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COMPLAINT OF EMILY MCCARTY  
AGAINST THE LUXE 380 APARTMENTS

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§  
§

PUBLIC UTILITY COMMISSION

OF TEXAS

2020 JUN 23 AM 8:54  
FILED

**ORDER NO. 1  
REQUIRING A RESPONSE AND CLARIFICATION FROM COMPLAINANT**

On May 26, 2020, Emily McCarty filed what purports to be a formal complaint against the Luxe 380 Apartments. The entirety of the complaint, including all supporting documentation, was filed confidentially under seal. On June 23, 2020, Commission Staff filed a motion to declassify the complaint.

Ms. McCarty’s complaint consists of a 238-page packet labeled as a “formal complaint against allocated water bills,” but sealed in an envelope marked “confidential” and with every page stamped “confidential.” Ms. McCarty’s stated desire that the entire contents of the package should be treated as confidential raises complications and requires further clarification from her. If Ms. McCarty’s desire is that her complaint be treated as a formal complaint under 16 Texas Administrative Code (TAC) § 22.242, then the existence and contents of the complaint cannot be kept from disclosure because the target of the complaint, Luxe 380 Apartments, must be given the opportunity to know about and respond to the complaint. Moreover, under 16 TAC § 22.74, Ms. McCarty was obligated to “serve” (i.e. provide a copy of) the complaint to Luxe 380 Apartments, and include a statement in her complaint that she had done so. It does not appear that Ms. McCarty provided a copy of the contents of the sealed envelope to Luxe 380 Apartments.

Moreover, the administrative law judge (ALJ) concludes that Ms. McCarty’s attempt to designate the entirety of her complaint as confidential violates 16 TAC § 22.71(d)(1), which prohibits a party that is submitting documents in a sealed confidential envelope to “not include any non-confidential materials” in the envelope. It is the ALJ’s opinion that most of the information included in Ms. McCarty’s complaint lacks any justification for treatment as confidential.

Therefore, the ALJ orders Ms. McCarty to do **one** of the following by August 31, 2020:

- If it is her desire to pursue a formal complaint against Luxe 380 Apartments under 16 TAC § 22.242, then Ms. McCarty must re-file her complaint non-confidentially and provide a copy of the complaint to Luxe 380 Apartments. When she refiles non-confidentially, Ms. McCarty may redact or file confidentially any specific

pages that contain personal identification information, such as social security numbers or bank account numbers, as allowed by 16 TAC § 22.72(g)(7).

**OR**


- If she prefers, Ms. McCarty may notify the Commission in writing that her intent with the May 26, 2020 confidential filing was to ask that the Commission undertake an investigation of Luxe 380 Apartments under 16 TAC § 22.241(a)(1). Under that rule, the Commission may “on its own motion, or the motion of the commission’s staff,” institute a formal investigation. Thus, if Ms. McCarty wishes to pursue this alternative, her request for an investigation would be considered informational and taken under advisement by the Commission and Commission Staff, the request itself would not initiate a formal contested case process, and no further action would be taken in this docket. However, the Commission Staff would be free to pursue its own investigation of Luxe 380 Apartments if it determined that such an investigation was warranted.

Until Ms. McCarty responds to this Order, the ALJ does not deem Ms. McCarty’s filing to constitute a validly-filed complaint. To that end, Luxe 380 Apartments will not be served with a copy of this Order.

In light of this Order, the ALJ is deferring ruling on Commission Staff’s motion to declassify at this time.

**Signed at Austin, Texas the 11th day of August 2020.**

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER  
CHIEF ADMINISTRATIVE LAW JUDGE