

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5947

Petitions of Alpine Haven Water Company, Inc.)
and AHA Water Cooperative, Inc., for approval)
of the sale of all of the assets of the Water)
Company to the Cooperative)

Order entered: 5/27/99

PROCEDURAL ORDER

Background

Oral argument was heard in this case for the purpose of resolving several motions by the parties, including Request For The Board to Administer Penalties, Sanctions And Injunctive Relief And Supporting Memo of Law, filed by Laura Snyder on May 15, 1998; Request to Sanction with an Addendum, filed by Laura Snyder on September 21, 1998; Request for a Clarifying Declaratory Ruling, filed by Laura Snyder on December 16, 1998; Motions to Quash Subpoena, Substitute Parties, Limit Questioning, and Reconsider Intervention of Laura Snyder, filed by AHA Water Cooperative, Inc., on March 23, 1999; and Motion to Compel and Supporting Memorandum, filed by Laura Snyder on April 29, 1999. This Order will dispose of all these motions. However, to the extent that any portion of any motion is not explicitly ruled upon in this Order, it is hereby denied.

This case was initiated by a joint petition, filed in January of 1997, of a water company and a property owners' association for permission to transfer ownership of the water system assets. Ms. Laura Snyder moved to intervene in the docket on March 14, 1997; that motion was granted, over the objection of the petitioners, by order of the previous Hearing Officer on October 23, 1997. In her Order of October 1997, the Hearing Officer allowed Ms. Snyder to intervene "as a property owner and resident of the Alpine Haven Development . . . [h]er intervention shall be limited to the representation of her interests, and those of her family." Since that time little visible progress has been made in this docket. The petition has been amended three times, apparently in response to concerns raised by the Department of Public Service. Exogenous factors have also played a part: the illness and retirement of counsel for the

Alpine Haven Property Owners Association certainly interfered with prompt resolution of issues; however, the most important influence appears to be disputes running between several individual landowners in Alpine Haven on one hand and the developer or the Property Owners' Association on the other. These disputes are apparently over matters outside the jurisdiction of the Public Service Board, and indeed are in active litigation in Superior Court. They are referred to in documents and colloquy only in passing. However, they may explain the sometimes passionate advocacy presented in this case. See generally the transcript of the public hearing held in this docket on February 12, 1999.

Resolution of the many outstanding motions will, I hope, lead to an expeditious end to this litigation.

Request For The Board to Administer Penalties, Sanctions And Injunctive Relief And Supporting Memo of Law, filed by Laura Snyder on May 15, 1998

This motion is made under color of 30 V.S.A. § 30. Setting aside the question whether Section 30 creates any private cause of action that can be enforced by a litigant in Ms. Snyder's position, as well as the fact that Section 30 contains no mention of equitable remedies, this motion must fail for several reasons. First, the only remedy asked for, on page 7, is for a Cease and Desist Order, but it is unclear what actions the Petitioners are supposed to Cease. Second, among the various allegations made are references to mistakes that have been made, and to statements made before Legislative committees. An order to cease making mistakes would be useless; an order to control Legislative testimony would be illegal. But it is easy to become befuddled amidst the many intertwined allegations and complaints in this motion. Its critical failure is that there is never any clear statement how the behavior complained of can have any deleterious effect upon the interests represented by Ms. Snyder. She is not a member of the Alpine Haven Property Owners Association, nor does she have a legal interest in nor receive water from the Alpine Haven Water Company. Ms. Snyder is almost a stranger to this litigation. Only her ownership of a house in the Alpine Haven development and her deeded right to receive water from the Water Company's system (a right not exercised since 1981; see transcript of May 5, 1999, oral argument at page 35) persuaded the Hearing Officer to allow her to intervene. She was permitted to intervene to protect those two interests, not to be a policeman of all alleged

missteps, misstatements, mistakes, and misconceptions occurring in the Petitioners' documentation. The Request for Penalties, Sanctions, and Injunctive Relief is denied.

Request to Sanction with an Addendum, filed by Laura Snyder on September 21, 1998

This would appear to be a renewal and supplement to Ms. Snyder's previous request for sanctions, and the same comments apply. It is actually unclear what the "Addendum" is, except perhaps for the recitation of portions of the Code of Professional Responsibility. At any rate, the Request to Sanction with an Addendum is denied.

Request for a Clarifying Declaratory Ruling, filed by Laura Snyder on December 16, 1998

This Request does not, in fact, ever ask that any particular thing be clarified by the Hearing Officer. It is, instead, a series of observations on minor inaccuracies and inconsistencies in representations by counsel as to the particular identities of members in two different associations. While those associations are both intended to be parties, it is irrelevant who the particular members are at this time. The identity of the associations is not in question. The Request for a Clarifying Declaratory Ruling is denied.

