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COMPLAINT OF JOHN SOAH: 473-21-1880.WS PUBLIC UTILITY
BLALOCK AGAINST COMMISSION OF
MERCY WATER TEXAS
SUPPLY
CORPORATION

JOHN BLALOCK’S RESPONSE TO MERCY WATER SUPPLY

CORPORATION’S “REPLY IN SUPPORT OF MERCY WATER SUPPLY

CORPORATION’S MOTION FOR DISPOSITION”

COMES NOW John Blalock (hereinafter “Mr. Blalock”) to reply to Mercy Water Supply Corporation’s (hereinafter “Mercy” or “Corporation”) *Reply in Support of Mercy Water Supply Corporation’s Motion for Disposition*;

I.

MERCY’S TARIFF AND DUTY TO INFORM

While the Texas Water Codes (hereinafter “TWC”) do not create an explicit duty to inform, Mercy’s tariff (Exhibit A, attached to *Mercy Water Supply Corporation’s Response to Complaint*, filed on the 24th day of August of 2021) does create a duty to inform for the Secretary of the Corporation. In Item 4 of the Resolutions, it states, “An official copy of this and all policies or records shall be available during regular office hours of the Corporation and a copy may be viewed

on the Corporation's website. The Secretary of the Corporation shall maintain an original copy as approved and all previous copies for exhibit." As there is no mention of the title of 'Office Manager' in Mercy's tariff, then it is reasonable to understand the titles of 'Office Manager' and 'Secretary of the Corporation' to be interchangeable, unless 'Secretary of the Corporation' is a reference to the title of 'Secretary' in reference to the Board position. But, as the Board is mentioned as a whole, then the latter is presumably not the case. Therefore, this creates a duty to inform on the part of the 'Office Manager'/'Secretary of the Corporation', as a representative of the Corporation, this creates a duty to inform on the part of the Corporation. This means, that Mercy as a corporation, through their staff, had a duty to inform Mr. Blalock of their policies as they do not keep a copy on their website (as of the 5th day of August of 2021 at 05:10). And, as of the last visit of John Blalock II (also known as Allie Blalock) (hereinafter "Allie") in July of 2021, there was no notices or documentation posted mentioning the existence of the tariff.

The definition of 'available' is "able to be used or obtained". Mr. Blalock contends that if an individual is not informed of the existence of something, then it is not logical to consider it available to the individual.

II.

THE EVIDENCE SUPPORTING MR. BLALOCK'S CLAIMS ABOUT THE METER ON THE SOUTHERN TRACT

What Mercy is leaving out is that their tariff does allow for meters to be installed on parcels of land different from the one that the meter is meant to deliver water service to. On page 3 of 5 of the sample *Service and Application Agreement States*, “The Corporation shall have the right to locate a water service meter and the pipe necessary to connect the meter on the Member’s property at a point to be chosen by the Corporation...,” this is also reflected in the *Service Application and Agreement* signed by Reba Ivey (hereinafter “Ms. Ivey”) in 1995. So, despite the statement made by Mr. Baker in his affidavit, the written policy is different from what Mr. Baker is claiming is the normal business practice.

Mercy’s tariff, in Section E (26), states, “Service shall be through a meter located on the designated real estate unless otherwise approved by the board.” This means that if the Board in 1995 approved it, then a meter could have been installed on the Southern Tract for service to the Northern Tract. Showing there is cause to believe the meter located on the Southern Tract to be for service to the Northern Tract.

All documents related to Mercy, their tariff, and all paper work related to the meter in question contains the phrase of “designated real estate” in one form or another. The real estate designated, in Ms. Ivey’s *Service Application and Agreement*, is

154 Bowen Road. This address changes to the current address of 1611 Bowen Loop. In the partition deed, which would have been on file in 1995 when the application was filed with Mercy, explicitly separated the Northern Tract and the Southern Tract, and leaves no possible room for an assumption that Ms. Ivey had a legal claim in/to the Southern Tract. This partition deed separated the properties in the mid 1980's, almost a full decade before the meter being installed for Ms. Ivey. This points to Mercy and their staff/contractors having the necessary documentation to show Ms. Ivey was getting a meter installed for the Northern Tract. Therefore, as all documentation states that the Corporation chooses the location, the meter being located on the Southern Tract was/is a decision made by Mercy.

