State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: November 21, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, Senior Attorney, Office of the General Counsel MD

RE: Docket No. 20180142-WS - Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.

Please place the attached email correspondence in the Documents section of the docket file for Docket No. 20180142-WS. Please let me know if you have any questions.

Margo DuVal

From: Richard A. Harrison <rah@harrisonpa.com>
Sent: Wednesday, June 27, 2018 4:41 PM
To: Margo DuVal; 'Linda Pestano'; 'bruce.may@hklaw.com'; 'jennifer.gillis@hklaw.com'; Allen Bobo; Jody B. Gabel; 'christensen.patty@leg.state.fl.us'; JR Kelly
Cc: Daniela N. Leavitt; Lisa Ferrara; Richard A. Harrison
Subject: RE: Palm Tree Acres Mobile Home Park

Ms. DuVal et al.,

Thank you for allowing us time to respond to the most recent communications from the Park and its counsel concerning this matter. The letter of June 6 from Mr. Bobo continues the pattern established in the prior letters of April 9 and April 30 from Mr. May of utterly distorting and misrepresenting the law in an effort to now avoid what is apparent to everyone: that the Park has for the past 30 years or more been operating an unlicensed and unregulated utility. This of course led to the Commission's Notice of Apparent Violation dated March 8, 2018, which the Park and its counsel desperately seek to avoid.

Frankly, the ever-shifting arguments advanced by the Park and its counsel have evolved from just plain wrong to utterly ridiculous. They continue to distort both the facts and the law in an attempt to retroactively justify their failure to submit to PSC jurisdiction for their long operating utility. As is clear and not disputed, the only possible exemption that would take the Park outside of the Commission's jurisdiction is the landlord-tenant exemption in F.S. §367.022(5). By its express terms, that exemption applies to "landlords providing service to their tenants without specific compensation."

The fundamental and obvious flaw in the Park's claim to the landlord-tenant exemption is that my clients own their lots in fee simple. This simple fact is undisputed. It is also fatal to the Park's claim that the exemption applies. Nobody can seriously argue that my clients are "tenants" of the Park when my clients own their own lots.

Now, the Park contends that the common understanding and legal definition of a landlord-tenant relationship under Ch. 83 (residential tenancies) should not be the basis upon which the landlord-tenant exemption from regulation rests. They contend further that the Mobile Home Act, Ch. 723, somehow makes my fee owner clients "tenants" under that Act. Again, they are plainly wrong.

The Act recognizes and defines two types of entities: a mobile home park and a mobile home subdivision. These are defined in F.S. § 723.003(12) and (14), respectively, as follows:

(12) "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

(14) "Mobile home subdivision" means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

Notably, the Act does not recognize, much less define, any "hybrid" type of operation such as exists in this Park: a total of about 244 lots of which about 10% of them are owned in fee by individual owners (my clients) and the remainder are owned by the Park and operated as rental lots. According to the sworn testimony of the Park owner, Mr. Goss, the Park is a mobile home park and not a mobile home subdivision. This is consistent with its licensure by DBPR as a mobile home park: https://www.myfloridalicense.com/LicenseDetail.asp?SID=&id=2C34059048714EA7BC1A1640D8ED5C32. The Park cites no authority for its apparent claim that it is a mobile home subdivision simply because a handful of the lots interspersed throughout the Park are owned by individual lot owners.

The convoluted legal argument set out in Mr. May's letter of April 30 seeks to convince you that there is a landlord-tenant relationship here because my lot owner clients "rent access to common elements." (May letter of April 30, p. 3) He contends that F.S. § 723.058 "recognizes that a 'tenancy' can exist between a 'mobile home subdivision developer' and the 'owner of a lot in a mobile home subdivision.'" But the Park is not a "mobile home subdivision" and its owners are not a "mobile home subdivision developer." That aside, the cited statute does not establish any landlord-tenant relationship; it merely places certain restrictions on the sale of mobile homes: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0723/Sections/0723.058.html

He then claims that F.S. § 723.0751 "recognizes that a lot owner tenant can rent access to 'common areas, recreational facilities, roads, and other amenities . . . in a mobile home park.'" Presumably, he is referring to F.S. § 723.0751(3), which deals with mobile home subdivision homeowners' associations. That section provides as follows:

(3) In the event that the owners of lots in a mobile home subdivision share common areas, recreational facilities, roads, and other amenities with the owners of mobile homes in a mobile home park and the mobile home owners have created a mobile home owners' association pursuant to ss. 723.075-723.079, said mobile home owners' association shall be the authorized representative of owners of lots in said mobile home subdivision provided:

(a) The members of the mobile home owners' association have, by majority vote, authorized the inclusion of subdivision lot owners in the mobile home park homeowners' association; and

(b) The owners of lots in the mobile home subdivision are entitled to vote only on matters that effect their rights contained in ss. 723.002(2) and 723.074.

