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TRANSMITTAL LETTER

TO: QUALIFICATION/REGISTRATION SECTION
DIVISION OF CORPORATIONS

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-06/15/94--01155--001
***4256.25 ***4256.25

000001370710
-01/05/95--01038--028
***4256.25 ***4256.25

SUBJECT: Charles L. Smith & Associates Designers, Inc.
(Name of corporation)

Dear Sir or Madam:

W94-13349

The enclosed "Application by Foreign Corporation for Authorization to Transact Business in Florida", "Certificate of Existence", and check are submitted to register the above referenced foreign corporation to transact business in Florida.

Please return all correspondence concerning this matter to the following:

Charles L. Smith
(Name of Person)

Charles L. Smith & Assoc. Designers, Inc.
(Firm/Company)

1823 North Third Street
(Address)

Jacksonville Beach, Florida 32250
(City, State and Zip Code)

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
95 JAN -3 PM 1:40

Should you need to call someone concerning this matter, please call:

Charles L. Smith at (904) 241 - 2345
(Name of Person) Area Code & Daytime Telephone Number

W
1/2/95

COURIER ADDRESS:

Qualification/Registration Sec.
Division of Corporations
409 E. Gaines St.
Tallahassee, FL 32399

MAILING ADDRESS:

Qualification/Registration Sec.
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314



CHARLES L. SMITH & ASSOCIATES
DESIGNERS INC.



1821 North Third Street
Jacksonville Beach, FL 32250
(904) 241-3452

June 2, 1994

Qualification/Registration Sec.
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

Dear Sir or Madam:

Pursuant to section 607.1503(1), Florida Statutes,
I have requested an original certificate of existence
from The State of Texas Secretary of State. As soon
it arrives, I will furnish it along with my "Application
for Authorization to Transact Business in Florida to
you.

I should expect to furnish you with the necessary
certificate, application and fee during the week of
June 6-10, 1994

Sincerely,

Charles L. Smith

Charles L. Smith,

74-2047290

5 W12H
6/4



FLORIDA DEPARTMENT OF STATE

Jim Smith
Secretary of State

June 16, 1994

CHARLES L. SMITH
1823 NORTH THIRD STREET
JACKSONVILLE BEACH, FL 32250

SUBJECT: CHARLES L. SMITH & ASSOCIATES DESIGNERS, INC.
Ref. Number: W94000013349

We have received your document for CHARLES L. SMITH & ASSOCIATES DESIGNERS, INC. and your check(s) totaling \$78.75. However, the document has not been filed and is being retained in this office for the following:

Section 607.1502(4), Florida Statutes, requires this office to collect a \$500 penalty fee for each year this entity transacted business in Florida prior to qualification and the appropriate charter tax and annual report fees that would have been due this office had the corporation qualified the year it began operations in this state. Please complete the enclosed form INHSE37 and contact this office for the charter tax due. The amount entitled this office in annual report fees and penalty fees is \$4781.25.

Enclosed please find a copy of section 607.1501 or 617.1501, Florida Statutes, which lists those activities that do not constitute transacting business or conducting affairs in this state. If after reviewing this section you determine erroneous information was inserted on the application, a sworn affidavit containing the following information must be submitted: 1.) a statement indicating erroneous information was listed on the application; and 2.) the correct date the corporation began transacting business or conducting its affairs in Florida prior to the year the application was submitted did not constitute transacting business or conducting affairs pursuant to section 607.1501 or 617.1501, Florida Statutes.

~~A certificate of existence, dated no more than 90 days prior to the delivery of the application to the Department of State, duly authenticated by the secretary of state or other official having custody of the records in the jurisdiction under the laws of which it is incorporated/organized, must be submitted to this office. A translation of the certificate under oath of the translator must be attached to a certificate which is in a language other than the English language. A photocopy of this certificate is not acceptable.~~

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call



FLORIDA DEPARTMENT OF STATE

Jim Smith
Secretary of State

(904) 487-6958.

Lee Rivers
Document Examiner

Letter Number: 794A00028177

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

CAROLYN HERMAN, Attorney At Law*

1831 North Third Street • Jacksonville Beach, FL 32230

*Admitted in Florida, New York,
and the District of Columbia

Phone: (904) 247-9420
Fax: (904) 247-8931

August 8, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Florida Department of State
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314
Attn: Lee Rivers
Document Examiner

Re: Charles L. Smith &
Associates Designers, Inc.
Ref. No. W94000013349

Dear Mr. Rivers:

Charles L. Smith recently came to my office and explained that his company has been incorporated in the State of Texas since 1979. Mr. Smith subsequently moved the company to Florida but never had it incorporated in this state. According to Mr. Smith, the company has paid to the State of Florida all applicable corporate income and sales taxes. Mr. Smith tells me, however, that he was unaware of the need for a Certificate of Authority to Transact Business as a Foreign Corporation until your office informed him of this requirement earlier this year.

