

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RECEIVED-PPSC  
12 JUN 12 PM 3:31  
COMMISSION  
CLERK

Edward McDonald  
7203 N. 41st St.  
Tampa, FL 33604  
(813) 374-3837

PETITIONER

-and-

DOCKET NO. 110305-E1

Tampa Electric Company  
P.O. Box 111  
Tampa, FL 33601  
(813) 223-0800,

RESPONDENT

A M E N D E D  
P E T I T I O N

RE: INITIATION OF FORMAL PROCEEDINGS - ORDER NO. PSC-12-0252-FOF-E1 May 23,  
2012

1. The petitioner has a substantial interest as a customer of a REGULATED PUBLIC UTILITY TO RECEIVE THE BENEFIT OF Rule 25-6.100 et, seq. F.A.C. and 256.105(5) F.S. and THE FAIR CREDIT REPORTING ACT and THE FAIR DEBT COLLECTION PRACTICES ACT.

THIS PETITION COMPLIES WITH 25.22.036 & 28-106.201 F.A.C.

2. Petitioner received via U.S. Mail on May 26, 2012 Order NO. PSC-12-0252-FOF-E1 granting motion to dismiss by Respondent Tampa Electric Company.

3. The material facts in dispute are: (1) whether petitioner paid \$915.94 for a bill allegedly incurred in 2004. TECO'S RECORDS SHOW THE BILL WAS TRANSFERRED TO PETITIONER'S HOME ACCOUNT AND PAID! (Exhibits 1 & 2). (2) whether TECO owes the petitioner \$3500.00 for an overpayment in 2004 plus 1½% interest per month-the same rate TECO charges its customers accruing from 2004 to 2012. (Exhibits 3, 4 & 5). The commission has jurisdiction because this is a BILLING DISPUTE not an action for "damages" as alleged by the respondent.

03834 JUN 12 2012  
FPSC-COMMISSION CLERK

5. Whether TECO returned the funds is immaterial if they were returned of their own volition BECAUSE OF A LACK OF DUE DILIGENCE in accepting the authority of a fraudulent "guardian". TECO IS LIABLE FOR THE \$3500.00. The record contains dispositive evidence that there was no "guardian" and that the petitioner, Edward McDonald, was the only person with legal authority to access the account used to pay TECO.

6. Petitioner wants his account credited with for \$915.94 and a refund of the \$3500.00 overpayment with interest at 1½% @ month from 2004 to the present.


7. Evidence presented herein includes affidavits, Requests for production and communications that are RELEVANT and MATERIAL comprising new evidence not previously considered by the commission.

8. There is ample evidence the material facts are disputed by the parties. It is disingenuous-bordering on the absurd, to suggest the petitioner "agrees" the bank recalled, dishonored or otherwise refused to comply with the Warrant for Payment used by the petitioner. To suggest that their negligence is somehow ameliorated because they "no longer have possession of the funds because they returned them is equivalent to saying the car thief is innocent because he returned the vehicle after a month long joyride. Both arguments are specious!

9. Petitioner respectfully moves the commission to assign this matter to THE DIVISION OF ADMINISTRATIVE HEARINGS for assignment of an Administrative Law Judge for adversarial proceedings to make findings of fact and conclusions of Law.

#### CERTIFICATE OF SERVICE

A copy hereof was furnished this 7th day of June, 2012 via u.s. mail to James D. Beasely, P.O. Box 391, Tallahassee, FL 32301 and General Counsel and Office of Public Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

  
Edward McDonald  
7203 N. 41st St.  
Tampa, FL 33604-2425

On June 6, 2011 I received a 3 page summary of Acct. # 1501-0000-3 &4. Excerpted below is page 3. 7 credit amounts of \$500.00 are listed and 7 Returned Payment Fees of \$40.00 are listed. I HAVE A COPY OF BANK RECORDS SHOWING THERE WERE ADEQUATE FUNDS TO COVER EACH OF THE 7 PAYMENTS! My authority to access funds of Lillie McDonald is PUBLIC RECORD. (Lillie McDonald is OWNER of 4010 Pocahontas in Joint Tenancy with Edward McDonald EXPLAIN AND DOCUMENT TECO'S ACTION BELOW.

