

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Dependable Chemical Co., Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. 10-0031-TP-CSS
)	
AT&T Ohio,)	
)	
Respondent.)	

AT&T OHIO'S MOTION TO DISMISS

AT&T Ohio, by its attorneys and pursuant to Section 4901:1-12 of the Commission's rules, moves to dismiss the captioned Complaint for the reason that it was filed on behalf of a corporation that is not properly represented by an attorney-at-law admitted to the practice of law in the State of Ohio. A memorandum in support of this motion is attached.

Respectfully submitted,

AT&T Ohio

By: /s/ Jon F. Kelly

Jon F. Kelly
AT&T Services, Inc.
150 E. Gay St., Room 4-A
Columbus, Ohio 43215

(614) 223-7928

Its Attorney

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Dependable Chemical Co., Inc. is an Ohio corporation, as shown in the attached records obtained from the internet website operated by the Ohio Secretary of State. The Commission may not permit a corporation to institute a formal complaint unless an attorney-at-law admitted to practice in the State of Ohio represents the corporation. The Commission has had a practice in recent years of permitting corporations to file such complaints, and to permit non-attorney officers or employees of the corporations to pursue the complaints through the prehearing settlement phase. The established legal precedents, however, demonstrate that this practice is in violation of Ohio law. The Commission may not accept, and certainly should not process, any formal complaint brought by a corporation that is not represented by a qualified attorney-at-law.

It is the law of Ohio that a corporate body cannot act through its corporate officers rather than through an attorney-at-law to maintain litigation on the corporation's behalf. Union Savings Assn. v. Home Owners Aid, Inc. (1970), 23 Ohio St.2d 60. In Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479, the Ohio Supreme Court held that "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." Thus, an attorney, or the owner of the property, must prepare and file the complaint. In the Union Savings case, the court observed that "[a] corporation is an artificial person, created by the General Assembly and deriving its power, authority and capacity from the statutes." The Court held that "[a] corporation cannot maintain litigation in propria persona, or

appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." Id. at syllabus.

The practice of law has generally been defined as encompassing three types of activities: "(1) legal advice and instructions to clients advising them of their rights and obligations; (2) preparation of documents for clients, which requires legal knowledge not possessed by an ordinary layman; and (3) appearing for clients in public tribunals and assisting in the interpretation and enforcement of law, where such tribunals have the power and authority to determine rights of life, liberty, and property according to law." Mahoning Cty. Bar Assn. v. The Senior Serv. Group, Inc. (Bd. Commrs. Unauth. Prac.1994), 66 Ohio Misc.2d 48, 52. The filing of a formal complaint with the Commission pursuant to R. C. § 4905.26 clearly fits the third category of activities described in that case. The Commission, as a public tribunal, has the right to determine the rights and responsibilities of public utilities *vis á vis* their customers in the formal complaint process. It is for that reason that the filing of a formal complaint before the Commission by a corporation may only be undertaken by an attorney-at-law.

The Supreme Court of Ohio has confirmed and expanded upon these precedents and has repeating its holding in the Sharon Village case that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." Worthington City School Dist. Bd. of Edn. v. Franklin County Bd. of Revision (1999), 85 Ohio St.3d 156, 160; *also see* Cincinnati Bar Association v. Clapp & Affiliates Financial Services, Inc. (2002), 94 Ohio St.3d 509, wherein a corporate officer was held in contempt for engaging in the unauthorized practice of law.

The Court has also declared that the practice of law includes the conduct of litigation and those activities which are incidental to appearances in court. Akron Bar Assn. v. Greene (1997), 77 Ohio St.3d 279. In that case, the Court reviewed its holding in Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, paragraph one of the syllabus, where it said, "The practice of law * * * embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts * * *." The preparation of a formal complaint pursuant to R. C. § 4905.26 clearly meets this test for determining whether such activity constitutes the practice of law.

The Ohio Supreme Court has confirmed that the filing of PUCO complaints on behalf of others constitutes the practice of law. Cleveland Bar Assn. v. Woodman, 98 Ohio St.3d 436, 2003-Ohio-1634 (adopting the finding of the Board of Commissioners on the Unauthorized Practice of Law that the respondents' preparation, signing, and filing of documents with the Public Utilities Commission of Ohio constituted the unauthorized practice of law).

For all of the foregoing reasons, Respondent AT&T Ohio respectfully prays that this Complaint be dismissed. In addition, the Commission should not address the issues raised in the complaint, except through its Staff and on an informal basis, unless and until the Complainant corporation is represented by an attorney-at-law.

Respectfully submitted,

AT&T Ohio

By: /s/ Jon F. Kelly

Jon F. Kelly

AT&T Services, Inc.

150 E. Gay St., Room 4-A

Columbus, Ohio 43215

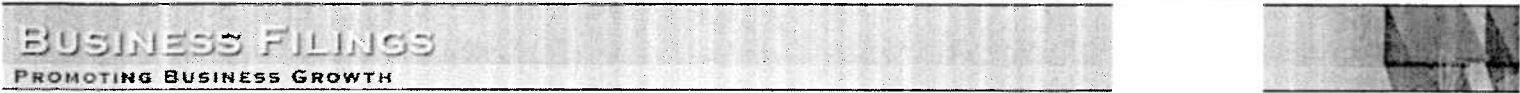
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Its Attorney

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Business Information

Total Row Count in Report - 1

Business Name	Charter / Registration Number	Type	Original Filing Date	Status	Expiration Date	Location / County / State	Age Info
DEPENDABLE CHEMICAL CO., INC.	290384	Corporation For Profit	Apr 30 1960	Active		Rocky River Cuyahoga Ohio	Click

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Business Filing Information

Business Name	Filing Type	Filing Date	Doc Id <i>Click for Image !</i>	Ad
DEPENDABLE CHEMICAL CO., INC.	Domestic Articles/For Profit	Apr 30 1960	B154_0073	
	Domestic/Amendment To Articles	Jul 06 1992	H390_0487	
	Domestic Agent Subsequent Appointment	Jul 06 1992	H390_0487	Ch
	Domestic Continued Existence Letter	Sep 09 1993	000000061878	
	Domestic Continued Existence	Nov 08 1993	000000061879	
	Domestic/Amended Restated Articles	Dec 17 1997	6108_1255	
	Miscellaneous Filing	Dec 17 1997	6108_1255	
	Agent Name/Address Tax Update	Jan 08 1999	AGNTUPDT	
	Agent Name/Address Tax Update	Feb 01 1999	AGNTUPDT	

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Agent Contact Information

Agent Name	Agent Address	City	State	Zip	Effective Date	Contact
Howard E Priest	20220 Center Ridge Rd 300	Rocky River	Ohio	44116	26-MAR-97	Active

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Prior Business Name Information

Prior Name	Change Date	Current Name
DEPENDABLE CHEMICAL CO.	Jul 06 1992	DEPENDABLE CHEMICAL CO., INC.

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 26th day of January, 2010 by first class mail, postage prepaid, on the party shown below.

/s/ Jon F. Kelly

Jon F. Kelly

Dependable Chemical Co., Inc.

Homer S. Taft, President
Dependable Chemical Co., Inc.
20220 Center Ridge Rd., Suite 300
P. O. Box 16216
Rocky River, OH 44116

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Case No(s). 10-0031-TP-CSS

Summary: Motion to dismiss and memorandum in support electronically filed by Jon F Kelly
on behalf of AT&T Ohio