

M E M O R A N D U M

November 28, 1994

ORIGINAL  
FILE COPY

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (SAGER) *EJS*  
RE: DOCKET NO. ~~940254-WU~~ - INITIATION OF SHOW CAUSE  
PROCEEDINGS AGAINST AIR BASE MOTOR COURT FOR OPERATING A  
WATER SYSTEM IN DUVAL COUNTY WITHOUT A CERTIFICATE

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Please file the attached letter in the above-referenced docket.

ELS/dp

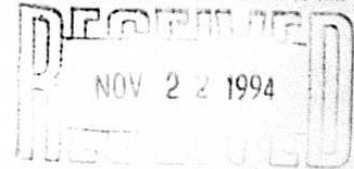
Attachment

cc: Division of Water and Wastewater (Xanders)

DOCUMENT NUMBER-DATE  
11948 NOV 28 8  
FPSC-RECORDS/REPORTING

STOCKTON & STOCKTON  
ATTORNEYS AND COUNSELORS AT LAW  
112 W. ADAMS STREET - SUITE 1309  
JACKSONVILLE, FL. 32202  
(904) 385-3675

Florida Public Service Commission



LEGAL DIVISION  
WILLIAM T. STOCKTON, JR.  
(1918-1995)

A. L. WALDO STOCKTON

November 18, 1994

TO: Public Service Commissioners  
RE: DOCKET NO. 940254-WS  
AIR BASE MOTOR COURT'S application for Landlord/Tenant  
Exemption

Enclosed is an Affidavit in support of our position of the Landlord/Tenant relationship existing between Air Base Motor Court (ABMC) and Azalea Mobile Home Park, Ltd. (Azalea).

This Affidavit establishes the basis of our position that ABMC and Azalea are, in fact, in a landlord/tenant relationship based on the existence of a carry over lease agreement dating back to the early 1980's. (See copy attached) ABMC is the Lessor and Azalea is its Lessee/tenant, and as such is entitled to a landlord's exemption as to Azalea under Section 367.0225, Florida Statutes.

The fact that ABMC rents property to Azalea and to a small strip center, and not to the general public, establishes that ABMC is not a utility under the definition set forth in Section 367.011(12) which refers to "public utility".

Therefore, (1) ABMC qualifies as a landlord not only to the strip center, but also to Azalea, and should be granted such a landlord/tenant exemption, as to Azalea, pursuant to the definition set forth in Section 367.011(12) Florida Statutes; or, in the alternative, (2) ABMC is not a "public utility" and is not subject to the jurisdiction of the Public Service Commission in this matter.

We will be at the meeting on Tuesday, November 22, and would appreciate your allowing us time on the Agenda to be heard.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. L. Waldo Stockton".

A. L. Waldo Stockton  
Managing Partner  
Air Base Motor Court

cc: Div. of Water & Wastewater (Xanders)  
Div. of Legal Services (Sager)  
Herman Ulmer, Jr., ABMC Partner

A F F I D A V I T

STATE OF FLORIDA )  
COUNTY OF DUVAL )

The undersigned, A. L. WALDO STOCKTON, being well known to me, and being first duly sworn, deposes and says:

1. He is the managing partner of AIR BASE MOTOR COURT (ABMC), a Florida general partnership, whose office address is 112 W. Adams Street, Suite 1309, Jacksonville FL 32202.

2. On or about June 30, 1978, ABMC, as "Lessor", entered into a written lease with MOBILE LIVING, INC., as "Lessee" of certain property in Jacksonville, Duval County, Florida all of which is located on the premises at 6331 Roosevelt Boulevard, Jacksonville, Florida, which lease expired by its terms on June 30, 1981. A true and correct copy of said lease is attached.

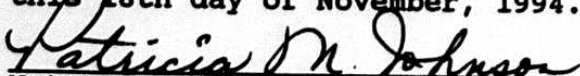
3. After the expiration of the term of said lease, the Lessee held over without a new lease and continued for 3 years to pay Lessor the monthly rental of \$200 per month. The rent was subsequently increased in June 1984 to \$280 per month, and Lessee paid said monthly amount of \$280 per month each and every month thereafter until the present time, except that upon Lessor's written notice of a rental increase, Azalea paid \$650 per month for the period from 9/1/93 until 3/1/94.