Edward McDonald



Edward G. McDonald

4010 Pocahontas Av E., Tampa, Fl. 33610

26-May-11

1501-000031-3 and 4

Date	Reading	kWh	Billed Amount	Fees	Credit Amount	Total	Comments
12/20/04			(\$469.54)			(\$3,089.45)	correcting 11/17/04 billing
12/20/04	5869	956	\$123.31			(\$2,966.14)	
12/20/04			\$111.60			(\$2,854.54)	Adjusted bill 11/17/04
01/19/05	6847	978	\$124.31			(\$2,730.24)	
01/20/05					\$500.00	(\$2,230.23)	Returned Payment
01/20/05				\$40.00		(\$2,190.23)	Returned Payment Fee
01/20/05					\$500.00	(\$1,690.23)	Returned Payment
01/20/05				\$40.00		(\$1,650.23)	Returned Payment Fee
01/20/05					\$500.00	(\$1,150.23)	Returned Payment
01/20/05				\$40.00		(\$1,110.23)	Returned Payment Fee
01/20/05					\$500.00	(\$610.23)	Returned Payment
01/20/05				\$40.00		(\$570.23)	Returned Payment Fee
01/20/05					\$500.00	(\$70.23)	Returned Payment
01/20/05				\$40.00		(\$30.23)	Returned Payment Fee
01/20/05					\$500.00	\$469.77	Returned Payment
01/20/05				\$40.00		\$509.77	Returned Payment Fee
01/20/05					\$500.00	\$1,009.77	Returned Payment
01/20/05				\$40.00		\$1,049.77	Returned Payment Fee
01/24/05				\$8.26		\$1,058.03	Late fee
02/04/05					(\$225.00)	\$833.03	Payment
02/08/05					\$225.00	\$1,058.03	Returned Payment
02/08/05				\$30.00		\$1,088.03	Returned Payment Fee
02/01/05			\$7.17			\$1,095.20	Acct Closed disconnection of service

ACCOUNTS	CLOSING DATES	BALANCES
1501-000031-4	July 27, 2004	\$915.94
1501-000031-5	February 1, 2005	\$1,095.20

*Wrong closing date  
see above*

ORDER NO. PSC-12-0053-PAA-EI  
DOCKET NO. 110305-EI  
PAGE 3

As seen above, the \$1,095.20 represents the balance on a separate account, and this is the amount that was paid by Mr. McDonald.

*2*

## January Billing Information:

300137

Visit our  
Web site at  
[tampaelectric.com](http://tampaelectric.com)  
633M-00113

MCDONALD EDWARD  
7203 41 ST N  
TAMPA FL 33604-2425

Account Number  
0261 0231564

Statement Date  
Jan 09, 2012

### BILL FOR DEPOSIT

Deposit due by: February 12, 2012

In the past we sent you a letter informing you that an additional deposit is required for your account. According to our records, the current deposit is not sufficient to cover the required two-month average billing. It is now necessary to increase the deposit equal to twice the average monthly bill.

**3**

**Total Due Deposit Billing \$75.00**

**Important Please Note:**  
Payments received may be applied to any unpaid deposit billing due on this account.

INQUIRY/02-12-12/

Pursuant to RULE 25-6.100 et. seq. F.A.C. please provide a DETAILED EXPLANATION of why my deposit is being increased. Please provide:

1. Amount of present deposit
2. monthly billing record from January 14, 2011-January 9, 2012.

NOTE: Edward McDonald has occupied the billing address for 12 months. HE DID NOT OCCUPY THE BILLING ADDRESS THE 24 MONTHS PRIOR TO JANUARY 14, 2011.

3. DEDUCT ANY INCREASED DEPOSIT FROM THE \$3,500.00 plus interest at 1½% @ month from January 2005 to the present (6480)

To ensure prompt credit, please return stub portion of this bill with your payment. Make check payable to Tampa Electric 71 E

FPSC # 648071E  
PROVIDE PROOF THE  
FUNDS WERE RECALLED  
BY THE BANK as al-  
TERNATIVE TO PAYING.

300137



Account No.  
0261 0231564

### DEPOSIT BILL

Payable by Feb 12

Total Bill Amount  
\$75.00

Mail Payment To:  
P.O. Box 31318  
Tampa, FL 33631-3318

633M-00113 00113-1043



MCDONALD EDWARD  
7203 N 41ST ST  
TAMPA FL 33604-2425



716606

**4**

## May Billing Information:

MCDONALD EDWARD  
7203 41 ST N  
TAMPA FL 33604-2425

Account Number  
0261 0231564

Statement Date  
May 04, 2012

Visit our  
Web site at  
[tampaelectric.com](http://tampaelectric.com)  
4671-11649

tampaelectric.com

**Average kWh per day**

May 2012	18
Apr	21
Mar	20
Feb	33
Jan	22
Dec	18
Nov	25
Oct	48
Sep	54
Aug	49
Jul	53
Jun	39
May 2011	33

**Fuel sources we use to serve you**

For the 12-month period ending March 2012, the percentage of fuel type used by Tampa Electric to provide electricity to its customers was:

Oil & Gas.....	36%
Coal.....	58%
Purchased Power.....	6%

Tampa Electric provides this information to our customers on a quarterly basis.

