

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 28, 2002

TO: Division of the Commission Clerk and Administrative Services

FROM: Patricia Brady, Division of Economic Regulation *pb*

RE: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Please add to the docket file the attached facsimile letter dated August 19, 2002, from J. Fritz Holzberg, applicant, to Rosanne Gervasi, Commission staff. The letter is part one of the utility's two part response to the allegation it was attempting to charge for service without Commission approved rates and charges.

Attachment

cc: Division of Economic Regulation (Redemann)

Office of the General Counsel (Gervasi)

Division of the Commission Clerk and Administrative Services (Security File)

DOCUMENT NUMBER-DATE

09082 AUG 28 2002

FPSC-COMMISSION CLERK

GISTRO I.N.C.
A FLORIDA CORPORATION

P O BOX 110 131
NAPLES FLORIDA
3 4 1 0 8
(239) 495 8089 voice
(239) 495 8089 fax
Email hlzbrg@cs.com

August 19, 2002

Ms. Rosanne Gervasi

Public Service Commission
Fax 1.850-413-6225

Dear Ms. Gervasi.

I am sending you by fax one part of the documents so you can see if what I have told you is true or not. A larger package I will send you by mail later today.

I would like to know who gave this letter to Mr. Friedmann. regarding the disconnection to our sewer system. I am sure they were the same people who knew they should not do it. But the County also did wrong by issue building permits against our, Gistro's request.. They all knew they are doing wrong, but lets try .I am sorry but you will probably have much more work in this case than you ever expected.

Regarding the information that I requested ten thousand \$.is absolutely untrue , if some body can prove this, I will give the connection to them for nothing.

Another builder has began to build with the help of B.S.U. and Lee County Administration,, The initiators of this all are the same as in the other matter but in this case we also issued this builder a warning that he will not get connection

May I make you for the first case a proposal. This builder has completed 5 homes against our attorneys warning in January ,3 homes are disconnected , 2 homes are connected and occupied. If P.S.C. will permit this deal we could solve this problem.

The builder will deposit with our attorney 5 times \$. 6.000 in to a trust account , of which 50 % should be handed over to Gistro Inc. The balance of the other 50% will stay in the trust account untill Gistro Inc and P.S.C. and B.S.U. have settled all the problems, but the builder could connect all five homes This would settle the problem for the 2 homes with the disconnection threat. Should you have another proposal please let me know..

It would also be a great help if the P.S.C. would order B.S.U. not to issue any more sewer capacity letters to the County untill we have solved all the existent questions. A letter with advice to the builder who just began to build, a note he should not expect any help from P.S.C. would avoid the same aggravation in the future.

Sincerely



J.Fritz Holzberg

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V.S. Roosa
Larry D. Sutton
Robert B. Burandt
Robert C. Adamski
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1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

January 11, 2002

Danny Mills
Mills Homes
26564 Old U.S. 41
Bonita Springs Florida 34135

RE: Regarding lots under construction
26650 Robin Way
11700 Red Hibiscus, lot 21,
11641 Forest Mere Drive
11584 Forest Mere Drive

Dear Mr. Mills:

Please be advised that our firm has been retained Gistro, Inc., the owner of the sewer lines at Forest Mere Phase II regarding the above located currently under construction.

Please be advised that you are not authorized to tie into Gistro Sewer lines and any attempt to do so, will be considered a trespass and damages will be sought accordingly.

PLEASE GOVERN YOURSELVES ACCORDINGLY

Sincerely yours,



Robert B. Burandt

RBB.cab

Roosa, Sutton, Burandt, Adamski & Roland, LLP*Attorneys and Counselors at Law*

Richard V.S. Roosa
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1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

January 16, 2002

Danny Mills
Mills Homes
26564 Old U.S. 41
Bonita Springs Florida 34135

RE: Regarding lots under construction
26650 Robin Way
11700 Red Hibiscus, lot 21,
11641 Forest Mere Drive
11584 Forest Mere Drive

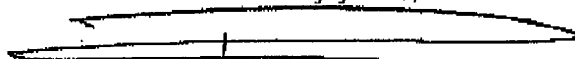
Dear Mr. Mills:

As you know our firm has been retained Gistro, Inc., the owner of the sewer lines at Forest Mere as it relates to the above property currently under construction.

Please be advised that you were not authorized to tie into Gistro Sewer collection system and our intelligence informs us that you have connected to our clients sewer collection system against his warning of trespass. You have three (3) days to disconnect or my client will disconnect your lines and bill you accordingly.

PLEASE GOVERN YOURSELVES ACCORDINGLY

Sincerely yours,



Robert B. Burandt

GISTRO INC.
A FLORIDA CORPORATION

P.O. BOX 110 131
NAPLES FLORIDA
34108
(239) 495 8089 voice
(239) 495 8069 fax
Email hlzbrg@cs.com

August 14, 2002

Danny Mills

Mills Venture
26564 Old U.S. 41
Bonita Springs Florida 34135

RE: Regarding disconnected homes
and future connections.

