

Diamond Williams

From: Trina Collins [TCollins@RSBattorneys.com]
Sent: Tuesday, October 18, 2011 3:08 PM
To: Filings@psc.state.fl.us
Cc: reginaldburge@bellsouth.net; aquarinautilities@bellsouth.net; Martin Friedman; Trina Collins
Subject: Filing in Docket No. 110061-WS; Aquarina Utilities, Inc.'s Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc. in Brevard County, Florida

Importance: High

Attachments: PSC Clerk 12 (Response to Motion to Compel and 1st Request for Admissions).ltr.pdf

- a. Martin S. Friedman, Esquire
ROSE, SUNDSTROM & BENTLEY, LLP
766 N. Sun Drive, Suite 4030
Lake Mary, Florida 32746
Phone: (407) 830-6331
Fax: (407) 830-8522
Email: mfriedman@rsbattorneys.com
- b. Docket No. 110061-WS; Aquarina Utilities, Inc.'s Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc. in Brevard County, Florida - Filing the Utility's Response to James I. Minnes' Motion to Compel and First Request for Admissions to James I. Minnes.
- c. Aquarina Utilities, Inc.
- d. 9 pages.
- e. Letter to Commission Clerk - 1 page; Response to Motion to Compel - 5 pages; and First Request for Admissions - 3 pages.

10/18/2011

DOCUMENT NUMBER-DATE

07633 OCT 18 =

FPSC-COMMISSION CLERK

LAW OFFICES
ROSE, SUNDBSTROM & BENTLEY, LLP

www.rsattorneys.com

Please Respond to the Lake Mary Office

October 18, 2011

VIA E-FILING

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JOHN L. WHARTON

ROBERT M.C. ROSE, (1924-2006)

Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RE: Docket No. 110061-WS; Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc. in Brevard County, Florida
Our File No.: 45052.01

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is Aquarina Utilities, Inc.'s:

- Response to James I. Minnes' Motion to Compel.
- First Request for Admissions to James I. Minnes.

Should you or the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

MSF/tlc
Enclosures

cc: Mr. James I. Minnes (w/enclosures) (via U.S. Mail)
Mr. Dennis Basile, Receiver (w/enclosures) (via U.S. Mail)
Keino Young, Esquire, Office of the General Counsel (w/encs.) (via U.S. Mail)
J.R. Kelly/Stephen C. Reilly, Esq., Office of Public Counsel (w/encs.) (via U.S. Mail)
Mr. Reginald J. Burge (w/enclosures) (via e-mail)
Mr. Keith Burge (w/enclosures) (via e-mail)

M:\1 ALTAMONTE\AQUARINA UTILITIES (45052)\(01) Transfer of Aquarina System\TRANSFER\PSC Clerk 12 (Response to Motion to Compel and 1st Request for Admissions).ltr.doc

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DOCUMENT NUMBER-DATE

07633 OCT 18 =

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority to Transfer)
the Assets of SERVICE MANAGEMENT)
SYSTEMS, INC., and Certificate Nos.)
517-W and 450-S in Brevard County,)
Florida to AQUARINA UTILITIES, INC.)
in Brevard County, Florida)
_____)

Docket No. 110061-WS

AQUARINA UTILITIES, INC.'S RESPONSE TO
JAMES I. MINNES' MOTION TO COMPEL

Applicant, AQUARINA UTILITIES, INC. ("AUI"), by and through its undersigned attorneys hereby files this response to JAMES I. MINNES' Motion to Compel filed on or about October 14, 2011.

In his Motion to Compel, Mr. Minnes requests that this Commission compel AUI to provide an Affidavit of Documents "to the full extent of AUI's knowledge, information and belief all documents relevant to all matters in issue in this proceeding, listing such documents chronologically, describing each document by type and title, providing a brief description of the subject matter of the contents of this document and the number of pages of each document" as well as Mr. and Mrs. Burges personal financial statement and all AUI pro-forma balance sheets. Further, Mr. Minnes demands that such documents be produced at a specific location. All of Mr. Minnes' demands are beyond the scope of the manner in which documents are produced.

