  
22 natural gas company to come out and examine that  
23 stove and tell me what was wrong with that stove.  
24 When I told the people at Peoples Gas Company that  
25 the reason I wanted them to come out and tell me

1           what was wrong with that stove and repair that  
2           stove was because I was having a dispute with  
3           Florida Public Utilities, those people declined to  
4           send a technician out there.

5                       We had the only other people that we were  
6           advised of in the area that could supply gas to  
7           the place, and this came through Mr. Spoulski  
8           (ph), the leaseholder of the place, he suggested  
9           that we use this discount propane. So, we  
10          contacted Discount Propane. Discount Propane sent  
11          a service tech out there. The guy looked at the  
12          stove and he had to change the couplings, the  
13          major couplings on the lines and stuff to adapt  
14          the stove from natural gas to propane gas.

15                      When he got those things hooked up, we had  
16          him -- Arthur Brooks, Harry Johnson, myself and  
17          Aaron Williams were present when this individual  
18          took the stove and turned on the gas supplied to  
19          the stove. And there in that area where Mr.  
20          McDaniel was claiming this part had gone bad was a  
21          little blue flame about so tall (indicating) and  
22          the guy took a screwdriver, turned the screw not  
23          even a full quarter turn, turned the screw and the  
24          flame went away.

25                      The guy told us there was no problem at all



1 with that switch other than the fact that somebody  
2 had backed the screw out. I asked him if that  
3 screw could work its way loose by itself and he  
4 said, no, someone had to go in there and turn it  
5 back with a screwdriver. This particular switch  
6 is in the exact same area that Mr. McDaniel spent  
7 the better part of almost 30 minutes kneeled down  
8 there in front of that stove.

9 Now, in addition to those particular  
10 actions, the people at Florida Public Utilities,  
11 in particular Diane Keitt, never, despite the  
12 repeated requests, never once supplied any written  
13 statement of billing, any written statement of  
14 delinquency, any written statement as to why she  
15 was threatening disconnection of service if we did  
16 not run down there immediately with money, nor  
17 could she supply the documents that I asked  
18 showing what had happened to money that we had  
19 paid her on two different occasions.

20 Now, Ms. Keitt also never, at any juncture,  
21 made any reference to me, and she talked to me a  
22 number of times, nor any of the other parties or  
23 employees that related her calls coming to that  
24 place, not one time did she ever make reference to  
25 wanting to speak to Alfred Byrd through any of



1 this. And more importantly, through Ms. Cowdery  
2 and Mr. Troy himself had made representations that  
3 the gas company considered their customer accounts  
4 confidential and --

5 MS. COWDERY: Objection, I don't see any  
6 relevance to any issues in the case.

7 THE COURT: If it's on relevance, I'll allow  
8 some latitude. Go ahead.

9 MR. BROOKS: They maintained this aspect of  
10 confidentiality to their clients' accounts, but on  
11 each and every occasion that a call was made on  
12 this account, that call went to someone other than  
13 Alfred Byrd and Ms. Keitt discussed the  
14 particulars of this account with someone other  
15 than Alfred Byrd.

16 So, if it's their company policy, this  
17 confidentiality of account holders, then Ms.  
18 Keitt's constant conversations with me, with Mr.  
19 Hodges, with Mr. Brooks and especially Harry  
20 Johnson, someone who's not a partner, a cook named  
21 Barney, a dishwasher, those type people, telling  
22 them about she needed this amount of money and  
23 this kind of stuff here, clearly showed that this  
24 particular account was never considered to be, by  
25 that utility, one person's account, that this

1 account was, in fact, to be considered a business  
2 account with known owners and individual partners.

3 THE COURT: Anything else?

4 MR. BROOKS: No, sir. That's it.

5 THE COURT: Do you want to take a short  
6 break before cross?

7 MS. COWDERY: Yes.

8 THE COURT: We'll take five minutes.

9 (Short recess.)

10 THE COURT: Back on the record. Mr. Brooks,  
11 you're still under oath. Cross examine, please.

12 CROSS EXAMINATION

13 BY MS. COWDERY:

14 Q Mr. Brooks, isn't it true that in the  
15 initial complaint letter which you sent to the Public  
16 Service Commission in September of 1996, and which is  
17 an undated letter and was received by the Public  
18 Service Commission on September 20th, 1996, you never  
19 alleged that Mother's Kitchen had paid a \$500 deposit  
20 or any amount in excess of \$500 to the company in order  
21 to open a new account, isn't that true?

22 A I don't know, ma'am. I don't have a copy of  
23 that letter.

24 MS. COWDERY: There's a copy of that letter.  
25 I would like to have this identified as --

1 THE COURT: I'll mark it for identification  
2 as Respondent's A.

3 MS. COWDERY: Mark it for identification,  
4 right.

5 (Respondent's Exhibit A was marked for  
6 identification.)

7 THE COURT: The witness has a copy?

8 MS. COWDERY: The witness has a copy and is  
9 reviewing it.

10 MR. BROOKS: Okay, ma'am. This letter, in  
11 response to your question, this letter was sent to  
12 Mr. Plesco, I believe it -- no, I'm sorry, Mr.  
13 Martin, concerning -- as you see, this letter  
14 starts out by stating that this letter is a follow  
15 up to the telephonic conversation we had on 9/17.

16 This letter was designed to address specific  
17 questions Mr. Martin had asked of me. Mr. Martin  
18 did not go into that second security deposit issue  
19 at all during his conversation with me and  
20 therefore, I did not go into it in any great  
21 detail in this letter, other than talking about  
22 the fact that Ms. Keitt had demanded that I give  
23 her \$500, plus pay Mr. Byrd's bill and pay for a  
24 bad check Mr. Byrd had given her.

25 So, this particular letter would not -- to

1 my recollection, was a response to specific things  
2 that Mr. Martin had asked, as was the majority of  
3 the letters that I sent to the PSC. The majority  
4 of them came after conversations over the  
5 telephone with them.

6 BY MS. COWDERY:

7 Q Okay. But, isn't this letter inconsistent  
8 with the position you're now taking, that there was a  
9 \$500 deposit?

10 If we look at the second page, paragraphs A,  
11 B and C, don't you say there that the company took  
12 money directly from you for a bad check presented by  
13 Mr. Byrd and directed your funds directly toward that  
14 end?

15 A Yes, ma'am. Yes.

16 Q Doesn't this have to do with precisely that  
17 July 1996 incident of which you are referring?

18 A No, ma'am. If you look at your records  
19 you'll see that a check for \$150 had been presented to  
20 this utility, I believe, June, May or something like  
21 this, anyway, prior to July 11, '96.

22 When they called about this check, even when  
23 I was at the Commission Hearing, this particular  
24 reference to a bad check about Byrd, I was under the  
25 assumption that the bad check that Ms. Keitt was

1 talking about, because she used Byrd's name at that  
2 point in reference to that check, I was under the  
3 assumption that it was a check that Mr. Byrd had  
4 issued, but it actually turned out to be a check that I  
5 had issued.

6 So, when I'm referring to the monies for a  
7 bad check, I'm referring to that \$150 check that was  
8 issued, I believe, in May or June, one of those two  
9 months, that had been returned to Florida Public  
10 Utilities. That's what that \$170 receipt was for and  
11 went towards.

12 As I say, by doing so, the company  
13 acknowledged Mother's Kitchen's right to the account or  
14 in the alternative, committed fraud by taking Mr.  
15 Brooks and associates money and illegally paid another  
16 person's bill. What I was referring to was their  
17 assertion that the account was Mr. Byrd's prior to July  
18 11, 1996.

19 And, if even the check that I had issued on  
20 that account, if that account was Mr. Byrd's account,  
21 then that was a debt under Mr. Byrd's account and it  
22 was not one that we should be made to pay if we were  
23 going to be made to pay a new deposit.

24 Q Okay. Mr. Brooks, on the first page of that  
25 document you specifically say that you objected to what

1 the company was proposing, if we take that to be -- I'm  
2 not going to accept that that was a correct portrayal  
3 of the facts.

4 But, you state you object to that -- let's  
5 see. "Diane stated, when we said we would open another  
6 account, that we would have to pay \$500 plus pay Mr.  
7 Byrd's bill and pay for a bad check Mr. Byrd had given  
8 them."

9 "When we objected to this attempted  
10 extortion for Mr. Byrd's benefit and the company's  
11 benefit and told them that we would do one or the other  
12 but not both, Diane and Dino then said they would allow  
13 service to remain in the company's name as it was if we  
14 paid for Mr. Byrd's bad check and paid on his back  
15 bills, since it was in Mother's Kitchen's name. We  
16 agreed."

17 You are disputing my interpretation of this  
18 letter, is that true?

19 A What I'm telling you, ma'am, is in this  
20 particular letter, the references to this scenario here  
21 was to clarify for Mr. Martin exactly what was said to  
22 me at the time that I was in the office, in Dino's  
23 office with Ms. Keitt.