Far from recognizing any landlord-tenant relationship, that section merely recognizes that a mobile home park and a mobile home subdivision may "share" such things common areas, roads, etc. Driving across a common road or sharing a clubhouse does not create a landlord-tenant relationship, and nothing in this section provides that it does.

It is only by torturing the statutes that Mr. May can get to his conclusion that "the owners of Palm Tree, as park owners and mobile home subdivision developers, are landlords, and the mobile home lot owners are tenants under Chapter 723."

More importantly, this entire argument is expressly precluded by the statutory statement of what Ch. 723 does apply to – a section of the statute that Mr. May has notably omitted from his correspondence to you. F.S. § 723.002 sets out the applicability of Ch. 723. Subsection (1) provides, in pertinent part, as follows:

723.002 Application of chapter.–

(1) The provisions of this chapter apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease. This chapter shall not be construed to apply to any other tenancy, ...

The Park's argument doesn't survive the first two sentences of the statute. My clients' mobile homes are not placed upon "a rented or leased lot" because my clients own their lots in fee simple. Period. "This chapter shall not be construed to apply to any other tenancy." Period. There is no landlord-tenant relationship under Ch. 723.

Because there can be no landlord-tenant relationship here as to the lots owned by my clients, the Park then attempts to convince you that my clients are "rent access to various parts of the Park's premises, including its water and wastewater facilities . . . ." (May letter of April 9, p.2) Please consider the sheer absurdity of this statement. Do I "rent" TECO's powerlines because I pay them for my home electric service? Do I "rent" Hillsborough County's water and sewer lines because they provide my home with those utilities? Of course not. The utilities own (and by law must own) the infrastructure that they operate. What I pay for as an end user or consumer is the utility service being provided. There is no landlord-tenant relationship there.

In Mr. Bobo's letter of June 6, he cites the Black's Law Dictionary of "landlord" as somehow supporting the Park's position that the exemption should apply. But even that definition requires "an estate in land, or a rental property" that has been "leased to another person." My clients do not lease the lots (because they own them) and do not lease the Park's utility infrastructure (because that is absurd).

Moreover, the Park's argument ignores the fundamental nature of a "tenancy," which is the right of exclusive possession of the real property of someone else. A tenant of an

apartment has the right to occupy and possess the unit and to exclude others from possession. A tenancy is an interest in real property and is distinct from the concept of a license, which is merely the non-exclusive right to use the real property of another person for a specific purpose – the classic example being a movie ticket that allows the patron to use the theater for the purpose of watching the movie, but does not convey any interest in the movie property. Indeed, Black's defines "tenancy" as ". . . an interest in realty which passes to the tenant and a possession exclusive even of that of landlord . . . Possession or occupancy of land or tenements under lease." My clients neither "possess" nor "occupy" the Park's water and sewer facilities.

The Park admits that it has historically charged my clients for water and wastewater service. In Mr. May's letter of April 9, he states that my clients "pay a lower fixed monthly rent that covers the value of access to and use of other facilities on the Park's premises, including water and wastewater facilities . . . ." Simply calling it rent does not create a landlord-tenant relationship where Ch. 723 precludes one. And claiming that my clients are paying for "access to and use of" the water and wastewater facilities again grossly mischaracterizes the nature of the utility-user relationship. My clients do not "access" or "use" the pipes and pumps, they pay for potable water to be delivered to them and for wastewater to be carried away. They pay for these services which are provided by a utility.

There is no reason for the PSC to expand the scope of the landlord-tenant exemption beyond the traditional residential tenancies contemplated by Ch. 83, Florida Statutes. But even if the PSC chose to broaden the scope of the exemption, there is no "landlord-tenant" relationship between my clients and the Park either under Ch. 723 or any other theory advanced by the Park.

