

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

MBP Development, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. SC-2005-0359
)	
Aqua Missouri, Inc.,)	
)	
Respondent.)	

**AQUA MISSOURI, INC.'S
ANSWER AND MOTION TO DISMISS**

Comes Now Aqua Source/CU Inc., d/b/a Aqua Missouri, Inc. ("Aqua Missouri"), pursuant to 4 CSR 240-2.070(8), and respectfully files its Answer to the Complaint of MBP Development, LLC ("Complainant") and its Motion To Dismiss. In support of its Answer and Motion To Dismiss, Aqua Missouri states as follows:

INTRODUCTION

In this case, the Complainant has alleged that Aqua Missouri has improperly charged Complainant for sewer service at "Summit Apartments", which allegedly consist of 2-three story buildings containing 59 separate apartments, in December 2004 and February 2005. During this period, Aqua Missouri has applied its schedule of rates for multi-family facilities of \$19.15 per unit, including vacant units, pursuant to its lawfully approved tariffs. Complainant has requested that Aqua Missouri be ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments and that Respondent be ordered to stop charging Complainant for sewer services for vacant apartments. For the reasons stated herein, the Complaint should be dismissed.

ANSWER

1. Aqua Missouri has insufficient information to admit or deny that the "Complainant is a Missouri limited liability company in good standing located at 10931 Evergreen Drive, Holts Summit, Missouri 65043" and therefore denies the allegation.

2. Aqua Missouri admits that "Aqua Missouri, Inc is located at 5402 Business Highway 50 West, Suite 3, Jefferson City, Missouri 65109 and is a public utility under the jurisdiction of the Public Service Commission of the State of Missouri."

3 a) Aqua Missouri has insufficient information to admit or deny the allegations contained in Paragraph 3 a) that "Complainant owns and operates two apartment buildings at 10931 and 10949 Evergreen Drive, Holts Summit, Missouri." Aqua Missouri admits that the apartments located at that address are known as "Summit Apartments".

3 b) Aqua Missouri has insufficient information to admit or deny the allegations contained in Paragraph 3 b) that "Summit Apartments consist of 2-three story buildings containing 59 separate apartments" and therefore denies the allegation.

3 c) Aqua Missouri admits that Complainant is currently being charged for sewer service on 59 units of the apartments, but has insufficient information to admit or deny whether the apartments are rented or vacant, whether the apartments are one bedroom or two bedroom, or what the "actual water usage" or "actual sewer service used by tenants" would be, and therefore denies the allegations.

3 d) Aqua Missouri denies all of the allegations in Paragraph 3 d).

3 e) Aqua Missouri admits that Complainant is to be charged for sewer service at the rates specified in the applicable tariffs on file with the Missouri Public Service

Commission. Aqua Missouri further admits that Complainant is liable for payment for all sewer charges for all sewer service, pursuant to Aqua Missouri's approved tariffs. Aqua Missouri further admits that "Under 9(k), Bills for Service, of the Rules and Regulations governing rendering service, Complainant shall be considered the customer receiving sewer service for all rented or leased multi-family dwellings."

4. Aqua Missouri denies the allegations in Paragraph 4.

5. Aqua Missouri has insufficient information to admit or deny that Complainant had 11 renters in January 2005, and therefore denies the allegation. Aqua Missouri admits that Complainant was charged over One Thousand Two Hundred Dollars (\$1,200.00) for sewer services during the month of January 2005. Aqua Missouri denies that these are excessive charges and that any of Aqua Missouri's business practices have caused an unfair financial burden upon Complainant. Aqua Missouri has insufficient information regarding Complainant's financial situation, and therefore denies the remaining of the allegations in Paragraph 5.

6. Aqua Missouri admits that Ken Marema went to its local office and that Mr. Marema has spoken to various Aqua Missouri representatives, but has insufficient information to admit or deny that he has been contradictory responses by Aqua Missouri representatives regarding whether Complainant is supposed to be charged for sewer service for vacant units, and therefore Aqua Missouri denies the allegations. Aqua Missouri admits that it has provided notice to tenants on Complainant's premises, pursuant to its tariffs, that sewer service was being discontinued. However, Aqua Missouri denies the remaining allegations in Paragraph 6.

5. Aqua Missouri affirmatively states that copies of all pleadings, orders and other filings in this docket should be served upon the following counsel for Aqua Missouri:

James M. Fischer
FISCHER & DORITY, P.C.
101 Madison, Suite 400
Jefferson City, Missouri 65101
Telephone: (573) 636-6758
email: jfischerpc@aol.com

and

with a copy to:

Tena Hale-Rush
Aqua Missouri, Inc.
5402 Business Highway 50 West—Suite 3
Jefferson City, Missouri 65109

AFFIRMATIVE DEFENSES

Comes Now Respondent Aqua Missouri, Inc. ("Aqua Missouri"), and for its affirmative defenses to the Complaint of MBP Development ("Complainant"), hereby states as follows:

1. Complainant has failed to state a claim upon which relief can be granted.
2. Complainant has failed to comply with 4 CSR 240-2.070 which requires that the Complainant file a Complaint which sets forth "any act or thing done or omitted to be done by any person, corporation or public utility, including any rule or charge established or fixed by or for any person, corporation or public utility, in violation or claimed to be in violation of any provision of law or any rule or order of the commission."

3. Complainant has failed to comply with Section 386.390(1) and 4 CSR 240-2.070(3) which provides that "no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president of chairman of the board of alderman or a majority of the council or other legislative body of any town, village, county or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective purchasers of . . . sewer . . . service as provided by law."

4. The Complaint should be dismissed since Respondent's rates and tariffs are prima facie lawful since Section 386.270 RSMo provides: "All rates, tolls, charges, schedules a joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter."

5. The Complaint should be dismissed because the Complaint is an unlawful collateral attack upon the Commission's various orders approving Respondent's tariffs in violation of Section 386.550 RSMo which states: "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive."

6. The Complaint should be dismissed because it requests that Respondent be "ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments and that Respondent be ordered to stop charging Complainant for sewer services for vacant apartments" (*emphasis added*)

which is relief that may not be granted since it would represent a "special rate, rebate, drawback or other device or method," for sewer service in violation of Section 393.130(2) RSMo.

7. The Complaint should be dismissed because it requests that Respondent be "ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments and that Respondent be ordered to stop charging Complainant for sewer services for vacant apartments" which is relief that may not be granted since it would represent an "undue or unreasonable preference or advantage" to Complainant for sewer service in violation of Section 393.130(3) RSMo.

8. The Complaint should be dismissed because it requests that Respondent be "ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments and that Respondent be ordered to stop charging Complainant for sewer services for vacant apartments" which is relief that may not be granted since it would represent "single issue" ratemaking in violation of law since rates would not be based upon all relevant factors. *State ex rel. UCCM v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979).

9. The Complaint should be dismissed since Aqua Missouri has no ability to base its sewer charges to Complainant on actual water and sewage service usage since has no ability to quantify or otherwise meter Complainant's water service since Aqua Missouri does not provide Complainant with water service, and its sewage service is not a metered service.

10. As required by 4 CSR 240-2.070(8), Aqua Missouri further states the following facts in its defense:

a. On March 31, 2004, Kenneth E. Marema completed an Application For Service for the Summit Apartments, LLC, Apartments 1-30, inclusive, located at 10931 Evergreen Drive, Holts Summit, Missouri 65042. Also on March 31, 2004, Kenneth E. Marema completed an Application For Service for the Summit Apartments, LLC, Apartments 31-60, inclusive, located at 10949 Evergreen Drive, Holts Summit, Missouri 65043. (*See* Exhibit 1 attached) Kenneth E. Marema indicated upon both Applications For Service that he was the "owner" of the Summit Apartments, LLC, and that "I hereby make application for water/sewer service to Aqua Missouri at the address described above and hereby agree to pay for this service in accordance with rates of the company which are not, or later may be file with, and approved by the proper Regulatory Authorities. By executing this application I hereby agree that the service shall be furnished to me only upon compliance of all rules, regulations and policies of the company now on file and approved by the Missouri Public Service Commission or its successors." (*Id.*)

b. Pursuant to the Applications For Service submitted by Kenneth E. Marema on behalf of Summit Apartments, LLC, Aqua Missouri began providing sewer service to Summit Apartments, Apartments 1-60, inclusive, immediately on March 31, 2004 in accordance with its duly approved tariffs.

c. By March 3, 2005, the Aqua Missouri account for Summit Apartments, LLC had become in the arrears in the amount of \$13,353.39.

d. On March 3, 2005, Kenneth E. Marema (Applicant) and Jennifer Lee (Company Representative) entered into a Deferred Payment Agreement on behalf of the customer, Summit Apartments, 10931 Evergreen Drive, Holts Summit, MO 65043, in which they agreed to make an initial payment of \$4,451.13 on March 3, 2005, in addition to the normal monthly billing, and two subsequent payments of \$5,389.48 no later than April 15, 2005, and May 15, 2005, to retire the arrears due Aqua Missouri, Inc. In addition, they agreed to pay all future bills for utility service by the due date. (*See* Exhibit 2 attached). Kenneth E. Marema signed the Deferred Payment Agreement as a representative of MBP Development, LLC D/B/A Summit Apartments.

