

ORIGINAL



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1 **Court S. Rich**
2 **JORDEN BISCHOFF McGUIRE ROSE & HISER PLC.**
3 **7272 E. Indian School Road Suit 205**
4 **Scottsdale, Arizona 85251**
5 **(480) 505-3900**

6 **Attorneys for Complainant**

7 **THE ARIZONA CORPORATION COMMISSION**

8 **AJF CUSTOM HOMES, LLC., an**)
9 **Arizona Limited Liability Company,**)

10 **Complainant,**)

11 **vs.**)

12 **DESERT HILLS WATER COMPANY**)
13 **Inc., an Arizona Corporation,**)

14 **Respondent.**)
15)
16)

NO. W-02124-A

W-02124A-04-0416

MOTION FOR EXPEDITED HEARING

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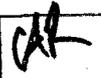
17 Complainant, AJF Custom Homes, LLC ("AJF") by and through its undersigned counsel,
18 hereby submits its Motion for Expedited Hearing. This Motion is made and supported by the
19 Memorandum of Points and Authorities attached hereto and the Formal Complaint and all exhibits
20 thereto filed concurrently herewith..

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Arizona Corporation Commission

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

AJF is a small custom home builder that currently owns five one acre parcels of real property located on the west side of Central Avenue, south of Carefree Highway (the "Properties"). AJF is building or is planning to build a custom home on each of the Properties.

Desert Hills Water Company, Inc. ("DHWC") is the water company that has been granted a CC&N to serve the surrounding area, including the Properties. Despite the terms of its CC&N, DHWC has unilaterally refused to provide water service to the Properties. DHWC currently provides water to a church property located just north of the Properties and homes located on the east side of Central Avenue but has discriminatorily refused to provide service to AJF and the Properties. DHWC's water line currently runs along Central Avenue just feet from two of the Properties' home sites.

In response to DHWC's refusal to provide service, AJF agreed to mediate the dispute before the Arizona Corporation Commission. On April 22, 2004, the parties appeared before the ACC's mediator. On May 12, 2004, the mediator sent a letter declaring her findings and requesting that DHWC provide service to the Properties. On May 24, 2004 counsel for DHWC sent a letter to the ACC declaring that DHWC would not be complying with the mediator's conclusion. Since that time, DHWC has refused to provide service to the Properties.

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2 At the mediation, DHWC, through its representative, orally agreed to provide service to two
3 of the Properties located at 14 W. Summerset (“#14”) and 15 W. Summerset (“#15”). Just
4 following the mediation on April 22, 2004, AJF and DHWC put this oral agreement in writing and
5 entered into written agreements (the “Agreements”) whereby DHWC agreed to provide service to
6 #14 and #15. In exchange for DHWC’s promise to serve, AJF provided a deposit and promised to
7 pay additional monthly fees for water. Pursuant to A.A.C. § R14-2-405(2), DHWC had five
8 working days from the date of the Agreements to schedule #14 and #15 for completion. Despite the
9 mediator’s findings, DHWC’s oral representations and the written Agreements, DHWC has refused
10 to serve all five of Properties including #14 and #15 that sit just feet from its water line.
11

12
13 AJF is scheduled to complete construction on #14 and #15 within the next two weeks.
14 Upon completion of construction, AJF will need to have water service to those lots so that their
15 owners may take occupancy. If there is no water service AJF will undoubtedly incur damages as it
16 may lose its sale and the purchasers of #14 and #15 may be well within their rights to rescind their
17 purchase contracts, and sue DHWC and/or AJF for the lack of water.
18

19 **II. DHWC has no Grounds to Deny Service**
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22 DHWC apparently has refused service to AJF until such time as all 21 or more different
23 private property owners in the surrounding area come together to jointly request service from
24 DHWC. DHWC has not provided AJF with any authority to suggest that it has the power to deny it
25 this essential service based on the action or inaction of numerous unrelated landowners in the

1 surrounding area. Further, the mediator from the ACC has already determined that DHWC has no
2 grounds to deny service.

