

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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DIANA WILLIAMS,)	
)	
Complainant,)	Case No. 08-1230-EL-CSS
)	
v.)	
)	RESPONDENT'S MOTION TO DISMISS
OHIO EDISON COMPANY,)	COMPLAINANT'S FIRST AMENDED
)	COMPLAINT
Respondent.)	

Pursuant to O.A.C. 4109-1-12, Respondent Ohio Edison Company respectfully moves this Commission for an Order dismissing, *with prejudice*, the claims brought against it by Complainant in Complainant's Amended Complaint. As explained in the Memorandum in Support that is attached hereto and incorporated herein, Complainant has repeatedly failed to adequately state a claim sufficient to trigger the Commission's jurisdiction. The Amended Complaint was not filed within the time allowed by the Attorney Examiner's previous entry, and does not contain any factual allegations whatsoever. As a result, Ohio Edison is entitled to a dismissal *with prejudice* of Complainant's claims.

Respectfully submitted,



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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

DIANA WILLIAMS,)	
)	
Complainant,)	Case No. 08-1230-EL-CSS
)	
v.)	
)	
OHIO EDISON COMPANY,)	MEMORANDUM IN SUPPORT OF
)	RESPONDENT'S MOTION TO DISMISS
)	COMPLAINANT'S FIRST AMENDED
Respondent.)	COMPLAINT

Despite making numerous attempts, Complainant Diana Williams ("Complainant") has repeatedly failed to state reasonable grounds for complaint by pleading factual allegations sufficient to warrant this Commission's exercise of its jurisdiction. Complainant's Amended Complaint is completely devoid of factual allegations of any type, and instead consists solely of an inaccurate citation of O.R.C. § 4905.26. Complainant has also failed to file her Amended Complaint within the time mandated by the Attorney Examiner's July 2, 2009 Entry ("Entry"). In light of the Complainant's repeated failure to adequately state a claim or to file her Amended Complaint in a timely manner, the Ohio Edison Company ("Ohio Edison") respectfully requests that the Commission issue an Order dismissing Complainant's Amended Complaint *with prejudice*.

LEGAL STANDARD

The Ohio Revised Code requires that "reasonable grounds for complaint" must be stated before a hearing may go forward. O.R.C. § 4905.26. All Complaints must contain "a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought." See O.A.C. 4901-9-01(B).

Dismissal of a Complaint is appropriate if the Complainant fails to set forth “reasonable grounds” for a Complaint. See O.A.C. §4901-9-01(C)(3). The Commission “view[s] ‘reasonable grounds’ as necessarily containing allegations of the receipt of inadequate service.” In the Matter of the Petition of J. Earl McCormick v. The Ohio Bell Tel. Co., Case No. 90-1256-TP-PEX, Entry ¶ 3 (Sept. 27, 1990). A complaint that “fails to allege any facts which would support a finding of inadequate service” does “not state[] reasonable grounds” and therefore “should be dismissed.” Id. Similarly, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements” are insufficient to maintain a claim for relief. Ashcroft v. Iqbal, No. 07-1015, 2009 WL 1361536, at *13 (U.S. 2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007).

ARGUMENT

I. The Complaint Does Not State Reasonable Grounds And Should Be Dismissed

The Complainant has had repeated opportunities to adequately state a claim in this litigation. After considering the Complainant’s Complaint, “Motion to Dismiss Respondents [sic] Motion to Dismiss and Motion for Summary Judgment Pursuant to 4901-9-01(D)” and “Addendum to Original Complaint,” the Attorney Examiner held that the Complaint failed to meet the standards set by O.A.C. 4901-9-01(B) or O.R.C. § 4905.26. See Entry at ¶ 7. Specifically, the Attorney Examiner held that all of Complainant’s claims related to a Summit County Court of Common Pleas proceeding, that the Commission had no legal authority to review matters decided by that court or to grant relief from the garnishment of wages, and that the Complaint lacked a proper presentation of facts or request for relief. See Entry at ¶¶ 7-10. The Attorney Examiner then granted Complainant 15 days from the date of the entry to file an Amended Complaint which did “not reference issues that she may have with the conduct of or

conclusion of the Summit County Common Pleas Court case because the Commission can not address these issues.” See Entry at ¶¶ 11-Conclusion.

Complainant’s Amended Complaint does not address any of the deficiencies identified in the Attorney Examiner’s Entry. The Amended Complaint does not contain any substantive factual allegations. Instead, the Amended Complaint contains only an inaccurate citation of O.R.C. § 4905.26. See Amended Complaint at 1-2. Citation to a statute alone, without any accompanying factual allegations relating to issues that are within the jurisdiction of the Commission, is not a sufficient statement of a claim under Ohio law. See O.R.C. § 4905.26. Specifically, all complaints must contain “a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought.” See O.A.C. §4901-9-01(B). It is not sufficient to merely restate a statute. As the U.S. Supreme Court has recently stated in an analogous context, merely restating the elements of a cause of action, without providing accompanying factual allegations, is not sufficient to support a claim for relief. See Ashcroft v. Iqbal, No. 07-1015, 2009 WL 1361536, at *13 (U.S. 2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007).