24 Ms. Keitt and Dino, at the end of their  
25 conversation, backed up off of this particular



1 agreement here. That's -- and it's clearly -- that's  
2 why I recorded this, because it's clearly indicated,  
3 not only in the recording but it's indicated in later  
4 documents, exactly what this makes reference to.

5 MS. COWDERY: I would like to have this  
6 identified and entered into the record as an  
7 exhibit. It goes toward showing what I think the  
8 evidence will show, that Mr. Brooks did not, at  
9 any time, have any intent to pay any additional  
10 security deposit during the time period at issue  
11 and during the course of the proceedings before  
12 the Public Service Commission, got that idea.

13 I think the documents and the transcripts  
14 from the informal conferences and from the agenda  
15 conferences and the timing of the documents and  
16 when they were shown to Mr. Brooks will bear this  
17 out. And, for that purpose and to the fact that  
18 Mr. Brooks disagrees with what I think is the  
19 plain statement in this letter, I would like to  
20 have it entered into the record as an inconsistent  
21 statement.

22 THE COURT: Any objection, Mr. Brooks?

23 MR. BROOKS: I sure do, sir. This letter  
24 starts out by saying, "This letter is a follow up  
25 of the telephonic conversation we had on 9/17/96,

1 during which it became obvious that my attempts to  
2 explain the nature of the complaint was confusing  
3 to you. As promised, here is the basis for my  
4 complaint."

5 Now, Mr. Martin asked me to address specific  
6 areas. I went into detail --

7 THE COURT: Okay. Fine, I heard your  
8 testimony.

9 MR. BROOKS: Okay.

10 THE COURT: But this was, in effect, your  
11 first complaint made to the company?

12 MR. BROOKS: No, sir. No, sir. It was not.

13 THE COURT: There was a letter previous to  
14 this?

15 MR. BROOKS: There was -- there was a --

16 THE COURT: Or some other document previous  
17 to this?

18 MR. BROOKS: There was a 16-page document  
19 submitted to the PSC as the initial complaint.

20 THE COURT: Before or after this letter?

21 MR. BROOKS: Before this letter. That's why  
22 this letter is making reference to a telephonic  
23 conversation and it says that, "the nature of the  
24 complaint was confusing to you."

25 So, it shows that Mr. Martin was in

1 possession of a complaint prior to getting this  
2 letter.

3 MS. COWDERY: Your Honor, if there is  
4 another one, I'm unaware of it. I believe that in  
5 the staff recommendation that this is referred to  
6 as the initial complaint, which is why I referred  
7 to it as the initial complaint.

8 THE COURT: Is there a 16-page letter that  
9 you don't know about?

10 MS. COWDERY: I -- I wouldn't think so.  
11 This is dated the 20th. The events here occurred  
12 on the 13th. I have got a --

13 THE COURT: Okay. Mr. Brooks -- if you  
14 don't have it, you don't have it. Mr. Brooks, do  
15 you have it?

16 MR. BROOKS: Sir, the PSC documents, because  
17 you told me this was going to be a de novo  
18 proceeding, --

19 THE COURT: Right.

20 MR. BROOKS: -- the PSC documents that I  
21 initially sent to the PSC, I have them stored. I  
22 do not have them with me. But, it is obvious from  
23 the statement here that for me to talk to Mr.  
24 Martin on the phone, Mr. Martin had to have prior  
25 communications with me.

1           For me to make reference to the nature of  
2           the complaint being confusing to you, I had to  
3           have had prior communication with Mr. Martin for  
4           Mr. Martin to be able to tell me that it was  
5           confusing to him.

6           Mr. Martin's telephonic conversation with me  
7           concerned the fact that I had sent him this 16--  
8           page letter, a copy of which went to Mr. Troy,  
9           that I had sent him this 16-page letter and he was  
10          complaining about the amount of paperwork, of  
11          paper that was with it, and he was saying that he  
12          was going -- trying to read through something that  
13          large, he was getting confused about certain parts  
14          in there. The man told me --

15                 THE COURT: I understand.

16                 MR. BROOKS: Okay.

17                 THE COURT: All right. Yes, any further  
18          response?

19                 MS. COWDERY: I think it may be appropriate  
20          for me to enter into the record at this time,  
21          documents from the Florida Public Service  
22          Commission, which are certified to be authentic,  
23          which started out with an FPSC Consumer Request  
24          Form dated 9/17/96, regarding a telephone call  
25          between the Petitioner, Mr. Brooks, and the

1 Florida Public Service Commission, with the  
2 attached response from the Florida Public  
3 Utilities dated 9/19. These are the documents.

4 THE COURT: Well, we're not going to --

5 MS. COWDERY: Okay.

6 THE COURT: We're not going to go that far  
7 off.

8 MS. COWDERY: All right. All right.

9 THE COURT: This is a de novo proceeding.

10 MS. COWDERY: Right.

11 THE COURT: The only thing that's relevant  
12 is the initial complaint that got the jurisdiction  
13 there, but as far as using other statements during  
14 the investigation stage as inconsistent  
15 statements, and if it's not under oath and it's  
16 not a deposition for this case, I'm not going to  
17 grant it.

18 MS. COWDERY: Okay. I might ask you to  
19 along the way and see if, under the circumstances,  
20 it works.

21 THE COURT: Well, you can do that. That's  
22 true. I just need to rule on this document.

23 MS. COWDERY: All right.

24 THE COURT: But, I mean, if you're offering  
25 this document only as an inconsistent statement,



1 I'll deny it. If you're offering it as the  
2 initial complaint --

3 MS. COWDERY: Well, I know it's referred to  
4 as the initial complaint, but I don't know legally  
5 what its status is. I have to say that. What I'm  
6 showing is that Mr. Brooks is --

7 THE COURT: Since I haven't been shown  
8 anything else, based on that, the assertion, even  
9 though Mr. Brooks disagrees, I'll allow it for  
10 that purpose.

11 MS. COWDERY: Thank you.

12 MR. BROOKS: For what purpose, sir?

13 THE COURT: That this, even though it refers  
14 to a telephonic conversation, this is the first  
15 written document that you, on behalf of Mother's  
16 Kitchen Limited, sent. The initial complaint, in  
17 effect, that you sent to the Public Service  
18 Commission that got the ball rolling in this  
19 thing. That will be admitted in evidence as  
20 Respondent's Exhibit 1.

21 (Respondent's Exhibit 1 was admitted in  
22 evidence.)

23 BY MS. COWDERY:

24 Q Mr. Brooks, in addressing this letter marked  
25 "Received September 20th, 1996," you discussed two



1 disconnect cases; one in July 1996 and one on August  
2 12th. Now, is that correct, just simply stated that  
3 you discussed two disconnect times in July and in  
4 August?

5 A Okay. July of '96, yes.

6 Q And August?

7 A Okay. Yes, ma'am. Yes, ma'am. There are  
8 the references there to that, to those dates.

9 Q Now, isn't it also true that in discussing  
10 the August 12th and 13th incident, you were really  
11 discussing the September 12th and 13th incident, that  
12 you got that month mixed up in this complaint letter?

13 A Without -- without seeing the other document  
14 that I did, ma'am, I do not know. I do not know. I  
15 don't think so, but I do not know. I can see why -- I  
16 can see why you'd say that, though.

17 Q Right, because you're talking about August  
18 13th being the time when the serviceman, when you claim  
19 that he broke the stove, isn't that true?

20 A Okay, ma'am. Yes, ma'am. The following  
21 paragraph I would have to say, yes, that should be  
22 September.

23 Q Now, the fact that you got the August  
24 incident shifted to September, isn't it possible that  
25 you did the same thing with July, that in your mind you

1 got July mixed up with something that happened in  
2 August?

3 A No, ma'am.

4 Q Okay. Now, is it your testimony today that  
5 on March 21st or on March 22nd, the account was set up  
6 at Mother's Kitchen?

7 A I believe it was the -- I believe it was the  
8 21st, ma'am.

9 Q Okay. Do you recall testifying at the first  
10 informal conference that the date was March 22nd?

11 A No, I do not.

12 Q Is it possible that you did that?

13 A I don't -- I don't think so, but if you've  
14 got something that shows that I did, then I'll admit  
15 it. I'll admit it, but I don't think so.

16 Q On February 24th, 1997 at the first informal  
17 staff conference --

18 THE COURT: Just a moment, counsel. Since  
19 Mr. Brooks unfortunately is a witness and doesn't  
20 have a representative right now, why is this  
21 relevant?

22 MS. COWDERY: It's, again, relevant to show  
23 -- Mr. Brooks is maintaining that documents, that  
24 he gave documents to Mr. Byrd to set up a gas  
25 account a certain way.

1           Our evidence will show that no documents  
2 were presented to the company. None of the  
3 documents that Mr. Brooks is maintaining he sent  
4 with Mr. Byrd, such as the Department of Revenue  
5 Certificate with a print date of 3/22/96, and his  
6 testimony has fluctuated between 3/21 and 3/22.

