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Decision 92-11-034 November 23, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Francis H. Ferraro, an individual,)
to sell 1,000 shares of Madera)
Ranchos Water Co. Inc. capital)
stock, which are the total shares)
issued, to Ara Keoshian and for)
Madera Ranchos Water Co. Inc. to)
transfer such shares to Keoshian.)

ORIGINAL

Application 90-04-042
(Filed April 25, 1990)

(U-403 W)

Steeffel, Levitt & Weiss, by Lenard G. Weiss,
Attorney at Law, for Francis Ferraro,
applicant.
Izetta C. R. Jackson, Attorney at Law, for
the Water Utilities Branch.

FINAL OPINION

This order dismisses without prejudice the application of Francis H. Ferraro (Ferraro) to transfer to Ara Keoshian (Keoshian) the ownership of Madera Ranchos Water Company Inc. (Madera Ranchos).

By this application, Ferraro and Keoshian jointly sought Commission approval under Public Utilities (PU) Code §§ 851 and 854 to transfer ownership and to execute a second deed of trust on the real property of Madera Ranchos.

Madera Ranchos is a Class C water company located about 12 miles from Fresno and about the same distance from Merced. It serves approximately 720 customers.

Ferraro sold his 1,000 shares of stock in Madera Ranchos to Keoshian on March 25, 1988. The total sales price was \$450,000: \$50,000 down and a \$400,000 promissory note dated March 11, 1988, bearing interest at 11% per annum, payable in the amount of

\$3,920.46 monthly commencing July 1, 1988. The note is secured by a second deed of trust on the real property of Madera Ranchos.

An evidentiary hearing was held on November 15 and 16, 1990 in San Francisco. The Commission issued interim Decision (D.) 91-07-067 dated July 24, 1991, in which it stated:

"Findings of Fact"

- *12. The income generated by Madera Ranchos and Keoshian's outside income are not sufficient to pay off the \$400,000 note, maintain the utility's operations and viability, and provide Keoshian a reasonable rate of return on investment and compensation of services rendered."
- *15. The transfer of ownership to Keoshian is adverse to public interest only because of the sale's financing."

"Conclusions of Law"

- *1. Ferraro has not received authorization under PU Code §851 to sell his shares of Madera Ranchos.
- *2. Keoshian has not received authorization under PU Code §854 to control or acquire the shares of Madera Ranchos.
- *3. The sale of Madera Ranchos, as specified in Application 90-04-042, is void and of no effect."

The Commission ordered that:

- *1. Application 90-04-042 for sale of Madera Ranchos shall remain open.
- *2. The applicants shall have 90 days in which to renegotiate the sale price and seek authorization from the Commission for the sale.
- *3. If the parties fail to seek authorization for a renegotiated sale price within 90 days, the Commission shall dismiss the application without prejudice. In that

event, Ferraro shall return whatever payments Keoshian has made and Keoshian shall return his shares to Ferraro." (D.91-07-067 dated July 24, 1991.)

On June 10, 1992, the Commission Advisory and Compliance Division's Water Utilities Branch (Branch) filed a motion to dismiss the instant application without prejudice.

Branch, by letter dated August 29, 1991, reminded Ferraro and Keoshian that they must seek authorization from the Commission for a renegotiated agreement by November 22, 1991 or the application will be dismissed. Branch has received no further correspondence from the parties on this matter (nor is Branch aware of any such agreement being filed with the Commission). Therefore, Branch submits that applicants have not complied with Ordering Paragraphs 2 and 3 of D.91-07-067.

Because the parties have failed to seek authorization for a renegotiated sale price of Madera Ranchos within the 90-day period allowed by the Commission's order, Branch requests that Ordering Paragraph 3 of Commission D.91-07-067 be implemented, that Application 90-04-042 be dismissed without prejudice, and that the Commission specifically order that, pursuant to PU Code §§ 851 and 854,¹ the purported transfer of Madera Ranchos from Ferraro to

1 "851. No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...plant, system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void."

"854. (a) No person or corporation...shall acquire or control either directly or indirectly any public utility

(Footnote continues on next page)

Keoshian and all related assignments and agreements are void and of no effect. Such dismissal and order would complete invalidation of the transfer of Madera Ranchos as found by the Commission in Conclusion of Law 3 of D.91-07-067.

Branch points out that, according to the evidence presented at hearing, the invalid transfer of Madera Ranchos from Ferraro to Keoshian was recorded, effective March 29, 1988, in the official records of Madera County. Because this transfer legally is void, Branch believes that it is important that the appropriate property recordation office(s) of Madera County be notified and a legal record of the Commission's invalidation of the purported transfer be included in the Madera County records.

In addition, Branch requests the Commission to send copies of the Commission decision invalidating the Madera Ranchos transfer to the California Department of Health Services, California Department of Real Estate, California Department of Water Resources, to all title insurance companies in the vicinity of Madera Ranchos, and to take all other reasonable steps to place any prospective bona fide purchaser of Madera Ranchos on notice of the statutory requirement of Commission approval prior to the legally effective transfer of this public utility.

(Footnote continued from previous page)

organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute acquisition or control activities which are subject to this section. Any such acquisition or control without that prior authorization shall be void and of no effect..."

Copies of Branch's motion, dated June 10, 1992, were served on Ferraro and Keoshian. No response has been received.

We conclude that since Ferraro and Keoshian have not renegotiated the sale price of Madera Ranchos as required by Ordering Paragraph 3 of D.91-07-067, the application to transfer the public utility should be dismissed without prejudice.

Finding of Fact

Ferraro and Keoshian have failed to renegotiate the sale price of Madera Ranchos as required by Ordering Paragraph 3 of D.91-07-067.

Conclusion of Law

1. Since D.91-07-067, dated July 24, 1991, requires that the sale price of Madera Ranchos be negotiated within 90 days, and since Ferraro and Keoshian have not renegotiated the sale price, the application to transfer the public utility should be dismissed without prejudice.

2. The sale of Madera Ranchos, as specified in Application 90-04-042, is void and of no effect since the purported transfer is in violation of PU Code §§ 851 and 854.

FINAL ORDER

IT IS ORDERED that:

1. The application of Francis H. Ferraro (Ferraro) to transfer to Ara Keoshian (Keoshian) the ownership of Madera Ranchos Water Company Inc. (Madera Ranchos) is dismissed without prejudice.

2. The purported transfer of Madera Ranchos from Ferraro to Keoshian is in violation of Public Utilities Code §§ 851 and 854; therefore, the transfer is null and void.

3. Ferraro shall return whatever payments Keoshian has made, and Keoshian shall return the 1,000 shares of Madera Ranchos to Ferraro.

4. The Executive Director shall file a copy of this decision with the County Recorder, Madera County.

5. The Executive Director shall mail a copy of this decision to all title companies in Madera County, the Chicago Title Company in Fresno, the California Department of Health Services, California Department of Real Estate, and the California Department of Water Resources.

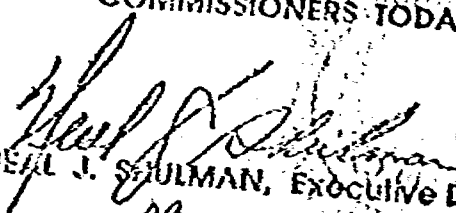
6. This proceeding is closed.

This order is effective today.

Dated November 23, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SCHULMAN, Executive Director
PB