

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MSK Properties, LLC/Michael S. Kozero

v.

PPL Electric Utilities Corporation

:
:
:
:
:
:

C-20065882

SECRET
2006 APR - 7 AM 10:15
77-2-11111

DOCUMENT
FOLDER

ORDER DENYING MOTIONS TO DISMISS AND
SETTING RESOLUTION CONFERENCE

On February 16, 2006, Michael S. Kozero filed a Formal Complaint with the Commission, on behalf of MSK Properties, LLC.¹ (Complainant), against PPL Electric Utilities Corporation (Respondent), alleging that Respondent refused to cut down a tree located within its right of way on Complainant's property. Complainant further avers that he sought the services of tree surgeons to remove the tree but could not find anyone who would remove the tree growing through Respondent's power lines. As relief, Complainant requests that the Commission direct Respondent to remove the tree.

On March 8, 2006, Respondent filed an Answer with New Matter addressing the Complaint allegations and a Motion to dismiss the Complaint on the basis that it was not filed by an attorney and is thus insufficient as to form.

According to Commission records, as of April 4, 2006, Complainant did not file a response to the New Matter² portion of Respondent's Answer or its Motion to Dismiss³. Therefore,

DOCKETED
JAN 12 2007

¹ A search of the Pennsylvania Department of State Corporations Bureau records revealed that MSK Properties, Inc. is a registered Limited Liability Company. However, the Complaint is written in the first person and signed by Michael S. Kozero.

² Pursuant to 52 Pa. Code §5.62(c) Complainant's response to New Matter was due on or before March 28, 2006.

³ Pursuant to 52 Pa. Code §5.101(d) a reply to the Motion to Dismiss was due on or before March 18, 2006.

the factual allegations raised as New Matter are deemed admitted⁴. This matter was assigned to me by Motion Judge Assignment Notice dated March 14, 2006. The Motion is ripe for ruling.

Before the Commission is a Complaint and a Motion to dismiss the Complaint on the basis that it is insufficient as to form pursuant to 52 Pa. Code §5.101(a)(2).

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §5.101. Commission preliminary motion practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)). Each of Respondent's Motions will be discussed separately.

⁴ The Commission's regulations state: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.62(c).

In its Motion to Dismiss, Respondent objects to the filing of this Complaint because the Complainant is a limited liability company and the Complaint was not filed by an attorney pursuant to section 1.22(a) of the Commission's Rules of Administrative Practice and Procedure. Based upon the following analysis, the Motion to Dismiss will be denied.

The Commission's regulations require corporate entities to be represented by attorneys in adversarial proceedings before the Commission. Only individuals may represent themselves in adversarial proceedings. See, 52 Pa. Code §§ 1.21, 1.22, 1.23. However, in non-adversarial proceedings, a bona fide officer of a corporation may represent a corporation. 52 Pa. Code § 1.21(c). The Commission's regulations provide that:

§1.21. Appearance in person.

- (a) Individuals may represent themselves.
- (b) In adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only under §1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under section 1307(f) or 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.
- (c) In nonadversarial proceedings, a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another agency, a political subdivision or governmental entity may represent the agency or political subdivision in presenting a submittal to the Commission subject to this chapter and Chapter 5 (relating to formal proceedings).

52 Pa. Code §1.21. [Emphasis added].

§1.22. Appearance by attorney or certified legal intern.

- (a) Individuals, partnerships, associations, corporations or governmental entities may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania.
- (b) An attorney licensed in a jurisdiction which does not accord like privileges to members of the bar of this Commonwealth may appear before the Commission with the permission of the presiding officer or the Commission consistent with Pa.B.A.R. No. 301 (relating to admission pro hac vice).
- (c) Law students meeting the requirements of PA.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

52 Pa. Code §1.22.

§1.23. Other representation prohibited at hearings.

- (a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Commission or a presiding officer except:
 - (1) As stated in §1.21 or §1.22 (relating to appearance in person; and appearance by attorney or certified legal intern).
 - 2) As otherwise permitted by the Commission in a specific case.