3
4 A.A.C. § R14-2-403(C) provides the only grounds for which DHWC can refuse to serve
5 AJF's Properties. After reviewing all six of the possible grounds for denial it is clear that none of
6 these grounds is present in this case; 1) AJF does not owe any outstanding debt to DHWC; 2) There
7 is no condition that makes serving the Properties "unsafe or hazardous." In fact, at the mediation,
8 DHWC repeatedly admitted that serving all of the Properties would have NO detrimental impact on
9 its current or future system or users; 3) AJF has provided DHWC with a deposit; 4) AJF is not
10 violating the tariff or any of the ACC's Rules or Regulations; 5) AJF has furnished or is willing to
11 furnish any funds or rights-of-way necessary for service; and 6) AJF provided only truthful
12 information to DHWC in its application and dealings with the company.
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14
15 DHWC only has declared one reason for its refusal to serve and that is that wants all the
16 property owners in the area to be declared a subdivision. Unfortunately for DHWC, neither it nor
17 the ACC has the power to declare this area a subdivision and all such matters are the exclusive
18 jurisdiction of the Arizona Department of Real Estate. There is absolutely no provision of law
19 giving DHWC the power to withhold service based on its unilateral determination that the
20 surrounding property should be a subdivision. Whether or not the surrounding properties constitute
21 a subdivision is irrelevant to DHWC's service of the Properties and does not excuse it from its
22 duties to serve within its CC&N.
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2 **III. DHWC is Acting well Beyond the Scope of its Powers**

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4 If allowed to continue, DHWC will be setting a dangerous precedent for all public utilities in
5 Arizona. If DHWC's reasoning is extended then water companies along with power, phone and gas
6 companies will be empowered to act as only the Courts of this state are currently allowed. For
7 example under DHWC's reasoning, if someone is accused of a crime such as theft then the electric
8 company could stop serving him and his family or if the IRS begins investigating someone for tax
9 fraud the phone company could cut off his telephone service. Without even addressing the
10 constitutional mandate that you are innocent until proven guilty, it is absolutely clear that the
11 legislature never intended a public utility to have the power to exact punishments on its customers
12 for activities unrelated to the utilities service. Despite the clarity of this issue, DHWC insists that it
13 has the power to punish AJF and its homebuyers for the alleged acts of its neighbors and to inflict
14 the harsh and unreasonable penalty of denying it essential services.
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17 **IV. Need for Expedited Hearing**

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19 As stated above, AJF is nearing completion on #14 and #15. If water is unavailable, AJF
20 will incur irreparable harm because it could lose its sales of the completed homes, be in violation of
21 its purchase contract with the purchasers, have complaints made to the Registrar of Contractors for
22 its delay, be unable to secure a certificate of occupancy, and incur other and further damages and
23 losses. Unfortunately, the normal time frames for the formal Complaint and Response periods set
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1 forth in ACC's Rules will not allow AJF to achieve its remedy in a timely fashion to avoid the
2 immediate and irreparable losses that will occur in the near future.

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4 AJF believes that there are no facts in dispute and that this is purely a legal issue for the
5 Commission. In fact, to hasten any decision, AJF is willing to stipulate to the facts for the
6 Commission's review. Further, AJF and the ACC's mediator both believe it is clear that DHWC
7 has no legitimate reason for denying service to the Properties and DHWC admitted repeatedly that
8 serving even all five of the Properties would have no detrimental effect on its system or users. For
9 those reasons, there is no need for an extended discovery process and there is no reason for delay.
10

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12 **V. Conclusion**

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14 DHWC has ignored the ruling of the Mediator in this matter, has broken its contract with
15 AJF, and its continued unjustified refusal to serve the Properties is likely to cause irreparable harm
16 to AJF. The issues are straightforward and there are no relevant facts in dispute. AJF respectfully
17 requests that the Commission grant this Motion and hear an expedited hearing on this matter at he
18 soonest possible date.
19

20 DATED this 4th day of June 2004.

21
22 Jorden Bischoff Mcguire Rose & Hiser PLC

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24 _____
25 Court S. Rich 021290
7272 E. Indian School Road Suit 205
Scottsdale, Arizona 85251
Attorneys for Plaintiff

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An **ORIGINAL** and 13 copies
of the foregoing were
HAND-DELIVERED for filing
this ____ day of June 2004; to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

By: _____