7           And we maintain it is 3/21. I think  
8 he's maintaining it's 3/21. But, it appears that  
9 on certain occasions when it has been beneficial  
10 to say so, he has said 3/22, I guess, in order to  
11 match it up with the DOR date. So, I'm showing  
12 again, inconsistent statements that he has made  
13 and that's why it's relevant. I'm trying to  
14 establish, is he maintaining that those went in or  
15 did he not.

16           THE COURT: His testimony right now is 3/21.

17           MS. COWDERY: Okay. That's fine.

18           MR. BROOKS: Sir, I'm sorry. I did not hear  
19 what she was saying when she said something about  
20 DOR date?

21           MS. COWDERY: Well, I'll --

22           THE COURT: She's referring to Exhibit  
23 Number 4?

24           MS. COWDERY: Yes, the Department of Revenue  
25 Certificate.

1 THE COURT: The first page.

2 MS. COWDERY: The print date.

3 THE COURT: The print date --

4 MS. COWDERY: Right.

5 THE COURT: -- of the Certificate of  
6 Registration.

7 MS. COWDERY: Yes.

8 BY MS. COWDERY:

9 Q Are you aware --

10 A And you're saying that --

11 Q That on this Department of Revenue  
12 Certificate Registration, there is a date up in the top  
13 dated 3/22/96?

14 A And you're saying that I said it was 3/22,  
15 because of this date up here?

16 Q Well, let me -- my request, if it was there,  
17 was denied by the Judge, so I'm --

18 A I was just trying to understand what you  
19 were referring to, ma'am.

20 Q Right. Well, right now I will continue  
21 since we're here, in asking this.

22 Is it your testimony today that you gave Mr.  
23 Byrd a copy of that document to bring in with him --

24 A No, ma'am.

25 Q -- to set up an account?

1 A My testimony --

2 Q Is that, no?

3 A No.

4 Q Okay. And if you testified at any point in  
5 this proceeding in the past to that effect, then you  
6 were incorrect?

7 A Any reference that I made to a DOR  
8 Certificate now, past or future, pertains to a receipt  
9 that the people gave me when we paid the money for the  
10 certificate. That was done on March 11th, '96.

11 You have in your possession, a letter from  
12 the DOR that states that that number was issued on  
13 March 11th, '96.

14 Q Okay.

15 A They give you a temporary receipt, ma'am.  
16 This thing you have here is the hard copy to be posted  
17 to the wall that's sent to you later on.

18 Q And you've never produced that receipt in  
19 this proceeding, have you?

20 A Produced that particular receipt?

21 Q The receipt you're talking about. You've  
22 never shown the Public Service --

23 A The temporary --

24 Q -- Commission or this party --

25 A The temporary receipt?

1 Q -- the temporary receipt?

2 A Yes, I have. Yes, ma'am. I sure have.

3 Q Okay.

4 A Along with the letter. The letter is  
5 attached to one of those exhibits. The letter was  
6 supplied to you at deposition. The letter was supplied  
7 to the PSC at the very first pre-hearing conference.

8 Q So, if you made reference to the  
9 certificate, you actually meant receipt?

10 A Yes, ma'am.

11 Q Okay.

12 A Well, no, ma'am. The receipt itself was a  
13 temporary certificate. So, when I say certificate, I'm  
14 talking about the -- it was a temporary certificate,  
15 just like the City of Sanford license, just like all  
16 the other licenses.

17 When you go and you get these things, they  
18 give you your temporary receipt. The some time later  
19 they mail you the hard copy which they demand that you  
20 put up on the wall in the place.

21 Q Okay. All right.

22 Is it true that you were not with Mr. Byrd  
23 when the gas account was set up?

24 A If you mean -- if by set up you mean when he  
25 gave the deposit monies to the company?



1 Q Correct.

2 A Yes, I was.

3 Q You were with Mr. Byrd at the front desk  
4 when he spoke to the Roberta Johnson and you heard what  
5 he said when he set up the account and you were there  
6 when he got the receipt and when he handed her any  
7 documents you say that he had, you were there with him?

8 A I was at the Sanford office of Florida  
9 Public Utilities with Mr. Alfred Byrd and with Mr.  
10 Harry Johnson. Mr. Byrd did not talk to a Roberta.  
11 Mr. Byrd walked into that office and he almost yelled,  
12 because Diane was to the back of the little office  
13 thing there, and Diane came over there.

14 I handed Mr. Byrd the money, I placed the  
15 documents there on the -- you've got a counter top  
16 there.

17 Q Right.

18 A You've got a counter top there. I placed  
19 the documents on the counter top in front of Mr. Byrd,  
20 told Al that I had to get over to Orlando and he could  
21 take care of this thing from here, and I left.

22 Q Right.

23 A As did Mr. Johnson.

24 Q Exactly. So, when Mr. Byrd actually did the  
25 transaction, you were no longer there, is that correct?

1 A Yes.

2 Q Okay. So, you cannot testify as to how he  
3 set up the account from personal knowledge.

4 A Ma'am, --

5 Q Is that true?

6 A -- I heard Mr. Byrd tell Ms. Keitt about my  
7 being one of his partners as we were leaving there.  
8 Now, if this whole thing got turned around after we  
9 went out of the door, no, ma'am, I cannot tell you  
10 whether or not that happened.

11 Q Okay. That's what I asked you.

12 A But, I can tell you what happened in front  
13 of me.

14 Q Right. That's my question.

15 Now, is it true that the account with the  
16 Florida Public Utilities Company was set up with Mr.  
17 Byrd's P.O. Box, because at that time, Mother's Kitchen  
18 did not have a P.O. Box?

19 A Yes.

20 Q Is it also true that other accounts from  
21 Mother's Kitchen were set up in Alfred Byrd's name  
22 using the P.O. Box as a mailing address?

23 A That other accounts were set up in his name?

24 Q Alfred Byrd, d/b/a Mother's Kitchen. Were  
25 other accounts set up as Alfred Byrd, d/b/a Mother's

1 Kitchen?

2 A Not that I was a party to and not that I  
3 have any knowledge of, no.

4 Q Mr. Brooks, wasn't the lease for Mother's  
5 Kitchen Limited set up to Alfred Byrd, d/b/a Mother's  
6 Kitchen Limited?

7 A I believe Kevin Spoulski made -- he wanted -  
8 - he wanted a person for that lease for the purposes of  
9 enforcing it if it was violated or something. So, I  
10 believe he did utilize Alfred Byrd's name. Yeah, if I  
11 recall correctly, he did utilize Alfred Byrd's name up  
12 there and he put Mother's Kitchen secondary.

13 But, you'll also see he had me sign that  
14 lease, as well. So, if you've got a copy of the lease,  
15 you will see my signature on that lease as well as Mr.  
16 Byrd's.

17 Q Are you aware that he set it up in the name  
18 of Alfred Byrd, d/b/a Mother's Kitchen Limited?

19 A No, ma'am.

20 Q Have you seen a copy of this three-day  
21 notice to pay rent or deliver possession dated January  
22 23rd, 1997, to Alfred Byrd, d/b/a Mother's Kitchen  
23 Limited, signed by Kevin J. Spoulski?

24 A I saw this thing on December 17th, I believe  
25 it was, at Mr. Byrd's deposition.

1 Q And this was the document he brought with  
2 him?

3 A Mr. Byrd brought this in there at that time.  
4 Yes, ma'am.

5 Q Do you have any reason to dispute that the  
6 account was set up and Mr. Spoulski appointed you as  
7 lessor in Alfred Byrd's name, d/b/a Mother's Kitchen  
8 Limited?

9 A Yes, ma'am. I do. At the same time, Mr.  
10 Byrd gave you a copy of a letter from Mr. Spoulski  
11 where Mr. Spoulski set out certain charges for Alfred  
12 Byrd, certain charges for Eddie Hodges, Arthur Brooks  
13 and so on.

14 The reason Mr. Byrd, he treated Mr. Byrd  
15 this way is because Mr. Byrd did the same thing with  
16 him that he did with your company, he did with Bell  
17 South, and he tried to do at the light company.

18 Q And what was that?

19 A Go to you people and try to convince you  
20 people that the account was his and it should be turned  
21 off, because he was requesting it turned off. However,  
22 you guys are the only ones who did it.

23 THE COURT: Counsel, do we have a question?

24 MS. COWDERY: Yes. I'm sorry.

25 BY MS. COWDERY:

1           Q       Mr. Brooks, are you familiar with this  
2 document from the State of Florida, Department of Labor  
3 and Employment Security, Notice and Penalty Assessment  
4 Order?

5           A       Yes, ma'am. I sure am.

6           Q       Is that your signature on the bottom of the  
7 page?

8           A       Yes, ma'am. It sure is.

9           Q       Dated 5/8/96?

10          A       Yes, ma'am. It sure is.

11          Q       This Notice and Penalty Assessment Order  
12 shows as the principle for the employer, Alfred Byrd.  
13 Can you explain that?

14          A       I sure can, ma'am. It does not show  
15 principle for the employer. Alfred Byrd is the reason  
16 this assessment order came about. That thing, his name  
17 is there, because this thing is directed directly  
18 towards him for the answers that he gave, false  
19 ludicrous answers that he gave.