Mr. Smith shortly thereafter submitted the application for a Certificate which you furnished him and paid the appropriate fee. In response, he received a letter from you dated June 16, 1994 informing him that his application would not be filed because the company owed annual report fees and penalties in the amount of \$4,781.25 for transacting business in Florida prior to qualification. In addition, the letter said that Mr. Smith would be responsible for back charter taxes to be determined. (A copy of the June 16, 1994 is attached to this letter.)

I would like to have a breakdown of the fees and penalties allegedly due by Smith & Associates so that I may review them with my client. Also, Mr. Smith can't find a copy of his recent application for a Certificate. Could you possibly send me a copy along with the breakdown?

If you have any questions or comments about any of the above, please feel free to contact me. Lastly, I would ask that Mr. Smith's filing for a Certificate not be considered abandoned and that this letter serve as response to your June 16, 1994 inquiry within the sixty day period.

Very truly yours,

Carolyn Herman

Att.



FLORIDA DEPARTMENT OF STATE

Jim Smith
Secretary of State

August 11, 1994

Carolyn Herman, Attorney at Law
1831 North Third Street
Jacksonville Beach FL 32250

RE: CHARLES L. SMITH & ASSOCIATES DESIGNERS, INC.
(Ref. # W94000013349)

Dear Ms. Herman:

This letter is in response to your letter dated August 8, 1994, requesting a written breakdown of the \$4,781.25 in annual report and penalty fees referred to in our June 16, 1994 letter. The fees and penalties are calculated as follows:

1986 = \$500 penalty (note: annual reports fees are not assessed in a corporation's first year doing business)
1987 = \$500 penalty and \$25 annual report fee
1988 = \$500 penalty and \$25 annual report fee
1989 = \$500 penalty and \$35 annual report fee
1990 = \$500 penalty and \$35 annual report fee
1991 = \$500 penalty and \$61.25 annual report fee
1992 = \$500 penalty and \$200.00 annual report fee
1993 = \$500 penalty and \$200.00 annual report fee
1994 = \$200 annual report fee (note: no penalty is assessed for the year in which you actually file)

If you have any questions, please feel free to call me at the number listed below.

Lee Rivers

Lee Rivers, Corporate Specialist
Division of Corporations
PO Box 6327
Tallahassee FL 32311
(904) 487-6958

CAROLYN HERMAN, Attorney At Law*

1831 North Third Street • Jacksonville Beach, FL 32250

*Admitted in Florida, New York,
and the District of Columbia

Phone: (904) 247-9420
Fax: (904) 247-8951

August 25, 1994

Douglas Sunshine
Assistant General Counsel
Florida Department of State
Rm. LL 10
The Capitol Building
Tallahassee, FL 32399

Re: Charles L. Smith & Assoc. Designers, Inc.
Ref. No. W94000013349

Dear Mr. Sunshine:

I represent Charles L. Smith & Assoc. Designers, Inc., a Texas Corporation ("Company") currently operating in Jacksonville Beach, FL. Earlier this year, Charles Smith, President of the Company, was notified by Corporate Records, Department of State ("Department") that the Company was required to file an Application by Foreign Corporation for Authorization to Transact Business in Florida pursuant to Section 607.1503, F.S. This was the first notice the Company had received regarding this requirement. Mr. Smith promptly filed the requisite Application and paid the appropriate fee. (A copy of the Company's Application is attached to Mr. Smith's affidavit also submitted.)

Shortly thereafter, Mr. Smith was notified by the Department that the Company's Application would not be filed until the Company had paid back fees and statutory penalties in the amount of \$4,781.25. (A copy of the June 16, 1994 notice is attached.)

Mr. Smith asked me to write the Department to obtain a breakdown of these back fees and penalties. (A copy of my August 15, 1994 letter is attached.) The breakdown I received showed that the Company owed annual report fees in varying amounts for the years 1986 through 1994, inclusive, and statutory penalties in the amount of \$500.00 per year for the years 1986 and 1993, inclusive. (A copy of the breakdown is attached.)

I contacted Lee Rivers, the Corporate Specialist assigned to the case and questioned him regarding the statute of limitations pertaining to the recovery of statutory penalties set out in Section 95(3)(n) of the Florida Statutes. According to Mr.

Rivero, it was the Department's position to start the limitations statute running from the time the Department first had notice of a failure to qualify to do business in Florida -- which in the instant case was 1994. This position was confirmed by Hart Collins, Mr. Rivero's supervisor. When I inquired further about any waiver of the penalties, Mr. Collins said he had no authority to make that determination and suggested that I contact you.

Attached please find an affidavit of Mr. Smith. You will note first that any failure on the part of the Company to file a Certificate of Authority was completely inadvertent. Mr. Smith simply was unaware of the filing requirement. You will also note from the affidavit, and your records will confirm, that the Company has duly filed all income and intangible property tax returns required by the State for each and every year since 1986 and has paid all taxes due as reported on those returns. In addition, the Company has paid all sales taxes, local property taxes, and local occupational licenses fees required by Florida law for those same years.

It is our position that in light of those circumstances, the Company should not be liable for any back fees or statutory penalties. As you know, Section 607.1502 does not make recovery of penalties mandatory but rather provides that "the Department may collect all penalties and fees due and owing the state." The Legislature recognized the possibility that the payment of a substantial penalty might cause hardship to an unsuspecting corporation. We submit that the facts presented here are precisely those the Legislature contemplated as warranting a waiver of fees and penalties, namely, that the Company has operated openly and not riously since 1986; its failure to file was completely inadvertent; and there's been no fraud or concealment of its corporate status, its business, or its income.

Although we contend that no back fees or penalties should be imposed, in the event the Department chooses to do so, under Section 95.11(3)(n), F.S., recovery should be limited to -- at most -- four years. Unlike other Florida statutes of limitations, which provide that "an action shall be commenced within ... years from the date the incident occurs, is discovered, or should have been discovered upon the exercise of due diligence", see, e.g., Section 95.11(3)(c) (latent construction defects); Section 95.11(4)(a)(b) (medical and other professional malpractice); and Section 95.11(4)(e) (securities violations), Section 95.11(3)(n) does not consider the time of discovery an operative fact. Rather, an action for the recovery of a statutory penalty under that section shall be commenced within four years of the cause of action. Here, the cause of action is "transacting business without a certificate of authority"; it accrues each year a Company transacts business without one. Thus, contrary to the Department's position, nothing in Section 95.11(3)(n) suggests that the cause of action accrues from the time of discovery.

Moreover, even those statutes which allow for commencement from the time of notice set certain limitations, *see, e.g.* Section 95.11(4)(b), medical malpractice (two years from discovery but not more than four years from the incident); Section 95.11(4)(c), security transactions (two years from discovery but no more than five years from the date of the violation.)

In any event, even assuming that the Department's notice theory is legally defensible -- which we do not concede --- we contend that the Department had notice of the Company's presence, or with the exercise of due diligence, should have had notice of the Company's corporate presence as early as 1986. Again, the Company has been filing all its requisite State tax returns since 1986; it has paid all required taxes and fees. There was no concealment; there was no fraud.

Lastly, the Company's original application for a Certificate of Authority needs to be amended. As Mr. Smith's affidavit reveals, the Company primarily engaged in interstate commerce in 1986 and did not transact business in Florida as defined by Section 607.1501, F.S. We would respectfully request that the filing be deemed amended to show 1987 as the first year of transacting business in Florida. Per the Department's request, Form INHSE37 has been completed for 1987 and enclosed.

In sum, we ask that all statutory penalties and fees be waived and that the Company be required to pay only the requisite filing and annual report fees for 1994. In the alternative, we ask that any statutory penalties or fees the Department decides to impose be consistent with this letter and the Company be given an opportunity to pay that sum in increments no greater than \$250.00 per month. We would also ask that the Company's Application be deemed filed and that the Company be sent an Annual Report to file for 1994.

Please contact me as soon as possible so that this matter may be resolved. Until that time, I would ask that you do not consider the Company's filing for a Certificate as abandoned.

Very truly yours,

Angela H. H. H.

cc: Lee Rivers/Hart Collins



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State

September 27, 1994

Ms. Carolyn Herman
Attorney At Law
1831 North Third Street
Jacksonville Beach, Florida 32250

Dear Ms. Herman:

Re: Charles L. Smith & Associates Designers, Inc.

It was a pleasure speaking with you the other day. In response to your request for a breakdown of the penalties and fees associated with Charles L. Smith & Associates Designers, Inc.'s transacting business in Florida without authority, I have enclosed a copy of Lee Rivers' August 11 letter to you which provides the breakdown.

As discussed, in light of the affidavit submitted by Mr. Charles L. Smith regarding the corporation's lack of activity in Florida during 1986, the penalty imposed for 1986 is waived. As a result, the \$25 annual report fee for 1987 is also waived. No charter tax is due. Therefore, your client is now liable for penalties and fees in the amount of \$4256.25.

If you have any questions concerning the method of payment, please contact Hart Collins, Senior Corporate Administrator, at (904) 487-6091. Please be aware that payment in full must be received before December 31, or your client may be liable for additional penalties and fees associated with any business transacted after that date.

Should you wish to discuss this matter further, please contact me at (904) 488-3684.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas D. Sunshine", is written over a horizontal line.

Douglas D. Sunshine
Assistant General Counsel

DDS/

Enclosure

cc: Hart Collins, Senior Corporate Administrator

AFELDAVIT

STATE OF FLORIDA)
COUNTY OF DUVAL) ss:

CHARLES L. SMITH, being first duly sworn deposes, and says:

1. I am the President of Charles L. Smith & Associate Designers, Inc. (the "Company") and have been its President since the Company was incorporated in the State of Texas on June 6, 1979. The Company is not now nor has ever been incorporated in the State of Florida.

2. I make this affidavit in connection with the Company's Application By Foreign Corporation For Authorization to Transact Business pursuant to Section 607.1503, F.S. filed with the Department of State ("Department") on or about June 15, 1994 and assigned Ref. No. W94000013349. (A copy is attached as Exh. "A").

3. In November 1986, the Company relocated from Texas to Jacksonville, Florida where it has continued to operate openly and notoriously since that time. Between November and the end of 1986, the Company was engaged primarily in starting up its business in Florida and completing work already contracted for by its customers in Texas. To the best of my knowledge and belief, only a nominal amount of the gross revenue reported by the Company on its 1986 Federal and State tax returns was generated exclusively in Florida (approximately \$250.00 out of \$79,165.00).

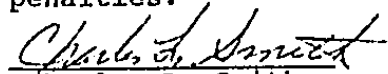
4. To the best of my knowledge and belief, the Company has filed all State income and intangible personal property taxes required under Florida law for the years 1986 - 1993,

inclusive. The Company also has paid all taxes due as reported on those returns as well as all Florida sales taxes, local property taxes, and local occupational license fees.

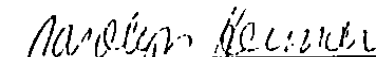
5. I was unaware that the Company was required to file an Application by Foreign Corporation for Authorization to Transact Business until the Department notified me earlier this year. In response to that notice, I promptly filed the Application and paid the requisite fee. Shortly thereafter, the Department informed me that the Company was required to pay a total of \$4,781.25 in back fees and statutory penalties because it had failed to qualify to do business in Florida for the years 1986-1993, inclusive.

6. I respectfully request that Item 6 of the Company's original Application be deemed amended to show that the Company first transacted business in Florida in 1987 rather than 1986. In addition, attached is Form INHSE37 for 1987 showing the necessary information to determine charter taxes due, if any.

7. I further request that the Company's Application for Authority to Transact Business be deemed filed, that the Company be issued a Certificate of Authority, that the Company be permitted to file an Annual Report for 1994, and that the Department waive all back fees and statutory penalties.


Charles L. Smith

Subscribed and sworn to before me
by Charles L. Smith, who is personally
known to me on this 24th day of August,
1994.


Notary Public
My Commission expires: 9/2/95



CAROLYN HERMAN
COMMISSION # CC 312895
EXPIRES SEP 2, 1997
Atlantic Bonding Co., Inc.
800-732-2245

Florida Department of State, Jim Smith, Secretary of State

THIS FORM IS TO BE COMPLETED BY CORPORATIONS WHO HAVE BEEN TRANS-
ACTING BUSINESS IN FLORIDA PRIOR TO QUALIFICATION TO DETERMINE
CHARTER TAX THAT MUST BE PAID.

Authorized number of shares (itemized by class and par value) the corporation had when
it first transacted business in Florida (if shares have no par value enter NPV along with the
number of shares). 100,000 shares at .01 par value

"VALUE" may be defined in any terms consistent with generally accepted accounting prin-
ciples.