52 Pa. Code §1.23. [Emphasis added].

The simple filing of a Formal Complaint does not automatically trigger an adversarial proceeding, because, until the answer is filed, it is not known whether the Formal Complaint will be contested. Furthermore, Formal Complaints may be satisfied by the respondent, under the procedures outlined in 52 Pa. Code §5.24, or via a mediation process. Finally, the Commission's procedural regulations are to be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding, and procedural defects may be

disregarded where substantive rights are not affected. 52 Pa. Code §1.2. Thus, if Complainant's failure to secure counsel prior to the filing of its Formal Complaint is merely procedural and not prejudicial to Respondent, it would seem that the filing deficiency could be excused.

Requiring closer scrutiny is the determination of whether the filing of a formal complaint by a non-attorney on behalf of a corporation constitutes the unauthorized practice of law.⁵ The Supreme Court of Pennsylvania is vested with exclusive jurisdiction to regulate the practice of law in Pennsylvania. Commonwealth v. Carroll, 517 A.2d 980 (Pa. Super. 1986), alloc. den., 527 A.2d 535 (1987); Pa. Const. Art. 5, §10(c). In Shortz v. Farrell, 193 A. 20 (Pa. 1937) (Shortz), the Pennsylvania Supreme Court outlined three broad categories of activities that constitute the practice of law: (1) the instruction and advising of clients in regard to the law so that they may pursue their affairs and be informed as to their rights and obligations; (2) the preparation of documents for clients requiring the familiarity with legal principles beyond the ken of ordinary laypersons; and (3) the appearance on behalf of clients before public tribunals, the application of rules of evidence, the examination and cross-examination of witnesses, and presentation of arguments in order to assist the deciding official in the proper interpretation and enforcement of the law. Shortz, at 21.

The Commission has held that there are certain activities before the Commission that may be performed by a corporation without legal counsel. Most recently, the Commission held that the filing of motor carrier applications with the Commission does not constitute the practice of law, does not require an attorney to prepare the filing, and does not warrant summary dismissal of such applications if filed by a non-attorney. Application of Pittsburgh Information and Research Company t/d/b/a Onyshko Investigative Services, Docket No. A-00120710, Order entered November 2, 2004 (Onyshko). Relying on Kohlman v. Western Pennsylvania Hospital, 652 A.2d 849 (Pa. Super. 1994) (Kohlman),⁶ the Commission held that "[t]he filing of motor carrier applications before the Commission is clearly not 'in court' representation of the type addressed in Kohlman." Onyshko, supra. Since these applications are "relatively elementary and dictated by the

⁵ The unauthorized practice of law is not to be condoned. Pa. R.P.C. 5.5.

⁶ In Kohlman, the Pennsylvania Superior Court concluded that a non-attorney's motion to strike a *non pros* judgment, constituted the practice of law. The court observed that "the in court representation of another...amounts to the 'practice of law'..." However, the court cited to Shortz (see Footnote 4 below) and said the preparation and filing of workmen's compensation pleadings "does not constitute the practice of law because the forms are prepared by the Workmen's Compensation Board, are elementary in character, and do not rise to the dignity of 'pleadings' as that term is understood in other judicial proceedings."

forms and instructions prepared by the Commission," the Commission does not believe "that filing these applications requires 'the abstract understanding of legal principles and a refined skill for their concrete application.'" Id. (citing Dauphin County Bar Assoc. v. Mazzacaro, 351 A.2d 220 (Pa. 1976)). Relying on Shortz,⁷ the Commission stated, "as applied to the various application forms required by our regulatory regime, it is not clear that filing routine applications on preprinted or suggested forms with the Commission constitutes the practice of law," since the "application forms are straightforward and do not require specialized knowledge of the law to be properly filled out." Onyshko, supra

The Commission provides complaint forms with instructions to anyone who requests them. In the instant case, Complainant used such a form. Using a form and instructions prepared and disseminated by the Commission to file a complaint is comparable to filing an application form as discussed in Onyshko and is consistent with the type of routine activity done on preprinted or suggested forms prepared by the Commission. Therefore, a similar result is required when a corporate officer files a formal complaint on behalf of a corporation as when filing an application with the Commission. Following the rationale in Onyshko, the completion of the Commission's Formal Complaint form by a non-attorney on behalf of a corporation does not constitute the practice of law, and therefore, need not be prepared and filed by legal counsel.