The Park has never waived its claims to damages from my clients for unpaid water and sewer fees. It has never stated that it will no longer charge for water and sewer service. It maintains it position that it will only provide water and sewer service to my clients as part of a "bundle" of services including the other amenities – not that it will provide water and sewer for free. None of that matters in terms of the PSC's jurisdiction, because there are no grounds for the landlord-tenant exemption to apply in the context of utility services furnished to my lot owner clients.

It is now almost 4 months since the PSC's Notice of Apparent violation issued on March 8. The litigation by letter writing campaign needs to be over, and the PSC needs to enforce the law and regulations entrusted solely to it. If the Park wants to continue to advance these tenuous legal arguments, then it should be compelled to so in the context of a regulatory proceeding with attendant rules and process. Please act now on the Notice of Apparent Violation.

RICHARD A. HARRISON, P.A.
ATTORNEYS AT LAW

Richard A. Harrison
Florida Bar No.: 602493
Board Certified by The Florida Bar in City, County & Local Government Law
400 N. Ashley Drive
Suite 2600
Tampa, FL 33602
rah@harrisonpa.com
Office: 813-712-8757 Ext. 7057
Cell: 813-230-7317
www.harrisonpa.com

From: Margo DuVal [mailto:mduval@psc.state.fl.us]
Sent: Friday, June 22, 2018 2:25 PM
To: Richard A. Harrison; 'Linda Pestano'; 'bruce.may@hklaw.com'; 'jennifer.gillis@hklaw.com'; Allen Bobo; Jody B. Gabel; 'christensen.patty@leg.state.fl.us'; JR Kelly
Cc: 'nschwob39@gmail.com'; Daniela N. Leavitt; Lisa Ferrara
Subject: RE: Palm Tree Acres Mobile Home Park

June 27th is fine. Thank you and have a great weekend.

Margo

From: Richard A. Harrison [mailto:rah@harrisonpa.com]
Sent: Friday, June 22, 2018 2:10 PM
To: Margo DuVal; 'Linda Pestano'; 'bruce.may@hklaw.com'; 'jennifer.gillis@hklaw.com'; Allen Bobo; Jody B. Gabel; 'christensen.patty@leg.state.fl.us'; JR Kelly
Cc: 'nschwob39@gmail.com'; Daniela N. Leavitt; Lisa Ferrara; Richard A. Harrison
Subject: RE: Palm Tree Acres Mobile Home Park

Due to other pressing matters, I would like until next Wednesday, June 27, to address the recent correspondence. Thank you.

RICHARD A. HARRISON, P.A.
ATTORNEYS AT LAW

Richard A. Harrison
Florida Bar No.: 602493
Board Certified by The Florida Bar in City, County & Local Government Law
400 N. Ashley Drive
Suite 2600
Tampa, FL 33602
rah@harrisonpa.com
Office: 813-712-8757 Ext. 7057

Cell: 813-230-7317
www.harrisonpa.com

From: Margo DuVal [mailto:mduval@psc.state.fl.us]
Sent: Tuesday, June 12, 2018 3:15 PM
To: Richard A. Harrison; 'Linda Pestano'; 'bruce.may@hklaw.com'; 'jennifer.gillis@hklaw.com'; Allen Bobo; Jody B. Gabel; 'christensen.patty@leg.state.fl.us'; JR Kelly
Cc: 'nschwob39@gmail.com'; Daniela N. Leavitt; Lisa Ferrara
Subject: RE: Palm Tree Acres Mobile Home Park

Good afternoon,

Yes, that would be fine. But, just to clarify, do you mean no later than Friday, June 22nd?

Thanks,

Margo

Margo A. DuVal
Senior Attorney
Regulatory Analysis Section
Office of the General Counsel
FLORIDA PUBLIC SERVICE COMMISSION
Phone: 850-413-6076
Fax: 850-413-6077
Email: mduval@psc.state.fl.us

From: Richard A. Harrison [mailto:rah@harrisonpa.com]
Sent: Tuesday, June 12, 2018 2:12 PM
To: 'Linda Pestano'; Margo DuVal; Katheryn White; 'bruce.may@hklaw.com'; 'jennifer.gillis@hklaw.com'; Allen Bobo; Jody B. Gabel; 'christensen.patty@leg.state.fl.us'; JR Kelly
Cc: Richard A. Harrison; 'nschwob39@gmail.com'; Daniela N. Leavitt; Lisa Ferrara
Subject: RE: Palm Tree Acres Mobile Home Park

Ms. DuVal,

We have reviewed the Park Owners' response dated June 6 to Ms. Duval's letter dated May 21. Remarkably, the Park Owners continue to mis-state facts and misrepresent

the applicable law. We request an opportunity to respond more fully no later than Friday June 24 on this matter as to the specific questions raised by Ms. Duval's letter and the Park Owners' response (I will be out of town the remainder of this week at the Florida Bar annual convention).

