



## Filing Receipt

**Received - 2023-01-12 09:33:10 AM**  
**Control Number - 51619**  
**ItemNumber - 94**

**DOCKET NO. 51619**

<b>COMPLAINT OF JEFF CONORS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AGAINST THE GALLERY</b>	<b>§</b>	
<b>APARTMENTS, ROSCOE PROPERTY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>MANAGEMENT, AND CONSERVICE</b>	<b>§</b>	

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

Pursuant to Rule 22.181 of the PUC Procedural Rules, The Gallery Apartments and Roscoe Property Management (collectively, the “Respondent”) respectfully submit this Amended Motion to Dismiss, and in support thereof would show as follows:

**BACKGROUND AND FACTS**

1. The Complainant alleges he was overcharged for water and wastewater by his landlord and the various respondents. According to the filings on record, the current allegation is that Complainant was overcharged \$85.06 from August 2019 to October 2020. The Complainant believes the alleged overcharges are the result of leaks in the irrigation system or other improper irrigation related charges.

2. The Complainant was not overcharged for water or wastewater, and he was not charged for water used in the irrigation system. The Consumer Protection Division of the PUC investigated these allegations and determined that Gallery II “acted consistently with Substantive Rule §24.277 Owner Registration and Records and §24.281 Charges and Calculations. *See Exhibit 1 to Respondents’ Original Response, incorporated herein by reference.*

3. Notwithstanding the Respondent’s numerous meritorious defenses, all of which are reserved, and to avoid further cost of litigation, Complainant recently received a check for the full amount of the relief sought. *See* Check to Mr. Connors dated September 26, 2022, with

delivery and tracking information, attached hereto as **Exhibit A**. This was an unconditional payment. No consideration was sought in return.

**AMENDED AND UPDATED FACTS IN SUPPORT OF DISMISSAL**

4. In its Original Motion to Dismiss, the Respondents asserted the claims of Mr. Connors were moot because he had received the refund of \$85.06 (the “Refund”) that he sought.

5. In response, Mr. Connors pointed out that the Refund was NOT the only relief that he sought in his amended pleading. *See **Response to Motion to Dismiss*** (“I also asked for the total amount that Gallery II residents were billed for water and wastewater on our January 2020 to June 2020 monthly bills”). But Mr. Connors has no cognizable interest in anything other than the Refund. Once he receives the Refund, he, individually, has no cognizable interest in the “total amount billed” to other people.

6. Likewise, when the Administrative Law Judge (ALJ) denied the Motion to Dismiss, the ALJ pointed out that the issue was not moot because the Refund was not the only relief sought. The ALJ pointed out that Mr. Connors had also requested to see the “total amount billed” and therefore the case was not moot, and the Motion was denied. *See **Order dated October 17, 2022***.

7. The Original Motion did not make reference to the second prong of the requested relief because, once Mr. Connors received his Refund, Mr. Connors has no cognizable interest in knowing the total amount billed to tenants other than himself. Someone may have an interest in this data, but it is not Mr. Connors. To say otherwise would put Mr. Connors in charge of representing the public interest, but this is not his cross to bear and he has no standing to lead such a crusade. Notwithstanding the above, and to address Mr. Conner’s response and the ALJ Order, the following facts are presented to show that Mr. Connors has already received BOTH

the Refund and the total amount billed other residents. Thus, all relief has, in fact, been granted and Mr. Conners should be dismissed from this Complaint.

8. Once again, in his Amended Statement of Relief, filed as Item No. 39, Complainant seeks the following: (a) \$85.06 which represents the refund amount that Complainant believes to be entitled; and (b) “Copies of the total amount that Roscoe billed to residents of The Gallery II for water and wastewater for the January 2020 – June 2020 monthly bills.” *See Amended Relief Sought, on file as Document No. 39 and incorporated herein by reference. All requested relief has been provided:*

(a) **Refund of \$85.06.** Respondents sent Complainant the requested refund of \$85.06 check on September 26, 2020. *See Exhibit A.* This was an unconditional payment. No consideration was sought in return.