20                   This goes part and parcel with the penalty  
21 assessment notice that was entered into evidence  
22 previously and it took all of 60 days with the  
23 Administrative Hearing process for me to get this thing  
24 cleared up.

25                   This man told these people that we were a

1 construction company, that we had seven employees. We  
2 have never been a construction company, never had seven  
3 full-time employees. That's how this came about and  
4 Mr. Byrd's name is there because when Ms. Carolyn  
5 Martin came out there, it was Mr. Byrd who supplied her  
6 with the information to issue this.

7 Q But, you signed this?

8 A Above this it says, "Employer: Alfred Byrd,  
9 Daniele Dow, Eddie Hodges," and it's got all three  
10 names doing business as Mother's Kitchen.

11 MS. COWDERY: Right. Now, I would like to  
12 have this identified and marked for identification  
13 and entered in the record as a business document  
14 of Mother's Kitchen that shows the principle as  
15 Alfred Byrd. It shows the d/b/a designation.

16 MR. BROOKS: I object, Your Honor, because  
17 this document does not show Alfred Byrd -- this  
18 document does not show Alfred Byrd as a d/b/a.  
19 This document clearly states on the first line,  
20 "Employer: Alfred Byrd, Daniele Dow, Eddie  
21 Hodges, d/b/a Mother's Kitchen. It shows Alfred  
22 Byrd as the principle and the only reason Alfred -

23 -

24 THE COURT: Could I have --

25 MS. COWDERY: Oh, I'm sorry.



1 MR. BROOKS: Oh, I'm sorry, Your Honor.

2 MS. COWDERY: Would you like a copy?

3 THE COURT: Thank you. So, you're not  
4 disputing the authenticity of it?

5 MR. BROOKS: No, this is an authentic  
6 document.

7 THE COURT: It's a document that goes along  
8 with what you had admitted in evidence as  
9 Petitioner's Exhibit 5?

10 MR. BROOKS: Yes, sir.

11 THE COURT: All right. And you're disputing  
12 what it shows, --

13 MR. BROOKS: No.

14 THE COURT: -- but the document would speak  
15 for itself, wouldn't it.

16 MR. BROOKS: No. No, sir. Ms. Cowdery is  
17 interpreting this document to represent the  
18 Workers' Comp Division Compliance Unit as  
19 considering Alfred Byrd the principle of the  
20 business.

21 Ms. Carolyn Martin clearly explained when  
22 she came out there and talked to me, after talking  
23 with Byrd and drawing this up, that the only  
24 reason Byrd's name was there is because he was the  
25 party that gave her the information upon which the

1 assessment was made.

2 THE COURT: I understand. You're offering  
3 it?

4 MS. COWDERY: I'm offering it into evidence.

5 THE COURT: I'm going to overrule the  
6 objection and admit the document in evidence as  
7 Respondent's Exhibit 2.

8 (Respondent's Exhibit 2 was admitted in  
9 evidence.)

10 MS. COWDERY: I would like to have next  
11 marked for identification, a document dated  
12 10/10/96, Department of Business and Professional  
13 Regulations.

14 THE COURT: I will mark the document for  
15 identification as Respondent's B.

16 (Respondent's Exhibit B was marked for  
17 identification.)

18 BY MS. COWDERY:

19 Q Mr. Brooks, do you recognize this document  
20 and do you recognize your signature on the bottom of  
21 the page?

22 A I sure do.

23 Q This document is dated 10/10/96. It shows  
24 Alfred Byrd as the owner of Mother's Kitchen. Can you  
25 explain that?

1           A       I sure can.

2           Q       Okay. Would you please do so?

3           A       If you look at the face of this document,  
4           there is a block and there's not blocks for several  
5           names. However, if you go back to the last page of  
6           this document you will see that the inspector put  
7           Alfred Byrd, Daniele M. Dow, okay?

8           Q       Uh-huh.

9           A       The man, when he filled out this thing, was  
10          not -- it was not an attempt by him to signify an owner  
11          of this. As a matter of fact, the BPR license for this  
12          place was purchased by Daniele Dow, no Alfred Byrd  
13          included, purchased by Daniele Dow with a personal  
14          check from Daniele Dow.

15          Q       Okay.

16          A       The only reason his name does appear is  
17          because this is an inspection notice, ma'am, and Alfred  
18          Byrd was at the place at the time. He was the only  
19          owner at the place at the time that the man came to do  
20          the inspection.

21          Q       Is there any particular reason that -- I  
22          mean, you didn't object to his name being put on there  
23          and that's why you signed it?

24          A       If I was the only person there at the place  
25          at the time the inspector showed up, my name would have

1           been there, ma'am. This is not --

2           Q       Okay. I'm just asking, so you didn't --

3           A       -- this is not an indication of ownership of  
4           Mother's Kitchen. Now, if you would like, I will show  
5           you the actual BPR license.

6           Q       No, sir. I just asked --

7           A       I can get it and show you where Daniele Dow  
8           was issued the license and she purchased it with a  
9           personal check of her own.

10          Q       Okay. Was Alfred Byrd's name on there when  
11          you signed the document?

12          A       Of course it was.

13                 MS. COWDERY: Okay. That's all the  
14                 questions I have on the document.

15                 THE COURT: Are you offering it into  
16                 evidence or --

17                 MS. COWDERY: I'd like to offer it into  
18                 evidence as a business record of the company.

19                 THE COURT: There's not going to be a  
20                 business record exception. They didn't prepare  
21                 the document, DPR prepared the document.

22                 MS. COWDERY: Well, they had it in their  
23                 records they brought to me that they kept in the  
24                 normal course of business and if it's not called a  
25                 business document, you know, that's, you know, my

1 mistake.

2 But, it goes towards showing that the did  
3 have Alfred Byrd heavily involved in the  
4 documents.

5 THE COURT: Do you object to it coming in or  
6 not?

7 MR. BROOKS: If it's for the purpose she's  
8 stating, Your Honor, yes, I would object to it,  
9 because this is not a document that is used to  
10 portray ownership. This is a document that is  
11 used to portray an inspection of a premises.

12 THE COURT: That's fine. The fact that it  
13 was in the file doesn't make it a business record.  
14 It was prepared, obviously, by the Department of  
15 Business and Professional Regulation.

16 MS. COWDERY: Okay. I just saw it was  
17 signed by Mr. Brooks, so that's --

18 THE COURT: I sustain the objection.

19 BY MS. COWDERY:

20 Q Mr. Brooks, do you ever recall during an  
21 informal conference, the first informal conference  
22 before the Public Service Commission staff -- strike  
23 that question.

24 Mr. Brooks, have you ever taken the position  
25 that the \$521.72 that you paid, that you allege that



1 you paid as a deposit you paid on August 28th, do you  
2 ever remember saying that?

3 A No, ma'am. I do not.

4 Q Do you remember saying that at the Florida  
5 Public Service Commission, at the agenda conference on  
6 September 9th, 1997?

7 A By agenda conference, do you mean there in  
8 Tallahassee?

9 Q Yes, in front of the Florida Public Service  
10 Commissioners.

11 A No, ma'am. Not -- no, I don't specifically  
12 recall that. I do recall at that conference, staff had  
13 -- staff had prepared what they called a representation  
14 of your client's chronological history of this account  
15 and I questioned that 5/28 entry.

16 Q But, you don't remember Ms. Chairman Johnson  
17 asking you if that was your position?

18 A I'm sorry. 8/28 entry, not 5/28 entry.  
19 Remember Chairman Johnson asking me what,  
20 ma'am?

21 Q Chairman Johnson said, "But it's Mr. Brooks'  
22 position that he gave you," talking to Mr. Troy, "that  
23 they gave you \$290 on August 12th and then another  
24 \$521.72 on August 28th." Mr. Troy said, "Negative."  
25 Chairman Johnson, "Mr. Brooks' is that your position?"



1 Mr. Brooks, "Precisely, ma'am." Do you remember that?

2 A No, ma'am. I do not. But, if it's there in  
3 the record then I probably -- you know, I probably did  
4 say it.

5 But at that juncture, at that juncture we  
6 were arguing over this chronological history and a lot  
7 of us were having problems keeping track of the dates  
8 and stuff and I was not testifying or making statements  
9 from notes or anything.

10 Q Okay. So, are you saying that what you said  
11 to Chairman Johnson was in error?

12 A If what you relate is something that I  
13 actually said, then yes, it was in error.

14 MS. COWDERY: Okay. Thank you. I have no  
15 further questions.

16 THE COURT: Thank you. Mr. Brooks, very  
17 briefly, if there's anything you forgot to tell me  
18 on direct that was refreshed because of the cross  
19 examination that you need to tell me as a witness  
20 right now?

21 MR. BROOKS: No, sir, Your Honor. I don't  
22 believe so.

23 THE COURT: All right. You may return to  
24 your seat.

25 MR. KEATING: Judge Kilbride?

1 THE COURT: Yes.

2 MR. KEATING: I would like to ask just a  
3 couple of questions.

4 THE COURT: Oh, excuse me.

5 MR. KEATING: If I could.

6 THE COURT: Yes, I'm sorry. Go ahead.

7 CROSS EXAMINATION

8 BY MR. KEATING:

9 Q You did state earlier that on July 11th when  
10 you allege that you went to the Florida Public  
11 Utilities office and paid \$160 and were told you needed  
12 to come up with another \$500 for a deposit, is that  
13 correct?

14 A I don't think I said that I was told I  
15 needed to come up with another. what I stated was and  
16 what occurred was this demand for these monies were  
17 being made upon me and the only thing that I had in my  
18 possession at that time was \$160, and I gave that to  
19 them. Yes, sir.

20 Q But, they told you they needed you to come  
21 back that day?

22 A With additional funds to make up that  
23 deposit.

24 Q With additional funds.

25 A Yes, sir.

1 Q And, you spoke with Harry Johnson and he  
2 rounded up the rest of the partners while you were at a  
3 meeting in Orlando?

4 A Yes, sir.

5 Q And got that money together and took it to  
6 the utility?

7 A Yes, sir.

8 Q And that amount was this \$521.72?

9 A It was 520-some-odd dollars. Yes, sir. I  
10 don't remember the exact.

11 Q Did you receive a receipt for that account  
12 or did the partners who went to the utility, --

13 A I'm sure --

14 Q -- did they receive a receipt?

15 A I'm sure Harry did. Harry was good about  
16 receipts. He would bring them back and he would post  
17 it. We had a board in the kitchen area where receipts  
18 for the month were placed on this board and kept until  
19 the end of the month when they were recorded. If it  
20 was something insignificant, then the receipt was  
21 thrown away.

22 Q Why wasn't that receipt provided in the  
23 exhibit that you entered into the record along with  
24 other receipts for payment on the account?

25 A Because that receipt, along with a couple of

1 other receipts, when Mr. Byrd left the company, Mr.  
2 Byrd took along some documents from the company.

3 I assumed, and maybe I'm incorrect in  
4 assuming, but I assumed that Mr. Byrd took those  
5 documents along with the other documents he pulled off  
6 of the board.

7 Now, we searched and we could not find that  
8 receipt, just like we had to search and we were able to  
9 come up with the \$290 receipt that was not mentioned  
10 previously, because if we didn't have it in front of  
11 us, we weren't given any documents from the gas  
12 company, so we didn't know that it existed.

13 Q When did Mr. Byrd leave the company?

14 A Mr. Byrd's last --

15 Q When he would have taken those receipts?

16 A Mr. Byrd's last day actively in that  
17 restaurant and when he marched out of there with a  
18 bunch of those items was on July 2, 1996. He did come  
19 back several times through there, but his last working  
20 day there at that company was July 2, 1996.

21 Q Ms. Cowdery showed you a DBPR Food Service  
22 Inspection Report earlier.

23 A Yes, sir.

24 Q It's dated October 10th, 1996, and it lists  
25 Alfred Byrd as the owner. You explained that the

1 reason he was listed as the owner was because he was  
2 the one there at the time.

3 If he was there on October 10th, how could  
4 he still have been there if he never came back to the  
5 company?

6 A Sir, I just finished telling you he did come  
7 back into that place a couple of times. I have police  
8 reports where he came back there and I tried to press -  
9 - have him arrested for doing so, okay, and that was in  
10 September '96, okay.

11 The old guy that comes out and does this  
12 report -- well, he did three of these things, to my  
13 knowledge. When he comes out and he does these things,  
14 on the 10th, and I would have to, before telling you  
15 for sure I'd have to check with Harry Johnson or the  
16 order entry reports that he was keeping to find out if  
17 this particular day, Alfred Byrd was back there in that  
18 kitchen.

19 But, it was not uncommon after -- because he  
20 kept insisting that we had some pans or something of  
21 his in there and he kept trying to sneak in to get  
22 those. So, it's not inconsistent with what Byrd was  
23 doing. This man might have walked up in there and saw  
24 Alfred Byrd. That's -- I've got no other explanation  
25 for you.

1 I do, the reason my signature is at the  
2 bottom is because this elderly guy, he comes in, he  
3 makes his little notes on a pad. Then he goes out to  
4 his car and he makes entries on the -- he makes entries  
5 on these comment sheets. Then the guy spends time out  
6 there making out -- there's a form that goes with this  
7 particular form and it's a form with a bunch of little  
8 blocks, like a computer data form. The guy sits out  
9 there and he fills those out.

10 Every time the guy came to the place, that  
11 same procedure was used. He'd come in. He'd make his  
12 little comment note. He'd go outside to his car.  
13 Sometimes he'd sit out there for 30 minutes. Sometimes  
14 -- one time he was out there for a whole hour before he  
15 came back in. I just happened to drive up as the guy  
16 was out there in the parking lot and the guy had talked  
17 to me previously, so he knew me.

18 He told me that he had just finished this.  
19 I didn't even know he had done an inspection. He told  
20 me he just finished doing this and he said that he  
21 needed the owner's signature at the bottom. So, I  
22 signed the thing because he told me I didn't have  
23 anything to worry about.

24 Q Okay.

25 A But, I would have to ask that guy, I can



1 find out from that guy if he actually saw Byrd there on  
2 that day. But, I would assume that he did or he  
3 wouldn't have put Alfred Byrd's name on there.

4 Q Did you contact the police on that occasion?  
5 Is there a police report?

6 A On this particular date?

7 Q Yes.

8 A No, because I didn't see Alfred Byrd there.

9 Q Okay. And just one more question.

10 You mentioned that you had sent a 16-page  
11 letter that you considered your initial complaint to  
12 the Commission?

13 A Yes, sir. I did.

14 Q Do you remember when you sent that letter?

15 A If I recall correctly, it wouldn't have been  
16 but a couple of days after the 13th of September,  
17 because I was pretty mad at the way they did that  
18 restaurant and since I was talking to one of their  
19 supervisors, a Mr. Troy at the time they did it, the  
20 only other option was to go to the people that regulate  
21 them.

22 Q Do you remember if you sent it before you  
23 called the Commission, before you made a complaint over  
24 the phone?

25 A No. No, I did not. Because, what I did

1 first was -- what I did first was, I called the  
2 Department of Professional Regulation and they told me  
3 they didn't have jurisdiction over these people and  
4 they made reference to the PSC.

5 If I recall correctly, the lady gave me --  
6 she gave me the address, along with the 800 number, I  
7 think. The address and the 800 number for your company  
8 and she told me that just like with them, I'd have to  
9 do it in writing, have to make a written complaint.

10 So, after she gave me that information, I  
11 did the written complaint. Then I got a call at my  
12 home from Doug Martin. I wasn't -- I wasn't there at  
13 the time. When I got it on the answering machine, I  
14 called him back. That's how that went. I called, I  
15 ended up calling him back when I wasn't there to  
16 receive his call.

17 MR. KEATING: I don't have any other  
18 questions.

19 THE COURT: Thank you, sir. You can return  
20 to your seat. Mr. Brooks, while you're doing  
21 that, your next witness is your last witness?

22 MR. BROOKS: I --

23 THE COURT: Who's going to be your next  
24 witness?

25 MR. BROOKS: Yes, Harry Johnson will be my

1 next witness.

2 THE COURT: Do you anticipate that to be a  
3 relatively long period of time?

4 MR. BROOKS: Yes, sir.

5 THE COURT: You'll not sure if you'll be  
6 finished after that?

7 MR. BROOKS: Calling another party? The  
8 only reason I say I'm not sure, sir, is because I  
9 don't know if I can get a hold of the person and  
10 get him here in a relatively short amount of time.  
11 So that's why, if I can't get him here in a short  
12 amount, then Johnson will be the last.

13 THE COURT: All right. Since it's a quarter  
14 to 1:00 and this may be a long witness, can we  
15 have a short lunch like 35 minutes or so? There  
16 is a snack bar, I think, or a little restaurant in  
17 the building. Can we do that?

18 Let's try to get back here by 20 after two.  
19 Anything else we need to do before we go off the  
20 record? If there's nothing further, then we're  
21 off the record.

22 (Lunch recess.)

23 THE COURT: Your next witness.

24 MR. BROOKS: Yes, sir. Mr. Harry Johnson.

25 THE COURT: Would you have a seat here,

1           please. Would you raise your right hand to be  
2           sworn.

3           WHEREUPON:

4   HARRY L. JOHNSON  
5           being first duly sworn by the Hearing Officer, was  
6           examined and testified under oath as follows:

7                                   THE WITNESS: Yes.

8   DIRECT EXAMINATION

9           BY MR. BROOKS:

10                   Q     Mr. Johnson, would you please state your  
11                   full name and address for the record, please.

12                   A     Harry L. Johnson, 1204 Pomegranate, Sanford,  
13                   Florida, 32771.

14                   Q     Mr. Johnson, you own your business, do you  
15                   not?

16                   A     Not anymore. I used to.

17                   Q     During the time that you were at Mother's  
18                   Kitchen Restaurant, what were your functions, what were  
19                   you doing?

