

Control Number: 48056



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DOCKET NO. **48056**

2018 FEB 12 PM 2:10

FILED AS ORDER

**AGREED SETTLEMENT AND §
PROPOSED ORDER RELATING TO §
SUNNY QUEST, LLC D/B/A §
SHALIMAR APARTMENTS' §
VIOLATION OF 16 TAC §§ 24.122, §
24.123, 24.124, AND 24.125, §
CONCERNING WATER UTILITY §
SUBMETERING AND ALLOCATION §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Staff of the Public Utility Commission of Texas (Commission) and Sunny Quest, LLC d/b/a Shalimar Apartments (Shalimar) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of Shalimar for violation of Title 16 of the Texas Administrative Code §§ 24.122 (TAC), related to owner registration and records; 24.123, related to rental agreement; 24.124, related to charges and calculations; and 24.125, related to billing.

Staff respectfully requests that the Parties' Application for Approval of Settlement Agreement be granted.

DATE: February 12, 2018

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500



W. Patrick Dinnin
Attorney-Oversight and Enforcement Division
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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. _____

CERTIFICATE OF SERVICE

----- I certify that a copy of this document will be served on all parties of record on this -----
the 12th day of February, 2018, in accordance with 16 TAC § 22.74.



W. Patrick Dinnin

DOCKET NO. _____

**AGREED SETTLEMENT AND §
PROPOSED ORDER RELATING TO §
SUNNY QUEST, LLC D/B/A § PUBLIC UTILITY COMMISSION
SHALIMAR §
APARTMENTS' VIOLATION OF 16 §
TAC §§24.122, 24.123, 24.124, AND § OF TEXAS
24.125, CONCERNING WATER §
UTILITY SUBMETERING AND §
ALLOCATION §**

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Sunny Quest, LLC d/b/a Shalimar Apartments (Shalimar)(together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of Shalimar for violation of Title 16 of the Texas Administrative Code §§24.122(TAC), related to owner registration and records; 24.123, related to rental agreement; 24.124, related to charges and calculations; and 24.125, related to billing.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommended, and Shalimar has agreed to pay, a refund to tenants totaling \$1,090.31.
3. Shalimar admits to the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Agreement.
4. Shalimar is an apartment house as defined by Texas Water Code § 13.501(1) (TWC) and 16 TAC § 24.121(c)(2) for the purposes of TWC § 13.5031 and 16 TAC § 24.123.
5. Shalimar is an owner of an apartment house as defined by 16 TAC § 24.121(c)(10) for the purposes of 16 TAC §§ 24.122, 24.123, 24.124, and 24.125.

6. Shalimar has 17 dwelling units that it can lease to tenants.
7. Shalimar has a total of 21 occupants, with 13 dwelling units containing one occupant and 4 dwelling units containing two occupants.
8. From May 17, 2017 through May 24, 2017 the Commission's Customer Protection Division received 3 complaints from tenants disputing Shalimar's billing practices.
9. Under TWC § 13.5031, the Commission is required to adopt rules and standards governing billing systems or methods used by apartment house owners for prorating or allocating among tenants nonsubmetered master metered utility service costs.
10. Specifically, under TWC § 13.5031(1), the Commission must adopt rules that require the rental agreement to contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the apartment house.
11. Under 16 TAC § 24.122(a), an owner who intends to bill tenants for submetered or allocated utility service or who changes the method used to bill tenants for utility service is required to register with the commission in a form prescribed by the commission.
12. Shalimar registered with the Commission on June 6, 2017 to bill for water utilities using the occupancy method in docket no. 46908.

13. Before June 6, 2017, Shalimar was charging tenants for allocated utility service without having first registered with the commission. Shalimar was previously unaware that registration with the Commission was required to bill for allocated water utility service.
14. Under 16 TAC § 24.124(f), an Owner using an allocation formula other than those approved in 16 TAC § 24.124(e) shall immediately provide notice as required under § 24.123(c) and either:
 - 1) adopt one of the methods in § 24.124(e); or
 - 2) install submeters and begin billing on a submetered basis; or
 - 3) discontinue billing for utility services.
15. Under 16 TAC § 24.123(c), the owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.

