

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of)
Tami Barcus,)
)
Complainant,)
v.)
)
Ohio American Water Company,)
)
Respondent.)

Case No. 09-0027-WW-CSS

MOTION TO DISMISS AND ANSWER
OF RESPONDENT, OHIO AMERICAN WATER COMPANY

MOTION TO DISMISS

Though Ohio American Water Company ("Ohio American" or "Company") has included a formal answer (below) to the Complaint of Tami Barcus ("Barcus" or "Complainant"), Ohio American respectfully requests that the Public Utilities Commission of Ohio ("Commission") dismiss the Complaint with prejudice because the Complainant has failed to set forth any facts that constitute a complaint in accordance with Ohio Revised Code Section ("R.C.") 4905.26, nor did Complainant allege any treatment under R.C. 4905.26 that violates a statute, regulation or order of the Commission.

Before setting forth the arguments that support dismissal, it may be helpful to review the facts that led to the Complaint. Sometime prior to 2001, Barcus was listed as the customer at 144 Garden Street, Marion, Ohio. In March 2005, she requested that the water service be turned off at 144 Garden Street and she requested new service at 459 Park Street, Marion, Ohio. More than three years later she requested that service be restored to 144 Garden Street. Throughout

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the period from March 2005 until Barcus requested service to 144 Garden Street, Ohio American records reflect that no service was provided to the address.

A bill for service at the Garden Street address was issued on approximately June 25, 2008 for \$576.50. Barcus called Ohio American on June 27, 2008 complaining about the high bill. A little less than one month later on July 16, 2008, Barcus' name was removed as the customer for the 144 Garden Street address. The prior bill was unpaid. Because she was listed as the customer for two residential properties, the Collections Department routed the unpaid balance for the 144 Garden Street address to her account at 450 Park Street.

In early November, Barcus requested payment terms for her combined water bills that totaled \$654.25. At the time she called, Barcus was eligible for disconnection on two separate bases: at the 450 Park Street address because she had overdue payments in the amount of \$59.02 for service rendered to that address and for the \$595.23 arrearage on the 144 Garden Street address. On the date of her call, Barcus agreed to pay \$164 (approximately one fourth of the total) by November 11, 2008. She did not make the payment that date but tendered \$164 on November 17, 2008. Because she had not made the payment terms she had agreed to, she was advised by the Call Center that she was not eligible for new payment terms for another year. As of February 3, 2009, Barcus is in arrears by \$556.43. Of this amount, \$125.20 is owed for service to 450 Park Street, a condition that again makes her eligible for disconnection at that location.

The issue that is at the heart of the Complaint is whether statutes, rules or regulations or Commission order prevent Ohio American from consolidating two residential accounts that are in the name of the same customer.

Ohio American's position is that no statute, rule, regulation or Commission order prevents the consolidation of two **residential** accounts where there is a single residential customer on both accounts. Indeed, though the rules do not apply to the water industry, the Commission, approximately a month ago on December 17, 2008, in Case No. 08-723-AU-ORD, amended Ohio Administrative Code ("OAC") Rule 4901:1-18-10 applicable to the natural gas and electric industries. The Commission's amended rule, entitled "Insufficient Reasons for Refusing Service or for Disconnection Service," makes the distinction between non residential service and residential service with respect to prohibitions against disconnection of service. The rule states ONLY that disconnection may not occur if the customer failed to pay for NON residential service. *See* Paragraph (B). This rule is consistent with the Commission's longstanding policy of separating nonresidential accounts from residential accounts. Water service to both addresses, 144 Garden Street and 450 State Street, has always been provided in accordance with Ohio American's residential rate schedule.

Though Ms. Barcus claims that the 144 Garden Street account is a "commercial" account because she claims to be a landlord of the property, she is incorrect with respect to the type of service provided to the 144 Garden Street address, which is residential service, not commercial service. Moreover, it appears that at the time Ms. Barcus asked for service to be re-initiated in May of 2008, she was not a landlord because she had no tenants. The new tenants instituted service in their own names on July 16, 2008. Moreover, Ohio American's records reflect that Ms. Barcus called to confirm that the tenants had service in their own names on July 25, 2008.

In addition, Ms. Barcus effectively acknowledged the consolidation of the accounts when she called in early November 2008 to arrange for payment terms on the combined amount owing for both residential accounts.

This Complaint should be dismissed. Ms. Barcus did not state a claim for which there is a remedy pursuant to Title 49 of the Ohio Revised Code. More importantly, Ms. Barcus had no claim to make. No statute, rule, regulation or order prevents the consolidation of two residential accounts, nor of disconnection for failure to make timely payments.

ANSWER

First Unnumbered Paragraph of the Complaint

1. *Ohio American Water is trying to put a balance of a water bill from a rental property on my residential water bill when they knew it was a rental house when the water was turned on in my name at the rental house in May 2008.*

ANSWER: Ohio American denies allegations in the entire Complaint.

FIRST DEFENSE

Ohio American has at all times provided service in accordance with its Tariff, P.U.C.O. No. 15, and the rules, regulations and laws promulgated by the Commission and the State of Ohio respectively.

SECOND DEFENSE

Ohio American avers that Ohio American has breached no duty owed to the Complainant.

THIRD DEFENSE

Ohio American avers that Ohio American has at all times acted in accordance with all applicable statutes, Commission orders, and Commission rules.

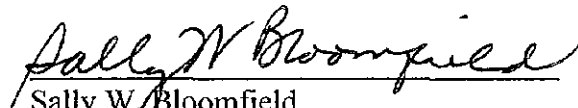
FOURTH DEFENSE

The Complainant is under the mistaken belief that she is both a commercial customer and a residential customer when in fact all documentation proves that she was a residential customer

of two residential accounts. Thus Complainant has failed to state a claim against Ohio American upon which relief can be granted pursuant to R.C. 4905.26.

WHEREFORE, having fully answered the Complaint, Ohio American respectfully requests that the Commission dismiss the Complaint with prejudice.

Respectfully submitted on behalf of,
OHIO AMERICAN WATER COMPANY



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer of Respondent Ohio American Water Company was served upon the Complainant at 450 Park Street, Marion, Ohio via regular U.S. Mail this 3rd day of February 3, 2009.



Sally W. Bloomfield