20                   A     Assisting Al.

21                                   THE COURT: Assisting what?

22                                   THE WITNESS: Assisting Al. I would say he  
23                   was the head cook or the cook.

24           BY MR. BROOKS:

25                   Q     Mr. Johnson, as such, did you have occasion

1 to have a lot of conversations with Mr. Byrd?

2 A Yes.

3 Q Did Mr. Byrd ever mention to you that he  
4 opened an account with Florida Public Utilities  
5 Company, the gas company, in his name and his name  
6 only?

7 A No, he never mentioned that to me.

8 Q Do you have any knowledge of how the initial  
9 deposits that opened the account was made?

10 A Yes.

11 Q Would you please tell the Court what you  
12 know about that, please?

13 A I remember in March of 1996, taking Mr.  
14 Brooks in my van to follow Al to the Florida Public  
15 Utilities Gas Company. I went with Mr. Brooks in and  
16 he gave Al \$200 and I sat by the door and Mr. Brooks  
17 came and we got back in the van and went and picked up  
18 some tables for the restaurant.

19 Q Did you have occasion to go back to that  
20 office at any time?

21 A Yes.

22 Q Approximately how many times, all total,  
23 would you say you went back to that office?

24 A Maybe a total of nine times during the  
25 course of a period.

1 Q When you went to that office, what was the  
2 primary reason for your going there? And if it varies  
3 during any time, please state the reason for each time.

4 A I remember going there making payments,  
5 except one time I took you to make a payment.

6 Q Let's go back to this initial payment.  
7 After we picked up the tables, where did you  
8 and I go?

9 A Back to Mother's Kitchen.

10 Q Did you see Alfred Byrd there when we  
11 returned?

12 A Yes.

13 Q Did Mr. Byrd make any comment about what had  
14 transpired at the gas company office after we left?

15 A When we came back and was bringing the  
16 tables in, I remember Mr. Byrd telling you, Tony, that  
17 he got the gas on in the company name, that everything  
18 was straight.

19 Q Did there come a time in July of '96 that  
20 you had to page me for any reason or call me on the  
21 pager?

22 A Yeah. July. July the 3rd, I believe it  
23 was, that I called you one morning when Diane had  
24 called and made statements regarding a deposit of \$525.  
25 And on July the 11th, I remember -- no, I didn't page



1 you then.

2 You was, I think you was there when she  
3 called and demanded 160-some dollars and she said  
4 something about, I remember the recording, where Diane  
5 said something about, she didn't care about Alfred  
6 Byrd's account or something of that nature.

7 Q When you say recording, what recording are  
8 you referring to?

9 A The conversation that you and Diane had  
10 before you took \$160 to her that same morning where it  
11 was little thing, a recorder that you had and you, I  
12 guess, you recorded her, you all's conversation where  
13 she was demanding money from you or from the restaurant  
14 for gas.

15 Q The nine times that you had referred to  
16 having gone to that place, at any time that you went  
17 into that Sanford office did anybody, at any time, tell  
18 you that that account was not in the name of Mother's  
19 Kitchen?

20 A No.

21 Q Did anybody at any time tell you that that  
22 account was Alfred Byrd's account only?

23 A No.

24 Q Did they refuse any payments from you?

25 A No, never.

1 Q And the payments you took, were they cash,  
2 check or --

3 A It was -- most all of them was cash, but I  
4 remember taking \$170 in there cash for some check, some  
5 problem with a check, and this was back in -- I think  
6 it was back in July, June or July, the latter part of  
7 June.

8 Q Did you receive or did you take any phone  
9 calls from the gas company?

10 A Yes.

11 Q Do you know who the party on the other end  
12 of the telephone calls was?

13 A Yes.

14 Q The phone calls you took, could you name the  
15 people that were on the other end and how you know that  
16 that's who was on the other end?

17 A The phone calls I took from the gas company?

18 Q Yes.

19 A Diane Keitt, and she identified herself as  
20 Diane Keitt.

21 Q On the occasions that you got a phone call  
22 from Ms. Keitt, do you remember any of the contents of  
23 any of the conversations you had with her?

24 A I ain't holding no -- well, the  
25 conversations I had with her was she was always

1 demanding money, but I ain't holding no conversation  
above and beyond that point with Diane Keitt.

3 Q What time frame are we talking about?

4 A Between -- I'd say most of the calls came in  
5 between 8:00 and 11:00, 11:30.

6 Q I'm sorry. When I said what time frame are  
7 we talking about, can you affix dates to the calls and  
8 things that you're talking about there?

9 A I remember Diane calling -- I remember Diane  
10 calling a lot before Al left to speak to Al and I  
11 remember when Al left, she called pretty frequently and  
12 -- let's see.

13 It was -- she called on -- she called July  
14 the 1st and she called July the 11th. She called in  
15 August and she called twice in September before service  
16 was discontinued with Florida Public Utilities.

17 Q And each time you spoke with her she was  
18 talking about money owed to the gas company?

19 A Yeah.

20 Q Did she ever ask you to speak to Alfred  
21 Byrd?

22 A Before Al left, she would call and ask to  
23 speak to Al, but when Al left she never called no more.

24 Q After she spoke to Al, on the times that you  
25 can recall when she called and asked to speak to Al,

1 did Mr. Byrd say anything after receiving the phone  
2 call that would indicate that the phone call was about  
3 a bill being due?

4 A It was in June, the only time -- she called  
5 two or three times between May and June, but one time  
6 in June I remember when she called for Al and he sat  
7 down and talked.

8 We was busy for lunch and she called and Al  
9 sat down in the corner and we were busy and I went and  
10 got up to get a plate from under the table, a carry-all  
11 plate to take some orders, and I remember the only  
12 thing I heard was Al was saying about, turn off the  
13 gas. I don't know what he meant by that.

14 Q This was in June?

15 A Yeah.

16 Q Do you know about what date?

17 A I don't know the exact date. It was the  
18 early part of June, from early to maybe mid June.

19 Q Do you recall a time that you and I were  
20 outside of the restaurant on the bench in front of the  
21 restaurant and Alfred Byrd walked up to us?

22 A Yeah.

23 Q Do you recall about the month, year, what  
24 time, when that occurred?

25 A It was the latter part of June of 1996, if I

1 believe is right.

2 Q What did Mr. Byrd say when he walked up to  
3 us, if you recall?

4 A I remember Alfred Byrd telling me, you and  
5 another guy that was eating on a plate, that he was  
6 going to have his friends cut the gas off or  
7 discontinue service or whatever it took to put us -- to  
8 put you all out of business.

9 Q Do you recall the date or the approximate  
10 date that would have been the last time that Alfred  
11 Byrd worked as a cook in that restaurant?

12 A I believe Al's last time working there was  
13 in June, June of 1996. I think it was around the 13th.

14 Q Was there ever a time after that date, if  
15 you remember that date as being Al's last time there,  
16 was there ever a time you were called to the restaurant  
17 concerning Alfred Byrd after that date?

18 A Yes, and I believe it was two occasions.  
19 One of them was where the policemen had come and I  
20 don't know how they got in the restaurant. It was about  
21 5:00, 5:30 in the morning, maybe 6:00 at the latest.  
22 When I came up, Al was attempting to take stuff out of  
23 the restaurant.

24 Then another time Al came back -- I don't  
25 know if he came in or not, but I remember he was

1 talking to one of the coworkers at the restaurant about  
2 he wanted his stuff.

3 Q Was there ever a time when you accompanied  
4 me to the Sanford Airport to speak to Kevin Spoulski?

5 A Yes.

6 Q Do you recall what the nature of that  
7 conversation was?

8 A It was about the gas company and Alfred  
9 Byrd.

10 Q Do you remember anything else about that  
11 conversation?

12 A I know Kevin, he called, Kevin called  
13 Discount Propane and told them to get out as soon as  
14 possible to change from Florida Public Utilities,  
15 change over the system to where Discount would be the  
16 vendor for Mother's Kitchen.

17 Q Were you present at all times when  
18 servicemen from Discount Propane were present at the  
19 restaurant?

20 A Yeah.

21 Q Do you recall the dates when that occurred?

22 A It was September 1996.

23 Q Were you present when one of their  
24 servicemen was working on connecting the stove to  
25 propane gas?



1           A     Yeah.

2           Q     Who else was there present with you?

3           A     You, Aaron, George Byrd, and I ain't sure  
4 Spoulski, Kevin was there or not. If he weren't there,  
5 he called.

6           Q     Besides myself, were there any other  
7 partners present?

8           A     I believe Eddie, I believe Eddie was  
9 present. He came in after -- I think he came in --  
10 Eddie was there before the man got there and Eddie  
11 left. When he came back, the man was there. I believe  
12 that's how it was.

13          Q     Were you present when the Florida Public  
14 Utility serviceman came to the restaurant in September  
15 '96?