It should be noted that in Mr. Minnes' Request for Production he requested:

A. All documents provided to Robert Dodrill and all documents generated by Robert Dodrill and documents exchanged between AUI and Mr. Dodrill in Mr. Dodrill's preparation of the pro-forma financial statements.

B. All documents provided to OPC that were the subject to the Motion for Temporary Protective Order, and all documents which formed the basis of estimating the value of assets, liabilities, income and expenses identified or referred to in the personal financial statement of Mr. and Mrs. Burge.

C. All corporate records.

AUI has printed the documents requested in A and C, and is holding them subject to payment of copying costs, and have objected to B. The relief sought by Mr. Minnes in his Motion to Compel greatly exceeds the documents in his original request. Further, a response to a request for documents does not have to be by Affidavit and organized as Mr. Minnes demands. His Motion is only appropriate as to the documents requested in his original request for *Production of Documents*.

At the outset, it should be pointed out that Mr. and Mrs. Burge have made no loan applications to SBA. Mr. Minnes' mistaken belief is apparently derived from the fact that Mr. and Mrs. Burge's personal financial statement was prepared on an SBA form which Mr. Burge printed from the internet.

Keep in mind that although the party to whom a request to produce is directed must file a response within thirty (30) days, the actual production is not required within that time. Thus, the response that the documents are being produced to Mr. Minnes is in compliance with discovery rules. He merely has to pay the copying costs and they will be delivered to him.

Mr. Minnes complains that there is no description of the 822 pages of documents, yet they are the documents he requested in A and C of his Request for Production. The documents were copied as a courtesy to Mr. Minnes. If he would prefer to review the documents, then he may do so where such documents are located in accordance with the rules of discovery. A party

requesting production of documents is required to pay the reasonable expense of the production. Schering Corporation v. Thornton, 280 So. 2d 493 (4th DCA 1973). If Mr. Minnes prefers to review the documents instead of receiving copies, he may do so where the documents are located, which is Orlando, Florida.

AUI must only produce the documents as they are kept in the normal course of business. In this case, the documents are in the possession of Robert Dodrill, a consultant and AUI's attorneys, and not in the possession of AUI at its office.

There is absolutely no authority to require a party to prepare an Affidavit of virtually all documents having anything to do with AUI's application, particularly since such documents were not requested in the Request for Production filed by Mr. Minnes. Even if it was, it is overly broad. Life Case Centers of America v. Reese, 948 So. 2d 830 (5th DCA 2007), Palmer v. Servis, 393 So. 2d 653 (5th DCA 1981).

AUI cannot be compelled to produce the personal financial statement of Mr. and Mrs. Burge to Mr. Minnes. Mr. Minnes was a driving force behind the creation of Aquarina Utility Association, Inc., and was, in fact, the incorporator and director. That entity sought to purchase the utility systems owned by AUI that are the subject of this proceeding and is carrying out the threat by its attorney that if the Burges purchased the system they would make the PSC transfer costly.


There is no basis for providing confidential information to an individual who suffers no adverse consequences from breaching that confidentiality. If this Commission determines that this financial statement must be disclosed pursuant to Rule 25-30.037(2)(k), F.A.C., then AUI will file a request for a waiver of such requirement since it is not necessary in the instant case where financial and technical ability have been unquestioned in the three PSC regulated utilities

with which Mr. Burge is involved. In fact, Office of Public Counsel has reviewed the financial statement and advised Mr. Minnes that the Commission was not going to deny the AUI application based on financial or technical ability. Based upon this analysis, the Community Association withdrew its Objection, but Mr. Minnes refused to do so, instead he seeks to harass Mr. and Mrs. Burge, as he tried to unsuccessfully do to the prior owner.

In summary, AUI will either provide the non-objectionable documents upon payment of copy costs, or will allow Mr. Minnes to view such documents at an agreed location in Orlando, Florida. That is all that he is entitled to.

