



Filing Receipt

Received - 2022-11-15 05:29:44 PM
Control Number - 51619
ItemNumber - 80

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

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

11/15/22

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

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 AMENDED MOTION TO DISMISS**

I. Background

The Gallery Apartments and Roscoe Property Management filed a motion to dismiss on 9/28/22 (Item 69 in the Docket).

I filed a response to that motion on 10/5/22 (Item 72) and then on 10/10/22 The Gallery and Roscoe requested a hearing on their motion (Item 73).

I filed a response to their motion to request a hearing on the motion on 10/12/22 (Item 74).

On 10/18/22, the SOAH denied The Gallery and Roscoe’s motion to dismiss and their request for a hearing on the motion (Item 75).

On 11/7/22, The Gallery and Roscoe filed an amended motion to dismiss (Item 78).

-

To clarify what I mean by “pdf pages”, a term I use in my footnotes, I mean the page number in the upper left-hand corner of the window when you pull up the document from the Docket; not the page numbers that are actually on the bottom of some of the documents. When I refer to paragraphs in my footnotes, I count partial paragraphs as paragraphs. Therefore, the second paragraph on a page may actually be the first full paragraph on that page.

-

II. Discussion

"If you have the facts on your side, pound the facts; if you have the law on your side, pound the law; if you have neither the facts nor the law, pound the table."

In the age of e-filing, when most court proceedings are done outside the auditory range of a judge and boldening text in one's written submittals doesn't quite deliver the same thump, the last segment of that famous adage above is probably due a revision and the respondents' amended motion brings to mind a fine one: *if you have neither the facts nor the law, make your own.*

In regards to their “facts”, the respondents begin by stating that “the current allegation is that Complainant was overcharged \$85.06 from August 2019 to October 2020”. One might get the faulty impression from that that my complaint is merely about being overcharged about six dollars a month over a fifteen-month period, when in actuality I was overbilled about \$200 over a period of eight months: from October 2019 to May 2020. Towards the end of that period, when things were really getting wild with the irrigation system spewing out about as much water per morning as it had per month before Roscoe arrived¹ and Conservice using grossly understated occupancy figures to calculate Gallery II residents' water bills², I was paying about triple for water compared to what I had been paying per month for the previous three years I'd lived here³. The reason they currently owe me only about \$80 is that I was credited approximately \$120 for water on my June 2021 to September 2021 rental bills⁴.

¹ Item 37 on pdf page 5 under II. Respondents' contentions that that the increase in my water bills had nothing to do with the work that contractors did after Roscoe began managing the property

² Item 37 on pdf page 7 under IV. The Respondent's claims that the increases in my water bills were "slight" and were due to the occupancy decreasing at The Gallery II due to COVID

³ Item 1 on pdf page 5 in table (*includes drainage charges*)

⁴ Item 39 on pdf page 3 under Relief sought

Another dishonesty that The Gallery and Roscoe incessantly repeat no matter how many times I correct them is that the “Complainant believes the alleged overcharges are the result of leaks in the irrigation system or other improper irrigation related charges”. When I first filed my Formal Complaint in December of 2020, before I got any water billing records from Roscoe, I had thought that the entire increase was due to The Gallery redesigning the irrigation system to toss the irrigation costs onto residents but once I finally got some of the water billing records from Roscoe, which I’d been requesting for over nine months⁵, I found out that they were actually overcharging us by running a numbers game by providing fraudulent occupancy figures to Conservice to calculate our bills⁶ and by falsifying water billing dates to conceal that they billed us twice for the same City of Austin monthly water bill⁷. Despite that, my claims that they charged us for irrigation water still holds true for at least five of those eight months for the period in question because, according to the occupancy figures Conservice used, on those bills The Gallery collectively charged us more than the entire amount of the City of Austin water bill to The Gallery II. So, for those months we paid for all of the water at the complex, including irrigation water, and then some.

One might also get the mistaken impression from the respondents’ amended motion that the findings by the PUC’s Consumer Protection Division that The Gallery had “acted consistently” with PUC Rules has some heft in this matter when in fact those determinations were made during the Informal Complaint process long ago in this case history, over 70 Items in the docket ago, back in January of 2021, before much of the evidence in the case was ever submitted and any of it was examined by me or commented upon⁸. That determination by the PUC Investigator means nothing at this juncture; it can’t even be credibly submitted as an expert’s opinion because the findings weren’t based upon the entirety of the evidence and testimony presently in the docket, only a small portion of it.

-

In their argument for their amended motion the respondents continue playing fast and loose with the truth when they claim that they have fulfilled the terms of my relief sought by sending me a check for the amount I’ve estimated they owe me and providing the records of the “total amount that Roscoe billed residents of The Gallery II for water and wastewater for the January 2020 to June 2020 monthly bills” that I’ve requested. I’ll mention here that even if they have fulfilled

⁵ Item 1 on pdf pages 51 to 61

⁶ Item 37 on pdf page 7 under IV. The Respondent’s claims that the increases in my water bills were “slight” and were due to the occupancy decreasing at The Gallery II due to COVID

⁷ Item 37 on pdf page 9 in table below fourth paragraph

⁸ Item 37 on pdf page 3 under I. Respondent’s remarks about my Informal Complaint

the terms of my relief sought, and they have not, it does not establish the grounds to have this matter dismissed, as I'll get to shortly, or have me severed as a party from the case.