This conclusion is consistent with the Commission's action in LeStat Corp. v. Pennsylvania Power and Light Co., Docket No. C-00946284, Order entered August 30, 1995 (LeStat). In LeStat, a complaint was brought by a corporation that did not appear with counsel at the hearing, and the Administrative Law Judge dismissed the complaint. The Commission remanded the case for hearing and required that the corporation be represented by counsel at the hearing. Therefore, LeStat stands for the proposition that attorney representation is required at the hearing, but not for the filing of the original complaint that initiated the proceeding.

⁷ In Shortz, the Pennsylvania Supreme Court found that while active representation at a workmen's compensation hearing required counsel, the preparation and filing of pleadings did not require counsel. The Court opined that such pleadings (on forms prepared by the Board) were uniformly simple and did not require legal skill in their preparation. It was only when a hearing is begun before a referee that the representation of a party constitutes the practice of law.

Moreover, the Commission's regulations permit pleadings (i.e. complaints),⁸ submittals, or other documentary filings to be signed by "an officer if it is a corporation, trust, association or other organized group." 52 Pa. Code § 1.35(b)(ii).

In support of its Motion to Dismiss, Respondent states that Complainant is a registered limited liability company, that the account at the service address is in the name of MSK Properties, LLC and that therefore, Complainant must be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania.

While I agree with Respondent that Complainant must be represented by counsel at all subsequent stages of this proceeding, I believe that the Complaint, on its face, sufficiently supports a presumption that Michael S. Kozero is authorized to sign the Complaint on behalf of Complainant MSK Properties, LLC. Most notably, the company shares identical initials with Mr. Kozero. His failure to procure counsel prior to initiating this proceeding is a procedural defect that is not prejudicial to Respondent. Complainant will be directed to cure this deficiency by presenting verification that Mr. Kozero is authorized to act on its behalf. Additionally, Complainant will be required to retain legal counsel to participate in all future stages of this proceeding.

Given the Pennsylvania Supreme Court's description of the broad activities that constitute the practice of law in Shortz, as well as the Commission's recent action in Onyshko, I find it difficult to conclude that the preparation and filing of a formal complaint, as was done in this case, using prepared, preprinted forms which do not require specialized knowledge of the law or legal skill to complete, constitutes the practice of law. Complainant's activity does not require the familiarity with legal principles beyond the ken of ordinary laypersons. So long as Complainant cures the defect in the Complaint and verifies that Mr. Kozero is authorized to act on its behalf, the signing and filing of the Complaint by a non-attorney on behalf of the corporation is acceptable, and 52 Pa. Code §1.21(b) does not require the dismissal of this Complaint. Accordingly, the Motion to Dismiss is denied.

This matter will be set for resolution conference to afford the parties the opportunity to attempt to resolve this matter themselves. The parties are strongly encouraged to participate in

⁸ A formal complaint is a pleading. 52 Pa. Code § 5.1(a)(2).

this process. This process is consistent with the Commission's regulations at 52 Pa. Code §§ 5.231(a) and 69.391.

Respondent shall contact Complainant no later than April 20, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of this case. The conference shall occur no later than May 10, 2005. No later than ten days following the conference, Respondent shall file a report with Bruce Bigelow (mediator), setting forth:

- (a) The date, time and location of the conference;
- (b) The participants representing each party;
- (c) A statement describing whether a full resolution, including withdrawal of the complaint, was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and
- (d) A statement listing any resolved issues, if a full resolution was not achieved.

Should the conference not take place by the due date, Respondent shall file a report with the mediator, no later than May 20, 2005, giving the reason(s) why the due date was not met.

The Commission encourages mediation if the parties cannot reach an agreement through the resolution conference.⁹ If the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, they are entitled to a hearing, which will include the presentation of oral testimony and other evidence before a Commission Administrative Law Judge, who will consider the case and issue a written decision.¹⁰

⁹ Mediation is an informal process in which the parties attempt to resolve the case with the help of a mediator. The mediator is a neutral staff member of the Commission who does not give advice, make a decision or represent any party. Instead, the mediator assists the parties in their efforts to come to an agreement.

¹⁰ Should this case proceed to hearing, Complainant will bear the burden of proof and must demonstrate that Respondent has violated a statute, regulations or orders of the Commission. 66 Pa. C.S. §332(a).

