

F95000000688

TRANSMITTAL LETTER

TO: QUALIFICATION/REGISTRATION SECTION
DIVISION OF CORPORATIONS

500001183005
-05/25/94--0102--004
++++841.25 +++841.25

SUBJECT: WILDWOOD TERRACE APARTMENTS, INC.
(Name of corporation)

300001009313
-05/18/94--0114--012
++++70.00 +++70.00

Dear Sir or Madam:

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:

Joanne W. Reeves
(Name of Person)
Huffaker, Watkins & Associates, P.C.
(Firm/Company)
P.O. Box 755
(Address)
Florence, AL 35631
(City, State and Zip Code)

FILED
SECRETARY OF STATE
CORPORATION DIVISION
OFFICE OF THE CLERK
TALLAHASSEE, FLORIDA
3/15/94
WAT=64123
64123

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

Joanne Reeves at (205) 766 - 1102
(Name of Person) Area Code & Daytime Telephone Number

200001404512
-02/13/95--0106--001
++++6000.00 +++6000.00

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



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State

March 23, 1994

HUFFAKER, WATKINS & ASSOCIATES, P.C.
% JOANNE W. REEVES
P.O. BOX 755
FLORENCE, AL 35631

SUBJECT: WILDWOOD TERRACE APARTMENTS, INC.
Ref. Number: W94000006463

We have received your document for WILDWOOD TERRACE APARTMENTS, INC. and your check(s) totaling \$70.00 . 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 \$6841.25.

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.

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 (904) 487-6094.

Steven Harris
Corporate Specialist

Letter Number: 594A00012908

RECEIVED
DIVISION OF CORPORATIONS
MAY 10 1994

Huffaker, Watkins & Associates, P.C.

Certified Public Accountants

Stanley B. Huffaker, CPA
Charles L. Watkins, CPA
Joanne W. Reeves, CPA
Myra G. Lovell, CPA
M. Buddy Johnsey, III, CPA

Member of
American Institute of CPAs
AICPA Private Companies
Practice Section
Alabama Society of CPAs

May 13, 1994

Mr. Steven Harris
Corporate Specialist
Florida Department of State
Division of Corporation
P. O. Box 8327
Tallahassee, Florida 32314

Dear Mr. Harris:

Attached is a copy of correspondence from you dated March 23, 1994 concerning Wildwood Terrace Apartments, Inc., along with documents concerning this corporation's qualification to transact business in Florida.

The information submitted on the application is correct. This corporation began "doing business" in the state of Florida in 1982. The nature of business done in Florida is real estate rental, consisting of one residential-type building.

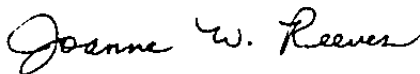
Neither the corporate officers nor the corporate accountants, who are located in Alabama, knew of any requirement that foreign corporations obtain a qualification of this type. Although ignorance is no excuse, it does seem that some mention of such requirement be made in the instructions for foreign corporate income tax returns for Florida, or that the corporation be notified of this prior to twelve years of non-compliance. By filing Florida income tax returns, we think it is obvious that the intention was to comply with Florida requirements.

Please, for these reasons, consider abating the penalty fees, which we assume are \$6000.00. (twelve years times \$500.00 per year.) We have enclosed a check for the remaining \$841.25 for the interest and taxes.

We have also enclosed a completed form INHSE37 for the charter tax. Please advise us of the amount of this tax.

Your help in this matter is sincerely appreciated. Please contact me if further information is needed.

Sincerely,



Joanne W. Reeves

RECEIVED
DIVISION OF CORPORATION
MAY 13 1994



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State

June 14, 1994

Joanne W. Reeves
Huffaker, Watkins & Associates, P.C.
P.O. Box 755
Florence, Al 35631

Re: Wildwood Terrace Apartments, Inc.

Dear Ms. Reeves:

Thank you for your letter dated May 13, 1994, concerning the transaction of business by Wildwood Terrace Apartments, Inc. in the State of Florida.

We have received and deposited your check for \$841.25, which covers the annual report fees for transacting business without authority for the years 1982 through 1993. Please be aware that Florida law does not grant this office the authority to waive or dismiss the appropriate penalty fees. This office is statutorily mandated to collect the appropriate civil penalty of \$500.00 for each year that a foreign corporation transacts business in this state without authority, which is the minimum penalty allowed by law. Section 607.1502(4), Florida Statutes, further directs the Florida Department of State to collect all penalties and annual report fees due this office and to recover such fees through an action in circuit court.

This office appreciates, and does not question Wildwood Terrace Apartments, Inc.'s honorable intent to comply with the filing requirements and laws of the State of Florida. We therefore request that the balance of \$6000.00 in the appropriate penalty fees be remitted to this office within thirty (30) days.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

Steven Harris, Corporate Specialist
Division of Corporations
(904) 487-6094

SECRET
DIVISION OF CORPORATIONS
JUN 16 1994

LAW OFFICES

FARISH, FARISH & ROMANI

110 RANTAN BOULEVARD

P. O. BOX 4118

WEST PALM BEACH, FLORIDA 33402

TELEPHONE (407) 658-3500
FAX (407) 658-3158

JOSE D. FARISH, JR.
JOSE D. FARISH, JR.
ROBERT V. ROMANI
S. EMORY ROGERS
JETER M. BASSALINI
KEITH H. TAYLOR
KENT P. REEDER
LEGAL ASSISTANT

August 17, 1994

*BOARD CERTIFIED CIVIL TRIAL LAWYER

Steven Harris, Corporate Specialist
Florida Department of State
P. O. Box 6317
Tallahassee, Florida 32314

RE: W94000006463 - Wildwood Terrace Apartments, Inc.

Dear Mr. Harris:

This firm has been retained by Wildwood Terrace Apartments, Inc., relative to their unauthorized transaction of business, within the State of Florida.

I have reviewed your documentation to Ms. Joanne W. Reeves, dated March 23, 1994 and June 14, 1994, relative to the annual report fees and penalties. While I agree with your conclusion that Florida Statute § 607.1502(4) requires a collection of a \$500.00 annual penalty, I cannot agree with your conclusion that the balance due is \$6,000.00. This penalty is subject to the Statute of Limitations as provided in Florida Statute § 95.11(3), which requires that any action based on a statutory penalty or liability, must be brought within four years. With this in mind, it appears that the maximum penalty which can be collected by the State of Florida is, therefore, \$2,000.00.

Per my request, our client has deposited into our escrow account, funds sufficient to pay the penalty in full as we have calculated it. Upon your review of this situation, please confirm with me that the amount due is in fact only \$2,000.00, upon which we will be forwarding our funds to you as payment in full of this penalty.

Thank you for your attention to this matter. If you would like to discuss it with me in more detail, please contact me at the above number.

Yours truly,

FARISH, FARISH & ROMANI

S. Emory Rogers
S. Emory Rogers

SER/dja
c.c. Charles L. Watkins, CPA

LAW OFFICES

FARISH, FARISH & ROMANI

110 BANYAN BOULEVARD

P.O. BOX 4111

WEST PALM BEACH, FLORIDA 33402

TELEPHONE (407) 659-3500
FAX (407) 659-3100

JOSE D. FARISH, JR.
JOSE D. FARISH, JR.
ROBERT V. ROMANI
K. EMORY ROGERS
PETER M. BAGGAL
KEITH H. TAYLOR

KEN C. REEDER
LEGAL ASSISTANT

BOARD CERTIFIED CIVIL TRIAL LAWYER

August 29, 1994

Douglas Sunshine, Corporate Department
Florida Department of State
P. O. Box 6317
Tallahassee, Florida 32314

RE: W94000006463 - Wildwood Terrace Apartments, Inc.

Dear Doug:

As you may recall, this matter relates to the imposition of a find against my client, pursuant to Florida Statutes § 607.1502(4). Thank you for taking the time to call me and discuss the State's position with regard to this matter as it relates the tolling of the Statute of Limitations.