A definition of the records that I've requested, and have been requesting in part since late-February of 2020⁹, can be found in §24.277 (e) (8): the total amount billed to all tenants each month. What the respondents have provided in Item 32 from RPM000111-138¹⁰ are the bills from retail public utility to the owner, which is the records in §24.277 (e) (5). What the respondents provided from RPM000146 –156¹¹ are the formula, occupancy factors, and percentages used to calculate our bills (the records defined in §24.277 (e) (6) (A)); the total number of occupants used to calculate our bills (the records defined in §24.277 (e) (6) (B)); and the total square footage at the complex used to calculate our bills (the records defined in §24.277 (e) (6) (C)).

So, once again, the respondents have failed to provide the total monthly amount billed to all Gallery II tenants for the period that I've requested. This violation of PUC Rule §24.277 (g) has been going on for over two years and eight months now and they supposedly still can't quite grasp what I'm asking for. If they're truly confused about what I'm requesting then they should look at the spreadsheet that they provided for the September 2019 billing¹². That has all the information required to tally those amounts up: the amounts each apartment was charged for water and wastewater that month.

Also, I'll mention again that the total number of occupants and total square footage of occupied space of the complex, which are both divisors in the equations that were used to calculate residents' water bills, used in these calculations that are found in RPM000147–154 did not reflect the actual occupancy at the Gallery II complex. The occupancy figures used in those calculations were understated which is one of the ways that The Gallery overcharged us. I have pointed this out numerous times, but no matter how many times¹³ I've proved it, The Gallery and Roscoe unfalteringly refuse to acknowledge it. As they refuse to acknowledge the falsified water billing dates that were used to bill us twice for the 7/16/19 to 8/14/19 City of Austin water bill to the complex¹⁴, both in our September 2019 rental bill, the last one the previous property manager and water biller administered, and also in our October 2019 rental bill, the first that Roscoe and Conservice were involved in.

⁹ Item 1 on pdf pages 56 to 58

¹⁰ Item 32 in 51619_32_1157353 on pdf pages 12 to 38

¹¹ Item 32 in 51619_32_1157353 on pdf pages 47 to 57

¹² *gl070 – 3506 Highlighted final summary – 9.4.19.xls* in Item 10 ZIP folder of the Docket

¹³ Item 37 on pdf page 7 under IV. The Respondent's claims that the increases in my water bills were "slight" and were due to the occupancy decreasing at The Gallery II due to COVID

¹⁴ Item 37 on pdf page 8 under V. Applicable PUC Rules that The Gallery when it was managed by Roscoe violated and Roscoe's business relationship with Conservice

Getting to the law that the respondents point towards to support their amended motion to dismiss, they cite §24.181 (a), which states that the presiding officer can recommend that the commission dismiss any *proceeding* for any reason found in §24.181 (d), and then 24.181 (b), which states that the presiding officer can dismiss any *issues* within a proceeding for any reasons found in §24.181 (d). The respondents then point to §24.181 (d) (2), which states that among the reasons that a proceeding or issues within a proceeding can be dismissed is if there are “moot questions or obsolete petitions” in it, and §24.181 (d) (11), which states that “other good cause shown” can also be used as the grounds for dismissal.

Next, they cite case law from *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 642 (Tex. 2005), which was a civil law matter in which one of the holdings was that a case is moot if a controversy ceases to exist or the parties lack a legally cognizable interest in the outcome, and *Mills v. Green*, 159 U.S. 651, 653 (1895), also a civil legal matter that holds that a case is moot if the court can no longer grant effectual relief to the complaining party.

The respondents then cobble this all together and argue that since they have satisfied the terms of my relief sought by sending me a check for \$85.06 and providing “total amount that Gallery II residents were billed for water and wastewater on our January 2020 to June 2020 monthly bills”, *which they have not*, that I no longer have any cognizable interest in the outcome of the case and therefore the case should be dismissed. They also argue that even if they didn’t provide “total amount that Gallery II residents were billed for water and wastewater on our January 2020 to June 2020 monthly bills” that my complaint should still be dismissed anyway because I have no cognizable interest in that info since I have already been sent the \$85.06 and that the totals I’m requesting are therefore “the total amount billed to other people”. Then they contend that if the case moves forward at all that I should be severed as a party from my complaint because they have granted me all the relief that I have sought and therefore the complaint from here on in should only be between them and the PUC.

