

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Cynthia Wingo,)	
)	
Complainant,)	
)	
v.)	Case No. 17-2002-EL-CSS
)	
Nationwide Energy Partners, LLC, et al.,)	
)	
Respondents.)	

**CRAWFORD HOYING, LTD., AND CRAWFORD COMMUNITIES, LLC
MEMORANDUM CONTRA TO COMPLAINANT’S APPLICATION FOR
REHEARING**

I. Introduction

Respondents Crawford Hoying, LTD., and Crawford Communities, LLC (collectively, “Crawford Hoying”) respectfully submit this Memorandum Contra to the Public Utilities Commission of Ohio (“PUCO” or “Commission”) pursuant to Ohio Administrative Code Rule 4901-1-35(B). On October 24, 2018, the Commission issued a Finding and Order which granted Crawford Hoying’s and Nationwide Energy Partners, LLC’s, motions to dismiss the complaint. Complainant Cynthia Wingo (“Complainant”) submitted an Application for Rehearing on November 23, 2018, and filed a Corrected Application for Rehearing (“Application”) on November 26, 2018. In her Application Complainant stated she would have no objection to allowing parties to base their

response due date using the November 26 filing date.¹ Therefore, Crawford Hoying hereby files this Memorandum Contra to Complainant's Application.

II. Complainant failed and continues to fail to dispute threshold issues as it relates to Crawford Hoying.

It is important to note that at no point throughout any of her responsive pleadings has Complainant argued or asserted that Crawford Hoying, in any form, is acting as a public utility. In its *Motion to Dismiss*, Crawford Hoying provided sufficient information for the Commission to determine that Crawford Hoying is not a public utility. The basic application of the *Shroyer* test was sufficient to defeat the Complainant's assertions about any Crawford Hoying entity involved in this case. In its Finding and Order, the Commission appropriately determined that Crawford Hoying is not a public utility, and not subject to the Commission's jurisdiction.² Thus, the Complaint was dismissed.³

Likewise, in its *Motion to Dismiss*, Crawford Hoying stated that Complainant "failed to allege any facts that implicate Crawford Hoying in any violation of Ohio law or Commission rule."⁴ Complainant never disputed this assertion. Complainant did not provide any explanation as to what violation of law or Commission rule it believes that Crawford Hoying allegedly committed. The Commission appropriately found that Complainant, in fact, failed to state any claims upon which relief can be granted and held,

¹ Motion for Leave to File Amended Application at 1.

² Finding and Order Dismissing Complaint, ¶85 (October 24, 2018).

³ Id.

⁴ Crawford Hoying Motion to Dismiss at 9.

therefore, Complainant failed to provide reasonable grounds as required by R.C. 4905.26.⁵

We agree with the Commission's finding. In her Application, Complainant completely ignores Crawford Hoying's prior defenses and assertions, as she has done throughout this process, claiming the Commission failed to address why it dismissed the Complaint on grounds not asserted.⁶ Except, as shown, Crawford Hoying did assert this ground in requesting dismissal. Complainant simply failed to address it and Crawford Hoying even pointed that out in its Reply to Complainant's memo contra.⁷

Complainant has repeatedly failed to substantively address any claims or defenses brought by Crawford Hoying. Her failure to do so resulted in the dismissal of her claims against Crawford Hoying and, in part, her Complaint in its entirety. Crawford Hoying respectfully requests that the Commission deny the Application and reaffirm that Crawford Hoying is not and was not a public utility, has not acted as a public utility, and that Complainant failed to state a claim or reasonable grounds for a claim against Crawford Hoying.

⁵ Finding and Order at ¶1.

⁶ Application at p. 17.

⁷ Crawford Hoying Reply to Complainant's Memo Contra Crawford Hoying's Motion to Dismiss, at p. 3 (Jan. 2 2018).

III. The Commission’s application of the *Shroyer* test was not only appropriate but required to establish if the Commission even had jurisdiction to hold a hearing.

Complainant claims that the application of the *Shroyer* test is premature and that the Complainant is entitled to a full hearing and discovery simply because she filed a Complaint. However, the Commission has a limited jurisdiction and the Complainant recognized this in the second paragraph of the Argument section of her Complaint. She stated, “[t]he General Assembly has directed the Commission to regulate “public utilities” and “electric services companies.” See R.C. 4905.02; 4905.03; 4905.04; 4928.01(A)(9); 4928.08. The Commission must hear complaints against these entities. See R.C. 4905.26 and 4928.16(A)(1).”⁸

Complainant correctly identifies that the Commission’s jurisdiction is limited to public utilities. Complainant also correctly recognizes that the first step in a complaint case is for the Commission to determine it has jurisdiction.⁹ The Commission does not have general jurisdiction such that it can hear cases involving general business disputes. However, Crawford Hoying has disputed Complainant’s claim it is a public utility in every responsive pleading. And Complainant has done nothing to prove otherwise except point to an irrelevant now eight-year old document that Complainant does not even confirm Crawford Hoying or its affiliates are a party to.

If a party to a case before the Commission disputes the Commission’s jurisdiction the Commission is obligated to establish that it does have jurisdiction. Doing so, may

⁸ Application at p. 4.

⁹ Application at p. 4.

include applying the *Shroyer* test. In fact, in the interests of justice and efficiency, the Commission should confirm it has jurisdiction prior to holding a full hearing so that parties that do not fall within the Commission's jurisdiction are not required to spend time and resources in a full litigation process that ultimately turns out to be unnecessary.

The Commission properly used the *Shroyer* test to determine if it had jurisdiction over the Respondents. Because the Commission determined that the Respondents were not public utilities or acting as public utilities they were not within the Commission's jurisdiction. Therefore, contrary to Complainant's claims she was not entitled to a full hearing simply because she filed a Complaint under R.C. 4905.26. Revised Code 4905.26, states, in its first ten words, that it applies to complaints against "any public utility" because the Commission determined the Respondents are not public utilities R.C. 4905.26 is inapplicable.

Crawford Hoying respectfully requests that the Commission deny her Application and reaffirm that Crawford Hoying is not and was not a public utility, has not acted as a public utility, and that Complainant failed to state a claim or reasonable grounds for a claim against Crawford Hoying.

III. CONCLUSION

Complainant brought this complaint alleging that Crawford Hoying is a reseller of utility services. The facts, however, when evaluated under the *Shroyer Test*, established that Crawford Hoying is not operating as a public utility because it cannot exercise the special benefits and rights of a public utility; its services are not available to the general public and it does not provide any utility services. The "safe harbor" provisions – established by the Commission in its recent investigation - relieve the Commission of

jurisdiction in these cases, as the Commission determined in their Finding and Order. Finally, Complainant has failed to level any actual claim against Crawford Hoying upon which relief can be granted.

For the foregoing reasons, Crawford Hoying respectfully requests that the Commission reaffirm their decision and deny Complainants Application for Rehearing.

Respectfully submitted,

/s/Christopher J. Allwein
Christopher J. Allwein (0084914)
Timothy Kelley (0088362)
KEGLER, BROWN, HILL + RITTER CO.
A Legal Professional Association
65 E State St., Ste. 1800
Columbus, Ohio 43215
Telephone: (614) 462-5400
Facsimile: (614) 464-2634
callwein@keglerbrown.com
(Willing to accept service via email)

*Attorneys for Crawford Hoying, Ltd., and
Crawford Communities, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Memo Contra* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail December 6, 2018.

/s/Christopher J. Allwein
Christopher J. Allwein

Mark A. Whitt
whitt@whitt-sturtevant.com
Andrew J. Campbell
campbell@whitt-sturtevant.com
Rebekah J. Glover
glover@whitt-sturtevant.com
Steven T. Nourse
stnourse@aep.com
Christen M. Blend
cmblend@aep.com
Ilya Batikov
ibatikov@vorys.com

Shawn J. Organ
sjorgan@organcole.com
Joshua M. Feasel
jmfeasel@organcole.com
Carrie M. Lymanstall
cmlymanstall@organcole.com
Barth E. Royer
BarthRoyer@aol.com
Michael J. Settineri
mjsettineri@vorys.com
Gretchen L. Petrucci
glpetrucci@vorys.com

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Summary: Memorandum Contra to Complainant's Application for Rehearing electronically filed by Mr. Robert Dove on behalf of Crawford Hoying, LTD and Crawford Communities, LLC