

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
OF COPY

In Re: Revocation by Florida)
Public Service commission of)
Certificates Nos. 451-W and)
382-S Issued to SHADY OAKS)
MOBILE-MODULAR ESTATES, INC.)
in Pasco County, Pursuant to)
Section 367.111(1), F.S.)

DOCKET NO. 930944-WS
FILED:

MOTION FOR EXTENSION OF TIME TO FILE PRE-HEARING
STATEMENT AND FOR CONTINUANCE OF HEARING

COMES NOW the Respondent, SHADY OAKS MOBILE-MODULAR ESTATES, INC. ("Shady Oaks"), by and through its undersigned counsel and requests an extension of time through and including July 1, 1994 in which to file its pre-hearing statements. Shady Oaks asks also for a continuance of the final hearing until after July 18, 1994. In support of the motion Shady Oaks states as follows:

ACK ✓
1. On June 15, 1994, Shady Oaks appeared before Circuit Court Judge Lynn Tepper and argued its motion for extension of time in which to comply with the Contempt Order entered by the Judge on February 18, 1994. (A copy of the Contempt Order is attached hereto as Exhibit "A"). Under the February 18th Order, Shady Oaks had until June 18, 1994, in which to interconnect its wastewater treatment facility to the Pasco County System or, alternatively, in which to sell the utility. At the hearing Judge Tepper granted Shady Oaks an extension of time through and including July 18, 1994 in which to sell the utility. Although

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Judge Tepper has not yet memorialized her ruling in writing, a copy of the proposed order, agreed upon as to form and content between undersigned and DEP counsel, David Thulman, is attached hereto as Exhibit "B".

2. Shady Oaks is making a diligent effort to comply with the terms of Judge Tepper's order directing sale. Counsel has inquired of two companies, Southern States Utilities, Inc. and Utilities, Inc., on behalf of Shady Oaks, both of whom have expressed an interest in purchasing the facility. Counsel has also notified the Shady Oaks Mobile Home Park homeowner's association that the utility must be sold by July 18, 1994, should they have any interest in acquiring the same. The undersigned has been authorized to approach a third company, U.S.A. Utilities, Inc., to see if it has any interest in purchasing the utility.

3. If Shady Oaks is successful in selling the facility by July 18, 1994, this action will become moot. If, on the other hand, Shady Oaks does not complete the sale as directed it is anticipated that a receiver will be appointed in accordance with the terms of the February 18th order. Again, however, this action will become moot.

4. Because this action will likely be mooted, whether by private sale or through receivership of the utility, it is in the interests of justice and judicial economy to post-pone the final hearing in this matter until after the July 18, 1994 deadline set by Judge Tepper in the Circuit Court action.

5. Shady Oaks agrees to file a status report in this action by July 21, 1994 representing the state of the Circuit Court action.

6. Shady Oaks respectfully submits that it will not be prejudicial under these circumstances if it is also permitted an extension of time until July 1, 1994 in which to file its pre-hearing statement. The June 17, 1994, deadline for submission of the pre-hearing statement was missed through inadvertence and miscommunication or misunderstanding between Shady Oaks and the undersigned attorneys. Counsel were retained on May 11, 1994 to represent Shady Oaks in its efforts to comply with the Circuit Court's February Contempt Order. In this regard representation was expressly limited to matters related to completion of the interconnection of the Shady Oaks wastewater treatment plant to the Pasco system, including but not limited to attempting to get an emergency rate proceeding underway. However, because the issues underlying this administrative action are closely intertwined with the Circuit Court proceedings, there regrettably arose some confusion over who was taking the lead in the preparation and submission of the pre-hearing statement. Again, however, given the status of the Circuit Court action, it does not appear that any prejudice will result from the requested extension.

WHEREFORE, petitioner, SHADY OAKS MOBILE-MODULAR ESTATES, INC., requests an extension of time through July, 1, 1994 in which to file its pre-hearing statement, as well as a continuance

of the final hearing until after July 18, 1994.

Respectfully submitted,

GERALD T. BUHR, P.A.

By:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to Lila A. Jaber, Esquire, Division of Legal Services, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0863, on this 20th day of June 1994.


Cheryl J. Lister

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND FOR
PASCO COUNTY, FLORIDA.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
(formerly known as, Department
of Environmental Regulation,

Plaintiff,

v.

SHADY OAKS MOBILE MODULAR
ESTATES, INC.,

Defendant.

CASE NO.: 87-3788CA DIV. Y

FLORIDA BAR NO.: 356115

AGREED ORDER GRANTING DEP'S MOTION FOR CONTEMPT

This cause came before me on Plaintiff, State of Florida Department of Environmental Protection ("DEP") moved for contempt against Defendant Shady Oaks Mobile Modular Estates, Inc. ("Shady Oaks"), and pursuant to the stipulation of the parties, it is

ORDERED:

1. On July 8, 1991, this court ruled on a previous motion by the Plaintiff for contempt against the Defendant. In the hearing on that motion, the Defendant represented that it would completely remove its sewage treatment plant from operation and divert its flow to the Pasco County sewage collection system. The Defendant did not comply with this order.