However, we can preliminarily report the following:

- The Park Owners say in the most recent response that they are dropping their claim for damages under the implied contract theory for monies they have heretofore alleged are due and owing from the lot owners, but no amended pleading or voluntary dismissal of those claims has yet been made.
- The Park Owners have never told any lot owner, or us as their attorneys, to stop tendering payments nor have they ever refused to accept a check or returned any checks to us or to any lot owner.
- The Park Owners have previously filed unauthorized liens against the property of the lot owners for amounts allegedly due and owing to the Park. To our knowledge, those liens have not been released or satisfied of record. In other words, the Park Owners continue to maintain that they are owed money by the lot owners and to assert liens against the lot owners and their property.
- More recently, the Park Owners replaced the common mailbox to which all mail for all residents had historically been delivered. When the new common mailbox was installed, it denied the lot owners key to an individual mailbox. The Park's own stated basis for this denial, as reflected in the letter from Mr. Bobo attached hereto, is that the lot owners are NOT tenants of the Park. So again, the Park wants to have it both ways: they tell the PSC that the lot owners ARE tenants, but simultaneously deprive them and deny them services that had historically been provided on the basis that they are NOT tenants.

We have much more to say on this, but these few facts should amply demonstrate the Park's continued bad faith and outright misrepresentations to the PSC regarding this matter.

RICHARD A. HARRISON, P.A.
ATTORNEYS AT LAW

Richard A. Harrison
Florida Bar No.: 602493
Board Certified by The Florida Bar in City, County & Local Government Law
400 N. Ashley Drive
Suite 2600
Tampa, FL 33602
rah@harrisonpa.com
Office: 813-712-8757 Ext. 7057
Cell: 813-230-7317
www.harrisonpa.com

From: Linda Pestano [mailto:lpestano@lutzbobo.com]
Sent: Wednesday, June 06, 2018 4:32 PM
To: Margo DuVal; Katheryn White; 'bruce.may@hklaw.com'; 'jennifer.gillis@hklaw.com'; Allen Bobo; Jody B. Gabel; Richard A. Harrison; Lisa Ferrara; Daniela N. Leavitt; 'christensen.patty@leg.state.fl.us'; JR Kelly
Subject: RE: Palm Tree Acres Mobile Home Park

On behalf of Allen Bobo, attached is the response to Ms. DuVal's letter of May 21, 2018.

From: Katheryn White <kwhite@psc.state.fl.us>
Sent: Monday, May 21, 2018 3:20 PM
To: 'bruce.may@hklaw.com' <bruce.may@hklaw.com>; 'jennifer.gillis@hklaw.com' <jennifer.gillis@hklaw.com>; Allen Bobo <jabobo@lutzbobo.com>; Jody B. Gabel <jbgabel@lutzbobo.com>; Linda Pestano <lpestano@lutzbobo.com>; 'rah@harrisonpa.com' <rah@harrisonpa.com>; 'Lisa@harrisonpa.com' <Lisa@harrisonpa.com>; 'dnl@harrisonpa.com' <dnl@harrisonpa.com>; 'christensen.patty@leg.state.fl.us' <christensen.patty@leg.state.fl.us>; JR Kelly <kelly.jr@leg.state.fl.us>; Margo DuVal <mduval@psc.state.fl.us>
Subject: Palm Tree Acres Mobile Home Park

On behalf of Margo A. DuVal, you will find attached a letter regarding Palm Tree Acres Mobile Home Park. The original signed version of this document is forthcoming via Certified Mail and U.S. Mail. If you have any questions or concerns you can contact Margo at 850-413-6076 or mduval@psc.state.fl.us.

Thanks

Katheryn White
Deputy Clerk II
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399
(850) 413-6630
KWhite@psc.state.fl.us