W.D.C.A 01

IN THE SUPREME COURT OF FLORIDA

FILED

NOV 21 1983

SID J. WHITE
CLERK SUPREME COURT
By _____
Chief Deputy Clerk

TAMARON HOME OWNERS ASSOCIATION INC.,

Petitioner,

v.

TAMARON UTILITIES, INC.,

Respondent.

CASE NO. 63,626

2nd DCA Case Nos. 82-1594 and 82-1744

BRIEF OF RESPONDENT
TAMARON UTILITIES, INC.

M. Joseph Lieb, Jr.
SYPRETT, MESHAD, RESNICK
& LIEB, P.A.
Post Office Box 1238
Sarasota, Florida 33578
(813) 365-7171
Attorneys for Respondent

I N D E X

TABLE OF CITATIONS

STATEMENT OF THE FACTS AND CASE

Respondent takes issues with, and supplements Petitioners' Statements of the Facts and Case, as follows.

At the time Respondent filed its application for a rate adjustment, Ordinance 80-62 was in effect and governed the County's regulation of private utilities. Ordinance 80-62 amended prior Ordinance 72-64. Both of these ordinances prohibited the inclusion of any CIAC property in the calculation of the utility's rate base. Ordinance 72-64 permitted a utility to collect depreciation as an operating expense on its property and made no distinction between property which was purchased and property which was contributed. Ordinance 80-62 amended Ordinance 72-64 so as to include a specific prohibition against the allowance of depreciation on contributed property as an operating expense.

Tamaron is a water and sewer utility which is totally comprised of contributed property. Therefore, pursuant to the County's ordinance as amended, it has a zero rate base and is prohibited from collecting depreciation on any of its property as an operating expense or in any other fashion. The utility's total income is nothing more than its day-to-day operating expenses. No reserve fund is accumulated to replace the utility's property when it wears out.

Amendment 80-62 to the County's utility ordinance was adopted in response to the circuit court's ruling in the case of Southeastern Development and Utilities v. Board of County

Commissioners, which was subsequently reported at 398 So.2d 882. (See p. 883 of that opinion.) In Southeastern, the County, as was customery up until that point in time, had adopted a rate resolution for the utility which authorized the utility to collect as an operating expense, a depreciation allowance on all of its property, regardless of how it was acquired. The Homeowners Association sought review of that rate order in the circuit court, challenging the allowance, so far as it applied to depreciation on contributed property. The circuit court quashed the rate order, finding that the allowance of depreciation on CIAC property was improper. The County then enacted Ordinance 80-62 in an effort to comply with the order of the circuit court. See Southeastern, supra., at page 883.

The utility appealed the trial court's order to the Second District Court of Appeals, which reversed the circuit court and held, among other things, that the prior ordinance's allowance of depreciation on CIAC property was proper. In its opinion, at page 884, the court noted that if the utility was not allowed to recover depreciation on its contributed property, it would have to be allowed to recover it in some other manner. Unfortunately, the County, by that time, had already amended the ordinance in "knee jerk" reaction to the lower court's order, which had now been reversed. The ordinance, as amended, created a distinction between property purchased by a utility and property contributed to a utility. A depreciation allowance was permitted for the former, but prohibited

for the latter.

It should also be noted that after the Second District Court of Appeals' decision, the County again amended its ordinance to its present form which, once again, allows depreciation on CIAC property as an operating expense.

Since Ordinance 80-62 was still in effect at the time Respondent filed its application for a rate increase, Respondent did not include a specific request for "depreciation expense on CIAC property," but rather included a request for a "reserve contingency account." That request was explained to be for the same purpose, and calculated in the same manner, as the previously allowed depreciation on contributed property expense. As stated by Mr. Meshad, the utility's attorney, at the November 3, 1981 hearing, (at page 31 of the transcript of that hearing):

> "Now, this is in the amount of twenty-three thousand five hundred thirty dollars. And let me explain what the evolution of the rate making process has been and why you now see that item, perhaps for the first time, and maybe you would recognize it better if it said, "depreciation contributed property."
>
> "As you know as recently as a year ago the utilities were depreciating all depreciable property. We had, incidently, a Court case where the Court upheld the right of the utility to depreciate contributed property. And my firm handled that case. (Southeastern)
>
> "But, in the interim between the time that rate case was filed, it prompted the litigation and the time that the Court decision came down, the Commissioners adopted Ordinance 80-62, which really has conflicting provisions. There is one provision that says that a utility shall be allowed to take depreciation on all depreciable property, but, then, there is a specific, and perhaps a controlling provision that says later on five or six pages further on, that

depreciation on contributed property shall not be allowed."

