

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

M.A.V.I.S.S., INC. AND
Mr. DARBY

ALLEGED FAILURE TO COMPLY WITH
COMMISSION REGULATIONS

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CASE NO.
92-016

O R D E R

On January 13, 1992, an Order to show cause was issued by the Commission against M.A.V.I.S.S., Inc. ("M.A.V.I.S.S."). The Order was issued on the basis of a utility inspection report filed December 18, 1991 by a utility investigator employed by the Commission. The report charges M.A.V.I.S.S. with 14 violations of 807 KAR 5:071, Section 7(1). The Order directed M.A.V.I.S.S. to appear before the Commission and show cause why it should not be penalized pursuant to KRS 278.990 for its failure to comply with Commission regulations. The Order further directed M.A.V.I.S.S. to submit a written response to the charges made in the inspection report.

On January 21, 1992, Mr. Darby, the sole shareholder of M.A.V.I.S.S., filed a response to the Order. In the response, Mr. Darby stated that due to the financial conditions of the corporation he could not provide maintenance or management for its facilities. He further stated that, since January 1, 1991, the customers of the utility to whom ownership of the facilities was

to be transferred pending approval of the Commission had taken control of the management and maintenance of the plant.

On January 28, 1992, Mr. Darby filed a supplemental response, again indicating that the inability to maintain the utility's facilities in compliance with Commission regulations was due to the financial condition of the corporation. Attached to the response was a separate statement listing the actions taken or contemplated to correct the violations charged in the December 18, 1991 inspection report.

On February 5, 1992, Mr. Darby, as the sole shareholder and president of M.A.V.I.S.S., was made a party to the proceeding and directed to appear before the Commission to show cause why he too should not be subject to the penalties provided in KRS 278.990. A hearing was held before the Commission on February 14, 1992 at which Mr. Darby appeared in his own behalf and on behalf of M.A.V.I.S.S. Mr. Darby was not represented by counsel.

FINDINGS OF FACT

M.A.V.I.S.S. owns, controls, and operates facilities used for the treatment of sewage for the public. The facilities are located in the Madison Village Subdivision in Madison County. Madison County does not contain a first class city and the M.A.V.I.S.S. sewage treatment plant is not subject to regulation by a metropolitan sewer district.

M.A.V.I.S.S. is a Kentucky corporation whose sole shareholder and president is Mr. Darby. In February 1988, Mr. Darby acquired all of the stock in A.B. Sanitation, Inc. He later changed the name of the corporation. M.A.V.I.S.S. operated the plant until

October 1, 1991, when the operation was taken over by Mr. Bill Williams. At that time, Mr. Williams was negotiating with Mr. Darby to purchase the plant. Mr. Williams operated the sewage treatment plant until December 31, 1991, when he and Mr. Darby terminated their negotiations. Since then, the plant has been operated by the association, a non-profit corporation organized by the homeowners of Madison Village Subdivision. On April 27, 1992, the association acquired the sewage treatment facilities owned by M.A.V.I.S.S. and the transfer was approved by this Commission in Case No. 92-049.¹

The inspection out of which this proceeding arose was conducted by a utility investigator on December 16, 1991. The investigator had previously inspected the plant on approximately 15 other occasions. The investigator found 23 conditions which he cited as violations. In a follow-up inspection made on February 10, 1992, the investigator found that some of the violations had been corrected, but that most of them remained.

The plant has also been inspected by environmental inspectors employed by the Environmental Protection and Natural Resources Cabinet. Those inspectors have found the plant to be in violation of their cabinet's violations and have cited M.A.V.I.S.S. for those violations.

¹ Case No. 92-049, Application of Madison Village Association, Inc. for an Order Authorizing M.A.V.I.S.S., Inc. to Transfer its Assets to Applicant and for Determination of Jurisdictional Status.

M.A.V.I.S.S. and Mr. Darby do not deny the violations. On the contrary, they admit that the plant was in poor condition when Mr. Darby acquired the corporation in 1988. They state that due to the lack of funds, they were never able to improve the plant or bring it into compliance. Their only defense is that the revenues produced by the facility have never been sufficient to properly maintain the plant.

CONCLUSIONS OF LAW

M.A.V.I.S.S. is a public utility subject to the jurisdiction of this Commission. By reason of its failure to properly maintain the plant, M.A.V.I.S.S. has violated the provisions of Commission Regulation 807 KAR 5:071, Section 7.

KRS 278.990(1) provides that any utility or any officer, agent, or employee of a utility who "willfully violates" any provision of KRS Chapter 278, or any regulation promulgated under that chapter, shall be subject to a penalty of up to \$2,500. A willful violation is a violation that is committed intentionally, not accidentally nor involuntarily. Muncie v. Commonwealth, 97 S.W.2d 606, 609 265 Ky. 730, 736 (1936). In the matter of Mike Little Gas Company, Inc., Case No. 91-202,² this Commission held that a willful violation occurs when an officer, agent, or employee of a utility knowingly violates any provision of KRS Chapter 278, or any regulation promulgated under that chapter.

Mr. Darby was aware at all times that the sewage treatment plant owned by M.A.V.I.S.S. was not being operated in compliance

² Case No. 91-202, Mike Little Gas Company, Inc., Alleged Violation of KRS 278.160.

with Commission regulations. As president of the corporation and the manager of the facility, Mr. Darby assumed all responsibility for the plant's operation and he had a duty to take whatever action was appropriate to bring the system into compliance. His failure to do so was a knowing violation of the regulations for which the Commission may assess a penalty against both the utility and Mr. Darby.

While the violations cited were willful on the part of M.A.V.I.S.S. and Mr. Darby, because of their limited financial resources, the violations were largely beyond their ability to control. These factors, together with the recent transfer of ownership from M.A.V.I.S.S. to the homeowners association, mitigate the violations and a nominal penalty of \$25 each against M.A.V.I.S.S. and Mr. Darby would be appropriate under the circumstances.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:


1. M.A.V.I.S.S. and Bil Darby are hereby determined to be in willful violation of 807 KAR 5:071, Section 7(1), for failing to properly maintain the sewage treatment plant owned by M.A.V.I.S.S.

2. For such violation, M.A.V.I.S.S. and Bil Darby are each hereby assessed a penalty of \$25.

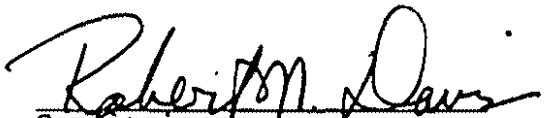
3. The penalty is hereby suspended on condition that M.A.V.I.S.S. and Bil Darby comply with all statutes and regulations of the Commission relating to the operation of the sewer plant for a period of not less than five years.

Done at Frankfort, Kentucky, this 1st day of July, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting