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COMPLAINANT RESPONSE TO THE GALLERY APARTMENTS
AND ROSCOE PROPERTY MANAGEMENT'S MOTION TO
DISMISS

10/05/22

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COMPLAINT OF JEFF CONNORS § PUBLIC UTILITY COMMISSION
AGAINST THE GALLERY §
APARTMENTS, ROSCOE PROPERTY § OF TEXAS
MANAGEMENT, AND CONSERVICE §

**COMPLAINANT RESPONSE TO THE GALLERY APARTMENTS AND ROSCOE
PROPERTY MANAGEMENT’S MOTION TO DISMISS**

I. Background

The Gallery Apartments and Roscoe Property Management filed a Motion to Dismiss in the Docket on 9/28/22 stating that since they sent me a check for the amount that I was overcharged that the proceeding is therefore moot and cited PUC Procedural Rules §22.181 (a) and (b) and §22.181 (d)(2) to support their contentions. They also stated that if I don’t accept the check then the proceeding should be dismissed for good cause and cited PUC Procedural Rule §22.181 (d)(11) to support that.

PUC Substantive Rules §22.181 (a) and (b) are:

*(a) **Dismissal of a proceeding.** Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section.*

*(b) **Dismissal of issues within a proceeding.** Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss or may recommend that the commission dismiss, with or without prejudice, one or more issues within a proceeding for any reason specified in this section.*

PUC Substantive Rules §22.181 (d)(2) and (d)(11) are:

(d) Reasons for dismissal. Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons:

(2) moot questions or obsolete petitions;

(11) other good cause shown.

The Gallery and Roscoe also mischaracterized my allegations by claiming that “(t)he Complainant believes the alleged overcharges are the result of leaks in the irrigation system or other improper irrigation related charges.”

Then, after suggesting that I was “wasting public time and resources that could be better spent fighting homelessness, crime, COVID-19, monkeypox, and hunger”, the Gallery and Roscoe requested that “this case and all issues and claims be dismissed with prejudice, and for all other and further relief to which it is justly entitled, whether at law or in equity, including attorneys' fees.”

II. Discussion

I want to state first of all that I’m contesting the facts as The Gallery and Roscoe portray them in their Motion to Dismiss and that according to PUC Substantive Rule §22.181 (c) that means that any dismissal would require a hearing.

PUC Substantive Rule §22.181 (c) states:

(a) Dismissal without hearing. A dismissal under this section requires a hearing unless the facts necessary to support the dismissal are uncontested or are established as a matter of law.

I’ll point out that The Gallery’s and Roscoe’s claim that the “Complainant believes the alleged overcharges are the result of leaks in the irrigation system or other improper irrigation related charges” is not entirely true. Yes, I believe that the fact that the water usage at the complex about quadrupled after the irrigation system redesign they oversaw had something to do with my monthly water and wastewater usage bills tripling from what they had been before. But I also believe that the fact that the occupancy figures used to calculate our bills were substantially understated by Roscoe played a role in the overbilling since those figures were divisors in those formulas and made it a mathematical certainty that I would be overcharged for water, as well as everyone else who lived at The Gallery II during that period. I’m also of the belief that the fact that The Gallery, managed by Roscoe, billed Gallery II residents twice for the same 7/16/19 to 8/14/19 City of Austin bill led to me and all the other Gallery II residents being overbilled.

The Gallery and Roscoe's claim that the "request for relief, which is already in the record, is moot and obsolete because it has already been afforded to him" is not fully factual either because I've also requested copies of the total amounts that Roscoe billed residents of The Gallery II for water and wastewater on their January 2020 to June 2020 rental bills with it. But Roscoe, in defiance of PUC Substantive Rule §24.277 (e)(8), has never supplied that and that's why we're here, over two and a half years after I first started requesting billing info from Roscoe, in front of the SOAH. If they would have followed PUC Rule §24.277 (e)(8) and turned over the records and paid me the \$85 then this probably never would have gone this far. They know this, but they've never produced those records.

I made five written requests for water billing records and filed an Informal and Formal Complaint before they gave me any records at all. The records they gave me then didn't include the total monthly amounts they charged us which they excused with claims that they were concerned about tenant privacy.

When I told them that I didn't want tenants' private info with it, which I had never had asked for to begin with, they sent me a spreadsheet that had a worksheet of totals billed to residents and tried to pass it off as being the totals that the Gallery I and II residents were billed combined. When I proved to them twice that those totals didn't include the Gallery II, and were only of The Gallery I, they just ignored it. That was over a year and a half ago.

They've also ignored the request I've made for that information in my first RFI to them; in fact, they ignored the entire RFI and haven't responded to it all. And they've ignored that I've asked for this info in the relief requested in my complaint. They've ignored that I've proven to them that they've broken other PUC Rules by using fraudulent occupancy figures and falsified water billing dates too. They've even ignored the SOAH's directive that the parties in this case are supposed to provide notice by email to the other parties when they file documents with the Commission¹ and didn't bother emailing me when they filed this Motion.

They were never concerned about wasting mine and the PUC's time back then when they broke PUC Rules by denying me access to their water billing records that could have quickly clarified what happened and potentially would've brought about a quick resolution to this if they were acting in good faith. So, I have to say that now that they're finally faced with having to answer for the numerous PUC Rules they've broken, it's awful large-hearted of them to share their broader perspective on the matter and compare homelessness, COVID-19, monkeypox, and

¹ *SOAH ORDER NO. 1* in Item 59 on pdf page 8 in first full paragraph.

hunger to the total amount of money that they overcharged 1 of the over 100 tenants they overbilled and ask the SOAH to consider: *Is it really worth it?*

I say: *Yes, it is.* Definitely. It is because those issues that The Gallery and Roscoe cite are not even on the PUC's roadmap but protecting the public from being overbilled for a public utility is well within their lane and The Gallery and Roscoe overcharged about a hundred people at The Gallery II well over \$10,000 collectively.

It is because if this maneuver works it also makes many PUC Rules irrelevant because a landlord or property manager can stonewall requests for water billing info that reveals that they have overcharged tenants and then impose mitigation on them to avoid any PUC scrutiny of what they did. They can thereby use this process, which all tenant complaints about overbilling are forced into, and turn it into an obstacle course that tenants have to navigate and then pull the plug on it whenever they want instead of a process that holds them accountable if they break PUC Rules.

It would also relegate PUC Rule §24.283 (k), which states that “*(i)f the overbilling or underbilling affects all tenants, an adjustment must be calculated for all of the tenants' bills*”, to a suggestion rather than a rule and if a predatory landlord or property manager wants to, they can overcharge a hundred tenants, not turn over anything, admit no guilt, and only pay back the rare ones who spend the time and energy to pursue it. They'll never be any amount of damages that will deter them from overcharging their tenants for a public utility if they can atomize the amount that they owe to the few people who file Formal Complaints and point to that amount as just cause to drop the matter and keep the rest of what they collected. It just becomes the cost of doing business, and a profitable one at that.

As it is, The Gallery and Roscoe have such a jaw-dropping sense of entitlement in this matter that although they've brazenly broken PUC Rules by overcharging Gallery II tenants for a public utility, ignored PUC Rules by not responding to my requests for water billing info, ignored the RFI that I sent them, and even ignored SOAH directives for this case that they apparently feel so put out that they would face any resistance about it that they somehow believe that *they* are the ones being wronged here, that this isn't the way this process ought to work, and they want compensation from *me*. And it appears that they want it at the price of their choosing since they'd be the ones deciding what the billable hours would be. So, essentially what they are proposing is making me pay a fine to them, for an amount that they will determine, for the inconvenience I've caused them while they walk away from ever having to acknowledge or address the PUC Rules they violated.

I ask that the SOAH deny The Gallery's and Roscoe's Motion for Dismissal and allow this case to move forward which will thereby force them to finally answer for the PUC Rules they broke in the process of profiting off of billing for a public utility, profit that came out of the pockets of their tenants, and prevent The Gallery and Roscoe from buying their way out of scrutiny from the PUC and exposure to potential administrative penalties for the grand sum of eighty-five dollars and six cents.

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I will email frontdesk@roscoeproperties, stephanie.laird@rpmliving.com, jaime.hearn@rpmliving.com, jkat@conservice.com, edmunds@hooverslovacek.com, liu@hooverslovacek.com, and phillip.lehmann@puc.texas.gov to inform them of this submission to the docket.

Respectfully submitted,
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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 on October 5, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Jeff Connors

Jeff Connors

Complainant