Dear Mr. Mills

Please be advised that 3 of your 5 homes you have build in the Forest Mere subdivison, are disconnected from our lines. Should you try to reconnect this houses again to our lines, we will disconnect this houses again and request your arrest and file all possible complains against you and your Company.

The 2 other homes you also connected without Gistros consent, and sold, will also be disconnected 30 days after July 31, 2002

Be aware that the 2 owners of this homes are presently committing a misdemeanor by stealing of services from Gistro INC

Please remit the disconnect cost of \$ 225.00

Sincerely

For Gistro INC

ORIGINAL SHEET NO. 10.0

NAME OF COMPANY _____

WASTEWATER TARIFF

(Continued from Sheet No. 9.0)

- 17.0 DELINQUENT BILLS - When it has been determined that a Customer is delinquent in paying any bill, wastewater service may be discontinued after the Company has mailed or presented a written notice to the Customer in accordance with Rule 25-30.320, Florida Administrative Code.
- 18.0 TERMINATION OF SERVICE - When a Customer wishes to terminate service on any premises where wastewater service is supplied by the Company, the Company may require reasonable notice to the Company in accordance with Rule 25-30.325, Florida Administrative Code.
- * 19.0 UNAUTHORIZED CONNECTIONS - WASTEWATER - Any unauthorized connections to the Customer's wastewater service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
- 20.0 ADJUSTMENT OF BILLS - When a Customer has been undercharged as a result of incorrect application of the rate schedule or, if wastewater service is measured by water consumption and a meter error is determined, the amount may be credited or billed to the Customer as the case may be, pursuant to Rules 25-30.340 and 25-30.350, Florida Administrative Code.
- 21.0 FILING OF CONTRACTS - Whenever a Developer Agreement or Contract, Guaranteed Revenue Contract, or Special Contract or Agreement is entered into by the Company for the sale of its product or services in a manner not specifically covered by its Rules and Regulations or approved Rate Schedules, a copy of such contracts or agreements shall be filed with the Commission prior to its execution in accordance with Rule 25-9.034 and Rule 25-30.550, Florida Administrative Code. If such contracts or agreements are approved by the Commission, a conformed copy shall be placed on file with the Commission within 30 days of execution.
- 22.0 EVIDENCE OF CONSUMPTION - The initiation or continuation or resumption of water service to the Customer's premises shall constitute the initiation or continuation or resumption of wastewater service to the Customer's premises regardless of occupancy.

ISSUING OFFICER

TITLE

1.850 245 6270

I.F.S. 2001

MISCELLANEOUS CRIMES

Ch. 877

(1) A "coin-operated vending machine" or "parking meter," for the purposes of this act, is defined to be any machine, contrivance, or device that is adapted for use in such a way that, as the result of the insertion of any piece of money, coin, or other object, the machine, contrivance, parking meter, or device is caused to operate or may be operated and by reason of such operation the user may become entitled to receive any food, drink, telephone or telegraph service, insurance protection, parking privilege or any other personal property, service, protection, right or privilege of any kind or nature whatsoever.

(2) Whoever maliciously or mischievously molests, opens, breaks, injures, damages, or inserts any part of her or his body or any instrument into any coin-operated vending machine or parking meter of another, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Whoever molests, opens, breaks, injures, damages, or inserts any part of her or his body or any instrument into any coin-operated vending machine or parking meter of another with intent to commit larceny is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whoever violates the provisions of subsection (3) a second time, and is convicted of such second separate offense, either at the same term or a subsequent term of court, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 2, 3, ch. 65-105; s. 1153, ch. 71-138; s. 1429, ch. 87-102.

877.09 Tampering with or damaging sewer systems.—

(1) Whoever willfully or fraudulently, without the consent of any person, firm, or corporation or lessee, trustee, or receiver owning, leasing, operating, or managing any sewer system, shall tap, make or cause to be made any connection with, injure or knowingly to suffer to be injured, tamper or meddle with, plug or in any way hinder, use without authorization, or interfere with any lines, mains, pipes, laterals, collectors, connections, interceptors, manholes, appliances, or appurtenances used for or in connection with any sewer system and belonging to such person, firm, or corporation or lessee, trustee, or receiver, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The existence of any tap, connection to, unauthorized use of, or interference with any line, main, pipe, lateral, collector, connection, interceptor, or other appliance or appurtenance used for or in connection with any sewer system and belonging to any person, firm, or corporation or lessee, trustee, or receiver owning, leasing, operating, or managing any sewer system shall be prima facie evidence of intent to violate this law by the person receiving the direct benefit from such tap, connection, or interference.

History.—ss. 1, 2, ch. 95-232; s. 1154, ch. 71-138.

877.10 Real property; dual contracts prohibited.—

(1) It is unlawful for any person to knowingly make, issue, deliver, or receive dual contracts for the purchase or sale of real property. Dual contracts, either

written or oral, are two contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement for mortgage investors to make a loan commitment on such real property in reliance upon the stated inflated value.