In the instant case, the only facts which have been alleged, or even referenced obliquely, relate to: (1) the enforcement of a court-issued subpoena; and (2) garnishment of the Complainant’s wages pursuant to a judgment issued by a court. As previously found by the Attorney Examiner, the Commission did not authorize the subpoena at issue or the garnishment of the Complainant’s wages. See Entry ¶ 7. Neither of these issues is expressly referenced in the Amended Complaint, although they are incorporated by reference. See Complaint at 1 (“Ohio Edison accused me of having [a]n account with them in 1998 an [sic] obtained a default judgment against me without [m]y knowledge, [sic] of that debt.”) As these are issues beyond

the Commission's jurisdiction, the Complaint fails to state reasonable grounds for her Amended Complaint in accordance with Ohio law. See Entry ¶ 10.

The Attorney Examiner's Entry specifically informed the Complainant that she was required to "provide a statement that clearly explains the facts that constitute the basis of the complaint and a statement of the relief sought." Entry ¶ 11. Complainant was also informed that "she must provide the Commission with sufficient information to determine if reasonable grounds for the alleged complaint exist." Id. Finally, Complainant was instructed that she "should not reference issues that she may have with the conduct of or conclusion of the Summit County Common Pleas Court case because the Commission cannot address those issues." Id.

Despite being put on specific notice of the requirements of Ohio law, and perhaps because she was instructed not to mention the Summit County proceedings which are beyond the Commission's jurisdiction, Complainant failed to follow these clear instructions. The Amended Complaint is completely devoid of any factual allegations relating to this cause of action. In light of the Complainant's repeated failure to adequately state a claim, Ohio Edison is entitled to the dismissal of the Amended Complaint *with prejudice*.

II. Complainant Failed To Timely File The Amended Complaint

As discussed in detail in the Entry, Complainant has made multiple filings in this matter relating to matters outside of the Commission's jurisdiction. After considering each of these pleadings, the Attorney Examiner concluded that "[t]he attorney examiner, even after attempting to cure these defects by conjecture, is led to the conclusion that the complaint fails to state reasonable grounds." Entry ¶ 8. In an effort to provide every possible chance to the Complainant, the Attorney Examiner allowed her yet another chance to "provide the Commission with sufficient information to determine if reasonable grounds for the alleged

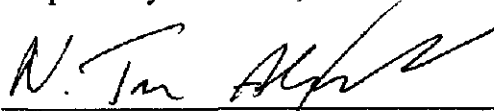
complaint exist.” Entry ¶ 11. The Attorney Examiner allowed the Complainant 15 days from the date of the Entry to file the Amended Complaint. See Entry at Conclusion. The Entry was dated July 2, 2009. See Docket. The Amended Complaint was filed on July 24, 2009, well after the 15 day grace period granted by the Entry. See id. In light of the Complainant’s failure to file the Amended Complaint within the time allowed by the Entry, the Amended Complaint should be disregarded, and the Complaint dismissed *with prejudice*.

CONCLUSION

The Amended Complaint, much like the other pleadings filed by Complainant, is devoid of any factual allegations relating to matters within the jurisdiction of the Commission. Instead, the Amended Complaint contains only an inaccurate citation of O.R.C. §4905.26, and an oblique reference to matters outside of the Commission’s jurisdiction. This is not sufficient under established Ohio and federal law, or under O.A.C. §4901-9-01(B). Moreover, the Amended Complaint was not filed within the time allowed by the Commission’s Order.

Complainant has been given repeated opportunities to adequately state a claim relating to a matter within the Commission’s jurisdiction. She has failed to do so. Therefore, for the reasons set forth above, and in Ohio Edison’s Motion to Dismiss and Ohio Edison’s Response to Complainant’s Addendum to Complaint, Ohio Edison respectfully requests that the Commission issue an Order dismissing Complainant’s Amended Complaint *with prejudice*.

Respectfully submitted,



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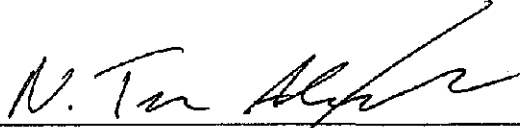
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CERTIFICATE OF SERVICE

A copy of the foregoing Respondent's Motion to Dismiss has been served this 12th day of August, 2009, by first class United States mail, postage prepaid, upon:

Diana Williams
933 Hartford Ave.
Akron, Ohio 44320



One of the Attorneys for Respondent