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PUC DOCKET NO. 50629

COMPLAINT OF CARBAJAL
AGAINST CSC NORTH AUSTIN
REALTY, LLC

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§

PUBLIC UTILITY COMMISSION
OF TEXAS

EMMA CARBAJAL'S MOTION TO COMPEL DISCOVERY RESPONSES

To the Honorable Administrative Law Judge

Complainant Emma Carbajal files this motion seeking an order compelling discovery responses from CSC North Austin Realty, LLC ("CSC") to her first requests for information and admissions. Ms. Carbajal submitted her requests on May 5, 2020. At the filing of this motion, CSC has not provided *any* response to Ms. Carbajal's requests.

I. Procedural Background

On March 6, 2020 Ms. Carbajal filed a complaint against the property owner of her apartment complex CSC. *Complaint of Carbajal Against CSC North Austin Realty, LLC*, Doc. No. 1 ("Complaint"). Ms. Carbajal is a tenant at the Creeks Edge apartment complex owned by CSC. The complaint alleges that CSC overcharged Ms. Carbajal for non-submetered water and wastewater costs for the lease term 2018-2019. *Id* at 1. The complaint further alleges that CSC does not employ a legal water and wastewater cost allocation methodology as required by the Public Utility Commission ("Commission"). *Id* (stating "the current flat rate utilized does not calculate the monthly amount owed by Ms. Carbajal as required by 16 TX ADC §24.281).

Despite two orders, CSC has never responded to Ms. Carbajal's formal complaint. *See Order No. 1 Requiring Responses* Doc. No. 2; *Commission Staff's Statement of Position*, Doc. No. 5, §V; *See Order No. 3 Requiring Response to Complaint*, Doc. No. 7.

CSC has also never produced to Ms. Carbajal any invoices or master meter bills, or bill calculation methodology to justify the monthly charges in her former and current lease. Complaint at 2. Nor did CSC produce these materials to Commission staff during the resolution of Ms. Carbajal's informal complaint. *Id*; *see also* Ex. F, attached to Complaint ("CPD has determined the complex failed to provide a copy of the lease addendum, invoices received for water and wastewater, and the calculations formula to allow verification of the billing.")

On May 5, 2020 Ms. Carbajal submitted her first requests for information and admissions to CSC. *Emma Carbajal's First Request for Information and Requests for Admission of Facts to CSC North Austin Realty, LLC*, Doc. No. 6 (Carbajal's First RFIs). CSC did not produce responsive materials or objections to any request within the 20 day deadline. 16 TAC § 22.144. Counsel for Ms. Carbajal conferred with counsel for CSC after the passage of the 20 day deadline for response, and indicated that Ms. Carbajal would be willing agree to an extended deadline for discovery. Ms. Carbajal's counsel did not receive a proposal an extension to discovery from CSC's counsel and on June 8, 2020 informed CSC's counsel this motion to compel was forthcoming.

II. Argument

Parties to proceedings at the Commission may obtain discovery that is relevant to the subject matter and not privileged or exempt under the Texas Rules of Civil Procedure. 16 TAC §22.141. The Commission may grant a party's motion to compel any discovery that is permissible under the Texas Rules of Civil Procedure. Tex. Gov. Code §2001.091(a); *see also* Tex. Water Code §13.003 (finding that all provisions of Ch. 2001 of the Government Code apply to proceedings initiated under Chapter 13 of the Texas Water Code). Ms. Carbajal's requests are

relevant and permissible discovery under the Texas Rules of Civil Procedure, therefore granting this motion to compel is appropriate.

Ms. Carbajal's first RFIs sought admissions regarding:

- a. The parties' relationship to Creeks Edge Apartments;
- b. The existence and contents of leases executed between her and CSC for the years 2018-2020; and
- c. CSC's failure to produce master meter bills or a utility cost allocation methodology to Ms. Carbajal and her counsel.

Ms. Carbajal's RFIs sought information regarding:

- a. The name of individuals consulted in preparing cost allocation methodologies used by Creeks Edge during each of Ms. Carbajal's leases;
- b. The names of individuals responsible for payment of the master meter utility bill at Creeks Edge;
- c. Specific information concerning the numerical inputs for the cost allocation methodology employed at Creeks Edge;
- d. The total amounts billed to tenants at Creeks Edge for water and wastewater purposes; and
- e. The production of documents including master meter bills, workbooks, utility bills issued to Ms. Carbajal, Ms. Carbajal's leases and ledgers, water and wastewater utility contracts, and any documents relied on in answering Ms. Carbajal's requests for admissions.

Each of Ms. Carbajal's requests are relevant to the proceedings as they seek evidence of CSC's water and waste-water cost allocation methodology at Creeks Edge, the very subject of Ms. Carbajal's complaint. The information sought is not overly-broad or unduly burdensome as it is restricted to only that information which is necessary to determine CSC's compliance with the substantive rules on non-submetered cost allocation statutes and regulations. *See* Tex. Water Code §13.5031; 16 TAC §§24.275 – 24.287. Moreover, by failing to object to any of Ms. Carbajal's requests within 10 days of receipt, CSC has waived any objections to the requests. 16 TAC §22.144(d); *Application of City of Lavon for a Sewer Certificate of Convenience and Necessity in Collin County*, 2017 WL 4351154 at 1 (Tex. S.O.A.H) (finding untimely objections

will not prevent a motion to compel from being granted). Therefore, CSC should be compelled to respond.

III. Request for Relief

Ms. Carbajal asks that an order be issued:

1. Compelling CSC to produce responsive material to all requests in Ms. Carbajal's First Requests for Information and Requests for Admission of Facts by Friday, June 19, 2020; and
2. Prohibiting CSC from objecting to any of Ms. Carbajal's requests.

Respectfully Submitted,

/s/ Jennifer Richards
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CERTIFICATE OF CONFERENCE

I certify that reasonable efforts were made to resolve this dispute before seeking judicial intervention and that such efforts have failed.

/s/ Jennifer Richards

CERTIFICATE OF SERVICE

I certify that on June 12, 2020 a true and correct copy of the foregoing document was served electronically on the following parties in accordance with the Order Suspending Rules, issued in Project No. 50664:

Courtney Dean
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By: /s/ Jennifer Richards
Jennifer Richards