Currently, despite Mercy's claim of a new meter being needed, the Northern Tract is still being serviced by the original meter. And, a new meter was installed by Mercy for the Southern Tract, following the order for temporary reinstatement of service at the beginning of the formal complaint proceedings. Mercy, has previously argued that the connection from the meter in question, to the Northern Tract is/was unauthorized, despite the connection being the original one placed in 1995 and travels directly from the meter to the residence on the Northern Tract. All of this evidence, pointing further towards the meter originally being installed on the Southern Tract for the Northern Tract.

III.

AFFADAVIT AND STATEMENTS OF RANDALL BAKER

In his affidavit, Randall Baker (hereinafter “Mr. Baker”) never states which property the meter was installed for. He only states, in item 4, that he installed the meter on the Southern Tract. It is not until Mercy’s response to Request for Information (hereinafter “RFI”) 1-4 from Commission Staff, that he supports the statement, “Mercy’s operators believed the service address to be the location at which Mercy installed the meter and was not aware the property had been partitioned.” Mr. Baker’s two statements (one made directly and one supported) have some issues with each other and other evidence on record, such as: (1) if Mr. Baker believed that, then he would have added it to his original statement in his affidavit; (2) this adds another failure on the part of the office staff, in 1995, as they would have had a duty to inform the operators of the partition deed; (3) Mr. Baker’s belief is unsubstantiated as there would have been a partition deed on file with Mercy and all of Ms. Ivey’s paperwork uses the address of 154 Bowen Road, until the address change to 1611 Bowen Loop which is reflected in Ms. Ivey’s record. These issues create 2 possibilities of what happened in 1995: (1) the operators at the time were not properly informed by office staff or (2) Mercy made a decision on the location and is now trying to back track on that decision, now that it has created a problem for them.

IV.

AFFIDAVIT AND STATEMENTS OF KELLEY ALLBRIGHT

As pointed out by Mercy, Kelly Allbright (hereinafter “Ms. Allbright”) does state that in her affidavit. But, as quoted, she stated, “...I have not entered into a verbal agreement on the behalf of Mercy...,” this statement only accounts for the actions of Ms. Allbright, not any previous Office Manager/Staff of Mercy. She also states, “...I have also not found any records indicating any agreement or discussion with Mr. Blalock...,” which would be the case of verbal contracts unless there was an audio/video recording of the conversation or one of the parties took notes. And, this absence of explicit evidence is what Mercy is relying on for their defense.

V.

MERCY’S REQUIREMENTS FOR DISCONTINUATION OF SERVICE OR CANCELATION OF MEMBERSHIP

Per Mercy’s tariff, there are notices that have to be sent before a disconnection of service/cancelation of membership can take place, examples of these notices are provided in Mercy’s tariff. Mercy never mailed any of the required notices, nor did the Board cancel the membership as required by Mercy’s *Service Application and Agreement*. If Mercy’s Board had discussed the cancelation of Ms. Ivey’s Membership, then there would have been a record of the

meeting containing the cancelation as an item for discussion. When asked for copies of board agendas or meeting minutes for the required board meeting, Mercy replied with “No responsive documents exist.” As these documents are required to be kept by state law and Mercy’s policies, then the board meeting cannot be legally claimed as being conducted. And, if Mercy claims that the board meeting took place, then the meeting was not held in accordance with all applicable laws or policies.

VI.

CONCLUSION

Despite Mercy’s arguments, their tariff creates a duty to inform as copies of their tariff are not made available, as the existence of the tariff is not made known publicly. The statements of Mr. Baker and Ms. Allbright, when closely examined and compared to the evidence on record, create holes in Mercy’s defenses. As such, Mr. Blalock to the fullest of his ability has met his burden of proof.

VII.

REQUEST FOR RELIEF

Mr. Blalock respectfully request that Mercy’s MSD be denied as he has met the burden of proof, and Mercy’s MSD depends on misrepresentation of the evidence and of Mr. Blalock’s statements.

RESPECTFULLY SUBMITTED BY,

/s/ John Blalock