

ORIGINAL FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revocation by Florida) DOCKET NO. 930944-WS
 Public Service Commission of)
 Certificates Nos. 451-W and 382-) FILED: 07/26/94
 S Issued to SHADY OAKS MOBILE-)
 MODULAR ESTATES, INC. in Pasco)
 County, Pursuant to Section)
 367.111(1), F.S.)

COMMISSION STAFF'S MOTION FOR SANCTIONS AGAINST SHADY OAKS MOBILE-MODULAR ESTATES, INC.

At the July 22, 1994, Prehearing Conference, the Staff of the Florida Public Service Commission (Staff), by and through its undersigned counsel, made an ore tenus Motion for Sanctions, pursuant to Rule 1.380, Florida Rules of Civil Procedure, against Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility). The Motion for Sanctions ore tenus was granted at the Prehearing Conference; however, the Prehearing Officer directed Staff to memorialize its motion providing the rationale for the motion. Therefore, in support of its motion, Staff states the following:

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 ORO _____
 R. _____
 S. _____
 V. _____
 W. _____

1. On September 23, 1993, the Florida Public Service Commission (Commission), pursuant to Section 367.111(1), Florida Statutes, and in accordance with Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, issued a Notice of Intent to Initiate Revocation of Certificates Nos. 451-W and 382-S issued to Shady Oaks.

2. On October 18, 1993, Shady Oaks timely filed an objection to the Notice. Accordingly, this matter has been scheduled for an August 4-5, 1994, administrative hearing.

3. On July 11, 1994, Staff served a Notice of Deposition, by facsimile and U.S. Mail, on Shady Oaks, for the purpose of deposing Richard D. Sims, the utility owner. Mr. Sims' deposition was to be taken at 10:00 a.m., July 22, 1994, at the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida.

4. Mr. Sims failed to attend his deposition.

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5. Rule 1.380(d), Florida Rules of Civil Procedure, states that:

If a party or an officer, director, or managing agent of a party or person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition after being served with a proper notice...the court in which the action is pending make take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

6. Rule 1.380(b)(2), Florida Rules of Civil Procedure, provides that a court may impose certain sanctions against a party failing to provide or permit discovery. Specifically, Rule 1.380(b)(2)(B) provides that the court may enter an order refusing to allow a disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence. In addition, Rule 1.380(b)(2)(C), provides that the court may enter an order striking pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party.

7. Mr. Sims' failure to attend the deposition resulted in the unnecessary expense and time of a court reporter, for which the Staff requests reimbursement.

8. Pursuant to Rule 1.380(d), Florida Rules of Civil Procedure, a party failing to attend a deposition may be ordered to pay the reasonable expenses caused by the failure. Therefore, Staff requests that the Prehearing Officer enter a judgment against Shady Oaks in the amount of \$52.50 to compensate for the costs of having a court reporter present for the July 22, 1994, deposition.


9. As stated earlier, the Prehearing Conference was held on July 22, 1994, in Tallahassee, Florida. The utility failed to attend the Prehearing Conference.

10. Rule 25-22.038(5)(b), Florida Administrative Code, provides that any party who fails to attend a final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his prehearing statement.

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Based on the foregoing, Staff has requested that the prefiled direct and rebuttal testimony of Richard D. Sims be stricken, and that Mr. Sims be ordered to pay \$52.50 to the Commission for the court reporter's costs from the deposition.

Respectfully submitted this 26th day of July, 1994.



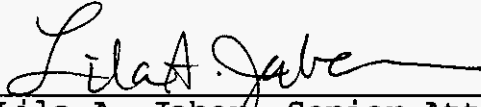
Lila A. Jaber, Esquire
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_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Staff's Motion for Sanctions Against Shady Oaks Mobile-Modular Estates, Inc., has been furnished to Richard D. Sims, c/o Shady Oaks Mobile-Modular Estates, Inc., 1315 Eckles Drive, Tampa, Florida, 33612, and Buddy D. Ford, Esquire, 115 Macdill, Tampa, Florida, 33609, by Federal Express, this 26th day of July, 1994.



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