

J. Alan Smith, Private Citizen
8166 Barranca Rd.
Payson, Arizona [PZ 85541]
(928) 302-8341 Hm.
(928) 951-2083 Wk.
PWC Utility Account No. 61138-24899
In Propria Persona

ORIGINAL



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Before the Arizona Corporation Commission

J. Alan Smith, Injured Party
Complainants,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.
Respondents.

AZ CORP COMMISSION
DOCKET NO. W-03514A-12-0007

REPLY TO RESPONDENTS ANSWER

Arizona Corporation Commission
DOCKETED

FEB 16 2012

DOCKETED BY

NOW COMES, the Complainant J. Alan Smith, pursuant to Ariz. Adm. Code R14-3-106 H; Ariz. Rules of Civ. Pro. for the Superior Court; Rules 7(a), 8(b)(c), 9(i), 12(a)(b), to reply to Respondents Answer and/or Motion to Dismiss.

Reference: Paragraphs 1 to 3 of Respondents Answer.

The Complainant is a renter and in fact named on the Account and billing statements and is the Customer who has been paying the water bill since about August of 2007 and whom the Respondents have failed to properly transfer the account fully into his name per R14-2-410 (F) et seq.

Furthermore, if the Complainant is a non-customer as alleged then why has he been paying the bill directly to the Company all these years and the Company accepted his payments? If the Complainant is a non-customer as the Respondents allege then the Complaint demands immediate re-payment of all deposits, payments for usage and fees or fines he has paid since 2007 plus 10% interest on his money (120% annually) going back to the date service was established.

The Respondents failed or refused to properly answer the Complaint.

Pursuant to AAC R14-3-106 H which states in part:

"All answers shall be full and complete and shall admit or deny specifically and in detail each allegation of the complaint to which such answer is directed. The answer shall include a motion to dismiss if a party desires to challenge the sufficiency of the complaint."

Respondents did not file an answer or responsive pleading that is compliant with, the above stated Rule /Regulation, nor one that is full and complete or in compliance with Ariz. Rules of Civ. Pro. Rules 7(a), 8 (b) (c)) (d), 9 (i) and 12(a)(b)(i).

Respondents falsely claim that the complaint is filed against an entity not regulated by the Corporation Commission. If that were true then: 1) Why does Brooke Utilities Inc. hold the Certificate of Convenience and Necessity for the Mesa del Caballo system? 2) Why are both Payson Water Co. Inc., and its parent company, Brooke Utilities Inc., registered with the Ariz. Corp. Com. to conduct business in the State of Arizona and apparently subject to regulation under A. A. C. Title 14, Chapters 2 and 3? Would it be because they are Utility Companies doing business in the State of Arizona?

All Statements issued and billed to the Customer for water usage etc. on the Payson Water Co. Inc. system, which is owned by Brooke Utilities Inc., are issued by Brooke Utilities Inc. and not Payson Water Co. Inc., who is not indicated anywhere in those statements that they should be paid. Brooke Utilities Inc., issues all orders, statements and collects all the deposits, funds, fines and benefits for services provided by its sub-corporation Payson Water Co. Inc. and the only way to report a problem or connect or disconnect from the system is to contact Brooke Utilities Inc. The Respondents claim is without merit and obviously false and misleading.

Representatives of Brooke Utilities Inc., appear before the Commission for rate increases for Payson Water Co. Inc. and in the name of Brooke Utilities Inc. It is obvious that Brooke Utilities Inc. and Payson Water Co. Inc. are one and the same and the proper parties to the Complaint and so joined pursuant to Ariz. Rules of Civ. Pro., Rule 19.

However, the Complainant might concede that pursuant to Rule 17 and 19 Mr. Robert T. Hardcastle should possibly be joined personally in this complaint since he is stockholder, statutory agent and president of both companies.

Respondents did not deny each allegation specifically and in detail or reference such answer to the allegation it is directed against and did not plead or offer affirmative defense(s) or detailed denials to any the allegations pursuant to Ariz. Rules of Civ. Pro., Rules 8 (b) (c) (d), 9 (i) and 12(b)(i).

Respondents merely made a vague and ambiguous blanket denial of the allegations founded upon diatribe and innuendo of which he/they offer no supporting proof, details or justification.

Due to Respondents failure or refusal to answer as required pursuant to AAC R14-3-106 H and Ariz. Rules of Civ. Pro. Rule 8 (b)(c)(d), 9 (i) and 12 (a)(b) he/they have admitted to the allegations contained in the complaint and have stated no cause upon which to challenge the sufficiency of the complaint or seek relief by dismissal. Respondents Motion to Dismiss is not founded in fact nor based on any specific Rule of the Ariz. Rule of Civ. Pro.

