

ORIGINAL

DOCKET NO.: 981781-SU - Application for amendment of Certificate No. 247-S to extend service area by the transfer of Buccaneer Estates in Lee County to North Fort Myers Utility, Inc.

WITNESS: Direct testimony Of John Floyd, Appearing on Behalf of Staff

DATE FILED: July 21, 1999

AFA _____
APP _____
CAF _____
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EAG _____
LEG _____
MAS 3/21/99
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SEC I
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DOCUMENT NUMBER-DATE

08667 JUL 21 99

FPSC-RECORDS/REPORTING

TESTIMONY OF JOHN FLOYD

1 |
2 | Q. Please state your name and business address.

3 | A. My name is John Floyd, and my business address is 1940 North Monroe
4 | Street, Tallahassee, Florida 32399. I am the Investigator Supervisor for the
5 | Bureau of Mobile Homes, Division of Florida Land Sales, Condominiums, and
6 | Mobile Homes, of the Department of Business and Professional Regulation.

7 | Q What is your background in the Bureau of Mobile Homes?

8 | A. I have worked for the Bureau of Mobile Homes for over fifteen years.
9 | My resume is attached to my testimony as Exhibit JF-1.

10 | Q. How did you become familiar with this docket?

11 | A. One of our staff attorneys was made aware of this docket, and found the
12 | Commission staff recommendation dated February 8, 1999, on the Internet.
13 | After reviewing the recommendation, we agreed to contact the staff of the
14 | Commission to discuss statements in the recommendation that needed
15 | clarification with regard to the application of Chapter 723, Florida Statutes,
16 | to mobile home parks. After meeting with the staff, I agreed to file
17 | testimony.

18 | Q. What is the purpose of your testimony in this docket?

19 | A. The purpose of my testimony is to clarify how Chapter 723, Florida
20 | Statutes, is interpreted by the Division of Florida Land Sales, Condominiums,
21 | and Mobile Homes with respect to the operations of mobile home parks. I am
22 | not advocating a position with respect to the operations of the Commission or
23 | the parties in this docket. My goal is to clarify various statements made in
24 | this docket that might not comport with the Division's policies and
25 | implementation of those policies with respect to mobile home parks.

DOCUMENT NUMBER-DATE

- 1 -

08667 JUL 21 88

FDSC-RECORDS/REPORTING

1 Specifically, I will address the purpose of a prospectus for a park, how
2 prospectuses are changed and how the Division interprets the application of
3 these prospectuses to the operations of the park. I will also testify on the
4 specific prospectuses in effect for Buccaneer Mobile Home Park in Lee County.

5 Q. When does Chapter 723, Florida Statutes, apply to a mobile home?

6 A. The provisions of this chapter apply to any residential tenancy in which
7 a mobile home is placed upon a rented or leased lot in a mobile home park in
8 which 10 or more lots are offered for rent or lease. The chapter does not
9 apply to a tenancy in which the mobile home, itself, is leased. In other
10 words, provisions of the Chapter apply to residents who own their mobile home
11 and lease the lot upon which it is placed.

12 Q. What is a prospectus?

13 A. A prospectus is a disclosure document given to a resident prior to his
14 entering into a rental agreement in a mobile home park.

15 Q. What is the purpose of a prospectus?

16 A. The philosophy behind requiring a prospectus is that potential mobile
17 home owners are in an unequal bargaining position once they have established
18 residency within a park. The cost to move a mobile home out of a park can be
19 as much as \$10,000. See Herrick v. Florida Department of Business Regulation,
20 Division of Florida Land Sales, Condominiums, and Mobile Homes, 595 So.2d 148,
21 152 (Fla. 1st DCA 1994). Therefore, the mobile home owner does not have the
22 freedom to move from park to park the way an apartment renter could move if
23 the landlord added additional charges to his rent.

24 Q. Does Chapter 723, Florida Statutes, dictate what the prospectus must
25 contain?

1 A. Yes. The prospectus is a disclosure document that must disclose each
2 type of charge to be paid by the homeowner and a description of all factors
3 which may result in an increase in those charges. The Bureau reviews a
4 prospectus to determine adequacy of compliance with section 723.012, Florida
5 Statutes. The homeowners do not take part in the prospectus review process.
6 Once a prospectus is approved and delivered, it is binding on both parties.
7 Any subsequent disputes between homeowners and the mobile home park owner
8 concerning the prospectus are under the jurisdiction of the circuit court.

9 Q. When must a mobile home park owner file a prospectus?

10 A. In accordance with section 723.011, Florida Statutes, prior to entering
11 into an enforceable rental agreement, a park owner must file a prospectus for
12 a park containing 26 or more lots. The Division shall determine whether the
13 proposed prospectus is adequate to meet the requirements of the chapter within
14 45 days of receipt.

15 Q. How is a prospectus modified to handle the changing needs of the park?

16 A. There are a limited number of amendments allowed under Rule 61B-
17 B31.001(5), Florida Administrative Code. The Division's view is that a
18 prospectus applies to an individual lot and that when a new resident enters
19 that lot they have the right to assume that prospectus. See Section
20 723.059(3), Florida Statutes. A park owner can file a new prospectus, have
21 it approved by the Division, and offer it to a new resident. The new
22 prospectus could contain different terms and conditions. The new resident can
23 assume the old prospectus or accept the new one. It is not unusual for a park
24 to have several prospectuses. For example, in this case, Buccaneer has three
25 (3) prospectuses.

1 Q. Would a park's prospectus have any bearing on whether a utility fee
2 could be passed-through or charged following a resident moving into a park?

