



Control Number: 49060



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COMPLAINT OF DEBORAH LOWE
AGAINST SADDLEBROOK
COMMUNITY AND SUN
COMMUNITIES, INC.

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§
§

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

SADDLEBROOK COMMUNITY AND SUN COMMUNITIES, INC.'S
MOTION TO DISMISS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Respondents Saddlebrook Community and Sun Communities, Inc. ("Sun"), and file this Motion to Dismiss, and in support provide as follows:

I.

This matter should be dismissed and there should be no contested hearing.

Complainant Deborah Lowe ("Ms. Lowe") filed the instant complaint on or about December 27, 2018, alleging that she was promised, but did not receive, a credit of \$2.32 against her water bills from Sun. This tribunal then issued Order No. 1, requiring that the parties respond to better describe the matters at issue in the Complaint. Ms. Lowe responded on January 24, 2019, Sun responded on January 28, 2019, and the Commission Staff provided their initial statement of position on January 31, 2019. Order No. 2 was then issued to again request clarification from Ms. Lowe and also require further briefing from the Commission Staff.

On February 19, 2019 and February 20, 2019, Ms. Lowe filed two additional letters, further detailing her allegations against Sun.¹ In general terms, these letters appear to show that Ms. Lowe seeks "all my over payments refunded," and "to receive the refund I was told I would get."² The Commission Staff also submitted three sets of Requests for Information to assist with their response to Order No. 2.

On March 28, 2019, PUC Staff submitted its supplemental statement of position.³ On March 29, 2019, Order No. 4 was issued to require a joint status report. Counsel for Sun has communicated to all other parties its intent to request dismissal of this matter, but as of the time

¹ See Deborah Lowe's Letters to PUC (February 19 and 20, 2019) (filed in the docket).

² *Id.*

³ See PUC Legal Supplemental Statement of Position (March 28, 2019).

of filing this Motion, Ms. Lowe has yet to respond to that communication with her requested discussion points for the joint status report.

II.

Section 22.181(a) of the PUC procedural rules provides that upon the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for various reasons, including lack of jurisdiction and failure to state a claim for which relief can be granted. *See* §§ 22.181(d)(1) and (8). Sun would respectfully request that such dismissal be made without hearing, as the facts necessary to support the dismissal are uncontroverted or are established as a matter of law, and a hearing would only serve to unnecessarily increase costs and the time spent on this meritless claim.

III.

Saddlebrook is a manufactured home community in San Marcos, Texas. It leases homes and home lots to residents, and also facilitates the provision of water and sewer utilities to residents via submetering and billing consistent with the laws of Texas. Ms. Lowe was a former resident at Saddlebrook who raises myriad complaints in her correspondence to the Commission, ranging from alleged overpayment for water utilities to alleged improper charges for lawn care services.

(a) Lack of Jurisdiction.

The Commission Staff's March 18 Supplemental Statement of Position ("Staff Position") clearly finds that many of the arguments raised by Ms. Lowe are outside of the jurisdiction of the Commission.⁴ These would include all of the landlord/tenant issues raised, such as billing for lawn care services, alleged mold in the manufactured home, unauthorized usage of her home's water, and not receiving her security deposit back at the end of her tenancy. Sun agrees with the Commission Staff that these issues fall outside of the jurisdiction of the Commission and should not be addressed. As such, Sun would ask that those issues be dismissed.

(b) Failure to State a Claim for Which Relief Can Be Granted.

The Staff Position then highlights two issues that Ms. Lowe has raised that are within the jurisdiction of the Commission.⁵ However, the Commission Staff has determined that both of those allegations are untrue.⁶ As such, Sun would request that this entire matter be dismissed.

⁴ *See id.* at 1.

⁵ *See id.* at 2.

First, Ms. Lowe's demand for repayment of overpayments. Ms. Lowe initially requested a refund of \$2.32. In clarifying statements, she alleged that she was due "not just \$2.45, they owe me way more."⁷

The Commission Staff has fully analyzed the documents provided by the parties, including water and sewer bills and the Customer Protection Division's opinion letter, and taken the "position that Ms. Lowe should never have been credited \$2.45 by Sun and that instead Ms. Lowe owes Sun \$22.13."⁸

Second, Ms. Lowe alleged that her water meters were improperly reading her water usage and were overstating her water usage. However, after analysis of documentation and the sworn responses to Requests for Information, the Commission Staff determined that "it appears that the meter readings on both the old meter and the new meter accurately reflected Ms. Lowe's actual water usage."¹⁰

Commission Staff's final conclusion was that the requirements for informal resolution have been met in this matter. As such, Sun believes that the Ms. Lowe has failed to state a claim for which relief can be granted. This matter should be immediately dismissed.

IV.

WHEREFORE, PREMISES CONSIDERED, Respondents pray that the Honorable Administrative Law Judge issue an order dismissing this matter with prejudice.

⁶ See *id.* at 3–5.

⁷ See Deborah Lowe's Letters to PUC (February 19 and 20, 2019) (filed in the docket).

⁸ The Commission Staff further determined that, "to the extent that there is controversy regarding whether Ms. Lowe received a credit in the amount of \$2.45, Staff believes that the ledger provided by Sun shows that Ms. Lowe has been credited this amount."

⁹ See PUC Legal Supplemental Statement of Position at 3 (March 28, 2019).

¹⁰ See *id.* at 4.

Respectfully submitted,

By: /s/ Jack E. Skaggs

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**ATTORNEYS FOR
SADDLEBROOK COMMUNITY and
SUN COMMUNITIES, INC.**

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of April, 2019, a true and correct copy of the foregoing document was served on all parties of record via U.S. Certified Mail, Return Receipt Requested.

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/s/ Jack E. Skaggs

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