Reference: Respondents Answer paragraph 4 and Exhibit 1.

How can the Respondents possibly claim or allege that this Complainant has not been injured or damaged as they erroneous misrepresent and claim? Think about it? Complainant's water was shut off without cause or justification, just because the Company could in an abuse of the Curtailment Plan.

ACC Staff, Al Amezuka told the Company to turn the water back on and not impose a fine which the Company refused to do. Complainant and his wife were made to suffer approximately one week without water and forced to pay a \$200.00 fine Two days after the water was shut off and before the water was turned back on the following Tuesday.

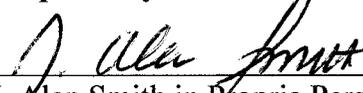
Respondents held Complainant's funds (i.e., \$200.00) and deprived him of the use of those funds for approximately 6 months and then only received his funds back as a measly credit on his bill without interest or compensation of any kind. Brooke Utilities Inc. is receiving those funds/fines and not Payson Water Co. Inc. and Brooke Utilities Inc., deposited the \$200.00 fine to an interest bearing trust account that the Company used to make money with at the Complainant's expense. Those funds have never been used to offset hauling costs to haul water to supplement the system as intended and prescribed by ACC Decision No. 67821. Why?

What is the Company doing with those funds and why are they not being used as directed in ACC Decision No. 67821 Items 4 (a) & (b) (**See: Attached Exhibit A**) further damaging and injuring the Complainant by charging him additional fees and rates to haul water. Furthermore, Brooke Utilities Inc./Payson Water Co. Inc., is applying payments to the credit of the property owner and not the renter who is paying the water bill thus defrauding his/their credit rating and possibly preventing both Complainant and his wife from using said water billings as tax deductions on his/their Income Taxes. The current Formal Complaint has more merit and standing than the Informal Complaint that was not dismissed.

This complaint is based on verifiable facts and evidence that is believed not to have been fully investigated by Staff and further, Complainant's Informal Complaint was not dismissed. Both Staff personnel Brad Morton and Al Amezuka in a one on one meeting with the Complainant advised him that he had standing to file a complaint as a renter because his name was on the water bill and he was paying in cash. Al Amezuka and Brad Morton advised the Complainant to file a Formal Complaint and sent to him the Formal Complaint documentation for him to file with the Commission.

The Respondents answer to the complaint is not relevant to the issues in the Complaint and not a responsive pleading that answers the allegations individually and completely. Staff did acknowledge and confirm that Complainant's complaint deserved further consideration. The Respondents have presented no cause whatsoever upon which the complaint must be dismissed and failed to, show cause why it should be dismissed.

Respectfully submitted, this 15th day of February, 2012



J. Alan Smith in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Response, has been mailed this 15th day February, 2012 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing, Response has been mailed this 15th day February, 2012 to the following:

Robert T. Hardcastle
P. O. Box 82218
Bakersfield, Ca. 93380

By: *J. Alan Smith*

EXHIBIT A

Page 3

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1 **Stage 5 – Enforcement**

2 1st offense \$600.00
 3 2nd offense \$1,200.00
 4 3rd offense (and thereafter) \$2,400.00

5 9. Under these mandatory restrictions in Stages 3, 4 and 5, the Company is required to
 6 notify customers by delivering written notice door to door at each service address, or by changing
 7 local sign postings, or via electronic mail, or by any other reasonable means of notifying customers
 8 in the affected water system(s).

9 10. It is the Company's position that water conservation will only be achieved if the
 10 parties responsible for wasting water face the consequences for such actions, including appropriate
 11 economic penalties. Otherwise, the impact of one individual wasting water is unfairly placed on
 12 all of the water system's customers.

13 11. Staff proposed several modifications to the tariff, one of which would potentially
 14 require the Company to haul water under certain conditions.

15 12. Staff finds the amended tariff to be reasonable.

16 13. Staff recommends approval of the Company's Curtailment Plan Tariff as modified
 17 by Staff and reflected in Staff's Exhibit A.

18 14. Staff further recommends:

- 19 a. That the monies collected under this tariff shall be deposited into a separate
 20 interest bearing trust account and used solely for the purposes of paying for
 21 importing of water to the Company (such as hauling water or connecting to
 22 and buying water from another water system).
 23 b. That the Company submit a report to the Utilities Division Compliance
 24 Section, beginning October 15, 2005, and on May 15 and October 15 of
 25 each year thereafter, that includes a running account of (up to the last day of
 26 the previous month) the following information;

- 25 1) The name of each customer that has paid the fine,
 26 2) The amount of the fine paid by each customer,
 27 3) The amount of money used from the account to pay for
 28 importing water, and
 29 4) The balance in the account.

Decision No. 67821