The macro-error in the respondents’ arguments to dismiss the case is their premise that the complaint is purely a civil matter between them and I. It is not, the PUC is also a party in these proceedings. To clarify this point, I’ll refer The Gallery and Roscoe Property Management to the *COMMISSION STAFF’S SUPPLEMENTAL STATEMENT OF POSITION AND REQUEST FOR REFERRAL*¹⁵ for how and why this case landed in the SOAH:

¹⁵ Item 40

“Staff has reviewed all of the filings in this docket and recommends that potential violations of Commission requirements are at issue in this docket. The Complainant alleges that the Respondents violated Commission regulations, and an evidentiary record needs to be developed. Staff recommends that this docket be referred to the State Office of Administrative Hearings for a determination on those issues, to develop an evidentiary record to assess any potential violations of Commission regulations, and to verify whether Respondents are in compliance with Commission regulations.”¹⁶

I'll also refer them to the PUC's *REVISED DRAFT PRELIMINARY ORDER & MEMORANDUM*¹⁷ for a list of what the PUC deemed are “*potential violations of Commission requirements [that] are at issue in this docket*”¹⁸.

So, in regards to §24.181 (d) (2), which the respondents cite as reason for dismissing the case, there are plenty of potential PUC Rule violations that the respondents are accused of that are not moot, especially to the PUC since they regulate public utilities including the billing of them.

Finally, in regards to the respondents' insistence that even if the complaint moves forward that I should be severed as a party from it because I have no remaining cognizable interest in the outcome, I'll point out that I would have a cognizable interest in the outcome even if they satisfied my relief sought, which they haven't, because my right to have access to the Gallery II's water billing records within fifteen days of my written request for them has been violated¹⁹, which is a right that is not predicated on whether or not I was overcharged and doesn't dissolve just because the respondents have sent me a check for \$85.06, and if The Gallery and Roscoe Property Management are held to account for it in some manner then that could arguably create a deterrence to it happening in the future. I'll also mention that I have a cognizable interest in the outcome of whether or not corrective action is taken on the respondents' violation of §24.283 (b) (1) for not rendering Gallery II residents' bills “as promptly as possible after the owner receives the retail public bill” because it may remove a dangling water bill for me to pay a month after I move out²⁰. Currently, we are billed a month and half behind the City of Austin water bills because, as mentioned earlier, The Gallery managed by Roscoe falsified water billing dates to conceal their double-billing of the City of Austin's 7/16/19 to 8/14/19 water bill to the complex.

¹⁶ Item 40 starting on bottom of pdf page 4 under III. COMMISSION STAFF' S STATEMENT OF POSITION AND REQUEST FOR REFERRAL

¹⁷ Item 50

¹⁸ Item 50 on pdf page 5 under I. Issues to be Addressed

¹⁹ PUC Rules §24.277 (e)(8), (g)

²⁰ Item 37 on pdf page 8 under V. Applicable PUC Rules that The Gallery when it was managed by Roscoe violated and Roscoe' s business relationship with Conserve

Furthermore, the action that the respondents are arguing for, dismissing me as a party in my complaint, does not follow from the PUC Rules they cite to effectuate it. The subject matter of PUC Rules §24.181 (a) and (b) is the dismissal of a *proceeding* or the dismissal of *issues* within a proceeding; neither of them have a thing to say about dismissing a *party* from a proceeding. One could argue that the issue at hand is dismissing (removing) me as a party from the proceeding and it could be fit in that way, but the result the respondents are striving for still does not follow when it's worked through §24.181 (b) even if any of the reasons in §24.181 (d) are found legit. Because "dismissal" under §24.181 is a decision to not rule on a matter, to not take the matter into consideration for a ruling, while the "dismissal" the respondents are asking for is a decision to remove me as a party from the complaint. If the issue posed to the ALJ is dismissing me as a party from the complaint and it is dismissed through §24.181 (b) then all the respondents would have won is dismiss the notion of having me removed from the complaint because the ALJ would have simply decided to not take the issue into consideration.

III. Summary

In addition to myself and the respondents, the PUC is a party in this complaint. There are numerous possible PUC violations at issue in this case, many of which potentially involve overbilling about a hundred residents at The Gallery II by using fraudulent occupancy figures and falsified water billing dates. The violation of PUC Rules is not a moot issue to the PUC and even if the respondents satisfied the terms of my relief sought, which they have not, that would not be sufficient grounds to dismiss this complaint because the PUC regulates public utilities, including the billing of them, and it is their duty in this matter to make a determination as to whether PUC Rules have been broken and what measures to take if there have.

In regards to dismissing me as a party from my complaint, the respondents have not satisfied the terms of my relief sought, one of the pillars of their reasoning as to why I should be dismissed from the case. Regardless, the PUC Rules they cite to legally justify my removal as a party in this proceeding don't work the way the respondents want them to because §24.181 does not pertain to, and can't be applied to, dismissing parties from a complaint.

IV. Prayer

I respectfully request that The Gallery and Roscoe's amended motion to dismiss and their request to dismiss me as a party in the complaint be denied.

*

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,
Jeff Connors
3506 Menchaca Road
Apt. 239
Austin, TX 78704
(509)990-2154
jeffc_419@hotmail.com

-

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 November 15, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Jeff Connors
Jeff Connors
Complainant