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**SOAH DOCKET NO. 473-22-2652
PUC DOCKET NO. 51619**

COMPLAINT OF JEFF CONNORS	§	BEFORE THE STATE OFFICE
AGAINST THE GALLERY	§	OF
APARTMENTS, ROSCOE PROPERTY	§	
MANAGEMENT, AND CONSERVICE	§	ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S REPLY BRIEF

Dated: March 13, 2023

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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SOAH DOCKET NO. 473-212-2652
PUC DOCKET NO. 51619

COMPLAINT OF JEFF CONNORS	§	BEFORE THE STATE OFFICE
AGAINST THE GALLERY	§	OF
APARTMENTS, ROSCOE PROPERTY	§	
MANAGEMENT, AND CONSERVICE	§	ADMINISTRATIVE HEARINGS

COMMISSION STAFF’S REPLY BRIEF

I. INTRODUCTION

On December 14, 2020, Jeff Connors (Complainant) filed a formal complaint against the Gallery Apartments (the Gallery), Roscoe Property Management (RPM), and Conservice (together, Respondents) regarding improper billing practices. This complaint was filed under 16 Texas Administrative Code (TAC) § 22.242. On May 10, 2022, the Commission referred this docket to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing, and a hearing on the merits was held on February 6, 2023.

Staff (Staff) for the Public Utility Commission of Texas (Commission) reaffirms its position that the SOAH administrative law judge (ALJ) should include in the proposal for decision a recommendation that the Commission order the Gallery to refund Mr. Connors the amount overbilled and accrued interest. If the SOAH ALJ follows Staff’s calculation that would constitute a total amount of \$76.90.¹ If the SOAH ALJ follows the figure provided by Mr. Connors in his opening statement, that totals roughly \$30.00.² Furthermore, the Gallery should be ordered to review all of its water and wastewater billing practices to ensure that they comply with 16 TAC Subchapter I, Water Utility Submetering and Allocation.³ Staff respectfully recommends that the Gallery be ordered to file a compliance report detailing the steps taken to alleviate the violations.⁴

¹ Staff’s Ex. 1 at 16-17.

² Based on notes taken during the hearing on the merits. Staff was unable to access the audio recording of the proceeding.

³ Staff’s Ex 1 at 17.

⁴ *Id.*

Here, Staff briefly responds to several arguments made by the Gallery and RPM in their Closing Brief.

II. COMMISSION STAFF’S REPLY TO THE GALLERY AND RPM’S INITIAL BRIEF

a. The material issues in this formal complaint proceeding are not moot.

In their Closing Brief, the Gallery and RPM argue that this proceeding is moot.⁵ But they offer no evidence to support this claim—they just assert it. Nowhere in the Closing Brief do they bolster their mootness argument by citing to the evidentiary record. *Contra* the Gallery and RPM, this formal complaint proceeding is not moot. The purpose of this proceeding is twofold: (1) to determine whether the respondents violated certain provisions of the TAC, and (2) if so, to determine the appropriate remedy. Staff maintains that it carried its burden to demonstrate that certain provisions of the TAC were violated and that it properly recommended remedies for those violations.

b. The timing of Staff’s direct testimony is determined by Commission procedure and the SOAH ALJ’s ordered procedural schedule and is therefore appropriate.

The Gallery and RPM wish to characterize the timing of Staff’s filing its direct testimony on November 28, 2022, as somehow improper given that the formal complaint process began in December of 2020.⁶ Staff doesn’t dispute that it first put forth its direct testimony on November 28, 2022. But this is in line with other Commission proceedings and in no way irregular. Direct testimony, whether in a trial on the merits or pre-filed as in Commission proceedings, is a party’s opportunity to present its case. To expect a robust presentation before a party files direct testimony is to misunderstand the purpose of direct testimony. The preceding argument notwithstanding, the filing date of Staff’s Direct Testimony was set in SOAH Order No. 2, filed on September 23, 2022. It was in this order that the SOAH ALJ established the filing deadlines for the parties. Staff filed

⁵ The Gallery Apartments and Roscoe Property Management’s Closing Brief at 2 (Mar. 7, 2023) (Closing Brief).

⁶ Closing Brief at 2-3.

its direct testimony accordingly. Staff respectfully notes that it was the Gallery and RPM that failed to abide by the SOAH ALJ's filing deadlines regarding testimony as further elaborated in Staff's response to the Gallery and RPM's response to Staff's objections.⁷

c. The information requested by Mr. Connors was not timely provided in accordance with 16 TAC § 24.277.

In their Closing Brief, the Gallery and RPM suggest that Mr. Connors made his request for certain documents in "November/December of 2020" and that they were promptly provided on January 5, 2021.⁸ This is not so. Mr. Connors first requested information concerning past water bills in February 28, 2020.⁹ As part of this request, Mr. Connors requested bills from June of 2019.¹⁰ Additionally, Mr. Connors made multiple requests from September through December of 2020.¹¹ Mr. Connors did not receive a substantive response to his request until he received the January 5, 2021 email.¹² That email did not include the bills from June of 2019.¹³ The email had only attached bills from November 2019 through January 2021.¹⁴ Therefore, not only did the Gallery fail to comply with his request in a timely manner, the Gallery also failed to provide Mr. Connors all of the information he requested.

16 TAC § 24.277 establishes the timeframes in which the information requested must be made available. Making that information available to Mr. Connors in January of the following year—11 months from the initial email he sent—does not comport with any of the timeframes established by 16 TAC § 24.277. The Gallery did not comply with the requirements of any of these provisions.

⁷ Commission Staff's Response to the Gallery Apartments and Roscoe Response to Objections filed by the Public Utility Commission (Feb. 27, 2023).

⁸ Closing Brief at 11.

⁹ Complaint of Jeff Connors against the Gallery Apartments, Roscoe Property Management, and Conservice at 57 of 69 of the PDF (Dec. 14, 2020).

¹⁰ *Id.*

¹¹ Commission Staff's Initial Brief at 7-8.

¹² The Gallery and RPM's Exhibit J.

¹³ *Id.*

¹⁴ *Id.*

Although the Gallery and RPM would prefer to handwave this away and confuse the issues with irrelevant truisms such as “to err is human”, this does not address the heart of the matter. Mr. Connors was not provided all of the information he requested in a timely manner. There are no provisions excusing non-compliance with these requirements based on human error, COVID-19, a lockdown order (for which the Gallery provides no citation), or anything else. In fact, the Gallery and RPM fail to cite a single legal authority for this argument. That is because no such legal authority exists. Furthermore, intent is not a necessary element in any of the provisions under consideration. Intent does not factor into determining whether a violation of Commission rules has occurred. The Gallery must comply with the Commission’s rules until those rules are either changed or abrogated.

III. CONCLUSION

Ultimately, this formal complaint proceeding is not complex. The preliminary order outlines the issues to be decided by the SOAH ALJ. Yet the Gallery and RPM’s answers to these issues rely primarily upon the use of overly emotional language—with sparingly few citations to the evidentiary record—to plead its case. Without their providing citations to their claims, the Gallery and RPM prevent the other parties from rebutting them and the SOAH ALJ from referencing them. But what can be asserted without evidence, can be dismissed without evidence.

Although the Gallery and RPM peppered their Closing Brief with question-begging epithets, their doing so neither demonstrates that the Gallery complied with Commission rules nor excuses its failure to comply with Commission rules. Staff respectfully requests the issuance of an order consistent with the foregoing recommendations made here and in Staff’s Initial Brief.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 13, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann