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IN THE SUPREME COURT
STATE OF FLORIDA

FILED
CLERK OF THE SUPREME COURT

APR 28 1987

CLERK OF THE SUPREME COURT

PAUL AND ELLEN THOMSON,)
)
 Petitioners,)
)
 vs.)
)
 STATE OF FLORIDA, DEPARTMENT)
 OF ENVIRONMENTAL REGULATION,)
)
 Respondent.)
 _____)

Case No. 69,483
By Deputy Clerk

Appeal From the District
Court of Appeal, First
District Case Nos. AZ-337
and BD-330

REPLY BRIEF OF PETITIONERS

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ATTORNEYS FOR PETITIONERS

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ARGUMENT ONE


THE FACT THAT THE DEPARTMENT PROVIDED A POINT OF ENTRY FOR THE FIRST PROCEEDING IS NOT DETERMINATIVE OF WHETHER OR NOT PAUL AND ELLEN THOMSON WERE AFFORDED A FAIR OPPORTUNITY TO BE HEARD.

Paul and Ellen Thomson, looking back on three and one-half years of litigation merely to obtain an administrative hearing, do not think that the assertion of lack of fairness in the department's administrative hearing process is ludicrous. It only requires a cursory review to determine that the case of Manasota-88, Inc. v. State of Florida Department of Environmental Regulation, 417 So.2d 846 (Fla. 1st DCA 1982) is solely a point of entry case and has no bearing upon the requirements of due process or traditional notions of fair play and justice. Similarly, the cases of Henry v. State Department of Administration 431 So.2d 677 (Fla. 1st DCA 1983) and Mohican Valley, Inc. v. Division of Land Sales and Condominiums, 441 So.2d 1126 (Fla. 1st DCA 1983) relate only to a petitioner's clear point of entry and have no discussion whatsoever of the fairness issue. Paul and Ellen Thomson are not concerned with whether or not they were given a point of entry, they are concerned with the fact that after having been provided notice of the agency's intent, they were provided further information from that employee of DER to whom they had been directed, giving them additional time in which to prepare an additional submittal. The fact that the additional time was not provided (instead a final order of denial was entered), and their second application was summarily defeated by the application of res judicata, resulted in the violation of due process.

Paul and Ellen Thomson appreciate the DER's direction of the Court's attention to The Florida Bar v. Moses, 380 So.2d 412 (Fla. 1980), which requires the presiding officer as early as possible in the proceeding to make inquiry into the qualifications of the representative of the party. DER dismisses these requirements by stating that for Paul and Ellen Thomson there was no proceeding. If there was no proceeding, how could res judicata apply?

CONCLUSION

The question posed to this court by Paul and Ellen Thomson remains as it has from the beginning: did they receive from DER a fair deal or an administrative fast shuffle? No further argument is required to show that the DER acted in a high-handed manner disregarding the rights of these applicants. The DER is not free to dismiss with "boiler plate" language the expensive scientific study conducted by the Thomsons, nor is it free to interpret its rules in whatever fashion it may, to avoid the due process of law.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Reply Brief of Petitioners have been filed with the Clerk of the Supreme Court, and that a true copy of the same has been furnished by United States Mail to E. Gary Early, Esquire, Assistant General Counsel, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, this 28 day of April, 1987.



ATTORNEY