- | | | |
|----|---|-----------------------------------|
| A. | Estimated Value of all property owned by
Corporation for the year it first transacted
business in Florida, wherever located: | Tax Year 1987.
\$ <u>5,015</u> |
| B. | Estimated Gross amount of business
transacted by the Corporation for the
year it first transacted business in Florida | \$ <u>80,340</u> |
| C. | Estimated Value of all property in Florida
owned by the Corporation for the year it
first transacted business in Florida. | \$ <u>5,015</u> |
| D. | Estimated Gross amount of business
transacted in Florida by the Corporation
during the year it first transacted business
in Florida. | \$ <u>88,805</u> |
| E. | TOTAL of "A" and "B" | \$ <u>85,355</u> |
| F. | TOTAL of "C" and "D" | \$ <u>63,820</u> |
| G. | DIVIDE "F" by "E" | \$ <u>.75</u> |
| H. | Corporations with Par Value Stock:
Multiply "G" and Authorized Shares and their
par value. | \$ <u>750.00</u> |
| I. | Corporations with No Par Value Stock:
Multiply "G" by Total Authorized Shares. | \$ _____ |

THIS PORTION IS FOR OFFICE USE ONLY AND IS TO BE COMPLETED BY
DOCUMENT EXAMINER UPON QUALIFICATION.

DOCUMENT NUMBER _____

CORPORATION NAME _____

PENALTY PAID FOR YEAR(S) _____

CHARTER TAX PAID _____

AR FEE PAID FOR YEAR(S) _____

**APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO
TRANSACTION BUSINESS IN FLORIDA**

IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS
SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACTION BUSINESS IN THE
STATE OF FLORIDA:

1. CHARLES L. SMITH & associates designers, inc.
(Name of corporation: must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or
abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person
or partnership if not so contained in the name at present.)

2. Texas 3. 74-2047290
(State or country under the law of which it is incorporated) (FEI number, if applicable)

4. June 6, 1979 5. Perpetual
(Date of Incorporation) (Duration: Year corp. will cease to exist or "perpetual")

6. November 1986
(Date first transacted business in Florida. (See sections 607.1501, 607.1502, and 817.155, F.S.)

7. 1823 North Third Street
Jacksonville Beach, Florida 32250
(Current mailing address)

8. Professional Building Designer
(Purpose(s) of corporation authorized in home state or country to be carried out in the state of Florida)

9. Name and street address of Florida registered agent:

Name: Charles L. Smith

Office Address: 1823 North Third St.

Jacksonville Beach, Florida, 32250
(Zip Code)

10. Registered agent's acceptance:

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Charles L. Smith
(Registered agent's signature)

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

12. Names and addresses of officers and/or directors:

A. DIRECTORS

Chairman: _____

Address: _____

Vice Chairman: _____

Address: _____

Director: _____

Address: _____

Director: William Epps Agent

Address: 1444 Blalock

Houston, Texas 77055

B. OFFICERS

President: Charles L. Smith

Address: 4720 Marsh Hammock Drive W.

Jacksonville, FL 32224

Vice President: Carole B. Smith

Address: 4720 Marsh Hammock Drive W.

Jacksonville, FL 32224

Secretary: Carole B. Smith

Address: 4720 Marsh Hammock Drive W.

Jacksonville, FL 32224

Treasurer: Charles L. Smith

Address: 4720 Marsh Hammock Dr. W.

Jacksonville, FL 32224

NOTE: If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13. Charles L. Smith
(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application)

14. CHARLES L. SMITH
(Typed or printed name and capacity of person signing application)



The State of Texas

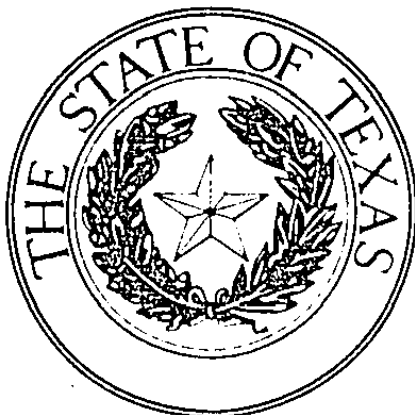
SECRETARY OF STATE

IT IS HEREBY CERTIFIED, that
Articles of Incorporation
of

CHARLES L. SMITH & ASSOCIATES DESIGNERS, INC.

were filed in this office and a certificate of incorporation was issued on
JUNE 6, 1979;

IT IS FURTHER CERTIFIED, that no certificate of dissolution has been issued, and
that the corporation is still in existence.



*IN TESTIMONY WHEREOF, I have hereunto
signed my name officially and caused to be
impressed hereon the Seal of State at my office in
the City of Austin, on June 3, 1994.*

[Signature]
Secretary of State PH

55 JAN -3 PM 1:40
SECRETARY OF STATE
DIVISION OF CORPORATIONS