16          A     Yes. Uh-huh.

17          Q     Do you remember when in September it was?

18          A     September the 9th, I think is when he came,  
19 when their maintenance man or whatever came out.

20          Q     Do you know for what purpose he came out?

21          A     He came out to turn the gas off.

22          Q     Was there a time that you were present when  
23 someone came to turn it on?

24          A     Yeah. That's the day I'm talking about he  
25 came out. He came out, this maintenance man came

1 around about in September '96, and at 8:00 o'clock that  
2 morning, I called Diane Keitt myself, because the day  
3 before they turned the gas off, I went into Diane's  
4 office that evening of Florida Public Utility and paid  
5 them \$172, I believe it was. I paid them the gas bill.

6 Diane told me that she would get a man out  
7 that evening to turn the gas back on. He never showed  
8 up. 8:00 o'clock that morning I called Diane and she  
9 told me that the man was on his way. It was after  
10 10:00 o'clock when this man came up, the repairman or  
11 the man that was supposed to turn the gas on.

12 Q Do you remember what day that was?

13 A September the 13th. I paid the bill on the  
14 12th. I paid the bill on the 11th or the 12th and he  
15 came out the next day, the next morning to turn the gas  
16 on.

17 Q When the serviceman arrived, where were you?

18 A Out back washing some equipment.

19 Q Did you have an open view of him as he drove  
20 up?

21 A Yes.

22 Q After he drove up, what was the first thing  
23 that he did?

24 A He reached in his van and got a pouch and he  
25 came in the kitchen, in the restaurant to the kitchen

1 area and started taking the front cover off the stove.  
2 When I saw what he was doing, I went to the front door  
3 and called you and you asked what he was doing, and he  
4 said that you needed to call Diane.

5 I believe you called Diane, but you hung up  
6 and called West Palm Beach to speak to Troy. During  
7 this whole time, this guy had got up and went out there  
8 and put a lock on this pipeline and he told us that he  
9 wanted -- that we had a gas leak or something and that  
10 you was telling Troy to tell him, between the two, to  
11 get whatever, whatever it would take to get it fixed  
12 right now and to do it, and this guy said that the part  
13 wouldn't be in until Monday.

14 Q At any time prior to the serviceman entering  
15 the building, did he go to that meter?

16 A No. Uh-uh. He came straight to the  
17 building, in the building.

18 Q Approximately how long was he there?

19 A Maybe seven to 10 minutes, inside the  
20 restaurant. But, when he -- he tried to get you to  
21 sign a red tag and he went out in his van and talked on  
22 his radio to somebody.

23 Q So, from the time that he arrived until the  
24 time that he left, that was only like seven to 10  
25 minutes of time that passed by?

1 A If I remember correctly.

2 Q Did there come a time when you had to obtain  
3 money from more than one partner to take to Florida  
4 Public Utilities?

5 A Yes.

6 Q Do you remember what that occasion was?

7 A It was the same morning, July the 1st, when  
8 Diane called and asked for a 500-and-some dollar  
9 deposit and that Al was down there demanding that the  
10 gas be cut off, that we needed to, the restaurant  
11 needed to come up with -- she said, us, needed to come  
12 up with a deposit.

13 Q You specifically recall conversation with  
14 Ms. Keitt where she was telling you of a demand for a  
15 deposit?

16 A Yes.

17 Q And this was over the telephone?

18 A Yes.

19 Q And you, to the best of your recollection,  
20 believe it was July 1st?

21 A Yes.

22 Q Are you familiar with BBIF?

23 A I believe that's the trash company.

24 Q Let me ask you another question. Are you  
25 familiar with the Black Business Investment Fund?

1 A Oh, yes.

2 Q Have you ever been to their offices?

3 A In Orlando with you, yes.

4 Q What was our reason for going to their  
5 offices?

6 A To obtain a loan to expand the restaurant,  
7 because the man had come in and gave you prices or bids  
8 to expand, to open that -- knock that wall down and put  
9 a screen out there with dining room tables.

10 Q Do you remember the time period that this  
11 was occurring; month, year?

12 A I believe this was in July of '96.

13 Q Do you recall a time that I was hospitalized  
14 and away from the restaurant?

15 A Yes.

16 Q Do you remember anything about the dates  
17 surrounding that incident?

18 A I believe that was right around the 12th or  
19 the 13th of July, and I think --

20 Q How long was I gone?

21 A You were gone a good while. Longer than a  
22 week, maybe two weeks.

23 Q Did you see me at the restaurant or anywhere  
24 else in Sanford on August 12th, 1996?

25 A No.

1 Q Did you receive any phone calls from me --

2 A No.

3 Q -- on or about August 12, 1996?

4 A No.

5 Q On the occasion that I personally went to  
6 that gas company -- strike that.

7 Did you ever have any conversations with me  
8 concerning any activities at the gas company after I  
9 went to it by myself?

10 A I remember taking you to the gas company in  
11 July and you were saying something about, you were  
12 telling me that Diane and them wanted you to pay a bill  
13 off or something to that nature.

14 Q On this particular time that you're talking  
15 about, did you go inside of the gas company's office?

16 A No. I took you down there.

17 Q Throughout the month of July, was there any  
18 time, to your knowledge, that I went to that gas  
19 company's office in the company of a small child?

20 A Not with me. I took you the first time in  
21 July, on July the 1st, me and you went down there  
22 together, just me and you, July -- well, we went again.  
23 We paid -- July the 1st, I think it was, we paid a \$525  
24 deposit. July the 11th or 12th or something like that,  
25 we went in and we made \$160 or \$170 payment on that.



1 I didn't go in with you on that particular  
2 occasion, but when we made the \$500, \$525 deposit, I  
3 went in with you and there weren't nobody with us.

4 Q So, what you're stating here is that there  
5 was a time in July when you and I both went into that  
6 office with 500-and-some dollars?

7 A Yeah.

8 Q In August '96, during the month of August  
9 '96, do you recall seeing me in the presence of a minor  
10 child?

11 A No.

12 MR. BROOKS: No further questions at this  
13 time, Your Honor.

14 THE COURT: Cross exam?

15 MS. COWDERY: Yes.

16 CROSS EXAMINATION

17 BY MS. COWDERY:

18 Q Mr. Johnson, I'm going to refer to the time  
19 that you testified to when the serviceman from Florida  
20 Public Utilities Company came to Mother's Kitchen after  
21 the gas had been turned off, okay, and came in and  
22 looked at the stove, okay?

23 A Yes.

24 Q You know what I'm talking about?

25 A Yes.

1 Q All right. When the serviceman came, do you  
2 remember that serviceman ever asking Mr. Brooks to fill  
3 out or sign a work order for repairs?

4 A No. He had a red card with a piece of metal  
5 wire around it. He asked Mr. Brooks to sign that and  
6 Mr. Brooks had just hung up the phone talking with Troy  
7 and he threw the thing -- he set the thing on the  
8 stove and the guy left. The guy left, but before he  
9 left on his way out the door, he asked Mr. Brooks to  
10 come down and fill out some work order or come down  
11 there and see Diane for some type of work order, but  
12 there was never a work order present when he came.

13 Q He didn't show him one, that's what you're  
14 saying?

15 A Yeah.

16 Q The serviceman didn't show a work order to  
17 Mr. Brooks, right?

18 A No.

19 Q But did he ask him, do you remember him  
20 talking about Tony filling out or signing a work order?

21 A I remember him asking Tony to fill out this  
22 little red three-by-five, three-by-six red card with a  
23 metal wire around it. When he refused, he told Tony to  
24 come down there and see Diane.

25 Q Now, I want to make sure you understand my

1 question, because I'm not asking about that red tag or  
2 anything like that, okay?

3 A Okay.

4 Q I'm just going to talk about this work order  
5 idea. Do you remember, do you remember the serviceman  
6 asking Tony to fill out or sign a work order for  
7 repairs to go and see Diane about filling out a work  
8 order for repairs? Do you remember any conversation  
9 about a work order?

10 A I don't remember, as fresh as that is in my  
11 mind, because I believe that was the downfall. There  
12 was never a work order discussed. It was a red tag  
13 with hazardous something across the top with a wire  
14 going through a little hole and coming back out  
15 twisted, and the guy left.

16 Q Do you remember on December 17th, 1997, when  
17 I took your deposition, you said, as part of that, "So,  
18 he" meaning the serviceman "asked Tony to come to the  
19 office to see Diane and fill out or sign a work order  
20 for repairs."

21 Question, "What did Tony say or do you  
22 remember?" Answer, "I know he didn't sign the red tag,  
23 but I don't know what he said about a work order. This  
24 guy wanted for him to come down and sign a work order."  
25 Do you remember that? Could that have happened?

1 A When was that?

2 Q You said that at your deposition.

3 Deposition of Harry Johnson, December 17th, 1997.

4 A And I said something --

5 THE COURT: Page and line number, please.

6 MS. COWDERY: That is page 39 and it's lines  
7 15 through 20.

8 THE WITNESS: Yeah, I remember saying that.

9 MS. COWDERY: Okay.

10 BY MS. COWDERY:

11 Q Was that the truth when you said that about  
12 the work order?

13 A It's true, based on what I just said. It's  
14 the same thing I'm saying now.

15 Q So, this is the truth, what you said here,  
16 that this guy wanted him to come down and sign a work  
17 order? That would be your testimony today?

