

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

DERALD MORGAN, RICK AND CINDY)	
GRAVER, WILLIAM AND GLORIA PHIPPS,)	
and DAVID LOTT,)	
)	
Complainants,)	
)	
v.)	File No.
)	
CARL RICHARD MILLS,)	
CARRIAGE OAKS ESTATES,)	
DISTINCTIVE DESIGNS, and)	
CARING AMERICANS TRUST)	
FOUNDATION, INC. (f/k/a Caring)	
Americans Foundation, Inc.))	
)	
Respondents,)	

AMENDED COMPLAINT

1. Complainants reside at:

Derald Morgan, 108 Carriage Oaks Dr., Reeds Spring, MO 65737

Rick and Cindy Graver, 96 Falling Leaf Court, Reeds Spring, MO 65737

William and Gloria Phipps, 132 Falling Leaf Court, Reeds Spring, MO 65737

David Lott, 197 Falling Leaf Court, Reeds Spring, MO 65737

2. The utility service complained of was received at Complainants' addresses listed in Paragraph 1 above.

3. Respondents' address are as follows:

Carl Richard Mills, 209 Falling Leaf Court, Reeds Spring, MO 65737

Carriage Oaks Estates Homeowners Association, 209 Falling Leaf Court, Reeds Spring, MO 65737

Distinctive Designs, Ltd., 209 Falling Leaf Court, Reeds Spring, MO 65737

Caring Americans Trust Foundation, Inc., 209 Falling Leaf Court, Reeds Spring,
MO 65737

4. Respondents operate a public utility under the jurisdiction of the Missouri Public Service Commission.

5. The amount at issue is at least \$8,000.00.

6. Complainants now request the following relief:

a. Require respondents to transfer ownership of the wastewater treatment facility and water system, including necessary easements, to a proper entity where all owners are members of said entity, such as the existing homeowners' association.

b. Such further relief as deemed appropriate by the Public Service Commission under these circumstances.

7. The relief requested is appropriate because Respondents have violated several Missouri statutes and regulations, as follows:

a. Respondent Carl Richard Mills caused the ownership of the wastewater treatment facility and water facility to be transferred to Caring Americans Trust Foundation, Inc.

b. Respondent Caring Americans Trust Foundation, Inc., is a non-profit corporation organized for charitable and educational purposes, and was not formed as a water and sewer company.

c. Complainants are not members, shareholders, owners of Caring Americans Trust Foundation, Inc., and have no say whatsoever in the control or operation of this company.

d. Further, Respondent Caring Americans Trust Foundation, Inc., has not obtained a Certificate of Convenience and Necessity from the Public Service Commission, nor has it received a valid Operating Permit from the Missouri Department of Natural Resources.

e. Respondent Carl Richard Mills previously tried to establish rates for the water and sewer service; however, he did not obtain proper authorization from the Public Service Commission before doing so.

f. In 2015, in a Stone County Circuit Court lawsuit, the Court ordered that Respondent Carl Richard Mills owned the wastewater treatment system and water system, thus making these systems his responsibility.

g. In spite of this order, Respondent Carl Richard Mills charged the homeowners' association for all operational costs of the facilities and other undocumented services.

h. The property owners in Carriage Oaks Estates subdivision continue to be charged for the operation costs of the facilities, even though Respondent Caring Americans Trust Foundation, Inc., has not been authorized to charge for these services and has not obtained a valid Operating Permit.

8. The Complainants have taken the following steps to present this matter to the Respondents to no avail:

a. The above described issues have been discussed during at least one meeting of the homeowners' association.


b. A demand letter was sent to Respondents' counsel on May 31, 2016, setting for these issues and requesting a resolution without having to file a complaint. A copy of the May 31, 2016, Demand Letter is attached hereto as **Exhibit A**.

c. Respondents now refuse to communicate with Complainants regarding this issue.

Respectfully submitted,


SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

By:


Karl Finkenbinder, Mo. Bar No. 59425
Cody A. Fenton, Mo. Bar No. 65526
P.O. Box 123
500 W. Main St., Suite 305
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Email: karl@sfalawfirm.com
COUNSEL FOR COMPLAINANTS

CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to Bryan Wade, counsel for respondents, via email (Bryan.Wade@huschblackwell.com) on this 11 day of August, 2016.