(b) **Request for “total amount billed”.** In his amended statement of relief, Complainant seeks “the total amount billed” from January to June 2020. This information was already provided by Respondents in response to the Commission’s Request for Information. *See Attachment B and E provided in response to Commission Staff’s First Request for Information (Item No. 32), incorporated herein by reference.* Specifically, please refer to **RPM000146 – 156 and RPM000111 – 138.** These records, which are on file in this case, show the “total amount billed” to all residents for both water and wastewater for the requested months. Although the Respondents position is that Mr. Conners does not have a cognizable interest in this data, the fact is that it HAS been provided.

i. January 2020 –*See* RPM000145 and RPM000146.

- ii. February 2020 –*See* RPM000147 and RPM000148.
- iii. March 2020 –*See* RPM000149 and RPM000150.
- iv. April 2020 –*See* RPM000151 and RPM000152.
- v. May 2020 –*See* RPM000153 and RPM000154.
- vi. June 2020 –*See* RPM000155 and *See* RPM000156.

#### **GROUND FOR DISMISSAL**

9. Much like practice in a civil court, jurisdiction is a fundamental issue that can be challenged at any time. “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.” *See* PUC Procedural Rule § 22.181(a). 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. *See* PUC Procedural Rule § 22.181(b).

10. A proceeding or issue may be dismissed if it becomes moot or obsolete. *See* PUC Procedural Rule § 22.181(d)(2). A proceeding or issue may also be dismissed for other good cause shown. *See* PUC Procedural Rule § 22.181(d)(11).

11. The issue in this case is whether it is moot or absolute. A case is moot if a controversy ceases to exist or the parties lack a legally cognizable interest in the outcome. *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 642 (Tex. 2005). The Supreme Court of the United States has said that a case is moot if the court can no longer grant any effectual relief to the complaining party. *See Mills v. Green*, 159 U.S. 651, 653 (1895).

12. As discussed above, the Complainant's request for relief is two-fold. He wanted the Refund, which has already been provided to him. *See Exhibit A*. He also wanted to know the total amount billed to the residents of Gallery II apartments. Upon receipt of the Refund, Mr. Conners does not have a cognizable interest in the second set of relief. He has no standing to pursue this information and no interest to be gained.

13. Notwithstanding the above position, the "total amount billed" has already been disclosed to Mr. Conners and the PUC, who, incidentally, is the actual party representing the public interest in this case, not Mr. Conners. *See RPM000146 – 156*. Because the Complainant has already been given all relief sought, he has no remaining cognizable interest in the outcome of this proceeding. This proceeding should be dismissed as to Mr. Conners. This administrative proceeding "can no longer grant any effectual relief to" Mr. Conners. *See Mills v. Green*, 159 U.S. 651, 653 (1895).

#### SUMMARY

14. The Respondents complied with the lease and applicable law. The Consumer Protection Division of the PUC investigated these allegations and determined that Gallery II "acted consistently with Substantive Rule §24.277 Owner Registration and Records and §24.281 Charges and Calculations. *See Exhibit 1 to Respondents' Original Response, incorporated herein by reference. Notwithstanding the substantive merit of the Respondent's defense, if this complaint proceeds at all, it should be between the public interest, as represented by Mr. Lehmann, and the Respondents.*

15. Mr. Conners does not represent the public interest and has already received all the relief he was requesting. The Complaint, as to Mr. Conners, should be dismissed. Oral hearing is requested.

**PRAYER**

WHEREFORE PREMISES CONSIDERED, The Gallery Apartments and Roscoe Property Management request 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.

Respectfully submitted,

**HOOVER SLOVACEK LLP**

By: /s/Daniel S. Edmunds  
**Daniel S. Edmunds**  
Texas Bar Number: 24115624  
edmunds@hooverslovacek.com  
**Xinyi (Cindy) Liu**  
Texas Bar Number: 24121726  
liu@hooverslovacek.com  
5051 Westheimer, Suite 1200  
Houston, Texas 77056  
Telephone: (713) 977-8686;  
Facsimile: (713) 977-5395

**ATTORNEYS FOR RESPONDENT**

**CERTIFICATE OF SERVICE**

I hereby certify by my signature below that a true and correct copy of the foregoing document was filed through the Interchange **and by email to jeffc\_419@hotmail.com** on this the 7th day of November, 2022.

/s/Xinyi (Cindy) Liu  
Xinyi (Cindy) Liu