Meter Number	Current Reading	Previous Reading	Diff.	Multi.	33 day period
B73904	57667	57073	594	1	
<b>Next Read Date On Or About May 31, 2012</b>			<b>Total kWh Purchased</b>		<b>594</b>
<b>Account Activity</b>		<b>Explanation</b>		<b>Charge</b>	<b>Total</b>
Previous Balance				1,038.80	
Payments Received - Thank You		As of May 04, 2012		-81.02	
<b>Total Past Due Amount</b>					<b>\$957.78</b>
<b>New Charges Due by May 28, 2012</b>			<b>Service from Mar 30 to May 02</b>		
Customer Charge		Residential 110 Rate		10.50	
Energy Charge					
First 1,000 kWh		594 kWh @ \$.05533/kWh		32.86	
Above 1,000 kWh		0 kWh @ \$.06533/kWh		0.00	
Fuel Charge					
First 1,000 kWh		594 kWh @ \$.03840/kWh		22.81	
Above 1,000 kWh		0 kWh @ \$.04840/kWh		0.00	
<b>Electric Service Cost</b>				<b>\$66.17</b>	
Florida Gross Receipts Tax		Based on \$66.17		1.70	
Franchise Fee		Based on 6.550%		4.45	
City Tax				5.30	
<b>This Month's Charges</b>					<b>\$77.62</b>
<i>Amount not paid by due date may be assessed a late charge of 1.5% or \$5.00, whichever is greater.</i>					
Adjustments				9.00	
Late Payment Fee		@ 1.5% On \$957.78		14.37	
<b>Total Miscellaneous Charges</b>					<b>\$23.37</b>
<b>Total Due</b>					<b>\$1,058.77</b>

**FINAL NOTICE**

0261 0231564  
MCDONALD EDWARD  
7203 41 ST N  
TAMPA FL 33604-2425

401903  
Total Amount Due \$1,058.77  
Statement Date  
May 29, 2012

To avoid having your electric service interrupted, full payment of **\$1,058.77** is due by **June 07, 2012**. This balance is not eligible for a payment arrangement to extend the due date. If you have already paid this balance, thank you.

If payment is not received, your service will be scheduled for interruption. A reconnect fee of \$50.00 or \$140.00 will be billed to your account depending on which method was used to interrupt your service.

You can pay your final notice bill online at [tampaelectric.com](http://tampaelectric.com). If you pay at a payment agent, please allow three business days for the payment to post.

Payments received may be applied to any unpaid deposit billing due on this account. Please note, the due date on any new bill you receive will not extend this final notice amount or due date.

Mail Payment To:  
P.O. Box 31318  
Tampa, FL 33631-3318

4671-11649 11649-1C49



MCDONALD EDWARD  
7203 N 41ST ST  
TAMPA FL 33604-2425



Account No.  
0261 0231564

Past due Amount  
\$957.78  
*Pay now to avoid disconnection*

New Charges  
\$100.99  
**Payable by May 28**

**Total Bill Amount**  
**\$1,058.77**

## June Billing Information:

716628

**5**MCDONALD EDWARD  
7203 41 ST N  
TAMPA FL 33604-2425Account Number  
0261 0231564Statement Date  
Jun 05, 2012Visit our  
Web site at  
[tampaelectric.com](http://tampaelectric.com)  
6771-11682

tampaelectric.com

**Average kWh per day**

Jun 2012	42
May	18
Apr	21
Mar	20
Feb	33
Jan	22
Dec	18
Nov	25
Oct	48
Sep	54
Aug	49
Jul	53
Jun 2011	39

**Report a malfunctioning streetlight:**

Tampa Electric's "Lights Out?" form at [tampaelectric.com](http://tampaelectric.com) makes it easy to report a malfunctioning light. Simply answer a few questions, and provide the ID number located on the light pole, or provide the nearest address or landmark. If you prefer to reach us by phone, please call: (813) 223-0800 in Hillsborough, (863) 299-0800 in Polk, or 1-888-223-0800 all other counties.

Meter Number	Current Reading	Previous Reading	Diff.	Multi.	29 day period
B73904	58879	57667	1212	1	
<b>Next Read Date On Or About</b>		Jun 29, 2012	<b>Total kWh Purchased</b>		1,212
<b>Account Activity</b>		<b>Explanation</b>		<b>Charge</b>	<b>Total</b>
Previous Balance				1,058.77	
Payments Received - Thank You		As of June 05, 2012		-86.62	
<b>Total Past Due Amount</b>					<b>\$972.15</b>
<b>New Charges Due by Jun 26, 2012</b>				<b>Service from May 02 to May 31</b>	
Customer Charge		Residential 110 Rate		10.50	
Energy Charge					
First 1,000 kWh		1,000 kWh @ \$.05533/kWh		55.33	
Above 1,000 kWh		212 kWh @ \$.06533/kWh		13.86	
Fuel Charge					
First 1,000 kWh		1,000 kWh @ \$.03840/kWh		38.40	
Above 1,000 kWh		212 kWh @ \$.04840/kWh		10.26	
<b>Electric Service Cost</b>				<b>\$128.35</b>	
Florida Gross Receipts Tax		Based on \$128.35		3.29	
Franchise Fee		Based on 6.550%		8.62	
City Tax				9.87	
<b>This Month's Charges</b>					<b>\$150.13</b>
<i>Amount not paid by due date may be assessed a late charge of 1.5% or \$5.00, whichever is greater.</i>					
Late Payment Fee		@ 1.5% On \$972.15		14.58	
<b>Total Miscellaneous Charges</b>					<b>\$14.58</b>
<b>Total Due</b>					<b>\$1,136.86</b>

To ensure prompt credit, please return stub portion of this bill with your payment. Make check payable to Tampa Electric.