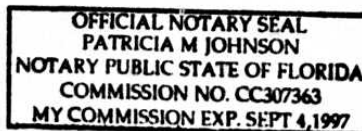
4. Azalea Mobile Home Park, Ltd. (Azalea) is a successor in title to the Lessee's interest under said lease, and as a hold over tenant its tenancy is subject to all of the terms and covenants of the original lease, and therefore, Azalea in effect is a tenant under a written lease.

5. ABMC, as Lessor, is the "LANDLORD" and Azalea, as Lessee, is the "TENANT."

  
A. L. WALDO STOCKTON

Sworn to and subscribed before me  
this 18th day of November, 1994.

  
Notary Public, State of Florida  
at Large. My commission expires:



LEASE

THIS LEASE by and between AIR BASE MOTOR COURT, a Florida partnership, as "Lessor" and MOBILE LIVING, INC., a corporation, 6301 Roosevelt Boulevard, Jacksonville, Florida, as "Lessee"

W I T N E S S E T H:

That Lessor does hereby lease unto the Lessee certain water facilities, including the well, aeration building and pumps in connection therewith, together with access to said facilities, all of which are located on the premises at 6331 Roosevelt Boulevard, Jacksonville, Florida, in order to provide water to Lessee's Mobile Home Park at 6301 Roosevelt Boulevard.

TO HAVE AND TO HOLD the same for the period, and upon the terms and conditions, and subject to the agreements as hereinafter set forth.

1. The term of this lease shall be for a period of three (3) years beginning July 1, 1978 and ending June 30, 1981.
2. The rental payment for said lease shall be Two Hundred Dollars (\$200.00) per month, said payment becoming due, without demand, on the 1st day of each month of the term of this lease. The Lessee represents that it leases the bulk of its lots to mobile home owners at the general rate of \$50.00 per month. In the event that such rate is raised in the future, the rental hereunder shall be increased by the same percentage as the percentage of the increase of the lot rental, effective as of the date of the increase to the lots.
3. Lessee agrees that it will maintain and operate said well and pumping facilities at the same standard and in the same manner as Lessee has heretofore operated said well and pumping

facilities and will have full responsibility in connection with the operation thereof. Lessee will continue to supply water from such facilities to certain buildings in the vicinity owned by the Lessor.

4. Lessor represents and warrants that the partnership is the lawful owner of said well and pumping facilities free and clear of all encumbrances and of the land on which same are situate free and clear of all encumbrances and that it is authorized to execute this lease.

5. Lessor and Lessee each hereby reserve the right to terminate this lease upon nine months written notice to the other. Notice shall be given to the Lessor at 1309 Barnett Bank Building, Jacksonville, Florida 32202, and to Lessee at 6301 Roosevelt Boulevard, Jacksonville, Florida, 32210.

6. In the event that either party shall have to litigate the provisions of this lease, the prevailing party shall be entitled to recover a reasonable attorney's fee as part of its costs in such litigation.

7. In the event the Lessee shall become delinquent in the payment of rent, the Lessor shall be entitled to take possession of the properties leased hereunder and to terminate water connections to Lessee's property, in addition to any other remedy it may pursue.

8. This agreement shall be binding upon and shall inure to the benefit of the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

EXECUTED in Jacksonville, Florida, this 30th day of June, 1978

Signed, sealed and delivered  
in the presence of:

MOBILE LIVING, INC.

Patricia M. Johnson  
As to Lessee

By: Robert N. Moore, Jr.  
Robert N. Moore, Jr., President  
(Corporate Seal)  
Lessee

Patricia M. Johnson  
As to Lessor

AIR BASE MOTOR COURT  
By: W. S. Stott  
Managing Partner  
Lessor

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Patricia M. Johnson  
As to Lessor

AIR BASE MOTOR COURT  
By: W. L. Stutz  
Managing Partner  
Lessor

STOCKTON & STOCKTON  
ATTORNEYS AND COUNSELORS AT LAW  
112 W ADAMS STREET  
SUITE 1309  
JACKSONVILLE, FL 32202

Division of Legal Services (Sager)  
Public Service Commission  
Fletcher Bldg., 101 E. Gaines St.  
Tallahassee FL 32399

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