



Control Number: 45207



Item Number: 33

Addendum StartPage: 0

SOAH DOCKET NO. 473-16-1108.WS
PUC DOCKET NO. 45207

RECEIVED

2016 AUG -8 PM 1:14

COMPLAINT OF J. HINKEN AGAINST §
BASTROP WEST WATER AND PAUL §
KLAUS §
§

BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S STATEMENT OF POSITION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Commission Statement of Position. In support thereof, Staff shows the following:

I. BACKGROUND

On September 30, 2015, J. Hinken (Complainant) filed a complaint against Bastrop West Water and its owner, Paul Klaus (collectively, BWB) pursuant to Texas Admin. Code § 22.242 (TAC). On November 9, 2015, the Commission referred this case to the State Office of Administrative Hearings (SOAH). On May 31, 2016, SOAH Order No. 6 set the deadline for Staff to file its position as August 8, 2016. This pleading is therefore timely filed.

II. STATEMENT OF POSITION

Complainant is challenging the payment of a \$655 bill from BWB, \$430 in relation to damage allegedly caused to BWB's main service line to Complainant's property by a handyman hired by Complainant to work on the water line, and \$225 which relates to an alleged agreement of Complainant to pay for half of the installation charge of a new meter on a portion of Complainant's property that she sold to a Jeff Hill in 2014. Mr. Hill is not a party to this complaint. Complainant alleges that her handyman did not perform work on the day that BWB claims the damage occurred, and that he could not have caused the alleged damage. Complainant also alleges that she was not responsible for paying for half of the installation cost of a new meter to Mr. Hill's property, and that her offer to pay was never accepted by Mr. Hill and therefore not binding. However, Mr. Hill paid his half of the installation cost and BWB installed the meter.

33

This \$655 charge was billed in February, 2015, for half the cost of the installation of a new water meter on Mr. Hill's property, and alleged damages to the water line that occurred between January 29, 2015 and February 2, 2015. Later in 2015, when Complainant sold the remainder of her property, and pursuant to an escrow agreement, funds in the amount of \$655 were placed into escrow for the payment of the \$655 water bill after a final amount to be paid to BWB was agreed to by all parties of the escrow agreement.¹ BWB stated at that time that to begin service for the new buyers, the \$655 bill would need to be paid, as well as a \$50 reconnect fee. In order to expedite the sale, this amount was paid to BWB by the new buyer's real estate company.² Complainant then demanded the title company release the funds to her. The title company has expressed reluctance to do so resulting in Complainant filing a complaint with the Department of Insurance which declined to take any action.³

Although the chronology of the facts appears convoluted, and many facts were not known until the filing of BWB's Direct Testimony, initially it appeared the issue before the Commission was a billing dispute between the Complainant and BWB pursuant to 16 TAC §§ 24.85(a) & (c), 24.86(a), and 24.87(o). Because BWB has been paid⁴ and can no longer seek any compensation from the Complainant, there is no longer a billing dispute between Complainant and BWB and consequently, there is no claim for which the Commission can grant relief. At this point, this is a contractual dispute requiring interpretation of the escrow agreement as to whether, and in what manner, the escrow funds for the water bill should be released. Staff believes the appropriate forum is a court of law to determine the contractual relationship between the actors and who has the proper claim to the \$655 in escrow funds. Therefore, this docket should be dismissed pursuant to 16 TAC § 22.181(a)(1)(G) for failure to state a claim for which relief may be granted.

¹ Direct Testimony of Bastrop West Water and Paul Klaus, Ex. 16 at Bates 175-190.

² *Id.* at Bates 176.

³ *Id.*, Ex. 16 at Bates 175-190.

⁴ *Id.*

III. CONCLUSION

Complainant has failed to state a claim upon which relief can be granted by the Commission. Therefore, Staff requests that this case be dismissed so that the Complainant may be allowed to pursue her claim in a more appropriate forum.

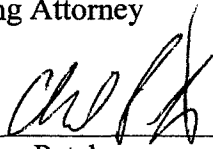
Dated August 8, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

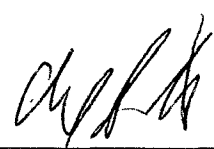


Alexander Petak
State Bar No. 24088216
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7377
(512) 936-7268 (facsimile)

**SOAH DOCKET NO. 473-16-1108.WS
PUC DOCKET NO. 45207**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 8, 2016, in accordance with 16 TAC § 22.74.



Alexander Petak