18 A Yeah.

19 Q Mr. Johnson, when you would go to the  
20 Florida Public Utilities Company, would you always get  
21 a receipt when you gave them money?

22 A Yes. Cash.

23 Q Now, you're saying that at some point, you  
24 brought down a large amount of money, more than \$500.  
25 Did you get a receipt? Do you remember getting a

1 receipt?

2 A I remember Mr. Brooks getting a receipt.  
3 He's the one who handed Diane Keitt the 500-and-some  
4 dollars. As you remember in your deposition, I stated  
5 I was by the door.

6 Q All right. You said in your testimony in  
7 response to a question from Mr. Brooks, that you  
8 believed on that same date when the serviceman came to  
9 look at the stove, you were talking about --

10 A To cut it on. He was supposed to come and  
11 cut it on.

12 Q Right.

13 A Okay.

14 Q On that same day, that you believe he called  
15 Diane Keitt at the office, is that your testimony  
16 today? Do you have a personal recollection of him  
17 calling Diane Keitt at the office?

18 A I told you Tony called Diane Keitt.

19 Q Right.

20 A The gas man was on when he -- before he  
21 left, he talked to somebody on his radio. It is not  
22 fair for me or you to prejudge who he was talking to.  
23 He talked to somebody on the radio. That's my  
24 statement.

25 Q Correct, right. But, I was asking about Mr.

1 Brooks. Do you remember Mr. Brooks calling Diane Keitt  
2 on the telephone at Mother's Kitchen?

3 A Yeah.

4 Q Now, you said something in your testimony  
5 about the workman going outside and putting a lock on  
6 the pipeline and coming back in and saying that there  
7 was a leak. What did that mean? What does that mean,  
8 putting a lock on the pipeline?

9 A I don't know. It was some kind of bolt  
10 thing.

11 Q A bolt?

12 A Yeah. It looked like some type of bolt  
13 thing about this long and he slid it through there and  
14 it had a lock-type thing on it.

15 Q Are you saying that the first time,  
16 according to you, the man came inside, worked on the  
17 stove for about seven or 10 minutes, went outside and  
18 put that lock on there, that bolt, and then came in and  
19 said that there was a leak? Is that your testimony?

20 A That he did what now?

21 Q Okay. Is it your testimony that the  
22 serviceman came to Mother's Kitchen, went directly  
23 inside, --

24 A Uh-huh.

25 Q -- worked for about seven to 10 minutes, --



1 A Uh-huh.

2 Q -- went outside, put some kind of a bolt on  
3 the pipe part, --

4 A Yeah.

5 Q -- and then came inside and said there was a  
6 leak, is that your testimony?

7 A Yes.

8 Q Did you follow him outside?

9 A I peeked -- I was still inside. I just  
10 looked out the door and saw him messing with this. I  
11 assume he put it on there, because I never saw it  
12 before, but it was a bolt about this long (indicating).

13 Q Okay. And as soon as he got back in and  
14 said there was a leak, is that when he started trying  
15 to get Tony to sign the hazardous condition report?

16 A Prior to him leaving, he tried to get Tony  
17 to sign this red hazardous thing.

18 Q All right.

19 A But, Tony was on the phone talking with  
20 Troy, telling Troy to do whatever it takes to get the  
21 stove in working condition.

22 Q Okay. So, it wasn't right away when he came  
23 back in, is that what you're saying, that he tried to  
24 get him to sign that hazardous condition report?

25 A No. The guy was in the building. He had

1           come from outside when Tony was talking with Troy. The  
2           guy was still on his knees when they were having the  
3           conversation.

4           Q       Okay. So, you're saying he went back to the  
5           stove?

6           A       Yeah.

7           Q       Okay.

8           A       He started putting everything back together.

9           Q       At that point he was putting it back  
10          together?

11          A       Yeah.

12          Q       How long did that take?

13          A       A few minutes.

14          Q       Just a few minutes?

15          A       Yes.

16          Q       And then he went on to the hazardous  
17          condition report?

18          A       Yes.

19          Q       So, how long was he at the business?

20          A       It didn't seem like no longer than 10  
21          minutes to me.

22                   MS. COWDERY: I have no further questions.

23                   THE COURT: Anything else for the witness?

24                   MR. BROOKS: Just a minute, Your Honor.

25                   Yes.

## REDIRECT EXAMINATION

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BY MR. BROOKS:

Q Mr. Johnson, those events that you were talking about, what was the date that they occurred on?

A September the -- I think it was September the 13th on a Friday.

Q This bolt that you're talking about, was it a single straight bolt, curved bolt, what kind of bolt was it?

A A single straight bolt.

Q If it was a single straight bolt, how did he affix it to the pipe?

A It was this thing that looked like a padlock and it was -- it looked like a U-bolt with a padlock around it to keep anybody from cutting it or whatever.

Q Mr. Johnson, before you came down here this morning, did you take any type of medication?

A I took a Xanax and I took a Prylocet.

Q These were prescribed medications?

A Yes.

Q You took those this morning?

A Yes.

MR. BROOKS: No further questions, Your Honor.

MS. COWDERY: Can I have one?

1 THE COURT: One.

2 RE CROSS EXAMINATION

3 BY MS. COWDERY:

4 Q Do these medications in any way interfere  
5 with your ability to recall events or testify as to  
6 what you believe the truth to be?

7 A I -- I took them at -- the Prylocet is for  
8 my stomach. The Xanax is just to relax me so I know  
9 the last time we was together, I felt that you felt  
10 that I got hostile or some --

11 Q No, I just wondered if --

12 A Okay.

13 Q If you can answer my question. Do I need to  
14 repeat it?

15 A I was trying to answer.

16 Q Oh, okay. I'm sorry. Excuse me.

17 A So, that's why I took the medicine so I can  
18 relax and feel comfortable.

19 Q So, it's only for relaxation and you  
20 wouldn't think it would interfere with your ability to  
21 testify?

22 A Oh, no.

23 MS. COWDERY: Okay. Thank you. I don't  
24 know the medications. That's why I asked.

25 THE WITNESS: Okay.

1 MR. BROOKS: No questions.

2 THE COURT: Thank you. Can this witness be  
3 released?

4 MR. BROOKS: Yes, he can.

5 THE COURT: Thank you, sir. You are  
6 excused. You can go back to work.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. Mr. Brooks, any other  
9 witnesses?

10 MR. BROOKS: Your Honor, I would like to  
11 call Arthur Brooks back to the stand for just a --

12 THE COURT: This is for new information?

13 MR. BROOKS: Yes, sir.

14 THE COURT: Not to go over --

15 MR. BROOKS: Yes, sir.

16 THE COURT: -- any ground -- okay. Mr.  
17 Brooks, you're still under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION

21 BY MR. BROOKS:

22 Q Arthur, what do you know about Harry Johnson  
23 and his medical treatment?

24 A He's a little on the bizarre side or  
25 something.

1 Q Have you had an occasion to observe Mr.  
2 Johnson when he's taking his medications?

3 A No.

4 Q Is there a marked difference in his  
5 functions --

6 MS. COWDERY: I'm going to object --

7 THE COURT: Sustained.

8 THE COURT: You can't attack the credibility  
9 of your own witness.

10 MR. BROOKS: Sir, I'm not trying to attack  
11 the credibility of my own witness. What I am  
12 doing is she asked Mr. Johnson if those  
13 medications hampered his ability to testify and  
14 think clearly. I think she used the words, think  
15 clearly, at one point. Now, --

16 THE COURT: If you're asking any questions  
17 which would attack that statement, in other words  
18 which would bring into question his credibility,  
19 you can't do it. It's your witness.

20 MR. BROOKS: It's not -- fine, sir. All  
21 right.

22 THE COURT: What other purpose would there  
23 be that you're asking these questions?

24 MR. BROOKS: It's to clarify Mr. Johnson's  
25 response to that question, to show that what Mr.



1 Johnson offered in response to that question is  
2 not necessarily the only response to that  
3 question.

4 THE COURT: I sustain the objection. No,  
5 you can't go that way. Anything else?

6 MR. BROOKS: Mr. Brooks -- no, sir. That's  
7 all. That's fine.

8 THE COURT: Thank you, sir. You may return  
9 to your seat.

10 THE COURT: Any other witnesses you wish to  
11 call at this time?

12 MR. BROOKS: No, sir.

13 THE COURT: Any other documents that have  
14 not been admitted that you forgot and need to get  
15 in before you rest your case?

16 MR. BROOKS: The only other documents that I  
17 have to submit, the Court has already stated that  
18 I would have to wait until Mr. Troy or one of  
19 those people took the stand to get them submitted.

20 THE COURT: All right. So, there's nothing  
21 else as far as your case in chief?

22 MR. BROOKS: Not at this juncture. No, sir.

23 THE COURT: All right. Then I'll consider  
24 that you've rested your case. You want to take a  
25 few minutes here before --

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MS. COWDERY: Can I have just a few?

THE COURT: Yes.

(Short recess.)

(Continued in Volume II.)