

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

RECEIVED-FPSC

11 APR 25 PM 4:21

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

COMMISSION
CLERK

DATE: April 25, 2011
TO: All Parties of Record & Interested Persons
FROM: Anna Williams, Senior Attorney, Office of the General Counsel *ARW*
RE: Docket No. 100400-WU – Investigation of rates of O&S Water Company, Inc. in Osceola County for possible overearnings and Docket No. 100440-WU – Application for transfer of water facilities in Osceola County from O&S Water Company, Inc., to Tohopekaliga Water Authority and cancellation of Certificate No. 510-W.

Please place the attached correspondence in the above-referenced docket files.

Thank you.

DOCUMENT NUMBER-DATE

02819 APR 25 =

FPSC-COMMISSION CLERK

Anna Williams

From: Mark Lawson [mlawson@bmlaw.com]
Sent: Monday, April 25, 2011 3:46 PM
To: Anna Williams
Cc: John Jenkins; Martin Friedman
Subject: FW: Demand letter concering O and S Water; request and suggestion that PSC consider deferring action on dockets

Importance: High

Attachments: L (Jenkins-Friedman)(MGL) Demand Notification of Personal Liability (00534063).PDF



L

Friedman)(MGL)

Anna,

I am disappointed to place you on notice of objectionable behavior by the regulated entity, and at least some of its shareholders. We believe the matter addressed in the letter attached is in fact related to the dockets before the Commission (and certainly the reasons they were opened in the first place) and should be deferred. This would be the most efficient and appropriate action for the Commission, as we can not assure you that the matter is final.

Please see attached.

Mark G. Lawson

**Bryant Miller Olive
101 N. Monroe Street, Suite 900
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(850) 222-8611
(850) 222-8969 (fax)**

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Mark G. Lawson

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-----Original Message-----

From: Mark Lawson
Sent: Monday, April 25, 2011 3:34 PM
To: 'John Jenkins'; 'Martin Friedman'
Subject: Demand letter concering O and S Water
Importance: High

John and Marty,

I realize your zeal to close dockets. Everyone is entitled to an advocate.

I am so disappointed to have to be a part of sending this letter. However, your client, and the shareholders involved are unjustly enriched and are shirking financial responsibilities. This matter is in fact related to the dockets now pending before the PSC and should be deferred.

Please kindly confirm when you have shared this information with ALL of the addressees. Thanks!

Mark G. Lawson

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-----Original Message-----

From: Mark Lawson
Sent: Wednesday, April 06, 2011 1:00 PM
To: John Jenkins
Subject: RE: Recap of telephone conference this morning; O&S/TWA reconciliation

John,

I am disappointed that the conversation at lunch was in fact intended as a substitute for you or your client not wanting to put in writing your communication as promised. I will relay the prospect that your client is unwilling to fulfill its obligations and follow through with the reconciliation; but rather, under the rationalization that its not worth the resources to be expended for TWA to seek redress, that your client now seeks to strike an accord for substantially less than that amount owed to TWA and discussed with both you and Jack Olsen most recently in March.

Mark G. Lawson

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-----Original Message-----

From: John Jenkins [mailto:JJenkins@RSBattorneys.com]
Sent: Wednesday, April 06, 2011 11:08 AM
To: Mark Lawson
Subject: RE: Recap of telephone conference this morning; O&S/TWA reconciliation

When and where?

John R. Jenkins, P.A.

Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
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-----Original Message-----

From: Mark Lawson [mailto:mlawson@bmlaw.com]

Sent: Wednesday, April 06, 2011 10:56 AM

To: John Jenkins

Subject: Re: Recap of telephone conference this morning; O&S/TWA reconciliation

Needs to be a quick one; and I will make it so long as its not a substitute for something in writing on O and S? :)

**Mark G. Lawson
Bryant Miller Olive
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(850) 222-8969 (fax)**

----- Original Message -----

From: John Jenkins <JJenkins@RSBattorneys.com>

To: Mark Lawson

Sent: Wed Apr 06 10:41:37 2011

Subject: RE: Recap of telephone conference this morning; O&S/TWA reconciliation

You available for lunch today?

**John R. Jenkins, P.A.
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From: Mark Lawson [mailto:mlawson@bmlaw.com]
Sent: Tuesday, April 05, 2011 2:05 PM
To: John Jenkins
Subject: RE: Recap of telephone conference this morning; O&S/TWA reconciliation

John,

Its been a week since you called with the disappointing, but unclear, prospect that your client had distributed funds from closing and possibly could not or would not finalize the reconciliation. You agreed to send me a written articulation of what ever it is your client is proposing. I do not have anything from you. Will you please respond to the email below or otherwise follow up promptly as promised?

Mark G. Lawson

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From: Mark Lawson
Sent: Tuesday, March 29, 2011 10:37 AM
To: 'John R. Jenkins (jjenkins@rsbattorneys.com)'; 'Ric Figueroa'; 'RODNEY HENDERSON'; 'BARBARA ARRANT'
Subject: RE: Recap of telephone conference this morning; O&S/TWA reconciliation
Importance: High

Good Morning John,

This is a follow up to recap memo (below) and our conference call on Thursday. The TWA folks have called and asked me when we can expect your response? Please call me. Thanks!