716628

Account No.  
0261 0231564Past due Amount  
\$972.15  
*Pay now to avoid disconnection*New Charges  
\$164.71  
Payable by Jun 26Total Bill Amount  
\$1,136.86Mail Payment To:  
P.O. Box 31318  
Tampa, FL 33631-3318

6771-11682 11682-1042

MCDONALD EDWARD  
7203 N 41ST ST  
TAMPA FL 33604-2425

PSC #1006767E



May 25, 2011

Mr. Edward McDonald  
7203 41 St N  
Tampa, FL 33604

Dear Mr. McDonald,

Re: 4010 Pocahontas Av E

1. Provide a DETAILED BILLING for \$915.94 & \$307.49.
2. Bankruptcy Court Records show TECO never filed a claim as a creditor. Service at 4010 E. Pocahontas was disconnected on January 21, 2005 (FPSC Complaint #648071E)=90 days before a bankruptcy filing and AFTER all bills from Pocahontas were transferred to 7203 N. 40th St. and PAID! TECO'S PROFFER OF DELAYED BILLING FOR 6-7 YEARS DUE TO BANKRUPTCY COURT PROCEEDINGS IS DISINGENUOUS! (Emphasis).
3. TPD Case # 05-900246 is a COMPLAINT! NONE OF THE ALLEGATIONS WERE SUBSTANTIATED and NO CHARGES WERE filed! PROVIDE PROOF FUNDS WERE ACCESSED FRAUDULENTLY OR RETURN MY \$3,500.00!
4. The "current diversion court case" ... in 2005 ... was dismissed. TECO OWES ME \$5,000.00 FOR THE COST OF DEFENDING MYSELF AGAINST TECO'S FALSE ALLEGATIONS OF CRIMINAL ACTS AGAINST THE COMPANY.  
Edward McDonald May 31, 2011

6

no funds at...

We are writing you today, in an effort to provide clarification regarding the above mentioned account, as per your request. In reviewing our records, we have determined the following:

- The disputed bill of \$915.94 represents usage solely from 4010 Pocahontas Av E.
- Records indicate TEC received several bankruptcy filings for yourself:  
Case# 05-7483 filed 4/19/2005 was dismissed 5/5/05  
Case# 05-11534 filed 6/8/2005 was dismissed 6/27/05  
Case# 05-15311 filed 8/3/05 was dismissed 12/7/05
- Records reflect you were charged with current diversion TEC Case# 05-0176 in 2005 - maybe, this is why you feel you were previously made payment?
- The payment amount of \$3,500 mentioned in faxed documentation, you provided, in your current complaint was returned as Bank of America reversed payment due to funds being accessed fraudulently (TPD Case#05-900246).

Tampa Electric delayed approaching you with the debt due to the bankruptcy filings. We have since verified all the above bankruptcy cases have now been dismissed. Please let us know if your records reflect otherwise. Additionally, our records reflect an outstanding balance of \$307.49 from the current diversion court case in 2005. A copy of the disputed bill is enclosed. We hope that this information, clarifies why Tampa Electric is holding you responsible for this debt. We are willing to make payment arrangements on the outstanding amounts. Please do not hesitate to contact me, should you have any additional questions regarding this debt or payment arrangements. I can be reached at 813-275-3952.

Sincerely,

*Ms. Drummond*

Ms. Drummond  
Corporate Credit

ORIGINAL

were made on this account to re-establish the new account (1501-000031-4) resulting in a credit balance of \$458.15, which was transferred on 7/8/2004.

**B) If there was a balance, what account was the balance transferred to?**

See question A's response

**3) On 07/06/04, account 1501-000031-4 was assessed a \$50.00 Tampering fee. Please provide explanation of this fee.**

A tampering fee of \$50 was charged when it was discovered the meter had been reconnected by someone other than TEC (service disconnected on June 1, 2004).

**4) Why was account 1501-000031-4 closed?**

Account # 1501-0000314 was closed when Mr. McDonald filed bankruptcy case # 04-01742. We are required to cease the billing on the Customer's account at the time of the bankruptcy filing and start new billing.

