

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: April 7, 2003
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Gervasi) *JS*
RE: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Please file the attached letter from William E. Sundstrom, Esquire, dated April 2, 2003, in the docket file for the above-referenced docket.

RG/dm

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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(LICENSED IN TEXAS ONLY)

April 2, 2003

Via Fax and Mail

APR - 4 2003

FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF THE GENERAL COUNSEL

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Rosanne Gervasi, Esq.
Florida Public Service Commission
Legal Department
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Re: Holzberg/Gistro, et al

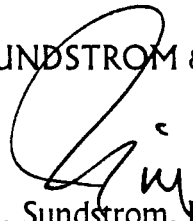
Dear David and Rosanne:

I am attaching, for your review and information, a copy of Judge Seals' letter of March 25, which is self-explanatory. I am also attaching a copy of the "Consent Final Judgment" between the FDEP and the Forest Mere Property Owner's Association, Inc. and Holzberg relative to the placing into service of the package plant without permit and the subsequent abandonment thereof by order.

Apparently Mr. Holzberg is again attempting to somehow leverage his actions into a position so that he may be paid significant sums of money for the wastewater collection system that he has previously dedicated to the homeowner's association and also turned service rights there over to Bonita Springs Utilities. For some reason, this matter simply refuses to just go away. I am sure that there will be more to come.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP


William E. Sundstrom, P.A.
For the Firm

WES:jmt
Enclosure

Letter to Mr. Owen and Ms. Gervasi
April 2, 2003
Page 2

cc: Don Thomson
Fred Partin
Marty Friedman

Bonita\owen-Gervasi letter of April 1

IN THE CIRCUIT COURT OF THE TWENTIETH
JUDICIAL CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

Case No. : 97-8858-CA-WCM

FOREST MERE PROPERTY OWNER'S
ASSOCIATION, INC., and J. FRITZ
HOLZBERG, individually,

Defendants.

CONSENT FINAL JUDGMENT

Plaintiff, State of Florida Department of Environmental Protection (hereinafter, "DEP" or "Department"), and Defendant, J. Fritz Holzberg, mutually desiring to settle this case have consented to the entry of this Consent Final Judgment. Now, therefore, the Court, having been advised in the premises,

FINDS AND ADJUDGES, that:

1. The Complaint in this action seeks injunctive relief and penalties pursuant to Sections 26.012, 403.121 and 403.131, 403.161, Florida Statutes, to immediately require the Defendant to cease all unpermitted discharges of sewage, to properly abandon the wastewater treatment plant in accordance with Departmental rules, to comply with all applicable rules for the maintenance of the collection system, to provide the required certification of completeness with regards to the collection system, and to pay civil penalties and costs.
2. This Court has jurisdiction over this action pursuant to Article V, Section 5, of the Constitution of the State of Florida, and Sections 26.012, 403.131, 403.141 and 403.161, Florida Statutes.
3. All violations complained of by the DEP allegedly occurred in Lee County, Florida. Defendant owns the property, located at Southern Pines Drive, West of Snowberry Lane in Bonita Springs, where the violations allegedly occurred.

EXHIBIT

4. The Department is the regulatory agency of the State of Florida charged with the duty to enforce the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes.

5. The Defendant owns and maintains an off-line 0.025 million gallon per day wastewater treatment plant and the existing collection system serving the Forest Mere and Spring Lake subdivisions.

6. The Department alleges in the complaint that on five occasions in 1997 the Defendant's collection system was discharging onto the ground in violations of Rule 62-600.740(2)(a), F.A.C.

7. The Department alleges in the complaint that Defendant constructed and placed the collection system into service without providing to the Department a certificate of completion by a professional engineer for the construction of the collection system in violations of Rule 62-604.500(1), F.A.C.

8. The Department alleges in the complaint that the Defendant has failed to properly abandon the wastewater treatment facility in accordance with Rule 62-600.410(7), F.A.C.

Based on the forgoing, it is hereby ORDERED AND ADJUDGED that the Defendant, its agents, successors, and assigns shall comply with the following:

A. Within 30 days of the date of the entry of this Consent Final Judgment, Defendant shall properly abandon the wastewater treatment facility in accordance with Rule 62-600.410(7), F.A.C. , by either demolishing the facility or enclosing it with fencing and a locked gate.

B. Within 30 days of the date of entry of this Consent Final Judgment, Defendant shall retain the services of a Florida registered professional engineer for the purpose of evaluating the collection system, including the lift stations, to discover the cause or causes of the system's non-compliance. The evaluation will include proposed design modifications to the collection system, if necessary, to ensure that the collection system will function in full and consistent compliance with all applicable rules of the Department.

C. Within 30 days from the date of entry of this Consent Final Judgment, Defendant shall submit permit applications to construct the modifications referenced in Paragraph B, if necessary.

D. Within 60 days of the date of entry of this Consent Final Judgment, Defendant shall complete the construction of the modifications to the collection system, and submit an engineer's certification of completion of construction to the Department.

E. From the date of the entry of this Consent Final Judgment to the receipt of the Certificate of Completion, Defendant shall insure that the collection system does not leak and does not have discharges. In order to prevent such discharges any measure necessary shall be implemented, including, but not limited to the daily removal of the effluent by a licensed hauler.

F. Defendant agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day the Defendant fails to timely comply with any of the requirements of paragraphs A through E of this Consent Final Judgment. Within 30 days of written demand from the Department, the Defendant shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon "OGC No.: 97-1408," and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, 2295 Victoria Avenue, Suite 364, Fort Myers, Florida 33901.

G. Within 30 days of the entry of this Consent Final Judgment Defendant shall pay \$1,000.00 for the Department's costs, expenses, and penalties that shall bear interest at the rate determined under Section 55.03, F.S., for which let execution issue. Payment shall be by cashier's check or money order payable to the "Department of Environmental Protection," and shall include thereon the notations "OGC No.: 97-1408" and "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department at the above address.

H. Entry of this Consent Final Judgment does not relieve the Defendant of the need to comply with applicable federal, state, or local laws, regulations or ordinances.

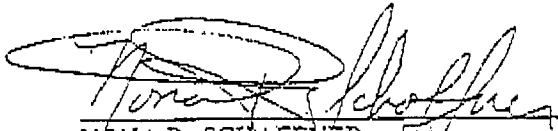
I. Defendant shall allow all authorized DEP personnel reasonable access to the Facility and collection system at reasonable times for the purpose of determining compliance with this judgment and the department statutes and rules.

J. Defendant, J. Fritz Holzberg, stipulates that at the time of the entry of this Consent Final Judgment that he has the financial ability to comply with its requirements.


K. The Court shall retain jurisdiction to enforce the terms of this Consent Final Judgment by contempt proceedings or other appropriate measure.

SEEN AND AGREED TO:


STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



 NONA R. SCHAFFNER
 Assistant General Counsel
 Attorney for Plaintiff

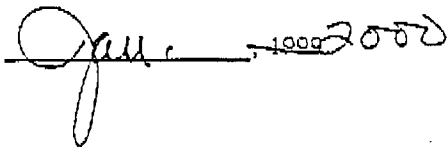


 FRITZ HOLZBERG
 Defendant



 ROBERT F. MAHER
 Attorney for Defendant

DONE AND ORDERED in Chambers in Fort Myers, Lee County, Florida, this 6 day of



 1009 2002

S/ WILLIAM C. MCIVER

 William C. McIver
 Circuit Judge

cc: Robert T. Maher
 Nona R. Schaffner
 J. Stephen Crawford