16. Because Shalimar has agreed to change its billing method to discontinue billing for utility services, it is required to notice its tenants at least 35 days prior to implementing the new method.
17. Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved method that Shalimar implemented from January 1, 2017 to July 31, 2017 and (b) the actual occupancy allocation method specified in 16 TAC § 24.124(e)(2)(A)(i).¹
18. Under 16 TAC § 24.124(e)(1)(B)(iv), an owner must deduct the common area usage from the retail public utility's master meter bill before allocating the bill to tenants. If the common areas that are served through the master meter that provides water to the dwellings are not separately metered or submetered and there is no installed landscape irrigation system, the owner must deduct at least 5% of the retail public utility's master meter bill.
19. Shalimar indicates on its allocated billing registration with the Commission that there are no common areas or irrigation systems; however, Staff understands that there is a common area in the form of a laundry room. O&E Staff has determined that Shalimar has failed to deduct at least 5% of the retail public utility's bill before allocating the bill to tenants.
20. Under § 24.124(e)(2)(A)(i), in order to calculate a tenant's bill under the "occupancy" method, the owner shall multiply the amount established in 24.124(e)(1) by the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered.
21. O&E Staff has determined that Shalimar has divided the amount established in 16 TAC § 24.124(e)(1) by the total number of dwelling units, which is not one of the approved methods listed in 16 TAC § 24.124(e)(2)(A). For a majority of Shalimar's tenants, billing under this method results in higher water utility bills than if Shalimar had divided this total by the number of occupants under 16 TAC § 24.124(e)(2)(A)(i).
22. Going forward, Shalimar has agreed to discontinue billing for water utility services.

¹O&E determined that the actual occupancy method should be used for the purpose of the refund because it is the method in which Shalimar has subsequently chosen as its billing method and which Shalimar stated it would have chosen to implement had it been aware of its options.

23. Due to Shalimar dividing the water utility bill by the number of dwelling units instead of the number of occupants, each single occupant dwelling was charged \$83.87 more than he would have been charged under the actual occupancy allocation method, for a cumulative total of \$1,090.31 from January 1, 2017 to July 31, 2017.
24. Shalimar has agreed that each tenant in a single tenant dwelling from January 1, 2017 to July 31, 2017 will each receive a total refund of \$83.87, pursuant to the spreadsheet included as "attachment 2," in the form of a check.
25. Shalimar agrees that it will not seek reimbursement from tenants who were underbilled due to Shalimar's billing miscalculations.
26. Because Shalimar suspended billing tenants for utility services since August 2017, the refund may be reduced by the amount owed to Shalimar for the suspended billing for the previous 6 months pursuant to 16 TAC § 24.125(k).
27. Shalimar has agreed to treat any unclaimed refunds consistent with Title 6 of the Texas Property code related to unclaimed property.
28. Shalimar has agreed that it will include a letter to tenants explaining that the refund is being issued due to Shalimar's use of an unapproved allocation method, and a reference to this investigation and settlement. This letter will serve as the notice required under 16 TAC § 24.123(c).
29. 16 TAC §§ 24.123(a)(1-9), provides a list of items that the written rental agreement between the owner and tenant must disclose in writing. Additionally, 16 TAC § 24.123(b) requires the owner, at the time the rental agreement is discussed, to provide the tenant with a copy of Title 16, Chapter 24, Subchapter H of the TAC.
30. The rental agreement provided to tenants by Shalimar only indicates that the tenant will pay utility costs and must keep the utilities on. O&E Staff has found that Shalimar has not provided, in its rental agreements, any of the necessary information required under § 24.123(a).
31. Under 16 TAC § 24.124(a), charges for allocated water utility service may only include bills for water or wastewater from the retail public utility and must not include any fees billed to

the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.