**5) Account 1501-000031-5 was established on 07/29/04 "after filing BNKCY". Please explain.**

As per bankruptcy requirements – account # 1501-0000315 was established under Mr. McDonald's name as new billing. Debts owed prior to the bankruptcy filing date are protected. Current laws allow Debtors to get a fresh start by starting accounts over again financially.

**6) A credit balance of \$551.81, created by the second \$500.00 payment on 11/04/04, was transferred on 11/08/04 to "7418 Lakeshore Dr 01610247831". Please explain if this address corresponds to another account in Mr. McDonald's name.**

A credit balance of \$551.81 was requested by Mr. McDonald to be transferred to the address on Lakeshore Dr. This account was not in Mr. McDonald's name but records show Mr. McDonald made a similar request on December 6, 2004 to transfer \$410.55 to the same address on Lakeshore.

**7) Account 1501-000031-5's billing for 11/17/04 was corrected on 12/20/04, from a credit balance of \$30.46 to a credit balance of \$3,089.45. Please provide an explanation of this balance adjustment.**

The credit balance of \$3,089.45 was due to a total of nine payments (\$500 each payment) being received between 11/4/04 and 12/9/04. (Please note all payments were returned on 1/20/05)

no reference to Bank recalling funds



8.1

A COMPLAINT BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

JURISDICTION: The FPSC has jurisdiction of the parties and subject matter because the ISSUE IS ERRONEOUS BILLING by a regulated Public Utility

COMPLAINT:

TAMPA ELECTRIC COMPANY owes Edward McDonald \$3,500.00 for an overpayment on account # 15010000315 and refuses to refund the \$2500.00 overpayment.

In support of this complaint, Edward McDonald (customer) asserts the following facts.

Edward McDonald OVERPAID TECO \$3,500.00.

1. The consumer had lawful authority to access the funds used for payment.
2. The \$3500.00 payments CLEARED Bank of America and were POSTED TO ACCT. # 15010000315.
3. NO LAW ENFORCEMENT AGENCY HAS DETERMINED THE FUNDS TO <sup>BE</sup> ACCESSED FRAUDULENTLY.
4. NO COURT OF LAW HAS DETERMINED THE \$3500.00 TO BE FRAUDULENTLY ACCESSED.
5. There is no document, transmittal or instrument whether memoranda or electronic which "reverses payment" - and if reversed, by what authority corporate operating rule(s), state or Federal Law=statutory or administrative.
6. THERE IS NO RECORD OF "INSUFFICIENT FUNDS" and charges therefor.
7. NO ONE ELSE HAD THE AUTHORITY TO ACCESS THE FUNDS USED TO PAY TECO.

All documents referenced herein have been furnished TECO and they are being forwarded a copy of this complaint. THERE HAS BEEN NO RESPONSE TO THE SEVEN FACTS LISTED HEREIN AND NO RULING ON THE ISSUES IN THIS COMPLAINT.

Edward McDonald  
Edward McDonald  
7203 N. 41st St.  
Tampa, Fl 33604-2425  
(813) 374-3837

Copy  
TECO  
Julie Goddard

5/20/05 Mr. McDonald called re case status - advised that he needed to speak with analyst, who was unavailable at time of call. He declined to go to analyst's VM; asks for a return call & requested that info be sent by email re his alternate CBR # 813-985-3512 and his cellphone # 813-451-1435. EMail this info JAnderson. LKAlford

*8*

05/23/05 - Attempted to contact customer. Left a message for the customer to return my call. janderson  
05-23-05 Customer transfer to Joy's VM. PW

05/24/05 - Reviewed report. According to the company's report, on 01/11/05, Edward McDonald contacted the Customer Care Center in regards to 4010 Pocahontas Av E. The account had a credit balance of \$2,854.54 and Mr. McDonald was requesting that the overpayment be refunded to him. Ms. Drummond, Corporate Credit, was contacted by Customer Care to ask for approval of refund. Ms. Drummond requested that proof of payments, made to the company be verified through Bank of America, reflecting that the monies had cleared the bank, prior to issuing refund. The Customer Service Professional advised Mr. McDonald of the requirements before issuing refund and the call ended.

*no finding of fraudulent access  
no statement of Bank recalling Funds*

On 01/13/05, the Customer Care Center received a call from a Julie Goddard, State of Florida appointed - Guardian Ad Litem for Lillie Mae McDonald. Ms. Goddard was referred to Ms. Drummond. Ms. Goddard advised Ms. Drummond of fraud charges currently being pursued by the State against Mr. McDonald for illegally accessing Lillie Mae McDonald's Bank of America checking account in an effort to gain funds from the company, Verizon, and Brighthouse Networks in a scheme to defraud. Ms. Goddard stated that Bank of America was aware of the situation and that the overpayment that was made to the company would be returned, as they would be reversing the payments to the company. A Tampa Police Department Case #05-900246 was given for additional information.