While I agree with you that there are a number of cases which discuss the tolling of the Statute of Limitations, those cases do not fit the factual situation which we are presented with in this case. Everyone would agree that our client breached a duty that it owed to the State of Florida by failing to register as a foreign corporation. That being the case, this matter clearly falls within the ruling announced in U. S. vs. The City of Palm Beach Gardens, 635 F.2d 337 (1979). That case establishes that in determining when the government's cause of action accrues, the time of discovery of the cause of action by the government, is not the material question. The material and relevant time for the commencement of the running of the Statute of Limitations, begins when there is a breach of duty owed to the government, not the discovery of the breach.

Even if for some reason you believe this case factually does not fit within the rule announced in U. S. v. The City of Palm Beach Gardens, it also clearly does not fit within the "blameless ignorance" rule that you have cited to me as postponing the operation of the Statute of Limitations. The blameless ignorance rule only applies when the violation is not discovered because of a misrepresentation or fraudulent concealment on behalf of the Defendant, or the Plaintiff could not, through reasonable diligence, be put on notice as to the violation. It is also of course, the Plaintiff's burden to show that they could not have discovered the violation through the exercise of due diligence. I

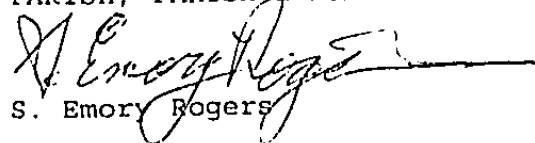
know that previously you said that the State could not know of the violation until the time of our client's registration, but that is simply not the case. A review of the records will show that our client faithfully filed its State Income Tax Return each year, paid all State taxes and that it had all appropriate licenses and or permits for the operation of its business. It is not our client's neglect when the left hemisphere of the State's brain does not know what the right hemisphere is doing or has knowledge of.

Because of these various factors and the position outlined above, I believe that the law clearly supports our position, as expressed in our prior correspondence, and we of course, still stand ready, willing and able to satisfy this obligation by payment of the penalty for operating for four years without proper registration. If you have had any cases directly on point which rely on the Maybusher v. Hollihan, or Franklin Life Ins. Company v. Tharpe, to arrive at a different conclusion, please provide them to me.

I look forward to receiving your response to this matter and resolving this matter as expeditiously as possible.

Yours truly,

FARISH, FARISH & ROMANI


S. Emory Rogers

SER/dja

c.c. Charles L. Watkins, CPA

RECEIVED
FEB 10 1967



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State

RECEIVED

SEP 13 1994

September 16, 1994

Mr. S. Emory Rogers
Farish, Farish & Romani
316 Banyan Boulevard
West Palm Beach, Florida 33402

FILED
SECRETARY OF STATE
SEP 16 1994

Dear Mr. Rogers:

Re: Wildwood Terrace Apartments, Inc.

This letter is in response to your August 29 letter regarding the liability of your client, Wildwood Terrace Apartment, Inc. (Wildwood), for penalties and fees associated with transacting business in Florida as a foreign corporation without authority since 1982. From your correspondence, it appears that Wildwood does not dispute the fact that it transacted business in Florida without authority.

I have reviewed U.S. v. City of Palm Beach Gardens, 635 F.2d 337 (1979), and I do not agree that this case establishes "that in determining when the government's cause of action accrues ... [t]he material and relevant time for the commencement of the running of the Statute of Limitations, begins when there is a breach of duty owed to the government, not discovery of the breach."

In response to your statement that the Department's lack of knowledge of Wildwood's breach of duty to register does not fit within the "blameless ignorance" rule, I submit that the holding in Franklin Life Ins. Co. v. Tharpe, 179 So. 406, 407 (1938) is controlling. The Supreme Court of Florida, in Franklin, held:

[T]he rule is generally established that mere ignorance of the facts which constitute the cause of action will not postpone the operation of the statute of limitations, but the statutes will run from the time the cause of action first accrues notwithstanding such ignorance. The reason of the rule seems to be that in such cases ignorance is the result of want of diligence and the party cannot thus take advantage of his own fault. It is otherwise where the cause of action does not arise except upon the ascertainment or knowledge of a particular

Mr S Emory Rogers
September 16, 1994
Page Two

fact, or where a demand is a necessary prerequisite to recovery and plaintiff is in no position to make demand until he has learned the facts. (Emphasis added.)

