

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show cause proceeding against)	DOCKET NO. 850482-SU
KELLY BROOKE, LTD. in Lee County)	ORDER NO. 25640
_____)	ISSUED: 1/27/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON

ORDER REFERRING DOCKET TO THE OFFICE
OF THE COMPTROLLER FOR COLLECTION
OF THE SUM OWED WITH INTEREST

BY THE COMMISSION:

Kelly Brooke, Ltd. (Kelly Brooke or the utility) was a limited partnership, organized under the laws of Florida. On September 14, 1987, the partnership's Certificate of Authority, issued by the Department of State, was revoked. Kelly Brooke was also the former owner of a wastewater collection system and treatment plant that provided wastewater service to an area located in Fort Myers, Florida. John Van Heemst (Van Heemst) was the sole representative of Kelly Brooke in all proceedings before this Commission.

In June, 1982, a customer contacted us regarding an alleged increase in rates by Kelly Brooke. The Commission's investigation revealed that the utility was operating, setting and increasing rates without Commission approval. Upon our discovery and Kelly Brooke's submission of a completed application, Kelly Brooke was granted Certificate No. 350-S, by Order No. 13777, issued October 15, 1984. By the same Order, this Commission established new wastewater rates for the utility. We ordered the utility to reduce its current rates and refund monies collected in excess of the new rates. Kelly Brooke failed to comply with Order No. 13777 by not refunding the utility's overcharges.

In Order No. 14930, issued September 11, 1985, this Commission ordered Kelly Brooke to show cause why it should not be fined up to \$5,000.00 per day, pursuant to Section 367.161, Florida Statutes, for its violation of Order No. 13777. Kelly Brooke proposed to the Commission a Stipulation in Settlement (Stipulation), whereby Kelly Brooke would refund the overcharges and in return, the show cause proceedings against Kelly Brooke would be dismissed. In Order No.

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15670, issued February 13, 1986, the Commission approved the Stipulation and ordered Kelly Brooke to perform the refund. The Stipulation was signed by Van Heemst as general partner of Kelly Brooke. Kelly Brooke again failed to fully perform the refund as ordered by the Commission.

In Order No. 16368, issued July 17, 1986, the Commission again required Kelly Brooke to show cause why it should not be fined up to \$5,000 per day for its failure to comply with Orders Nos. 13777 and 15670 (refund orders). Van Heemst failed to respond to the show cause order. In Order No. 16683, issued October 16, 1986, the Commission imposed a penalty of \$10,000.00 upon Kelly Brooke, pursuant to Section 367.161(1), Florida Statutes, for its violation of Orders Nos. 13777 and 15670. To date, neither Kelly Brooke nor Van Heemst has paid this amount. The current amount of the penalty with interest is \$14,346.96.

On July 17, 1987, we filed a Petition For Enforcement of the refund and penalty in the Circuit Court for the Twentieth Judicial Circuit in and for Lee County, in accordance with Section 120.69(1), Florida Statutes. On October 20, 1987, Van Heemst responded to the Petition For Enforcement by serving an Answer in his individual capacity only. In the Answer, Van Heemst denies that he was a general partner of Kelly Brooke and asserts as an affirmative defense, that he is only a limited partner.

On July 19, 1991, we filed a Motion for Summary Judgment in Circuit Court, which was granted on September 16, 1991. The Court awarded the Commission a judgment in the sum of \$22,128.22 with interest at 12% a year from September 16, 1991 until paid. Van Heemst received notice of all proceedings and has not responded to us nor to the court. The judgment was recorded by the Clerk of the Court in Lee County and acts as a lien on real property owned by Van Heemst. A Writ of Execution was issued on October 14, 1991. However, we are unable to find property records or personal property in Van Heemst's name to levy against. Further, Van Heemst's former spouse, Kelly Murphy, has informed us that Van Heemst does not own property in his name and has numerous judgments against him.

Based upon the facts as stated above, we hereby refer this matter to the Comptroller's Office for further disposition and collection efforts. We believe this Commission has made diligent efforts to collect the amount owed by Van Heemst and the Judgment

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in the amount of \$22,128.22 with interest at 12% a year from September 16, 1991 until paid, is uncollectible by this Agency.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Docket No. 850482 be referred to the Comptroller's Office for collection of the Judgment in the amount of \$22,128.22 with interest at 12% a year from September 16, 1991 until paid. It is further

ORDERED that after referral to the Comptroller's Office for collection of the Judgment, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 27th day of JANUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida

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Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.