The allowance was denied by the County, and Tamaron sought review of the rate order in the circuit court, alleging:

1. That Ordinance 80-62 violates the due process clauses of the Federal and State Constitutions, as applied to the Petitioner (a zero rate base utility), and/or

2. That Ordinance 80-62 violates the due process clauses of the Federal and State Constitutions per se, and/or

3. That Ordinance 80-62 violates the equal protection clauses of the Federal and State Constitutions.

In its briefs to the circuit court, the County, apparently recognizing the invalidity of the exclusion and the fact that it was never the Commissioners' desire to exclude the depreciation expense in the first place, ignored the express exclusion contained in the ordinance and argued merely that the utility did not make a specific request for "depreciation expense on contributed property," and requested that the appeal be dismissed without prejudice to allow the utility to go back before the Commission and relabel its "reserve contingency account" to a request for "depreciation on contributed property" so that it could be allowed. After having reviewed the briefs submitted by the County and the utility, the circuit court entered its order striking the language in the ordinance which prohibited depreciation on contributed property as an operating expense.

At that point, the Homeowners petitioned, and were allowed to intervene. They filed a motion for rehearing and a brief

in support of their motion. After having once again reviewed the briefs and hearing argument, the circuit court denied the motion and both the County and the Homeowners filed appeals which were treated as petitions for certiorari in the Second District Court of Appeals.

After additional briefs were submitted and oral argument heard, that court rendered its opinion. In affirming the circuit court, the district court concluded that the amended utility ordinance was constitutionally defective for the reason that it failed to permit depreciation on contributed property to be considered at any stage of the rate setting procedure.

ARGUMENT

ORDINANCE 80-62, INSOFAR AS IT FAILS TO MAKE ALLOWANCE FOR DEPRECIATION ON CONTRIBUTED PROPERTY AT ANY STAGE OF THE RATE MAKING PROCESS, VIOLATES CONSTITUTIONAL PROTECTIONS OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

Respondent obviously has no quarrel with the County's prefatory statement that generally a duly enacted ordinance comes before this court clothed with a presumption of validity. Courts should ordinarily assume that the lawmakers who compose and enact legislation have acted properly and the legislation they pass, based upon competent and substantial expertise and evidence. In the present case, however, the ordinance in question was enacted not by the County in its general legislative process, but rather solely in an effort to comply with a ruling of the circuit court which was subsequently quashed on appeal. (See Southeastern, supra. P. 883.) Therefore, since the basis for the general presumption of validity does not exist in the present case, the ordinance challenged should not enjoy that presumption.

Both the circuit court and the Second District Court of Appeals have determined that Ordinance 80-62 is unconstitutional for the reason that it fails to permit depreciation on CIAC property to be considered at any stage of the rate making procedure. An examination of the relevant cases clearly demonstrates that the lower court's decisions are correct and should not be disturbed.

Petitioners argue, as they did in the courts below, that

the United States Supreme Court has already determined the issue presented in this case. See Lindheimer v. Illinois Bell Telephone Company, 292 U.S. 15 (1933), United Railways & Electric Company v. West, 280 U.S. 234, 50 S.Ct. 123, 74 L.Ed. 390 (1930); Federal Power Commission v. Natural Gas Pipeline Company of America, 315 U.S. 575, 62 S.Ct. 736, 86 L.Ed. 1037 (1942); and Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944). A review of these cases, however, reveals this argument to be incorrect.

The case of Federal Power Commission v. Natural Gas Pipeline of America, supra., involved the issue of how to amortize assets that were already used at the time the utility became subject to utility rate regulation for the purpose of computing a rate base. The utility company argued that the amortization base should be computed on the basis of reproduction costs at the time the rate base was to be established. The Court, however, held that it was not confiscatory to have the amortization base reflect the depreciated value of the company's actual investment and not the reproduction costs. The Supreme Court was dealing with a problem that simply is totally incongruous with the problem situation.

In Federal Power Commission v. Hope Natural Gas Company, supra., the Supreme Court also dealt with the proper rate base calculations for a utility. The regulatory commission estab-

lished a rate base which represented the actual legitimate cost of the company's interstate property, less accumulated depletion and depreciation. The Supreme Court again held that this was a proper measure of the rate base rather than the reproduction or replacement costs. Again, the case involved a determination of rate base and not how depreciation on contributed property should be treated.

None of these cases deal with, or even mention, the proper treatment of depreciation on contributed property, and therefore neither the holdings nor the principles discussed in those cases are relevant to the issue in this case.

To accept Petitioner's argument that these Supreme Court cases should be interpreted to stand for the proposition that a utility has no protected property rights in contributed property, would necessarily lead to the absurd conclusion that a utility would be entitled to no compensation in the event its property is taken by virtue of eminent domain proceedings.

Petitioner's narrow reading of these cases, which do not deal with contributed property, as a basis for the argument that depreciation is designed solely to restore to the owner his "out of pocket" investment in the asset consumed, and that since the utility has paid nothing for the property contributed to it, it is not entitled to depreciation, ignores the true reason for allowing depreciation

on property for rate making purposes. That is, to provide a reserve for the replacement of the property as it wears out.

In Lindheimer, supra., the Court was faced with the task of reviewing the value of property utilized by the utility in interstate and intrastate business and whether or not the return allowed on that property in the utility's rates was sufficient. Although the utility was not comprised of any contributed property, and therefore that issue was not addressed by the Court, the Court did recognize the necessity of allowing a depreciation factor on the property used in public service to allow for its replacement as it wears out. As stated by the Court in describing the term "depreciation" as used for utility rate making purposes:

> "Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. Annual depreciation is the loss which takes place in a year." p.167.

and then at p.173:

> "The distinction between expenses for current maintenance and depreciation is theoretically clear. Depreciation is the expense occasioned by the using up of physical property employed as fixed capital; current maintenance, as the expense occasioned in keeping the physical property in the condition requred for continued use during its life."

Since all types of physical property are subject to wear and tear, regardless of how it is acquired, Petitioner's

argument that a depreciation allowance is not required for contributed property is not sound.

Homeowners next cites this Court to cases from other jurisdictions for the proposition that the issue in this case has already been decided in other states, and therefore this Court should follow that authority. See Princess Anne Utilities Corporation v. Commonwealth of Virginia, ex rel. State Corporation Commission, 179 SE2d 714 (Va. 1971); State ex rel. Martigney Creek v. Public Service Commission, 357 SW2d 388 (Mo. 1976); State of North Carolina ex rel. Utilities Commission, et al. v. Heater Utilities, Inc., 219 SE2d 56 (N.C. 1975); City of Hagerstown v. Public Service Commission, 217 Md. 101, 112, 141 A2d 699, 704 (1958).

First of all, in reviewing the cases cited by Homeowners, it is impossible to determine whether the issue before those courts was similar to the issue in this case since the entire rate setting process was not being reviewed by those courts. In the present case, the lower courts found Ordinance 80-62 to be defective for the reason that it requires a rate setting procedure which prohibits an allowance for depreciation at any stage of the rate making process. As stated by the Second District Court of Appeals in its opinion at p. 327:

> "We, therefore, affirm the circuit court. However, we do so not because the exclusion by a regulatory body of CIAC depreciation as an operating expense is uncontitutional per se. We do so because it is improper to completely exclude the consideration of CIAC depreciation

> in the rate-making process as we interpret Ordinance No. 80-62 as doing here."

There are numerous ways a utility regulatory board may take into consideration depreciation on contributed property, including a "reserve contingency account" in addition to including it in the rate base or as an operating expense, and therefore those cases, at least as reported, do not address the issue of the constitutionality of an ordinance which totally ignores contributed property in setting a utility's authorized rates.

Furthermore, the cases cited by Homeowners recognize that other jurisdictions have decided the issues before those courts differently. As stated by the Supreme Court of Appeals of Virginia in the Princess Anne, supra., case, at p. 717 of that opinion:

> "[3] The question whether the Commission properly excluded a depreciation allowance on the contributed property is more difficult. This is so because there is a sharp split of authority on the subject, and valid arguments can be advanced to support either view.
>
> "We have examined numerous utility rate cases and have concluded that where depreciation is allowed, the rationale is that since the utility owns and must ultimately replace the property, it should be entitled to a reasonable depreciation allowance as part of its annual operating expenses to build up a reserve against the day when replacement must occur."

