

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of James P. Woodman as WeShare, Inc.,

Complainant,)

Y.

Case No. 95-1017-TP-CSS

Ameritech Ohio,

Respondent.)

ENTRY

The Commission finds:

- (1) On November 1, 1995, James P. Woodman as WeShare, Inc. (WeShare) filed a complaint with the Commission alleging that Ameritech Ohio (Ameritech) intended to wrongfully terminate the services that WeShare receives and that the parties dispute certain billed amounts. WeShare further stated that, since it began receiving services from Ameritech sometime in 1989, it should not have been billed at the higher message rate.

On November 13, 1995, WeShare filed an amendment to its complaint to add that Ameritech knowingly charged WeShare an unreasonable and unjust rate during said time period. Also, on November 13, 1995, WeShare filed a motion to prevent the disconnection of its service, which was to occur if WeShare did not pay the amounts past due by November 9, 1995.

- (2) On November 14, 1995, Ameritech filed a memorandum contra WeShare's motion to prevent/stay the termination of service.¹ Ameritech contended that the motion to prevent termination was moot because WeShare's service had been disconnected on November 14, 1995, for non-payment of services since February 1995. Further, Ameritech stated that WeShare does not dispute the amounts contained in the telephone bills since February 1995, but instead disputed the amounts billed

¹ On November 14, 1995, Ameritech had been served with the complaint, but its answer or other responsive pleading was not yet due. Ameritech filed a responsive pleading, namely a motion to dismiss the complaint, on November 27, 1995.

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prior to August 1994 (given the credit Ameritech had made for the period August 1994 through January 1995). Ameritech noted that it gave adequate notice, five working days, pursuant to its tariffs.

- (3) On November 17, 1995, WeShare filed a motion to expedite a ruling on its request to stay the termination of service. WeShare requested that its motion for a stay be converted into a motion for reinstatement of service, in light of the fact that the disconnection had occurred. WeShare stated that a hearing on the reinstatement of its service should be scheduled, pending resolution of the dispute.
- (4) On November 21, 1995, Ameritech filed a memorandum contra the request for an expedited ruling, opposing the reconnection of service for the same reasons that it opposed the motion for a stay. Also, Ameritech moved to strike the references to dollar amounts in WeShare's November 17, 1995, filing regarding settlement discussions that occurred during a conference mediated by the Commission staff prior to the filing of the formal complaint.²
- (5) By entry dated December 7, 1995, the attorney examiner found the motion for a stay of the service disconnection to be moot, but an expedited ruling on the service reconnection request to be warranted. Further, the attorney examiner found that insufficient grounds were stated to warrant reinstatement of the disconnected service. The attorney examiner specifically noted that, while there appears to be a genuine dispute between the parties regarding the payments made by WeShare from sometime in 1989 to August 1994, that dispute did not entitle WeShare to discontinue payment for the service it had been receiving since February 1995 and that WeShare had not made any justification for its failure to make such payments, other than pointing to the instant dispute. Furthermore, the attorney examiner concluded from the pleadings of *both* parties that WeShare believed it has been receiving the appropriate service since February 1995, yet nevertheless failed to pay for those services. Therefore, the attorney examiner found that reconnection was not appropriate. With regard to Ameritech's motion to strike, the attorney examiner found that WeShare's reference to a prior settlement offer of Ameritech

² Prior to the filing of the formal complaint, the Consumer Services Department of the Commission attempted to informally resolve the parties' dispute. However, an amicable resolution was not reached.

was not appropriate and struck the reference from the November 17, 1995 pleading.

Furthermore, the attorney examiner determined that this case should proceed in an expedited fashion. She scheduled a prehearing conference for December 27, 1995, in order to work with the parties to determine if any or all of the facts could be stipulated, if a record hearing was possible, and any other issue that the parties wished to address. The attorney examiner stated that, since extensive negotiations had not already resulted in an amicable resolution of the dispute, that the typical settlement conference would not be scheduled, but that, if the parties wished to conduct settlement negotiations, a mediator would be available after the conference had ended. WeShare did not appeal the rulings in the attorney examiner's entry.