2. The parties have stipulated that the Defendant had the ability to comply with the July 8, 1991 order but that it did not do so.

3. The Court finds that the Defendant's sewage treatment plant still must be removed from service.

EXHIBIT

A

4. The Court takes judicial notice of Public Service Commission Order No. PSC-93-0542-FOF-WS wherein the Public Service Commission ordered that a revocation proceeding be initiated to revoke the utility's certificate for failure to comply with, among other things, this Court's order. (Exhibit 1.)

5. The Court finds that Richard Sims is the president of the Defendant and the person responsible for complying with this Court's orders concerning the sewage treatment plant.

6. The parties stipulate and this Court finds that Shady Oaks is in contempt of this Court's order of July 8, 1991. Shady Oaks may purge itself of contempt by complying with one of the following options:

a. Within 120 days from the entry of this order Shady Oaks will have completed the connection of its sewage treatment system with Pasco County's sewage collection system. During this time period, Shady Oaks shall acquire all permits, contracts and approvals needed to construct the connection to the Pasco County sewage collection system. Within 30 days of the completion of the connection of the Defendant's sewage system to the County's system, Shady Oaks shall decommission its sewer plant and shall modify the plant and disposal system so that they will not pose a threat to public health or safety. As a part of decommissioning, Shady Oaks shall drain the percolation ponds and destroy some or all of the berms of those ponds so that they no longer will retain water. All sludge from the sewer plant and any significant accumulation of sludge at the bottom of the pond shall be removed and disposed of in accordance with F.A.C. Rule 17-7. Shady Oaks

shall also dismantle and remove the sewer plant and/or create enough holes in the components of the plant so that they no longer retain water.

b. Within 120 days from the entry of this order Shady Oaks shall sell or otherwise convey the sewage treatment, collection and transmission system and the sewage treatment utility free and clear of all liens and encumbrances. The sale or conveyance shall not be to Richard Sims, his wife or any family member, or to any company or other entity owned or controlled, in whole or in part, directly or indirectly, by Richard Sims, his wife or any family member. The sale or conveyance must meet with the approval of the Public Service Commission. The new owner shall be responsible for complying with paragraph 6.a. above within the time periods specified therein. The time periods will commence from the date the sale or conveyance is complete.

7. If the Plaintiff demonstrates, upon affidavit, that Shady Oaks has failed to purge itself of contempt as provided herein, this Court shall order the Sheriff to arrest Richard Sims and incarcerate him in the county jail until such time as Shady Oaks complies.

8. In the event Shady Oaks fails to purge itself of contempt as provided herein, the Plaintiff may move for the appointment of a receiver to comply with the terms of this order.

The failure to purge shall constitute constructive notice of intent to abandon the system pursuant to section 367.165, Florida Statutes.

DONE AND ORDERED this ___ day of February, 1994.

cc: David K. Thulman
Thomas Patrick McAlvanah

SIGNED AND DATED

FEB 18 1994

LYNN TEPPER

Circuit Judge

JUDGE LYNN TEPPER

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND FOR
PASCO COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION,

Plaintiff,

v.

Case No.: 87-CA
Div. Y

SHADY OAKS MOBILE MODULAR
ESTATES, INC.,

Defendant.

O R D E R

THIS CAUSE came on for hearing on June 15, 1994 upon the Defendant's Motion for Extension of Time to Comply With Court Order. Having heard the arguments of counsel and testimony and the Court being otherwise fully advised in the premises, it is, upon consideration,

ORDERED that Defendant's Motion for Extension of Time to Comply With Court Order be and the same is hereby GRANTED in part and DENIED in part as follows:

1. The Defendant's request for an extension of time in which to exercise the option spelled out in subparagraph 6a of the Order of this Court dated February 18, 1994 is DENIED.

2. The Defendant's request for extension of time is GRANTED to the extent that the Defendant shall have through and including July 18, 1994 in which to sell or otherwise convey its wastewater treatment facility free and clear as provided in subparagraph 6b of the February 18, 1994 Order. In addition, the strictures of

subparagraph 6b are hereby MODIFIED to the extent that the purchaser of the utility shall negotiate with the Plaintiff for additional time to interconnect the facility to the Pasco County utility system and to dismantle the plant. The purchaser shall, likewise, have additional time in which to negotiate the necessary transfer of PSC Certificate No. 401-S.

DONE and ORDERED in Chambers, this _____ day of June, 1994.

LYNN TEPPER
CIRCUIT JUDGE

COPIES FURNISHED TO:

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