Motions to: Quash Subpoena, Substitute AHA Water Cooperative for Alpine Haven Property Owners Association as Joint Petitioner, Limit Questioning by Laura Snyder in Deposition, and Reconsider Grant of Intervention to Laura Snyder, filed by AHA Water Cooperative on March 23, 1999

Substitution of Parties

This single document actually contained four distinct motions. The matter of the substitution of parties is actually a renewal of what had been sought in the Second Amendment to Joint Petition, filed September 14, 1998. That document stated that a cooperative had been created to serve the users of the Alpine Haven water system, and that it was intended that the cooperative be allowed to purchase the system rather than the Alpine Haven Property Owners Association, as originally petitioned for. A Third Amendment to Joint Petition was filed on November 25, 1998. It appears that the only difference created by the Third Amendment is that it

asks that a Certificate of Public Good be issued to the AHA Water Cooperative if the Board determines that the Cooperative will still be subject to the Board's jurisdiction after it acquires the water system. Permission was sought in paragraph 5 of the Second Amendment, and is sought again in the March 23 motion, for AHA Water Cooperative to be substituted for the Alpine Haven Property Owners Association as the acquiring entity. The emphasis at oral argument was not permission for the Cooperative to enter the case, but for the Property Owners Association to exit.

The Department of Public Service opposes the withdrawal of the Property Owners Association, mainly because the Department wishes to perform discovery upon the Association and is concerned that the Association will not respond to discovery if it is not a party. While it might be possible to fashion a conditional order that would assure the Association's responses to discovery, the Petitioners have shown no urgent reason for the Association to quit its party status. So long as it is clear that the Association will neither be paying for an interest in the Water Company nor receiving an interest, and that its continued participation is for the purpose of satisfying the Department's need for discovery, there should be no detriment to the Association by remaining a named party. Therefore, the motion to substitute AHA Water Cooperative, Inc., for Alpine Haven Property Owners Association as the real party in interest is granted; however, the motion to dismiss Alpine Haven Property Owners Association from the case entirely is denied.

Reconsideration of Intervention

The motion to reconsider Ms. Snyder's intervention is denied. While Petitioners' counsel could demonstrate that her presence in the case is inconvenient, they could not quite dispel the suggestion¹ that Ms. Snyder's property could somehow be burdened by a debt or liability arising either from the purchase transaction or some later act. While it may be that any such risk is imaginary, suggestions from counsel for the Department and from the bench that the Property Owners Association provide a written indemnification drew no immediate response. It is emphasized that Ms. Snyder's participation is limited to protection of her personal interests. Discovery or pleadings aimed to protect the interest of other property owners at Alpine Haven, or

1. Suggestions originally introduced by counsel for the Petitioners.

to protect the dignity of the laws of the State of Vermont, are not within the ambit of that intervention.

Quashing of Subpoena and Limitation of Questioning

These requests are connected in that Petitioner wishes Ms. Snyder's discovery to be limited to the subject matter on which her intervention was permitted: protection of her and her family's interests. I agree that most of what is sought in Ms. Snyder's discovery is beyond the scope of those interests. Especially now that the Water Cooperative is the actual party in interest, and is the only party to whom an interest in the water system may be conveyed in this docket, further examination of the affairs of the Property Owners Association by Ms. Snyder is pointless. Wide ranging exploration of the affairs of the Water Cooperative are also unlikely to lead to evidence concerning a direct impact upon Ms. Snyder's interests. The motion to quash is therefore granted, and questions by Ms. Snyder at any deposition of Mr. Hawkins shall be limited to how transfer to the Water Cooperative can adversely impact her and her family.

Motion to Compel and Supporting Memorandum, filed by Laura Snyder on April 29, 1999

For the same reasons as those set out in the paragraph above, the motion to compel is denied.

Protective Order

It appears from oral argument and from the Board's Docket Log that all outstanding motions and countermotions from discovery have been resolved in this Order. Since it is possible that some allowable lines of questioning were contained in the general mass of discovery materials that I have denied in the motion to quash, the motion to limit questioning, and the motion to compel, I will permit Ms. Snyder one more round of discovery upon Alpine Haven Water Company and AHA Water Cooperative, Inc. I wish to emphasize again that all lines of questioning must appear reasonably calculated to lead to the discovery of admissible evidence on the subject of the impact on Ms. Snyder's personal interests of the proposed transfer of ownership of the water system. In order to avoid further lost time, any discovery requests by Ms. Snyder

shall be sent to me for review at the time they are served upon the parties. I will then indicate to the respondent which questions and requests it must respond to. Copies of the responses shall also be filed with me.

Hearing Dates

Technical hearings will be held in this case during the week of September 13, 1999.

Parties must endeavor to have their cases complete by that date.

SO ORDERED.

DATED at Montpelier, Vermont, this 27th day of May, 1999.

s/ John P. Bentley
John P. Bentley
Hearing Officer

OFFICE OF THE CLERK

FILED: May 27, 1999

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.