Between 01/13/05 and 01/20/05, numerous telephone calls were received by Ms. Drummond from Mr. McDonald. These calls were in regards to the decision not refund monies. Per Mr. McDonald, the company was acting against Florida Law by not issuing a refund.

On 01/20/05, total payments of \$3,500.00 were returned as fraudulent payments from Bank of America through SpeedPay, the company's third party vendor.

On 01/21/05, service at 4010 Pocahontas Av E was disconnected for fraudulent payments.

On 02/01/05, Mr. McDonald was arrested for theft of electricity at the Pocahontas address. Ms. Drummond was contacted by Officer Micki Mashburn at Tampa Police Department, Department of Elder Affairs, and was advised that several issues regarding Mr. McDonald are currently under investigation including falsifying documents, using a fictitious Power of Attorney, and accessing funds using an altered check. Officer Mashburn further indicated that electric service should not be re-instated under Lillie Mae McDonald's name as Department of Elder Affairs had enough documentation to send through a request for prosecution. Officer Mashburn also

Request No. 0648071E Name MCDONALD, LILLIE MAE MS Business Name \_\_\_\_\_

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

EDWARD MCDONALD, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 TAMPA ELECTRIC COMPANY, )  
 )  
 Respondent. )

DOCKET NO. 110305-EI

8.3

MOTION FOR CONTINUANCE  
REQUEST FOR DISCOVERY

Petitioner, Edward McDonald, moves for a continuance in these proceedings.

The motion to DISMISS Petition To Initiate Formal Proceedings was filed May 10, 2012; received by petitioner on May 14 and scheduled for hearing on May 22, 2012. The time from receipt of the motion to the date of hearing is 8 days! THIS IS INSUFFICIENT NOTICE FOR THE PETITIONER TO (1) request permission to prepare a response and if permission is granted to (2) file a proffer supporting his petition asserting his substantial interest meritan evidentiary hearing pursuant to Chapter 120 Florida Statutes.

The record in this case does not support the findings presented in the General Counsels motion.

TECO AND FPSC staff offer no rebuttal to allegations they violated Federal Law. THE TOTALITY OF PETITIONERS PLEADINGS INCLUDE CITATIONS OF F.A.C. RULES AND FEDERAL STATUES; thus stating a cause of action!

Pursuant, to Federal Law, THE FAIR DEBT COLLECTION PRACTICES ACT, the petitioner is entitled to verification of debt; accordingly TECO and FPSC staff are commanded to produce DOCUMENTS IN THE RECORD WHICH:

- 1.) Show month by month billing of accounts 1501-000031-4 & 1501-000031=5 from July 2004 to February 2005. COPIES OF ACTUAL MONTHLY BILLINGS
- 2.) "bank recalled \$3,500.00 that Mr. McDonald made in overpayment to TECO." COPY OF BANK TRANSMITTALS.
- 3.) copy of statute which releases TECO from liability when they return payments that have been posted.
- 4.) Document affirming Julie Goddards authority RE: Lillie Mae McDonald
- 5.) Petition must be "FILED" by the close of business on Feb. 12, 2012.

FOR REASONS STATED HEREIN, THE COMMISSION SHOULD CONTINUE THIS PROCEEDING UNTIL TECO AND FPSC STAFF PRESENT DOCUMENTS REQUESTED ABOVE.

~~DISMISSING~~ A REQUEST FOR FORMAL PROCEEDINGS BASED ON A "THOROUGH INVESTIGATION" WHOSE CONCLUSIONS ARE NOT SUPPORTED BY THE RECORD IS A DENIAL OF DUE PROCESS. 8.4

A F F I D A V I T

Under penalty of perjury, the affiant, to the best of his knowledge and belief, swears the following to be true. This affidavit is filed in response to a memorandum by FPSC counsel to the FPSC recommending affiant's PETITION FOR INITIATION OF FORMAL PROCEEDINGS BE DISMISSED.

1. I have reviewed every document submitted in this action.
2. THERE IS NO RECORD FROM BANK OF AMERICA RECALLING \$3500 paid by the affiant' to TECO.
3. I have contacted Bank of America and they have no record showing Julie Goddard had Authority to exercise custody and control of funds belonging to Lillie Mae McDonald in December 2004 nad January 2005. THIS CASE CONTAINS NO VERIFICATION OF HER AUTHORITY.
4. TECO ACCEPTED GODDARD'S CLAIM OF "GUARDIANSHIP". THE RECORD CONFIRMS TECO'S ACCEPTANCE OF HER AUTHORITY WITHOUT OFFICIAL CONFIRMATION.
5. .The record does not contain a month by month accounting for charges in account 1501-000031-5 fzom July 27, 2004 to February 1, 2005 nor does it show a month by month accounting for charges in account 1501-000031-4 for the same period. (allegedly two different accounts)
6. The record shows that account 1501 000031-5 had a credit balance of \$2,854,54 on December 23, 2004 - 3 times the amount needed to pay \$915.94 allegedly owed in account 1501-000031-4.