Respectfully submitted on this 18th day of October, 2011, by:

ROSE, SUNDSTROM & BENTLEY, LLP
766 N. Sun Drive
Suite 4030
Lake Mary, Florida 32746
TELEPHONE: (407) 830-6331
FACSIMILE: (407) 830-8522
EMAIL: mfriedman@rsbattorneys.com

By: 
MARTIN S. FRIEDMAN
For the Firm
Attorney for Applicant

CERTIFICATE OF SERVICE
DOCKET NO. 110061-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to James I. Minnes' Motion to Compel has been furnished by U. S. Mail this 18th day of October, 2011, upon the following:

JAMES I. MINNES
25 Grovehurst Drive
Ottawa, Ontario
Canada K2G 6W1

Mr. Dennis Basile, Receiver
Service Management Systems, Inc.
826 Creel Street
Melbourne, FL 32935-5992

Keino Young, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 301D
Tallahassee, FL 32399-0850

J. R. Kelly/Stephen C. Reilly, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400



MARTIN S. FRIEDMAN
Florida Bar No.: 0199060
For the Firm
Attorney for Applicant

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority to Transfer)
the Assets of SERVICE MANAGEMENT)
SYSTEMS, INC., and Certificate Nos.)
517-W and 450-S in Brevard County,)
Florida to AQUARINA UTILITIES, INC.)
in Brevard County, Florida)
_____)

Docket No. 110061-WS

**AQUARINA UTILITIES, INC.'S FIRST REQUEST
FOR ADMISSIONS TO JAMES I. MINNES**

Applicant, AQUARINA UTILITIES, INC. ("Aquarina"), by and through its undersigned attorneys, and pursuant to Rule 1.370, Florida Rules of Civil Procedure, requests that JAMES I. MINNES; admit the truth of the matters set out below, to be answered in accordance with the foregoing Rule of Civil Procedure.

Instructions Regarding Requests for Admissions

Pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, you are requested to admit the truth of each of the matters stated below and to admit the genuineness of each document that may be attached as exhibits hereto.

You are to respond to each of the following requests in writing within thirty days after service, by delivering or causing to be delivered to the undersigned attorney a statement admitting or denying specifically, in good faith, each matter of which an admission is requested, or stating in detail the reason(s) you cannot truthfully admit or deny the matter.

Please note that if after you submit your responses to these requests for admissions, you learn that any such response was either incomplete when made, or, although complete and correct when made, is no longer complete and correct, you must amend or supplement your response reasonably promptly after you discover the necessity for such an amendment or supplementation. Plaintiff will object at trial or any hearing to your use or attempted use of any evidence that is inconsistent with matters that you have admitted or that you have failed to deny on a timely basis.


FIRST REQUEST FOR ADMISSIONS TO JAMES I. MINNES

1. You were instrumental in forming Aquarina Utility Association, Inc. ("AUA").

2. You were the incorporator of AUA.
3. You were an original director of AUA, and remained a Director during its entire existence.
4. AUA was formed to purchase the water and wastewater assets servicing the Aquarina development, which were purchased by Aquarina Utilities, Inc.
5. You, either directly or through your attorney, Brian Armstrong threatened the Burges, that if they purchased the utility system serving Aquarina that a transfer would be made difficult.

Respectfully submitted on this 18th day of
October, 2011, by:

ROSE, SUNDSTROM & BENTLEY, LLP
766 N. Sun Drive
Suite 4030
Lake Mary, Florida 32746
TELEPHONE: (407) 830-6331
FACSIMILE: (407) 830-8522
EMAIL: mfriedman@rsbattorneys.com

By: 

MARTIN S. FRIEDMAN
For the Firm
Attorney for Applicant

CERTIFICATE OF SERVICE
DOCKET NO. 110061-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing First Request for Admissions to James I. Minnes has been furnished by U. S. Mail this 18th day of October, 2011, upon the following:

JAMES I. MINNES
25 Grovehurst Drive
Ottawa, Ontario
Canada K2G 6W1

Mr. Dennis Basile, Receiver
Service Management Systems, Inc.
826 Creel Street
Melbourne, FL 32935-5992

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MARTIN S. FRIEDMAN
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For the Firm
Attorney for Applicant