The rationale of Franklin is reiterated in the more recent case, Senfeld v. Bank of Nova Scotia Trust Co., 450 So. 2d 1157 at 1162 (Fla. 3rd DCA 1984) (copy enclosed), wherein, the District Court held:

While it is true that 'mere ignorance of the facts which constitute the cause of action will not postpone the operation of the statute of limitations,' Franklin, (citation omitted), it is equally true that where the plaintiff's ignorance is blameless, the cause of action will not arise until the plaintiff knows or is chargeable with knowledge of an invasion of his legal right, Miami Beach First National Bank v. Edgerly, 121 So. 2d 417 (Fla. 1960). (Emphasis added.) See also Maybusher v. Hollihan, 610 So. 2d 714 (Fla. 4th DCA 1992).

The Department did not know Wildwood was transacting business in Florida without authority until receipt of Department of Revenue (DOR) information, which until 1991 was previously confidential and not accessible by the Department. See Ch. 91-214, § 1, Laws of Fla. (requiring DOR to provide confidential information to the Department).

It was not until Wildwood submitted its application for authority on March 18, 1994 that the Department had definitive knowledge that Wildwood transacted business in Florida without authority. The indication of corporate income tax filings in Florida is not conclusive evidence that activity conducted by a foreign corporation in Florida violates Section 607.1501(1), Florida Statutes. See § 607.1501(2), Fla. Stat. (providing laundry-list of exempt activity).

In Senfeld, the Court reiterates the Supreme Court of Florida's application in City of Miami v. Brooks, 70 So. 2d 306 (Fla. 1954) and Miami Beach First National Bank v. Edgerly, 121 So. 2d 417 (Fla. 1960) of the discovery rule to actions other than where the statute of limitations expressly provided for the application of the rule

Mr S Emory Rogers
September 16, 1994
Page Three

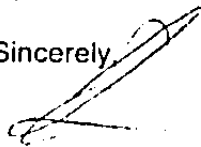
The Court, quoting the Supreme Court of Florida in Creviston v. General Motors Corp., 225 So. 2d 331 (Fla. 1969), agrees with the conclusion that:

From the standpoint of legal principles, the holdings in the cases above discussed appear to crystalize in favor of application of the blameless ignorance doctrine in those instances where the injured plaintiff was unaware or had no reason to know that an invasion of his legal rights had occurred. In reality, such a doctrine is merely a recognition of the fundamental principle that regardless of the underlying nature of a cause of action, the accrual of the same must coincide with the aggrieved party's discovery or duty to discover the act constituting an invasion of his legal rights. Senfeld, at 1163. (Emphasis original.)

Consequently, Section 607.1502, Florida Statutes, and the provision of Chapter 95, Florida Statutes, may be read harmoniously. Case law clearly establishes that a cause of action does not arise until particular facts are ascertained or known and where plaintiff's ignorance is blameless.

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

Sincerely,



Douglas D. Sunshine
Assistant General Counsel

DDS/

cc: Dave Mann, Director, Division of Corporations

RECEIVED
DIVISION OF CORPORATIONS
SEP 16 1994



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State

December 2, 1994

HUFFAKER, WATKINS & ASSOCIATES, P.C.
% JOANNE W. REEVES
P.O. BOX 755
FLORENCE, AL 35631

SUBJECT: WILDWOOD TERRACE APARTMENTS, INC.
Ref. Number: W94000006463

We have received your document for WILDWOOD TERRACE APARTMENTS, INC. and your check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

We are still awaiting a response from your office concerning our correspondence dated September 16, 1994. I have enclosed a copy for your convenience. Please respond as soon as possible.

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 (904) 487-6094.