Some cases from those "other jurisdictions" include Re Central Light & Power Co., 37 P.U.R. (n.s.) 106, 114

(N.D.Pub.Serv.Comm'n. 1940) and DuPage Utility Co. v. Illinois Commerce Com'n., 267 NE2d 662 (Sup.Ct. Ill. 1971). In approving the depreciation allowance made in DuPage, supra., the Supreme Court of Illinois recognized:

> "[7, 8] Finally, the intervenors contend that the Commission, in computing operating expense, improperly allowed DuPage a depreciation rate of approximately 1.6% of the depreciable plant. The propriety of allowing a reasonable depreciation deduction on the property of a utility is not dependent upon the source of funds for the original construction of the facility. (emphasis added) (Cf. Langan v. West Keansburg Water Co., 51 N.J. Super. 41, 143 A.2d 185.) DuPage will be required to replace from time to time properties which have become obsolete or whose useful lives have expired, in order to sustain service to its customers. This being the case, DuPage is entitled to a reasonable depreciation deduction on its entire plant in service for the purpose of computing its operating expenses. Intervenors' contention that current maintenance will continually extend the life of the system begs the question since depreciation by definition includes only that loss which cannot be restored by current maintenance. See Lindheimer v. Illinois Bell Telephone Co. (1934), 292 U.S. 151, 167, 54 S.Ct. 658, 78 L.Ed. 1182."

It should be noted that that Court's opinion cites the Lindheimer decision, relied upon by Petitioners as authority for its decision. It should also be noted that the United States Supreme Court denied certiorari review of the decision at 404 U.S. 832.

The cases cited by Homeowners come from jurisdictions which adhere to the theory that the purpose of a depreciation allowance should be limited to allowing a utility to recoup its actual investment in the property being depreciated. Florida, on the other hand, has consistently recognized that

depreciation is not limited to the recovery of investment theory, at least in the area of utility rate making, and should also reflect the deterioration of equipment which inevitably will have to be replaced by the utility. As stated by this Court in Westwood Lake, Inc. v. Dade County, 264 So.2d 7 (1972), at page 11:

> "...to disregard arbitrarily that part of a utility's equipment because it was "contributed" and to allow no recognition of its replacement ignores reality; it would only mean a raise in rates later on when it became necessary to replace it. A depreciation loss factor may be proper if necessary to prevent a resulting unfair rate, because its purpose is to save against loss and this must be anticipated. The consideration is not confined to a "recovery of investment" application, as the county has treated it. It cannot be eliminated entirely from the present rate base if it prevents a fair return. What if an entire utility were made up of such "contributions"? Then is it to be said that no part of the plant is to be considered in the rate base? The utility would not long survive on such basis." (emphasis added)

In the case of State v. Hawkins, 364 So.2d 723 (1978), this Court was called upon to review the procedure of the Public Service Commission which allowed the utility to recover a depreciation allowance by way of both an "add-back" of accumulated depreciation into the utility's rate base as well as collection of depreciation as an operating expense. The Court concluded that this procedure, in allowing the utility to take a "double dip" of depreciation allowance, was improper. The Court was careful to point out, however, that its opinion was not to be interpreted as conflicting with the previous opinion in Westwood Lake,

and instead took the opportunity to once again reaffirm its previous decision by stating on p. 725 of its opinion:

> "The Commission also properly allows the utility to include the accumulated depreciation of the facilities purchased from investment and CIAC funds in the rate base calculation. In this way the utility is provided with the case necessary to replace the property as it wears out. Therefore, the total dollar amount of investment and CIAC property stays constant over time, as does the rate base. This is as it should be, since the ratepayers are paying for the cost of using up the equipment which provides services." (emphasis added)

In 1981, in the case of Citizens v. Florida Public Service Commission, 399 So.2d 9 (1st DCA), the court reviewed a rate setting procedure which allowed an "add back" of accumulated depreciation into the rate base. Public counsel representing the citizens, argued that this was the same practice condemned by the Supreme Court in State v. Hawkins. The court disagreed, however, in noting that although the "add back" was allowed, depreciation on contributed property as an operating expense was not, and therefore the "double dipping" disallowed in Hawkins was not present.