(2) Any violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-531; s. 1155, ch. 71-138.

877.111 Inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances; penalties.—

(1) It is unlawful for any person to inhale or ingest, or to possess with intent to breathe, inhale, or drink, any compound, liquid, or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, ethylene glycol monomethyl ether acetate, cyclohexanone, nitrous oxide, diethyl ether, alkyl nitrites (butyl nitrite), or any similar substance for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual, or mental processes. This section does not apply to the possession and use of these substances as part of the care or treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, part I of chapter 464, or chapter 466 or to beverages controlled by the provisions of chapter 561, chapter 562, chapter 563, chapter 564, or chapter 565.

(2) It is unlawful for any person to possess, buy, sell, or otherwise transfer any chemical substance specified in subsection (1) for the purpose of inducing or aiding any other person to violate the provisions of subsection (1).

(3) Except as provided in subsection (4) with respect to nitrous oxide, any person who violates subsection (1) or subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who knowingly distributes, sells, purchases, transfers, or possesses more than 16 grams of nitrous oxide commits a felony of the third degree which shall be known as unlawful distribution of nitrous oxide, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, in addition to proving by any other means that nitrous oxide was knowingly possessed, distributed, sold, purchased, or transferred, proof that any person discharged, or aided another in discharging, nitrous oxide to inflate a balloon or any other object suitable for subsequent inhalation creates an inference of the person's knowledge that the nitrous oxide's use was for an unlawful purpose. This subsection does not apply to the possession and use of nitrous oxide as part of the care and treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, chapter 464, chapter 466, or chapter 474; as a food-processing propellant; as a semiconductor oxidizer; as an analytical chemistry oxidizer in atomic absorption spectrometry; in the production of chemicals used to

F.S. 2001

THEFT, ROBBERY, AND RELATED CRIMES

Ch. 812

(c) The customer or recipient of the utility services has received the direct benefit of such utility service for at least one full billing cycle.

(4) Any person who willfully violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Whoever is found in a civil action to have violated the provisions hereof shall be liable to the utility involved in an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

(6) Nothing in this act shall be construed to apply to licensed and certified electrical contractors while performing usual and ordinary service in accordance with recognized standards.

812.15 Unauthorized reception of cable television services; penalties.—

(1) As used in this section, the term:

(a) "Cable operator" means "cable operator" as defined in 47 U.S.C. s. 522(4) (1988).

(b) "Cable system" means "cable system" as defined in 47 U.S.C. s. 522(6) (1988).

(2)(a) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law. For the purpose of this section, the term "assist in intercepting or receiving" shall include the manufacture of or distribution of equipment intended by the manufacturer or distributor, as the case may be, for unauthorized reception of any communications service offered over a cable system in violation of this section.

(b) Any person who willfully violates this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) Any person who willfully violates paragraph (2)(a), paragraph (4)(a), or subsection (5) and who has been previously convicted of any such provision shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and for purposes of direct or indirect commercial advantage violates paragraph (2)(a), paragraph (4)(a), or subsection (5) shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) Any person who intentionally possesses equipment, knowing or having reason to know that the design of such equipment renders it primarily useful for the purpose of the unauthorized reception of any communications service offered over a cable system, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who intentionally possesses five or more devices or pieces of equipment and knows or has reason to know that the design of such devices or pieces of equipment renders them primarily useful for the unauthorized reception of any communications services offered over a cable system is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who intentionally possesses fifty or more devices or pieces of equipment and knows or has reason to know that the design of such devices or equipment renders them primarily useful for the unauthorized reception of any communications services offered over a cable system is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication, including any electronic medium, any advertisement that, in whole or in part, promotes the sale of equipment, if the person placing the advertisement knows or has reason to know that the equipment is designed to be primarily useful for the unauthorized reception of any communications service offered over a cable system. Any person who violates this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) Any person aggrieved by any violation of this section may bring a civil action in a circuit court or in any other court of competent jurisdiction.

(b) The court may:

1. Grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of this section in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damages to the person shall have to be made;

2. Award damages pursuant to paragraphs (c), (d), and (e); and

3. Direct the recovery of full costs, including awarding reasonable attorney's fees, to an aggrieved party who prevails.

(c) Damages awarded by any court under this section shall be computed in accordance with either of the following:

1. The party aggrieved may recover the actual damages suffered by him or her as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the violation; or

2. The party aggrieved may recover an award of statutory damages for each violation involved in the action, in a sum of not less than \$250 or more than \$10,000, as the court considers just.

(d) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage, the court in its discretion may increase the award of damages, whether actual or statutory under this section, by an amount of not more than \$50,000 for each violation.

(e) In any case in which the court finds that the violator was not aware and had no reason to believe that his or her acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than \$100.

History.—s. 3, ch. 82-135; s. 1241, ch. 87-102; s. 1, ch. 98-214; s. 1, ch. 99-281