Cody A. Penton, Counsel for
Complainants

8-3-16
Date

417-872-1219
Complainant's Phone Number

Alternate Contact Number

8-3-16
Date

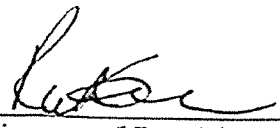
417-839-1309
Complainant's Phone Number

Alternate Contact Number

Date

Complainant's Phone Number

Alternate Contact Number



Signature of Complainant

RICK GRAVER
Complainant's Printed Full Name

Complainant's E-mail Address


Signature of Complainant

CINDY GRAVER
Complainant's Printed Full Name

@hotmail.com
Complainant's E-mail Address

Signature of Complainant

Complainant's Printed Full Name

Complainant's E-mail Address

Email: karl@sfalawfirm.com
COUNSEL FOR COMPLAINANTS

7-24-16
Date

William A. Phipps
Signature of Complainant

573-578-8787
Complainant's Phone Number

William A. Phipps
Complainant's Printed Full Name

Alternate Contact Number

bebosphipps@embargo.mai.com
Complainant's E-mail Address

7-24-16
Date

Gloria Phipps
Signature of Complainant

573-578-8787
Complainant's Phone Number

Gloria Phipps
Complainant's Printed Full Name

Alternate Contact Number

bebosphipps@embargo.mail.com
Complainant's E-mail Address

Date

Signature of Complainant

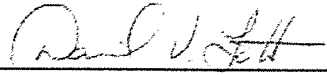
Complainant's Phone Number

Complainant's Printed Full Name

Alternate Contact Number

Complainant's E-mail Address

August 2, 2016
Date


Signature of Complainant

417-527-1432
Complainant's Phone Number

David V. Lott
Complainant's Printed Full Name

Alternate Contact Number

david@missouriholding.com
Complainant's E-mail Address

Date

Signature of Complainant

Complainant's Phone Number

Complainant's Printed Full Name

Alternate Contact Number

Complainant's E-mail Address

Date

Signature of Complainant

Complainant's Phone Number

Complainant's Printed Full Name

Alternate Contact Number

Complainant's E-mail Address



Russ Schenewerk' (Also licensed in AR)¹
Karl Finkenbinder (Also licensed in OK)²
Joshua Baker
Cody A. Fenton
Jacqueline Bryant
Nicolas Grimwood*

Direct email: karl@sfalawfirm.com

May 31, 2016

Bryan Wade
Husch Blackwell
901 St. Louis Street, Suite 1800
Springfield, MO 65806

Re: *Transfer of Carriage Oaks Water and Sewer Systems to Caring American Foundation, Inc.*

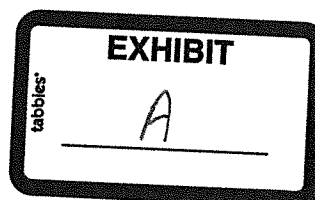
Dear Bryan:

As you know, at the HOA meeting, your client notified the Membership that ownership of the water and sewer systems were transferred from the developer, Mr. Mills, to Caring Americans Foundation, Inc. ("CAF"), a non-profit corporation formed exclusively for charitable and educational purposes. However, as I am sure you are aware, CAF would not be authorized to provide water and sewer services to Association members without first obtaining an operating permit from the Missouri Department of Natural Resources ("DNR"), and a certificate of convenience and necessity from the Public Service Commission ("PSC").

Pursuant to 10 CSR 20-6.010, All persons who build, erect, alter, replace, operate, use, or maintain existing point sources, or intend these actions for a proposed point source, water contaminant sources, or wastewater treatment facilities shall apply to the department for the permits required by the Missouri Clean Water Law and these regulations. 10 CSR 20-6.010(1)(A). Further, All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. 10 CSR 20-6.010(3)(A).

CAF, however, is not a valid continuing authority for purposed of providing water and sewer service to Association members. 10 CSR 20-6.010(3)(B) provides a list of continuing authorities that may be issued an operating permit for water and sewer services; CAF, however, would not fall under any of the categories listed. While CAF could attempt to take the position that it would qualify as a continuing authority under 10 CSR 20-6.010(3)(B)(3), this argument would fail because CAF was not formed as a water or sewer company; it was formed as a non-profit corporation for chartable and educational purposes. Even if CAF were able to establish it is a continuing authority under 10 CSR 20-6.010(3)(B)(3), CAF would still need to acquire a certificate of convenience and necessity from the PSC prior to providing services, and would be subject to PSC regulation.

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SCHENEWERK & FINKENBINDER
ATTORNEYS AT LAW, LLC

It should also be noted that CAF would not be exempt from PSC regulation simply because it is a non-profit corporation. While there were statutory provisions enacted in 1997 to authorize non-profit organizations to operate water and sewer system free of PSC authority, CAF would not fall into this category because it is not a non-profit water or sewer corporation organized under Chapter 393 RSMo. Further, CAF would not be eligible to convert to a non-profit water or sewer corporation because it was not originally organized for the purposes of providing water and sewer services. *See*, §393.827 (sewer) and §393.903 (water).

Because CAF is not a continuing authority for purposes of providing water and sewer services, and because CAF would not be exempt from PSC regulation, CAF is not authorized to provide or charge Association members for water and sewer services. Notably, though, the Association could be a continuing authority for purposes of obtaining an operating permit, provided that certain guidelines detailed in 10 CSR 20-6.010(3)(B)(5) were complied with.

Accordingly, demand is hereby made that, within 15 days, Mr. Mills: (a) create a non-profit water and sewer corporation with all Association members being members of the water and sewer corporation, and then strictly adhere to the statutory requirements detailed in §§ 393.825-.861 and 393.900-.954 – including the requirement that the entity refund to their membership all revenues in excess of their operating expenses; (b) then transfer all ownership rights to the water and sewer facilities to the newly formed non-profit corporation, along with any required easements so that the corporation may apply for an operating permit; and (c) ensure that the sewer and water corporation is in compliance with DNR and PSC requirements – including obtaining a certificate of convenience and necessity. My clients also demand that Mr. Mills have the systems inspected to ensure that they are in full compliance with all DNR requirements and code.

In the event that Mr. Mills fails to comply with this demand, my clients would be forced to report Mr. Mills' misconduct to DNR and the PSC. In addition, they may be forced to initiate legal proceedings against Mr. Mills and CAF, and petition the PSC to conduct a judicial review of CAF for unlawfully engaging in the provision of water and sewer services for gain without certification.

After reviewing the relevant provisions, I think you would agree that Mr. Mills would be subject to civil liability to the Association and the PSC for operating water and sewer services without the proper permits and certifications; as such, it would very much be in your client's best interest to comply with our demands.

Respectfully,


Karl Finkenbinder