Lastly, the attorney examiner directed Ameritech to file an answer to the complaint on or before December 13, 1995, pending a ruling upon its motion to dismiss.

- (6) The prehearing conference was held as scheduled on December 27, 1995. The parties agreed to conduct discovery and to begin working on a stipulation of some of the involved facts. Also, the parties and the attorney examiner agreed to have a second prehearing conference, via telephone, on March 6, 1996, and to begin the evidentiary hearing on March 13, 1996. The hearing date was specifically chosen by the parties based upon *both* parties' statements that they wished to conduct discovery and their acknowledgments that discovery could be fully conducted within the two and one-half months from the date of the first prehearing and the hearing date selected.
- (7) By entry dated January 22, 1996, the attorney examiner denied Ameritech's motion to dismiss, found that reasonable grounds for complaint had been stated, and, based upon the agreements reached during the first prehearing, scheduled the second prehearing and hearing.
- (8) On February 6, 1996, Ameritech filed a motion to compel discovery. Ameritech stated that it served its first set of interrogatories (31 interrogatories) and a request for production of documents (nine document requests) upon the complainant on January 5, 1996, and that the complainant had completely failed to respond.

- (9) By entry dated February 13, 1996, the attorney examiner found, as permitted by Rule 4901-1-12, Ohio Administrative Code, that the time frame for the complainant to respond to Ameritech's motion to compel discovery and the time frame in which Ameritech would reply to the complainant's response would be shortened in order to allow the attorney examiner adequate time to consider these pleadings and still allow the parties sufficient time to prepare for the March 13, 1996, hearing. Furthermore, the attorney examiner noted that such an expedited pleading schedule may prevent the need to delay the hearing. Therefore, the attorney examiner directed the complainant to file its response to Ameritech's motion to compel on or before February 20, 1996. The attorney examiner specifically directed the complainant to include in its response any and all objections it may have to the specific interrogatories and document requests. Ameritech was given until February 23, 1996, to file its reply to the complainant's response.

A copy of the February 13, 1996, entry was sent by facsimile and by ordinary mail to counsel for the complainant and counsel for Ameritech. The complainant never responded to the motion to compel.

- (10) On February 28, 1996, Ameritech filed a supplemental motion to dismiss the complaint, or in the alternative a motion to continue the hearing. Ameritech stated that the complainant has, willfully, failed to prosecute its case and, therefore, the matter should be dismissed.
- (11) The complainant did not file a response to Ameritech's supplemental motion to dismiss. The complainant also did not call in for the second prehearing conference which was held on March 6, 1996.³
- (12) On March 13, 1996, Mr. Woodman appeared without his counsel for the hearing. Mr. Woodman stated that his counsel was ill and could not attend the hearing, but that he still employed his counsel. Upon questioning by the attorney examiner, Mr. Woodman stated that he is still interested in

³ On March 5, 1996, counsel for complainant requested that the telephone conference be rescheduled from 11:00 a.m., as agreed upon on December 27, 1995, to 3:30 p.m. on March 6, 1996. The attorney examiner granted that request. Nevertheless, counsel never called in and has never contacted the attorney examiner since.

pursuing his case. Based upon that statement, the attorney examiner directed Mr. Woodman to respond to the discovery requests (both the interrogatories and document requests) on or before March 20, 1996. The attorney examiner took Ameritech's supplemental motion to dismiss under advisement and indefinitely continued the hearing.

- (13) On March 20, 1996, the complainant delivered responses to the discovery requests to Ameritech. The responses were executed by Mr. Woodman as the "attorney in fact" for WeShare, Inc. Mr. Woodman objected to the vast majority of the interrogatories and document requests (as privileged and/or not relevant). If an objection was not stated, WeShare responded that the information was a public record or already within Ameritech's possession.⁴ The complainant only responded to three interrogatories, in which it states that: (1) the service complainant believes it was entitled to receive in 1989 was "the most favorable tariff rate offered by [Ameritech] if in a competitive environment"; (2) complainant bases its belief that Ameritech misrepresented the local exchange services available to customers upon audits by its auditor of "government customers both State and Federal [having] established, without exception, that Ameritech Ohio (Ohio Bell Telephone Company) has misrepresented to customers the local exchange services available"; and (3) complainant is still compiling its witness list.
- (14) On April 3, 1996, Ameritech renewed its motion to dismiss this complaint on the basis of the complainant's willful lack of prosecution. Ameritech states that the complainant's response to its discovery requests is essentially "no response" since no information was provided and the responses are procedurally defective. Ameritech alleges that the complainant is ignoring the attorney examiner's rulings and showing contempt for the Commission's rules. Ameritech believes that the complainant's answers to the discovery requests were "evasive, frivolous, and not responsive." Ameritech notes that complainant repeats the same baseless claim that the information is privileged and not relevant, but does not explain or support this claim. Furthermore, Ameritech states that the

