

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of NSCO	)	
International Investment, LLC dba Cross	)	
Key Row,	)	
	)	
Complainant,	)	
	)	Case No. 10-1400-WS-CSS
v.	)	
	)	
Ohio American Water Company,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On September 21, 2010, NSCO International Investment, LLC dba Cross Key Row (NSCO or complainant), filed a complaint against Ohio American Water Company (Ohio American or respondent) setting forth a number of allegations. First, NSCO states that, although it purchased an apartment complex on November 19, 2009, and requested that a new account be established, the respondent failed to assign a new account and, instead, maintained the account of the predecessor apartment complex owner. The complainant asserts that, although a new account was eventually opened, the respondent has improperly credited payments to the former account and, at the same time, transferred arrearages from the old account. Further, the complainant states that the meter reading done for this account results in charges for water usage that are in an amount that is ten times the actual usage. In light of its stated concerns, the complainant requests the issuance of a stay specific to any applicable shut-offs and the posting of notices of any shut-offs.
- (2) On September 24, 2010, Ohio American filed a letter indicating that it will hold any shut-off related to the complaint in abeyance until the Commission has an opportunity to review the pleadings filed in this matter.
- (3) On September 28, 2010, Ohio American filed its memorandum contra the request for stay. As background, the respondent

explains that NSCO is now the owner of an apartment complex, referred to as Chatterton Club and/or Chatterton Club/Cross Key Row, located at Chatterton Road, Columbus, Ohio, consisting of four buildings with a total of approximately 36 units. Ohio American states that it provides water and sewer services to the complex through a single meter.

Ohio American summarizes the ownership history of the apartment complex. Ohio American notes that the prior owner, Six Ventures, Ltd., had a history of nonpayment and filed for Chapter 11 bankruptcy protection. According to Ohio American, Debt Acquisition Holdings, LLC obtained the property pursuant to a foreclosure sale and assigned it to CHW Property LLC, which sold the complex to NSCO. While Ohio American acknowledges that a representative of NSCO contacted the respondent and requested that billings be sent to the complainant, the respondent contends that there was no representation that NSCO was the new owner. As a result, Ohio American explains that the account number of the prior owner was continued until April 2010, when a representative of NSCO called Ohio American and requested that the prior account be changed to reflect that NSCO was the owner and new customer.

Ohio American submits that, since November 2009, only four payments have been received for the property in question, resulting in only 35.77 percent of the balance being paid. Based on the allegations set forth the complaint, Ohio American avers that the requested stay must be denied inasmuch as there is no stated basis for the stay. In support of its position, Ohio American notes that, on August 4, 2010, its field personnel checked the meter both inside and outside the complex and found no issues with the meter. The respondent also asserts that an analysis of meter readings since August 2008 reflects that the annual usage was 458 ccf for the 12-month period ending July 2008, 494 ccf for the 12-month period ending July 2009 and 427 ccf for the 12-month period ending July 2010.

Ohio American also highlights that NSCO neither provided Ohio American with a notice of a bill dispute nor followed any billing dispute procedures consistent with the respondent's tariff. In support of this argument, Ohio American states that the complainant (1) with the exception of four specified months, failed to pay the undisputed portion of the any bill in the last ten months;

(2) failed to pay future bills following notice of the billing dispute; (3) failed to enter into bona fide discussions with Ohio American regarding any bill dispute; (4) failed to give any notice whatsoever regarding any dispute for the ten-month period since it became owner of the apartment complex.

Ohio American alleges that NSCO's actions appear to be a ploy to retain water and sewer service while not paying for the services. The respondent submits that the Commission should not allow NSCO, a commercial customer represented by counsel, to continue to "play" the administrative agency system and ignore the company's approved tariff procedure.

- (4) On September 30, 2010, Ohio American filed a motion to dismiss and its answer in this matter denying the majority of the substantive allegations of the complaint.

In support of its motion to dismiss, Ohio American contends that the complainant has failed to state a reasonable claim upon which relief can be granted. Specifically, Ohio asserts that NSCO fails to state reasonable grounds for the Commission to conclude that the respondent has in any way provided unreasonable, unjust, or insufficient service in violation of any statute, regulation, or order of the Commission.

Ohio American describes that, upon receipt of a notice of the filing of the Chapter 11 bankruptcy proceeding for Six Ventures, Ltd., it created a new account (#176333) for the apartment complex that is the subject of this complaint and mailed the associated bills to Red Sky Asset Management, 1335 Dublin Road, Columbus. According to Ohio American, the amounts associated with the prior account (#8205) were held in abeyance during the pendency of the bankruptcy.

- (5) The attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Rule 4901-1-26, Ohio Administrative Code (O.A.C.), any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement discussion. However, nothing prohibits any party

from initiating settlement negotiations prior to the scheduled settlement conference.

- (6) Accordingly, a settlement conference shall be scheduled for October 20, 2010, at 10:00 a.m. at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio, 43215-3793. The parties should bring all relevant documents to the conference.
- (7) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint, (or the respondent with respect to its counterclaim). *Grossman v. Public Util. Comm.* (1966), 5 Ohio St.2d 189.
- (8) As stated above, Ohio American has indicated that it will hold any shut-off related to the complaint in abeyance until the Commission has an opportunity to review the pleadings filed in this matter. Consistent with Rule 4901-9-01(D), O.A.C., during the pendency of this matter, the complainant must timely pay all undisputed bill amounts each billing cycle in order to avoid the disconnection of service. At the settlement conference, the attorney examiner expects the parties to be prepared to discuss the level of payments to be made during the pendency of this complaint. In the absence of such agreement, this amount will be established by the Commission.

It is, therefore,

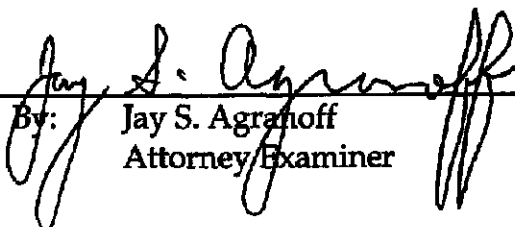
ORDERED, That a settlement conference be scheduled in accordance with Finding (6). It is, further,

ORDERED, That the complainant comply with Finding (8). It is, further,

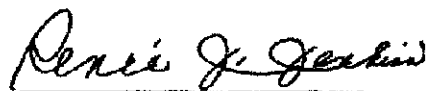
ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

jes  
/dah

  
By: Jay S. Agranoff  
Attorney/Examiner

Entered in the Journal OCT 07 2010



Renee J. Jenkins  
Secretary