FURTHER SAYETH THE AFFIANT NAUGHT.

  
Edward McDonald

May 21, 2012

Addendum,  
Supplemental Authority

This case is not a bar to  
The statute of limitations (F.S. 95)

8.5

Westlaw.

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see page 3. The issue in this matter is a Billing Dispute - civil in nature, ultimately subject to judicial review. It was not based on an Administrative ruling.

C

District Court of Appeal of Florida,  
Second District.  
SARASOTA COUNTY, a political subdivision of  
the State of Florida, Petitioner,  
v.  
NATIONAL CITY BANK OF CLEVELAND,  
OHIO, as Trustee of the Dorothy F. Hinchcliff  
Trust, Respondent.

No. 2D04-3297.  
May 13, 2005.

\*233 Jorge L. Fernandez, County Attorney, and  
Elizabeth M. Woodford, Assistant County Attor-  
ney, Sarasota, for Petitioner.

Alan M. Oravec of Judd, Shea, Ulrich, Oravec,  
Wood & Dean, P.A., Sarasota, for Respondent.

**Background:** County filed petition for writ of cer-  
tiorari, seeking review of a decision of the Twelfth  
Judicial Circuit Court, Sarasota County, sitting in  
its appellate capacity, that found that county's ad-  
ministrative enforcement proceeding against owner  
of house to which improper improvements were al-  
legedly made was barred by four-year statute of  
limitations for actions based on improvements to  
real property.

**Holding:** The District Court of Appeal, Altenbernd,  
C.J., held that statute of limitations did not apply to  
county's administrative enforcement proceeding.  
Petition granted.

ALTENBERND, Chief Judge.

Sarasota County ("the County") seeks certiorari  
review of an opinion issued by the circuit court sit-  
ting in its appellate capacity. The circuit court ap-  
plied a statute of limitations to bar a code enforce-  
ment proceeding commenced pursuant to part I of  
chapter 162, Florida Statutes (2001), which is en-  
titled the "Local Government Code Enforcement  
Boards Act." See § 162.01-13, Fla. Stat. (2001).  
We grant relief, holding that section 95.11(3)(c),  
Florida Statutes (2001), has no application to such  
administrative enforcement proceedings. We are in-  
clined to believe that all of chapter 95 has no ap-  
plication to such administrative proceedings. We  
decline to determine, at this time, whether such pro-  
ceedings in specific cases could be barred by some  
legal theory based on unreasonable delay within the  
enforcement process.

West Headnotes

Counties 104 ↪ 21.5

104 Counties  
104II Government  
104II(A) Organization and Powers in Gener-  
al  
104k21.5 k. Governmental Powers in  
General. Most Cited Cases

Four-year statute of limitations for actions  
"founded on the design, planning, or construction  
of an improvement to real property" did not apply  
to county's administrative enforcement proceeding  
against owner of property to which unpermitted im-  
provements were allegedly made; statute was not

National City is trustee of the Dorothy F.  
Hinchcliff Trust. The Trust owns property at 4510  
Higel Avenue in Sarasota County, which is near the  
Gulf of Mexico. Ms. Hinchcliff purchased the prop-  
erty in 1996, placed the property in a trust, and died  
in 1998. The property includes a single-family res-  
idence that was constructed in 1980. Ms. Hinch-  
cliff's grandson and his daughters have lived in this  
home since 1999.

8.16

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\*234 When the house was built in 1980, the Federal Emergency Management Act Flood Insurance Rate Map placed the house in zone A-12, requiring a base flood elevation of eleven feet. As a result, at the time of construction, the ground level of the house could not be used for human occupancy.

Sometime between 1980 and 1990, a prior owner of the property renovated the home, allegedly without obtaining a building permit, to add wallboard, electrical outlets, carpet, and air conditioning on the ground level. In 1990, the prior owner renovated the garage for use as an office and redesigned the stairs leading to the main floor of the house. A building permit was issued for the renovation of the stairs, and this construction was inspected by two County building inspectors. The County has taxed at least some of the unpermitted improvements to the ground level as habitable areas since 1991.

In 2001, the County commenced a code enforcement proceeding against National City pursuant to a local ordinance and part I of chapter 162, alleging that both the absence of a building permit for the construction between 1980 and 1990, and the construction of habitable space within the flood zone violated the Sarasota County Code. A special master conducted the administrative hearing pursuant to the Code.<sup>FN1</sup> The special master entered an order containing the preceding findings of fact. The special master concluded that the County had established the two violations and that the statute of limitations contained in section 95.11(3)(c) did not bar the County's enforcement action. Section 95.11(3)(c) provides that "[a]n action founded on the design, planning, or construction of an improvement to real property" must be commenced within four years, "with the time running from the date of actual possession by the owner." The special master based this conclusion on the fact that Ms. Hinchcliff's grandson and his daughters had resided in the house for less than four years at the time the County initiated its action, and thus, it had not been

four years "from the date of actual possession by the owner."