⁴ A few responses were not required, as the complainant had not responded to the prior question in the affirmative.

responses have not been signed by an attorney and the responses were not verified. In the alternative, Ameritech requested a motion to compel responsive answers to the interrogatories.

- (15) The complainant did not file a response to Ameritech's April 3, 1996 filing.
- (16) The Commission finds that Ameritech's motion to dismiss should be granted. It appears from the record that the complainant is not truly interested in pursuing its claims against Ameritech. Rather, the complainant is delaying this case, without justification. For example, the complainant specifically agreed at the first prehearing conference that discovery would be conducted between the parties and yet ignored Ameritech's first discovery requests. No explanation was ever given. The complainant also failed to participate in the second prehearing conference, even when it was rescheduled to accommodate complainant's counsel. Additionally, complainant has not even responded to the various motions by Ameritech to dismiss this case for lack of prosecution.

Furthermore, even when the attorney examiner directed the complainant to respond to Ameritech's discovery requests, the complainant did not do so in good faith. We have reviewed the "responses" and find that many of them are inadequate and designed to, at a minimum, delay the complaint process. For example, complainant claimed that Ameritech possesses the names of persons involved in and the dates of all contacts with Ameritech concerning WeShare's telephone service. Moreover, complainant claimed that such information was not relevant. Also, complainant claimed that its auditor had determined that Ameritech misrepresents the local exchange services to customers, but refused to provide copies of any studies, reports or documentation of its consultants or identify them on the ground that the information is privileged. WeShare also refused to provide an amount by which it believes it was overcharged by Ameritech because complainant contends the information was not relevant. The basis of WeShare's complaint is that it was billed for a period of time under the wrong rate, but WeShare refused to provide any facts to Ameritech in response to at least three questions that bear upon the basis of WeShare's allegations. WeShare's "justifications" for not supplying the information are wholly inadequate. We conclude that complainant is not prosecuting

this case and, therefore, this matter should be dismissed and closed of record.

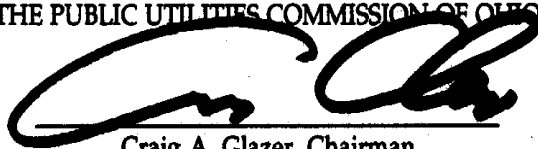
It is, therefore,

ORDERED, That Ameritech's motion to dismiss the complaint for lack of prosecution is granted. It is, further,

ORDERED, That Case No. 95-1017-TP-CSS be closed of record. It is, further,

ORDERED, That a copy of this Entry be served upon the James Woodman, counsel for WeShare, Ameritech, counsel for Ameritech, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



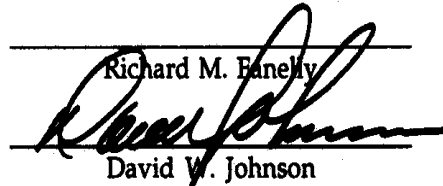
Craig A. Glazer, Chairman



Jolynn Barry Butler



Ronda Hartman, Clerk



Richard M. Eneely


David W. Johnson

GLP:geb

Entered in the Journal

MAY 23 1996

A True Copy


Gary E. Vigorito
Secretary

SERVICE NOTICE

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CASE NUMBER 95-1017-TP-CSS
CASE DESCRIPTION JAMES WOODMAN/AMERITECH OHIO
DOCUMENT SIGNED ON May 23, 1996
DATE OF SERVICE May 23, 1996

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