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by PPL Electric Utilities Corporation, seeking dismissal of the Complaint filed by the MSK Properties, LLC/Michael S. Kozero, at PUC Docket No. C-20065882 is denied.
2. That within 10 days of receipt of this Order, MSK Properties, LLC shall file with the Commission a statement verifying that Michael S. Kozero is authorized to act on its behalf. The statement shall state Mr. Kozero's relationship to the company and shall be notarized. A copy of this statement shall be provided to the undersigned via regular mail at P.O. Box 3265, Harrisburg, PA 17105-3265 or facsimile at (717) 787-0481.
3. That this matter be set for a resolution conference.
4. That PPL Electric Utilities Corporation shall contact Deke Enterprises, Inc. no later than April 20, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of this case.
5. That the resolution conference shall take place no later than May 10, 2006.
6. That PPL Electric Utilities Corporation shall file a report addressed to Bruce Bigelow, Mediator, Office of Administrative Law Judge, P.O. Box 3265, Harrisburg, PA 17105-3265, no later than ten days following the resolution conference setting forth:
 - (a) the date, time and location of the conference;
 - (b) the participants for each party
 - (c) a statement describing whether a full resolution, including withdrawal of the complaint was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and
 - (d) a statement listing any resolved issues, if a full resolution was not achieved.

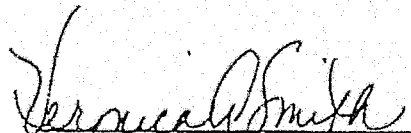
7. That, if the resolution conference does not take place by the due date, PPL Electric Utilities Corporation shall file a report with the mediator, no later than May 20, 2006 giving the reason(s) why the due date was not met.

8. That, if the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, this matter will be set for hearing.

9. That any pleadings, discovery or other documents submitted in this proceeding on behalf of MSK Properties, I.L.C. must be prepared and filed by an attorney licensed to practice law in the Commonwealth of Pennsylvania.

10. That, if this matter is not resolved through the resolution conference or mediation process and a hearing becomes necessary, MSK Properties, LLC. must be lawfully represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania.

Date: April 6, 2006


Veronica A. Smith
Chief Administrative Law Judge

GROSS, MCGINLEY, LABARRE & EATON, LLP

MALCOLM J. GROSS
PAUL A. MCGINLEY
DONALD LABARRE, JR.
J. JACKSON EATON, III
MICHAEL A. HENRY
PATRICK J. REILLY
ANNE K. MANLEY
SUSAN ELLIS WILD
VICTOR F. CAVACINI
ROBERT A. ALPERT
JOHN P. SERVIS
ALLEN I. TULLAR
RICHARD T. CURLEY
RAYMOND J. DERAYMOND

ATTORNEYS AT LAW
33 SOUTH SEVENTH STREET
P.O. BOX 4060

ALLENTOWN, PENNSYLVANIA 18105-4060

(610) 820-5450
TELEFAX (610) 820-6006
E-MAIL kkrupka@gmle.com
Direct Dial (610) 871-1323

JOHN F. GROSS
KIMBERLY G. KRUPKA
K. A. SPOTTS-KIMMEL
ERROL C. DEANS, JR. *
ANDREW H. RALSTON, JR.
LOREN A. WALMER

OF COUNSEL
DAVID C. KEHN

*Also admitted in NY

EASTON OFFICE:
717 WASHINGTON ST
EASTON PA 18042
(610) 258-1506

August 21, 2006

ORIGINAL

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

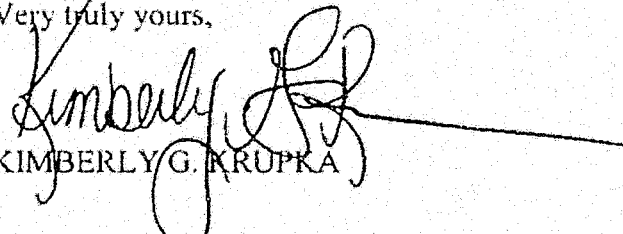
RE: MSK Properties, LLC v. PPL Electric Utilities Corporation
Docket No. C-20065882

Dear Mr. McNulty:

Enclosed for filing in the above-captioned matter are an original and three (3) copies of the Certificate of Satisfaction of Complaint of PPL Electric Utilities Corporation.