FN1. See Sarasota County Code § 2-342, *et seq.*

The circuit court reviewed this final administrative order of a local government code enforcement board,<sup>FN2</sup> and reversed the special master. The circuit court agreed with the special master that the statute of limitations in section 95.11 applied to the case but concluded that the period of limitations began in the early 1990s when the County knew about the violations. The circuit court relied extensively upon another circuit court decision, *Latorre v. Monroe County*, No. 96-1109-CA-25, 2000 WL 34509018 (Fla. 16th Cir. Oct. 6, 2000).

FN2. See § 26.012(1), Fla. Stat. (2004)

The *Latorre* decision is admittedly very similar to this case. The circuit court judge who wrote that decision obviously spent considerable time and effort on the opinion. Nevertheless, we conclude that the *Latorre* decision erroneously equated an administrative proceeding with a civil action.

Chapter 95 applies to civil actions or proceedings. § 95.011, Fla. Stat. (2001). We have previously held that the statutes of limitation in chapter 95 do not apply to administrative license revocation proceedings. See *Landes v. Dep't of Prof'l Reg.*, 441 So.2d 686 (Fla. 2d DCA 1983). Nothing in section 95.11(3)(c) suggests that the legislature intended it to apply to quasi-judicial proceedings initiated pursuant to any administrative law, and we are inclined to conclude the same as to all of chapter 95. Enforcement proceedings \*235 brought under part I of chapter 162 are administrative actions that simply are not subject to the statute of limitations provided in section 95.11(3)(c). As a result, both the special master and the circuit court clearly applied the wrong law in deciding this case.

It is noteworthy that chapter 162 is divided into two parts, both of which authorize proceedings for

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code enforcement. Part I applies in this case and authorizes a county or municipality to adopt a code enforcement system that is administrative in nature, where administrative hearings are heard before special masters, and administrative penalties may be imposed. Part II provides for a supplemental method of enforcement which is clearly civil in nature and is enforced within the judicial system. There does not appear to be any provision that could serve as a statute of limitations for an enforcement proceeding initiated under part I of chapter 162. Presumably, a lawsuit filed under part II of chapter 162 is subject to statutes of limitation contained in chapter 95.

It is disconcerting to consider that the outcome of such an enforcement action could be determined merely by the choice of forum, administrative or judicial. As a result, we comment on two issues that have not yet been resolved in this case. First, we do not rule out the possibility that an administrative enforcement proceeding could be barred by some legal theory relating to delayed enforcement. The record in this proceeding does not allow us to determine whether some theory of laches, estoppel, or due process might bar an enforcement proceeding. We note that the relevant Sarasota Code provision was apparently enacted after these conditions were in existence, but no one suggests that the violations are "grandfathered" under any provision, or that retroactivity plays any part in these proceedings.

Likewise, we are not called upon to resolve any issue arising out of the continuing nature of these types of violations. Many building and safety code violations are continuing conditions. We would not expect a county to bring an enforcement proceeding against a property owner concerning a defective staircase that the owner had properly repaired years ago. Instead, the county might be expected to bring an enforcement action for a defective staircase that currently was defective and had been defective for many years. From a health and safety standpoint, local governments normally bring enforcement proceedings to cause landowners to correct existing

conditions before they result in harm.

In this administrative proceeding, for example, Sarasota County maintains that the Trust's house has habitable areas that are only 5 1/2 feet above sea level and that the house contains electrical outlets and air conditioning work that does not comply with code. It further maintains that the house is missing a load-bearing post in the old garage area. These violations are past actions undertaken by a prior owner that may have occurred even prior to the adoption of the relevant ordinance, yet the dangerous conditions still exist today and still pose a threat to human safety. Thus, the difficult legal issue that remains unresolved by this opinion is when, and under what circumstances, may a local government seek administrative enforcement for code violations of long-standing duration.

We grant the County's petition for writ of certiorari, quash the circuit court's order reversing the special master, and remand to the circuit court. We note that the decision in *Latorre* discusses concepts similar to laches and estoppel and that the special master rejected all of these arguments\*236 based on the date that the Hinchcliff grandchildren occupied the house. Thus, it would not be improper for the circuit court to reverse and remand this case to the special master to further consider issues, other than the statute of limitations under chapter 95, that might bar enforcement proceedings in this case.

Petition for writ of certiorari granted.

FULMER, J., and THREADGILL, EDWARD F.,  
Senior Judge, Concur.

Fla.App. 2 Dist., 2005.

Sarasota County v. National City Bank of Cleveland, Ohio

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