

FILE

3

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PETER J. WIELICKI,

)

Case No. 10-2329-EL-CSS

Complainant,

)

v.

)

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,

)

)

Respondent.

)

PUCO

2011 MAY 16 PM 2:08

RECEIVED-DOCKETING DIV

Complainant's Response to Respondent's Post-Trial Brief

Respondent's take on their responsibility toward the Ohio Revised Code ORC
1303.40 is unique, to say the least.

Respondent's only defenses to there actions in this matter is that they believe
they are exempt from the provisions of the UCC because several courts around the
country have ruled such and the duty for them to obey the laws that our legislature
has enacted is too burdensome.

First, this is an action brought under Ohio law before a Court that only has Ohio
jurisdiction. Respondent admits that they cannot produce any Ohio court decisions that support
their claim that they are exempt. They cannot even show support for this claim in the Ohio UCC. The
fact that other courts outside the jurisdiction of Ohio may or may not have issued rulings

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
technician SMA Date Processed

MAY 16 2011

supporting their claim is of no relevance. Ohio courts have strongly supported the UCC as written and the legislature has provided the Respondent with a relief method called "Safe Harbor".

Second, every corporate and private citizen is responsible to obey the law regardless to the costs involved. Respondent's reasoning for not obeying the law because it is burdensome and costly just is no justification to ignore the law. The Respondent clearly admits that they have ignored the law and are ill trained to comply with it. No-one enjoys obeying the law, but without laws there would be bedlam. If the law creates that much of a hardship on the Respondent, they should be trying to work with their state representative to change the law to fit their situation, not ignoring the established law in favor of increased profits.

The simple facts are that the complainant has met all the criteria to have the amount in dispute discharged and the Respondent has not met any of the criteria to have the accord & satisfaction over-ruled.

Respondent stoops so low as to mislead this Court by stating that Complainant is not entitled to relief because he had only three years to enforce the obligation pursuant to ORC 1303.16(D). What Respondent fails to mention is that this statute of limitations only applies to "certified checks or the issuer of a teller's check, cashier's checks, or traveler's checks", not personal checks as was used by the Complainant in this action. Therefore, the Complainant is entitled to relief.


Respondent was notified with the accompanied restrictively endorsed check that the check was meant as payment in full and carried a restrictive endorsement. This notice was addressed to the Customer Service Manager. By testimony, the Respondent acknowledged that the notice and check was purposely not given to a person of authority and the matter was instead handled by an unqualified clerk.

Respondent had an obligation to refer Complainant's notice and check to a person "MANAGER" in charge of such matters who had the authority and knowledge to deal with such matters.

Complainant had no control over Respondent's actions after the correspondence and letter was mailed. Respondent acted irresponsibly in this matter and was the cause of their own downfall.

Therefore, the foregoing reasons and the reasons stated in Complainant's Post Trial Brief, the Complainant respectfully requests that the Commission deny the Respondent's request and issue an order that they credit Complainant's account.

Respectfully submitted,

A handwritten signature in cursive script, reading "Peter J. Wielicki", is written over a horizontal line.

Peter J. Wielicki

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed to the following person on this the 13th day of May, 2011:

Grant W. Garver
Attorney for Respondant
gwggarber@jonesday.com