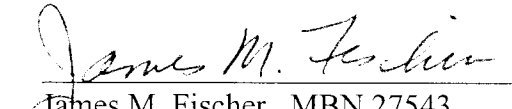
e. Aqua Missouri received an initial payment of \$4,451.13 on March 3, 2005. However, Aqua Missouri did not receive the two subsequent payments of \$5,389.48, as agreed to in the Deferred Payment Agreement. As of the date of the filing of this Answer, Aqua Missouri has not received the subsequent payments and has not received payment for current services that are due and owing. At the present time, \$10,382.45 remains outstanding on the account of Summit Apartments.

PRAYER FOR RELIEF

Wherefore, having fully answered, Respondent respectfully requests the Commission to dismiss the Complaint, and for such other and further relief as the Commission deems necessary and just in the circumstances.

Dated this 4th day of May, 2005.

Respectfully submitted,


James M. Fischer MBN 27543
FISCHER & DORITY, P.C.
101 Madison, Suite 400
Jefferson City, Missouri 65101
Telephone: (573) 636-6758
Email: jfischerpc@aol.com

Attorneys for
Aqua Missouri, Inc.

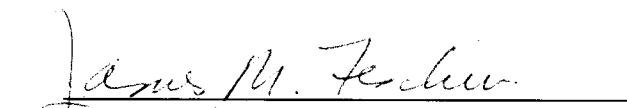
CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Answer and Motion To Dismiss has been hand-delivered, emailed or mailed, First Class mail, postage prepaid, this 4th day of May, 2005, to:

Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
Jefferson City, MO 65102

Rodney J. Stevens
Jones, Schneider and Bartlett, LLC
11 North Seventh Street
Columbia, Missouri 65201


James M. Fischer

Application For Service

Summit Apartments, LLC

March 31, 2004

Exhibit 1

AQUA

Missouri_{SM}

P.O. Box 7017
Jefferson City, MO 65102

800-624-5252 (MO only)
573-634-2699
573-635-2157 (fax)

Physically checked ID



Account Number:

APPLICATION FOR SERVICE

OFFICE USE ONLY

CUSTOMER INFORMATION:

Customer Name: SCHMIDT APARTMENTS, LLC
Service Address: 10931 EVERGREEN DR APT. 1-3C, HOLTS SPRING, MO 65043
Mailing Address: SAME APT 5
Previous Address: _____
Home Telephone Number: 573-896-8313 Date of Birth: _____
Social Security Number: _____ Drivers License Number: _____
Employer: _____ Work Telephone Number: 573-424-9685

SPOUSE'S INFORMATION:

Spouse's Name: _____ Date of Birth: _____
Social Security Number: _____ Drivers License Number: _____
Employer: _____ Work Telephone Number: _____

NEAREST RELATIVE OR NEIGHBOR WITH A PHONE:

Name: _____
Phone Number: _____ Relationship: _____

SERVICE INFORMATION:

Previous service with our company: NO YES
Location: _____
Date & Type: MARCH 1, 2004, SEWER SERVICE

Date Service is to Begin: _____ Type of Service: _____

Are you the: OWNER BUILDER RENTER

If you are the Renter, you must give us the Owner's:

Name: _____
Address: _____
Telephone number: _____

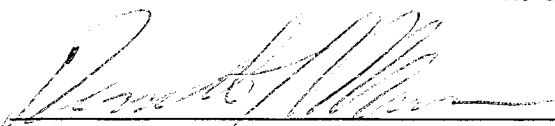
If this is a new construction, you must give us the Builder's:

Name: _____
Address: _____
Telephone number: _____

KINDLY READ AND SIGN THE SERVICE AGREEMENT

I hereby make application for water/sewer service to Aqua Missouri at the address described above and hereby agree to pay for this service in accordance with rates of the company which are now, or later may be filed with, and approved by the proper Regulatory Authorities. By executing this application I hereby agree that the service shall be furnished to me only upon compliance of all rules, regulations and policies of the company now on file and hereafter filed and approved by the Missouri Public Service Commission or its successors.

