

ORIGINAL

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

State Alarm, Inc.
Complainant
v.
Ameritech Ohio
Respondent

Case No. 95-1182-TP-CSS

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Reply Memorandum on Behalf of Ameritech Ohio

Ameritech Ohio, the Respondent herein, files its Reply Memorandum to Complainant State Alarm's Memorandum Contra Motion to Dismiss in accordance with authority contained at Section 4901-1-12 (B) (2), Ohio Admin. Code. State Alarm's Memorandum Contra seeks to avoid the problem raised through Ameritech Ohio's Motion to Dismiss by portraying Ameritech Ohio's filing as "frivolous" and as an attempt to "bludgeon" the Complainant. This large alarm company, doing business pervasively throughout northern Ohio, other parts of Ohio and elsewhere outside of Ohio and represented in litigation with Ameritech Ohio by prestigious law firms in Cleveland and Columbus, is attempting to clothe itself in the guise of a small hapless consumer, when in fact it enjoys a quite different status. This rhetoric should not mask the issue raised by Ameritech Ohio's motion.

The issue is State Alarm's good faith in pursuing this complaint case under Ohio Rev. Code Section 4905.26 -- an issue not previously raised by Ameritech Ohio in this docket because Ameritech Ohio was hopeful that State Alarm would pay its bills, or

at least escrow money, or show other good faith pending the outcome of litigation. Since State Alarm has chosen to continue its policy of non-payment - a strategy that in Ameritech Ohio's view is clearly illegal - this motion was, reluctantly, filed.

Ameritech Ohio's Motion is Not Duplicative or Burdensome

Ameritech Ohio has not heretofore raised the non-payment issue in this docket by motion. It has an absolute legal right to do so, however. The Common Pleas Court action discussed by State Alarm in its Memorandum Contra was filed because the Commission is not a collection agency and has no collection authority. The present motion is not, therefore, duplicative of the Common Pleas court action. The self-complaint was filed because it seeks relief (authority to disconnect with customer notification procedures established by the Commission) that is not available in this adequacy of service case.¹ The Common Pleas Court also quite obviously lacks jurisdiction to award this form of relief. Therefore, the self-complaint is not duplicative of any other filings either.

More curious, however, is State Alarm's "burden" argument. State Alarm filed a complaint alleging that, for twenty years and more, Ameritech Ohio has been providing legally inadequate service. Notwithstanding Ameritech Ohio's belief that this charge is completely false, it has supplied State Alarm with reams of discovery material and documents at an expense to Ameritech Ohio

¹ Ameritech Ohio respectfully urges the Commission to schedule a hearing on its self-complaint at the earliest time possible.

that is now in the many, many thousands of dollars and at great cost in personnel time. Many Ameritech Ohio employees have been deposed, the cost to Ameritech Ohio mounts daily and State Alarm, notwithstanding, does not pay bills for service rendered. State Alarm has a legal right to discovery of course, as does Ameritech Ohio, and Ameritech Ohio has not complained to the Commission that State Alarm's requests are "frivolous." Responding to a motion or discovery request is a burden attendant upon any litigation, but the "burden" to State Alarm in filing a Memorandum Contra pales beside the efforts Ameritech Ohio has made to satisfy State Alarm's demands.

Ohio Rev. Code Section 4905.24 Does Not Permit One Party to Recover Fees and Expenses from the Other

Twenty-two years ago the Ohio Supreme Court issued its opinion in a case entitled Ohio Public Interest Action Group v. Public Utilities Commission (1975), 43 Ohio St. 2d 175. Among other issues, the Court was called upon to decide whether Ohio Rev. Code Section 4903.24 (the section now relied upon by State Alarm) permitted the Commission to divide, apportion or impose fees, costs or expenses of a hearing or investigation among the parties to that hearing or investigation. Complainants in that case were seeking recovery of costs, expenses and fees from the electric company respondents through Commission order. The Court affirmed the Commissions' dismissal of the entire case and held:

"The forgoing section (Section 4903.24) relates to 'expenses incurred by the Commission' and the fees, expenses and costs mentioned in the statute which may be

imposed by the Commission are only those which the Commission itself incurs in the course of an investigation." (emphasis supplied)

The Commission therefore, has no legal authority to award money to State Alarm under Section 4903.24 or any other statute. The public utility statutes enable the Commission to recover, but do not allow parties to assess costs against each other. State Alarm's request for relief therefore is procedurally, as well as substantively, meritless.

CONCLUSION

For the reasons discussed in Ameritech Ohio's motion to dismiss, State Alarm's adequacy of service complaint should be dismissed and the relief State Alarm seeks against Ameritech Ohio should be denied. Sanctions and monetary relief sought by State Alarm should also be denied. Ameritech Ohio has a right and duty to defend itself, and to protect its record in each case where it is a party. If the Commission denies the motion filed herein the hearing will proceed to conclusion as currently scheduled. No prejudice to the process or to either party can result. Ameritech Ohio seeks no more than careful consideration of its arguments by the Commission and stands ready to cooperate with the Commission in furnishing whatever additional information may be required.

Respectfully submitted,

Ameritech Ohio

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CERTIFICATE OF SERVICE

A copy of the foregoing Reply Memorandum on Behalf of Ameritech Ohio has been served upon the following parties by regular U.S. mail, postage prepaid, this 13th day of February, 1997.

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