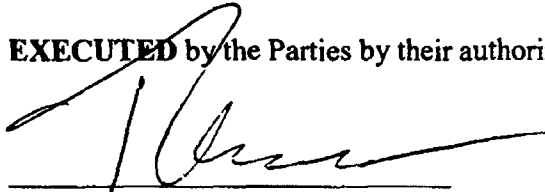
32. Under 16 TAC § 24.125(e), if issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill.
33. O&E Staff has found that Shalimar is charging its tenants for the City of Austin's "drainage service" each month, which is associated with the drainage of storm water for the apartment house. Although the City of Austin allows the drainage service charge to be passed through to the tenants, it is not permitted under 16 TAC § 24.124(a) to be included in Shalimar's calculation of the water utility service charges billed to tenants; the drainage service charge must be separate and distinct from the allocated water charge.
34. O&E Staff has found that Shalimar does not separate the charge for trash or electric services from its allocated water utility service charge. Tenants do not have the ability to distinguish their water utility service costs from one month to another, nor are they able to calculate their portion of the bill from the information provided by Shalimar.
35. Under 16 TAC § 24.125(f), the bill must clearly state that the utility service is submetered or allocated, as applicable, and must include all of the information listed in §§ 24.125(f)(1-8).
36. O&E Staff has found that Shalimar provides utility bills by simply text messaging billing information to the tenants. The text messages list (1) the total of the combined water, electric, and trash charges, (2) the billing cycle month, and (3) a due date, 8 days after the date of the text. Because bills are not being mailed or hand delivered and the text messages lack all of the required information required by 16 TAC § 24.125(f), O&E Staff finds Shalimar in violation of §§ 24.125(f)(1, 2, 5, 6, 7, and 8).
37. Under 16 TAC § 24.125(h), the due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant.
38. O&E Staff has determined that Shalimar requires tenants to pay the water utility service charges 8 days after Shalimar sends the text messages, in violation of 16 TAC § 24.125(h).

39. Under 16 TAC § 24.122(e), the owner shall make records¹ available for inspection by the tenant or the commission or commission staff at the on-site manager's office during normal business hours in accordance with 16 TAC § 24.122(g).
40. Under 16 TAC §§ 24.122(g)(1-4), if the required records are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant. If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant. Such copies may be provided by mail if postmarked by the 30th day.
41. Under 16 TAC § 24.122(f), records must be maintained for the current year and the previous calendar year.
42. Shalimar has neither been providing the required records at the tenants dwelling, nor by mail once a written request has been received by Shalimar. Instead, Shalimar has been offering to provide the records offsite or via a picture of the records sent via a text message.
43. Shalimar has cooperated with Staff's investigation.
44. Shalimar acknowledges that it has violated 16 TAC §§ 24.122, 24.123, 24.124, and 24.125.
45. This Agreement resolves all claims related to Staff's investigation of Shalimar for violations of 16 TAC §§ 24.122, 24.123, 24.124, and 24.125 from January 1, 2017 to July 31, 2017.
46. Shalimar has acknowledged that it has made changes to prevent future violations of the same nature from happening going forward.
47. Shalimar asserts that none of the violations detailed in this agreement were intentionally committed.
48. Unless specifically provided for in this Agreement, Shalimar waives any notice and procedures that might otherwise be authorized or required in this proceeding.
49. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in the TWC and the TAC.

¹ The records that the owner shall make available are listed in 16 TAC § 24.122(e)(1-10).


50. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
51. The Parties contemplate that this Agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.
52. This Agreement is the final and entire agreement between the Parties regarding the violations of 16 TAC §§ 24.122, 24.123, 24.124, and 24.125, and supersedes all other communications among the Parties or their representatives regarding its terms.
53. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.
54. Shalimar warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties by their authorized representatives designated below.



Tony Vuong
Owner/Operator
Sunny Quest, LLC d/b/a/ Shalimar Apartments

Date: 02/07/2018



W. Patrick Dinnin
Attorney, Oversight and Enforcement Division
State Bar No. 24097603
Public Utility Commission of Texas

Date: 02/12/18