Steven Harris
Corporate Specialist

Letter Number: 094A00051591

SECRET
DIVISION OF CORPORATIONS
95 FEB 10 11 51 AM '95



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

February 2, 1995

JOANNE W. REEVES
HUFFAKER, WATKINS & ASSOCIATES
P.O. BOX 755
FLORENCE, AL 35631

SUBJECT: WILDWOOD TERRACE APARTMENTS, INC.
Ref. Number: W94000006463

CERTIFIED MAIL #P 348 066 564
RETURN RECEIPT REQUESTED

This letter constitutes notice that the Department of State (Department) intends to pursue all legal remedies provided in Sections 607.0130(3) and 607.1502(4), Florida Statutes, because of the failure of WILDWOOD TERRACE APARTMENTS, INC. to pay the appropriate penalties and fees incurred by the transacting of business as a foreign corporation in Florida without authority. I have enclosed a copy of Sections 607.0130(3), 607.1501 and 607.1502, Florida Statutes, for your review.

The application submitted by WILDWOOD TERRACE APARTMENTS, INC. for authority to transact business in Florida indicates that the corporation transacted business in Florida prior to qualifying. As a result, associated penalties and fees imposed by Section 607.1502(4), Florida Statutes, are due and owing the Department.

Penalties and fees in the amount of \$6000.00 are now due. To avoid further penalty, payment must be remitted within 15 days of receipt of this letter. Please make your check payable to the Department of State and forward it to this office.

In the event the date business was first transacted in Florida is incorrect or the activity falls under an enumerated exemption provided in Section 607.1501(2), Florida Statutes, please provide this office with an affidavit to that effect. If it is determined that the affidavit establishes either circumstance, all penalties and fees previously imposed will either be withdrawn or will be recalculated in accordance with the corrected information, and the application will be processed accordingly. If you have any questions regarding this matter, please telephone (904) 487-6091. I look forward to your response.

Sincerely,

Douglas D. Sunshine, Assistant General Counsel

RECEIVED
FEB 10 1995
STATE DEPT
TALLAHASSEE, FL

Watkins & Company, P.C.

Certified Public Accountants

Charles L. Watkins, CPA
M. Buddy Johnsey, Jr., CPA

Member of
American Institute of CPA's
AICPA Private Companies
Practice Section
Alabama Society of CPA's

February 8, 1995

Mr. Steven Harris
Florida Dept. of State
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

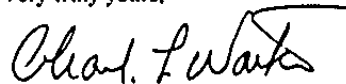
Re: Wildwood Terrace Apartments, Inc.

Dear Steve:

Please find enclosed our client's check for full payment of penalties assessed.

Should you need anything further, please let me know.

Very truly yours,



Charles W. Watkins

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
95 FEB 19 AM 9:09

**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. Wildwood Terrace Apartments, 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. Alabama 3. 63-0279597
(State or country under the law of which it is incorporated) (FEI number, if applicable)

4. 8-9-49 5. Perpetual
(Date of Incorporation) (Duration: Year corp. will cease to exist or "perpetual")
1982

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

7. P.O. Box 755

Florence, Al. 35631
(Current mailing address)

8. Real Estate Rental
(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: _____
Office Address: CT CORPORATION SYSTEM
1200 S. PINE ISLAND ROAD
PLANTATION, FLORIDA 33324

_____, Florida, _____
(Zip Code)

SECRET
DIVISION OF STATE
95 FEB 10 11 51 AM '80

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.

PETER F. SOUZA
ASSISTANT SECRETARY

(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: _____

Address: _____

B. OFFICERS

President: Edeltraud Balentine

Address: Bocklinstr. 34

68 Mannheim 1 West Germany

Vice President: _____

Address: _____

Secretary: Jerry Balentine

Address: Bocklinstr. 34

68 Mannheim 1 West Germany

Treasurer: _____

Address: _____

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

13. Jerry Balentine
(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application)

14. Jerry Balentine - Secretary
(Typed or printed name and capacity of person signing application)

FILED
SECRETARY STAFF
95 FEB 10 11 51:02

STATE OF ALABAMA

I, Jim Bennett, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that the domestic corporation records on file in this office disclose that Wildwood Terrace Apartments, Inc. incorporated in Tuscaloosa County, Tuscaloosa, Alabama on August 9, 1949. I further certify that the records do not disclose that said Wildwood Terrace Apartments, Inc. has been dissolved.

FILED
SECRETARY OF STATE
DIVISION OF REVENUE
95 FEB 10 AM 9:08

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

March 1, 1994

Date

Jim Bennett

Jim Bennett

Secretary of State