Mark G. Lawson

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**From: Mark Lawson
Sent: Thursday, March 24, 2011 11:57 AM
To: 'John R. Jenkins (jjenkins@rsbattorneys.com)'; 'Ric Figueroa'; 'RODNEY HENDERSON'; 'BARBARA ARRANT'
Subject: Recap of telephone conference this morning; O&S/TWA reconciliation**

Thanks to all for getting on a call this morning.

As I understand it, here are the remaining items/actions that need to be addressed, and what needs to be resolved:

1. John Jenkins will confirm with Jack Olsen that interest treatment on (certain limited) deposits proposed by TWA is acceptable, and if not, why not, and propose resolution. This is likely a very small amount.

2. John Jenkins will confirm with Jack Olsen that aged accounts receivable reconciliation proposed by TWA is acceptable, and if not, why not, and propose a resolution.

If you need more info, please let me know and I can arrange to assist you with the folks from TWA.

John, if it turns out that the latest reconciliation information from TWA is acceptable, then you can respond by email. If not, let me know and let's please schedule a call for next Monday or Tuesday. Thanks!

Mark G. Lawson

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April 25, 2011

VIA E-MAIL TRANSMITTAL AND HAND DELIVERY

Ron and Ardith Clark,
Martin S. Friedman,
Jack and Bonnie Olsen,
Walter Pyne,
Ruth Stewart,
Scott and Silvia Stewart,
Dennis Turtock,
Roy F. Woodruff, individually,
and any other known or unknown shareholders of
O and S Water Company, Inc.

c/o John R. Jenkins, Esq. and Martin S. Friedman, Esq.
Rose, Sandstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Re: Demand and Notification of Personal Liability

Ladies and Gentlemen,

This firm represents the Tohopekaliga Water Authority ("TWA"). Reference is made to TWA's purchase of a utility system from O and S Water Company, Inc. ("O & S"). As part of the consideration for that transaction, O&S agreed to a post-closing reconciliation of the value of accounts receivable and other assets purchased by TWA and resulting purchase price adjustment. This post-closing reconciliation was necessitated by O&S's inability to produce accurate and verifiable business records prior to closing (apparently, for some of the same reasons that the Florida Public Service Commission initiated an overearnings docket). Thus, it was known to both parties, at the time of the transaction, that TWA could and would assert claims against O&S for post-closing adjustments.

John R. Jenkins, Esq.
Martin S. Friedman, Esq.
April 25, 2011
Page 2 of 3

As part of that post-closing reconciliation process, TWA discovered that the records produced by O&S contained false and inaccurate data, including, without limitation, (i) phantom accounts receivable ascribed to vacant homes; (ii) deposit ledgers which failed to reflect that deposits had been returned; and (iii) other false and inflated financial records. Because of this, TWA has simply excluded disputed amounts in working in good faith with O&S representatives in determining that O&S owed TWA an amount in excess of \$40,849.26.

After the transaction closed, TWA independently learned that O&S had voluntarily dissolved as a Florida corporation in December, 2010. No notice of dissolution or intent to dissolve was ever given to TWA by O&S (or its attorneys) as required by *Fla. Stat. §607.1406*. Further, after O&S secretly and prematurely dissolved itself, TWA learned that O&S distributed the proceeds of the referenced transaction with TWA, and all other assets of O&S, to the shareholders of O&S. When TWA presented its post-closing adjustment demand to O&S, O&S admitted through its attorneys that, due to the dissolution of O&S and distribution of its assets to its shareholders, O&S no longer had sufficient assets to pay its obligations to TWA.

Please be advised that TWA hereby gives notice to you and any other unknown shareholders of O&S that O&S has failed to comply with the requirements of *Fla. Stat. §607.1406* by failing to either deliver actual notice of dissolution to TWA as a known creditor, or pay the claim of TWA in full prior to distributing the assets of O&S to its shareholders. Accordingly, the shareholders of O&S are, among other things, now personally liable to TWA for the amount owed by O&S to TWA as to the amount of their pro rata share of TWA's claim or in the amount distributed to each shareholder.

Further, the dissolution of O&S and distribution of its assets to its shareholders, without satisfying the claims of the creditors of O&S, is, among other things, actionable as a fraudulent transfer under *Fla. Stat. §§ 726.105 and 726.106*. By its own admission communicated through its attorneys, O&S has, as a result of the dissolution and distribution, insufficient assets to pay the claims of TWA arising from the sale transaction and O&S's prior business dealings with TWA. Accordingly, pursuant to *Fla. Stat. §726.108*, TWA, among other things, has the right to avoid and recover the distribution to the shareholders of O&S, attach the assets of those individual shareholders to that extent, enjoin any further distribution of those assets and seek appointment of a receiver, as well as any other relief that a court may deem required, including rescission if ordered by the court.

Florida law also provides for, in addition to the above remedies, the imposition of successor liability for the shareholders of O&S in the amounts owed to TWA.

John R. Jenkins
Martin S. Friedman
April 25, 2011
Page 3

Accordingly, TWA hereby makes demand on you and any other shareholders of O&S for payment of TWA's claim against O&S in the amount of \$40,849.26. TWA reserves the right to take all necessary and appropriate action to enforce its rights in all manner available by law.

PLEASE BE GOVERNED ACCORDINGLY.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark G. Lawson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark G. Lawson

cc: Anna R. Williams, Esq.
Office of the General Counsel, Florida Public Service Commission