Signature



Date

3/2/04

APPLICATION FOR SERVICE

OFFICE USE ONLY

CUSTOMER INFORMATION:

Customer Name: SENIOR APARTMENTS, LLC
Service Address: 10949 ~~SE~~ EVERGREEN DR. APT. 31-60 MOBILE AL 36604
Mailing Address: 10931 EVERGREEN DR. APT 5, MOBILE SUMMIT, AL 36604
Previous Address: _____
Home Telephone Number: 573-896-8313 Date of Birth: _____
Social Security Number: _____ Drivers License Number: _____
Employer: _____ Work Telephone Number: 573-424-7685

SPOUSE'S INFORMATION:

Spouse's Name: _____ Date of Birth: _____
Social Security Number: _____ Drivers License Number: _____
Employer: _____ Work Telephone Number: _____

NEAREST RELATIVE OR NEIGHBOR WITH A PHONE:

Name: _____
Phone Number: ~~222~~ Relationship: _____

SERVICE INFORMATION:

Previous service with our company: NO YES
Location: _____
Date & Type: MARCH 1, 2004 SEWER SERVICE

Date Service is to Begin: _____ Type of Service: _____

Are you the: OWNER BUILDER RENTER

If you are the Renter, you must give us the Owner's:

Name: _____
Address: _____
Telephone number: _____

If this is a new construction, you must give us the Builder's:

Name: _____
Address: _____
Telephone number: _____

KINDLY READ AND SIGN THE SERVICE AGREEMENT

I hereby make application for water/sewer service to Aqua Missouri at the address described above and hereby agree to pay for this service in accordance with rates of the company which are now, or later may be filed with, and approved by the proper Regulatory Authorities. By executing this application I hereby agree that the service shall be furnished to me only upon compliance of all rules, regulations and policies of the company now on file and hereafter filed and approved by the Missouri Public Service Commission or its successors.

Signature [Signature] Date 3/31/04

Deferred Payment Agreement

Summit Apartments

March 3, 2005

Exhibit 2



P.O. Box 7017
Jefferson City, MO 65102
5402 Bus. Hwy. 50 W. Suite 3
Jefferson City, MO 65109

800-624-5252 (MO only)
573-634-2699
573-635-2157 (fax)

Customer SUMMIT APARTMENTS
Address 10931 EVERGREEN DRIVE
HOLTS SUMMIT, MO 65043
Account Number _____

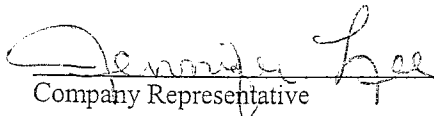
DEFERRED PAYMENT AGREEMENT

The Applicant agrees to the following terms:


- A. To make an initial Payment of \$ \$4451.13 to be received by Aqua Missouri, Inc. no later than MARCH 3, 2005. This payment is in addition to your normal monthly billing and is not in place of that amount.
- B. To pay all future bills for utility service by the due date.
- C. To make payments in the amount of \$ \$5389.48 to be received by Aqua Missouri, Inc. no later than the 15th day for the month beginning APRIL and ending MAY, to retire the arrears due Aqua Missouri, Inc.

If the applicant shall default upon any payment due under the Deferred Payment Agreement, the utility shall have the right to discontinue service.

Please acknowledge receipt and understanding of the Agreement by signing and returning the copy immediately in the enclosed envelope.


Company Representative

3-3-05
Date


Applicant Signature

3/3/05
Date

MOP DEVELOPMENT, LLC/DBA
SUMMIT APARTMENTS

PAYMENT MADE UNDER PROTEST.

MBP DEVELOPMENT, L.L.C.
SUMMIT APARTMENT ACCOUNT
P.O. BOX 10225
COLUMBIA, MO 65205

80-712/815
0100127401

No. 1171

DATE 3/3/05

Pay to
the order of

James Messer

\$4,457¹³/₁₀₀

Four thousand four hundred fifty-seven and 13/100

DOLLARS



Security Features
Including
Details on Back

Sun Security Bank

PAYMENT MADE
BY DEPOSIT

[Signature]

⑆081507124⑆0100127401⑆ 1171

ANTIQUE WATERFOLIO