In addition, please date and time-stamp the enclosed extra copy of this letter and return it to me in the envelope provided.

Very truly yours,


KIMBERLY G. KRUPKA

Enclosures

cc. Gary J. Owens (w/ enc.)
Bruce E. Lenord (w/ encs.)
MSK Properties, LLC
Bruce Bigelow

DOCUMENT
FOLDER

RECEIVED

AUG 21 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

117

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MSK PROPERTIES, LLC,

Complainant

v.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET
NO. C-20065882

CERTIFICATE OF SATISFACTION OF COMPLAINT

1. Complainant is MSK Properties, LLC (hereafter "Complainant").
2. Respondent is PPL Electric Utilities Corporation (hereafter "PPL").
3. This Certificate of Satisfaction of Complaint is submitted pursuant to Section 5.24(b) of Title 52 of the Pennsylvania Code, 52 Pa. Code § 5.24(b).

4. PPL hereby certifies that the parties to the above-referenced formal Complaint, now pending before the Pennsylvania Public Utility Commission (hereafter "Commission"), have mutually and voluntarily agreed upon the following terms as full satisfaction of all outstanding legal and factual disputes in this proceeding, and Complainant has acknowledged satisfaction to PPL:

(a) Complainant MSK Properties, LLC and Respondent PPL, agreed that upon a telephonic request, PPL will trim any tree on the property of MSK Properties, LLC which is within ten feet of a PPL service line. It is specifically acknowledged that the trimming will be limited to

DOCUMENT
FOLDER

1
DOCKETED
SEP 08 2006

RECEIVED

AUG 21 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

creating a ten foot clearance for purposes of MSK Properties, L.L.C tree surgeon further trimming or cutting of the tree. While PPL agrees to use reasonable efforts to preserve the viability of the tree, both parties acknowledge that there should be no liability on part of PPL if any tree dies as a result of the said trimming.

(b) Complainant agrees to withdraw his Complaint with Prejudice.

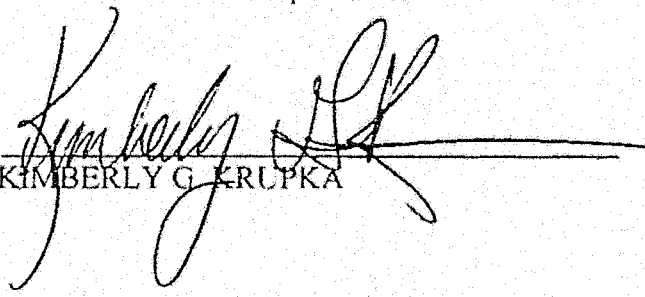
5. Complainant hereby acknowledges that he has ten days from the issuance of the Certificate of Satisfaction to provide written notification to the Public Utilities Commission if he disagrees with any provisions set forth here in.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the docket be marked closed in this matter.

Respectfully submitted,

PPL Electric Utilities Corporation

By:


KIMBERLY G. KRUPKA

Dated: August 21, 2006
at Allentown, Pennsylvania

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MSK PROPERTIES, LLC,

Complainant

v.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET
NO. C-20065882

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

MSK PROPERTIES, LLC
715 WEST MARKET STREET
BETHLEHEM, PA 18018

Dated this 21ST day of August 2006.

GROSS, MCGINLEY, LABARRE & EATON, LLP

BY: 

KIMBERLY C. KRUPKA
ATTORNEY FOR PPL ELECTRIC UTILITIES CORP.
33 SOUTH 7TH STREET, P.O. BOX 4060
ALLENTOWN, PA 18105-4060
(610) 820-5450
I.D. #83071

W:\WDOX\CLIENTS\ppl-pucitree\00140239.DOC

3

RECEIVED

AUG 21 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: September 15, 2006
SUBJECT: MSK Properties, LLC v. PPL Electric Utilities Corporation
C-20065882
TO: Wanda Zeiders
Docket Management
FROM: Linda Salome, ALJ Support Staff
Office of Administrative Law Judge

DOCUMENT
FOLDER

On August 21, 2006, a Certificate of Satisfaction was filed in the above-captioned proceeding. If no objection is filed to this certificate within 10 days of the filing, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

Attachment

pc: Bruce Bigelow, Mediator
Beth Plantz
Case File

DOCKETED
SEP 26 2006