After citing both the Westwood Lake and Hawkins cases as authority for its opinion that the allowance of the depreciation reserve was proper, the court noted:

> "Stated differently, depreciation is not merely a measure of the recovery of investment; rather it also reflects deterioration of equipment which, inevitably, will have to be replaced. Here, by utilizing the PSC's formula for rate base the utility can make provision today for the replacement of property as it is retired from service."

In Southeastern, supra., the district court, in reviewing Sarasota County Ordinance 72-64, before it was amended to specifically prohibit depreciation on contributed property as an operating expense, held that such allowance was proper. At p. 884 of the opinion, the Court stated:

> "...because a depreciation allowance is necessary to accumulate a fund for replacement of not only the portion of the plant provided by the utility but also the portion contributed in aid of construction. Both the Board's consultant and Southeastern's consultant testified that if the Board did not allow Southeastern to include depreciation on CIAC property as an operating expense, it would have to allow it to be recovered in some other way. Finally, the supreme court has sanctioned including depreciation on CIAC property as an operating expense for utilities for this purpose." Westwood Lake, Inc. v. Dade County, 264 So.2d 7 (Fla. 1972). See State v. Hawkins, 364 So.2d 723 (Fla. 1978). (emphasis added)

As recognized by the district court in this case, a review of the decisions from this state reveals,

> "...three principles inherent in the utility rate-making process are clear. One, CIAC depreciation is generally, and should be, considered at some point in the rate-making process. Two, while a utility constitutionally must be allowed the right to recoup its investment and its expenses, there is no constitutional requirement that a utility be allowed to do so by maintaining a reserve fund using depreciation expenses [as opposed to allowing this recovery in another fashion]. Three, a utility may permit an add-back of CIAC depreciation into the rate base calculation or it may treat CIAC depreciation as an operating expense, but it cannot do both."

The conclusion that depreciation on CIAC property cannot be ignored in establishing a utility's rates, is logical and necessary. Pursuant to Ordinance 80-62, Tamaron, being wholly

comprised of contributed property, earns no return on any investment and is also prohibited from collecting any depreciation expense on any of its property. Its recoverable expenses are limited to repair and maintenance. When equipment must be replaced, there will be no reserve to be utilized by the utility for this purpose and the utility will simply malfunction or cease serving its customers. While the situation confronted by Tamaron may be more compelling because it is a zero rate base utility, the inequities of the ordinance apply to all utilities which use contributed property, only to differing degrees.

Reasonable classifications are permitted under the law, provided the classifications are not arbitrary, but rather are based upon some difference in the classes which has a reasonable relation to the purpose of the legislation. Greater Miami Financial Corp. v. Dickenson, 214 So.2d 874 (Fla. 1968); Georgia Southern and Florida Railway Company v. 7-Up Bottling Co., 175 So.2d 39 (Fla. 1965); Florida Power Corp. v. Pinellas Utility Board, 40 So.2d 350 (Fla. 1949). In the situation presented herein, there is no difference in the classes which has a reasonable relation to the purpose of the legislation. There simply is no rational basis for establishing different classes of utilities under the ordinance, namely those which consist of contributed property and those which do not. Depreciation is not dependent upon the manner in which the property is acquired, and the utility must replace it when it wears out.

Petitioner's reference to F. S. 367.081(2) does not support their argument. That statute regulates rate proceedings before the Public Service Commission and does not apply to Tamaron. Prior to 1980, that statute did not provide for any particular procedure to be followed in dealing with depreciation on contributed property. Subsequent to this Court's ruling in State v. Hawkins, supra., that the "double dipping" allowed by the PSC in permitting both an accumulated depreciation add back into the rate base and the collection of depreciation on contributed property as an operating expense, was improper, the statute was amended to its present form. The amendment now establishes the procedure to be used by the PSC, in that it prohibits the allowance of depreciation on CIAC as an operating expense. However, it does not preclude an add back of accumulated depreciation into the rate base. This procedure was approved by the First District Court of Appeals in the 1981 case of State v. Public Service Commission, 399 So.2d 9.

Therefore, the statute as applied by the PSC, does not prevent depreciation on CIAC in all stages of the rate setting process.

Homeowners next argues that even if the ruling of the lower courts is correct, that the ordinance still should not have been found defective because there was no showing that the "end result" of the rate setting process required by the ordinance resulted in a rate which was confiscatory. Homeowners argues that there was no showing that the allowance

granted by the ordinance for repairs and maintenance was inadequate to repair and maintain the utility's property.

