

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Michael Brower,)
)
 COMPLAINANT,)
)
 v.) Case No. WC-2017-0207
)
 Branson Cedars Resort Utility)
 Company, LLC,)
)
 RESPONDENT.)

**RESPONDENT'S MOTION FOR SUMMARY DISPOSITION AND STATEMENT OF
UNCONTROVERTED MATERIAL FACTS**

COMES NOW Respondent, Branson Cedars Resort Utility Company, LLC, by and through undersigned counsel, and for its Motion for Summary Disposition, states to the Court as follows:

1. Complainant, the Browers¹, filed a Complaint against Respondent alleging that the Brower structure at 310 Heavy Timber Dr., Ridgedale, Missouri 65739 should not be treated as two separate units so that only one customer flat rate—and not two customer flat rates—is charged to the Brower structure.
2. Respondent, Branson Cedars Resort Utility Company, LLC, asserts that the Brower structure is a duplex.

¹ The deed to the Brower Structure at issue shows that the property is owned by both Michael and Darla Brower, as husband and wife. Nonetheless, although Mr. Brower filed the Complaint in his own name, both Mr. and Mrs. Brower have participated in the Complaint process. For simplicity, Respondent will refer to “the Browers” when referring to the Complainant and/or owners of the structure.

3. The Brower structure consists of an upper unit with four bedrooms, a kitchen, a living space, and a bathroom, as well as a lower unit with four bedrooms, a kitchen, a living space, and a bathroom, with no internal connection between the two units—such as a stair case.

4. Pursuant to the definition of a “unit” in Rule 1 R on Sheet 8 of the water tariff, each rental unit of a multi-tenant rental property is to be considered a separate unit.

5. Applying the definition to the Brower structure, and considering that there are no guarantees that Complainant will not rent out the upper unit and the lower unit of the duplex separately, the upper unit and the lower unit **each must be charged** a customer flat rate.

6. Since the Browers have not reimbursed Branson Cedars Resort Utility Company, LLC for any of the money it incurred in hooking up the Brower structure so it can have water service, including a water meter, the Browers cannot use this as a basis for prevailing on the Complaint.

7. As no material fact is in dispute, Respondent is entitled to Summary Disposition in its favor.

8. As more fully set forth in Respondent’s Legal Memorandum in Support of Summary Disposition, filed contemporaneously herewith and incorporated herein by reference, there are no genuine issues of material fact and Respondent is entitled to Summary Disposition against Complainant as a matter of law.

WHERFORE, Respondent respectfully requests that its Motion for Summary Disposition be granted.

STATEMENT OF UNCONTROVERTED MATERIAL FACTS

1. Complainant, Michael Brower, is the owner of the structure with an address of 310 Heavy Timber Dr. Ridgedale, MO 65739 (“the Brower structure”). *See* Complaint at ¶1.

2. Respondent provides utility services to the Brower structure. *See* Complaint at ¶2.

3. Complainant admits that the Brower structure was originally built to be a duplex. *See* Complaint at ¶3.

4. The Brower structure at issue is a duplex, and the structure was constructed as such. *See* Affidavit of Michael Hyams, attached hereto as Exhibit 1, at ¶5.

5. James A. Merciel, Jr., P.E., Missouri Public Service Commission, informed Branson Cedars Resort Utility Company, LLC that the Brower structure should be considered two separate units in a correspondence sent on April 29, 2016. *See* Affidavit of Hyams at ¶6.

6. The Brower structure has no internal access (such as a staircase) between the upper unit and lower unit, which is a sure sign of an owner intending on having the ability to rent out the upper unit and lower unit separately. *See* Affidavit of Hyams at ¶7.

7. The upper unit of the Brower structure has four bedrooms, a kitchen, a living area, and a bathroom, while the lower unit of the Brower structure has four bedrooms, a kitchen, a living area, and a bathroom. *See* Affidavit of Hyams at ¶8.

8. The upper unit and lower unit of the Brower structure have separate entrances. *See* Affidavit of Hyams at ¶9.

9. The Brower structure was advertised that it could be rented out as two separate 4-bedroom units or one 8-bedroom unit. *See* Affidavit of Hyams at ¶10.

10. Complainant named the upper unit “Owls Nest Cabin.” *See* Affidavit of Hyams at ¶11.

11. Complainant named the lower unit “Fox Den Cabin.” *See* Affidavit of Hyams at ¶12.

12. Complainant named the combined units “Cedar Point Cabin.” *See Affidavit of Hyams at ¶13.*

13. Mr. Brower said he intended on renting out the upper unit and lower unit separately; it was not until Mr. Brower was told that he would have two utility bills did he assert that he would only rent out the Brower structure as one big unit. *See Affidavit of Hyams at ¶14.*

14. Although Complainant has alleged that there are no longer any intentions to rent out the lower unit and upper unit separately, Respondent is aware of no restrictions that would prevent Complainant from renting out the lower unit and upper unit separately after this Complaint has been adjudicated. *See Affidavit of Hyams at ¶15.*

15. Respondent has been told by individuals staying at the Brower structure that they were allowed to rent out half of the Brower structure. *See Affidavit of Hyams at ¶16.*

16. Mr. Brower has been hostile and unprofessional towards Branson Cedars Resort Utility Company, LLC regarding the billing of the Brower structure. *See Affidavit of Hyams at ¶17.*

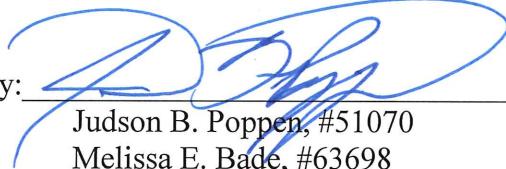
17. In an email dated October 16, 2015 between Branson Cedars Resort Utility Company, LLC and the Browers, the Browers were informed that the unit the Browers were constructing would need to have a meter installed. *See Affidavit of Hyams at ¶18.*

18. In the Complaint, the Browers state that they have “pledged” with Branson Cedars Resort Utility Company, LLC to install a meter to charge for usage, but the Browers have failed to pay anything to reimburse Branson Cedars Resort Utility Company, LLC for the money it incurred in hooking up the Brower structure so it can have water service. *See Affidavit of Hyams at ¶19.*

19. Branson Cedars Resort Utility Company, LLC paid a third party to hook up the Brower structure so it can have water service, but Complainant has refused to reimburse Respondent. *See* Affidavit of Hyams at ¶20.

WHERFORE, Respondent respectfully requests that its Motion for Summary Disposition be granted.

NEALE & NEWMAN, L.L.P.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 14th day of August, 2017:

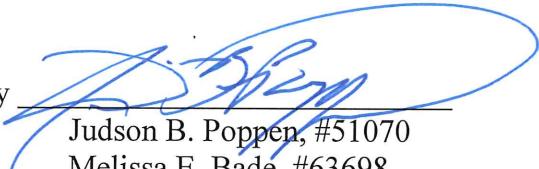
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