3 A. Yes. The park's prospectus must contain what is called "reservation
4 language" in order to charge for a service which was originally included in
5 the rental amount, however, reservation language is optional. Additionally,
6 in accordance with Section 723.037, Florida Statutes, a 90-day notice of
7 reduction in services must be given, and there must be a corresponding
8 decrease in the rent.

9 Q. Must the decrease in rent be dollar for dollar?

10 A. No, however, the reasonableness of the decrease in rent can either be
11 subject to mediation or determined by a circuit court, under Section 723.033,
12 Florida Statutes.

13 Q. Do you know whether the prospectuses for Buccaneer have reservation
14 language contained in them?

15 A. Yes, they do.

16 Q. If a park resident had a lifetime lease, could the park owner still give
17 a 90-day notice of reduction in services and decrease in rent to that person.

18 A. Maybe. It would depend on the terms of the lease. Many of the early
19 lifetime leases included all charges, and in those cases, no other charges
20 could be imposed.

21 Q. Are lifetime leases assumable?

22 A. No, in accordance with Section 723.059(5), Florida Statutes, they are
23 nonassumable, unless the lease itself says otherwise, or unless the transferee
24 is the home owner's spouse.

25 Q. Would you discuss the application of Chapter 723 to the situation in

1 | this docket? Specifically, could you address a park owner's ability to pass
2 | through the connection fee to its customers?
3 | A. Section 723.003(10), Florida Statutes, states that a park owner can
4 | pass-through to a mobile home owner his proportionate share of any "necessary
5 | and actual direct costs and impact or hookup fees for a governmentally-
6 | mandated capital improvement . . ." (Emphasis added) Case law directs, and
7 | the Division gives, a strict interpretation to the term "governmental
8 | mandate." In Bearden v. Homeowners of Alligator Park, Inc., 686 So.2d 2 (Fla.
9 | 2d DCA 1995), the district court of appeal upheld the circuit court's ruling
10 | that the park owner could not pass-through the costs for improvement of the
11 | sewage system because the improvements were not governmentally mandated
12 | capital improvements. The lower court's ruling was based on the court's
13 | belief that the items installed by the park owner restored the function of the
14 | sewer plant as distinguished from installing a new function or improving an
15 | existing function. The court stated that no new governmental pressure was
16 | brought to bear, thus there was no governmental mandate.
17 | Q. Do you know whether there was a governmental mandate for Buccaneer to
18 | connect to Fort Myers Utility?
19 | A. No, I do not know.
20 | Q. Does this conclude your testimony?
21 | A. Yes, it does.
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24 |
25 |

John B. Floyd
Bureau of Mobile Homes
Division of Florida Land Sales,
Condominiums, and Mobile Homes
1940 North Monroe Street
Tallahassee, Florida 32399-1030

Education:

Georgia Southwest College
Americus, Georgia

Bachelor of Science in Business Administration
awarded in March 1973 with a major in Business
Administration.

Work Experience:

Division of Florida Land Sales, Condominiums,
and Mobile Homes
1940 North Monroe Street
Tallahassee, Florida 32399-1030

Job Position: Investigator Supervisor
Bureau of Mobile Homes
October 1996 to Present

Responsibilities: Direct and supervise investigative staff in three district offices, Tallahassee, Tampa, and Ft. Lauderdale, in the conduct of investigations, in the audit and examination of industry financial books and records, and in the extensive review of multiple complex disclosure documents required by Florida Statutes for financial and other obligations. Coordinate all investigative activities within the assigned districts. Receive, review and approve all investigative reports for adequacy and accuracy under Florida Statutes. Analyze all enforcement operational procedures for efficiency and effectiveness, and make recommendations for improvement. Assist in the development and implementation of Bureau policy and procedures, and the promulgation of administrative rules. Monitor Consent and Final Orders for compliance.

Job Position: Real Estate Development Specialist Supervisor
Enforcement Section-Tallahassee and South
Florida Filed Office
Bureau of Mobile Homes
September 1985 to 1996

Responsibilities: Supervise the Bureau's Clerical Pool functions and direct investigative staff in two district offices in the performance of the Bureau's Enforcement Section functions. These functions include conducting investigations of alleged violations of Chapter 723, Florida Statutes, responding to inquiries and complaints, analyzing data, inspecting properties, preparing recommendations for administrative actions, drafting investigative reports and final orders, and coordinating all of these efforts with the Bureau's Examination Section.

Job Position: Real Estate Development Specialist
Bureau of Mobile Homes Enforcement Section
January 1985 to September 1985

Responsibilities: Investigate alleged violations of Chapter 723, Florida Statutes, including document examination and field investigations. Recommend administrative actions. Respond to written and oral inquiries. Educate the public and industry.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment) DOCKET NO. 981781-SU
of Certificates No. 247-S to)
extend service area by the)
transfer of Buccaneer Estates) Filed: July 21, 1999
in Lee County to North Fort)
Myers Utility, Inc.)
_____)

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the Direct Testimonies and Exhibits of John Floyd, Andrew Barienbrock and John Williams have been furnished by U.S. Mail this 21st day of July, 1999 to:

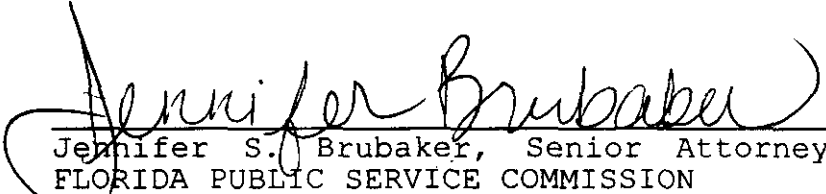
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*Orig. Cert. of Service attached to DN 08465-99.