As recognized by the Supreme Court of Illinois in the DuPage, supra., case:

> "Intervenors' contention that current maintenance will continually extend the life of the system begs the question since depreciation by definition includes only that loss which cannot be restored by current maintenance. See Lindheimer v. Illinois Bell Telephone Co. (1934), 292 U.S. 151, 167, 54 S.Ct. 658, 78 L.Ed. 1182." f.669

Furthermore, in City of Miami v. Public Service Commission, 208 So.2d 249 (Fla. 1968) and again in State v. Hawkins, supra., this Court recognized the limitations on the curative effect of that doctrine.

> "This Court has recognized the limitations of this doctrine and has noted that it
>
> > [w]as never intended to justify improper or erroneous methods or factors in the rate-making process. It operates to neutralize such irregularities where they do not appear to be serious enough to produce harmful effects in the final determination of a fair and reasonable return." Id. at p.727.

In the present case, the failure to provide for depreciation at any stage of the rate making process is not the type of inconsequential irregularity which was designed to be rectified by the "end result" doctrine. As determined by the lower courts, the County's application of Ordinance 80-62 constitutes a fundamental departure from proper rate making procedures.

Homeowners final argument is that the district court erroneously interpreted the provisions of the IRC cited in its

opinion. This argument, however, is based upon an Internal Revenue Regulation which was proposed in May of 1978, but which has never been adopted!

None of the parties to this proceeding referred the district court to the IRC as authority for their respective positions, and a review of that court's opinion reveals that the IRC was mentioned only in passing and was not fundamental to the decision, as Homeowners would lead this Court to believe.

As acknowledged by Homeowners in its Motion for Rehearing to the district court:

> "Granted, simply because the Congress of the United States chooses to exclude contributions in aid of construction from its definition of gross income, and provides that the basis for expense purposes of such property shall be set at zero, does not mean that that same treatment for ratemaking purposes does not unconstitutionally deprive the utility of property without due process of law."

This is true when one recognizes the distinction of "depreciation" for income tax purposes (to allow the taxpayer to offset diminution in value of assets used in production of income against the income they produce) and the purpose of "depreciation" of contributed property in utility rate making purposes (to allow the utility to establish a reserve to replace the property as it wears out). Westwood Lake, supra., Hawkins, supra., Southeastern, supra.

Finally, Petitioner's argument that to require the utility's customers to pay a depreciation allowance on contributed property results in their having to pay twice for

the same cost, while initially appealing, ignores reality.

At the risk of being redundant, the allowance of depreciation on contributed property is not for the purpose of giving the utility a return on property in which it has no investment. It is for the purpose of providing for a fund to replace the property as the customer consumes it. The customer is ultimately going to bear the cost of replacing the property when it fails, regardless of how that property was initially acquired by the utility.

At the conclusion of its brief, the County, by using a "hypothetical utility," attempts to demonstrate the alleged inequity of allowing a utility to recover a depreciation allowance on contributed property. The County argues that the allowance is improper because it results in a "return" or "profit" to the utility even though the utility has no rate base. This simply ignores the fact that the depreciation recovery is not allowed as a profit to the utility, but to provide a source of funds to replace the utility as it wears out. The fact that without such an allowance no funds will be available to replace worn out property, is accurately demonstrated by the County's hypothetical utility.

CONCLUSION

Ordinance 80-62, insofar as it fails to permit consideration of depreciation on contributed property at any stage of the rate making process, violates state and federal constitutional guarantees of due process and equal protection under the law, and therefore the decision of the Second District Court of Appeals should be affirmed.

Respectfully submitted,

SYPRETT, MESHAD, RESNICK
& LIEB, P.A.
Post Office Box 1238
1900 Ringling Boulevard
Sarasota, Florida 33578
(813) 365-7171

By _____
M. JOSEPH LIEB, JR.

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to DANIEL JOY, ESQUIRE, 2055 Wood Street, Suite 200, Sarasota, Florida 33577, and to RICHARD E. NELSON, ESQUIRE, Nelson, Hesse, Cyril, Smith, Widman & Herb, 2070 Ringling Boulevard, Sarasota, Florida 33577, this 16 day of November, 1983.

SYPRETT, MESHAD, RESNICK
& LIEB, P.A.
Post Office Box 1238
Sarasota, Florida 33578
(813) 365-7171

By _____
M. JOSEPH LIEB, JR.

Attorneys for Respondent