

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE HARBOR AT HARRODS CREEK	)	
CONDOMINIUM ASSOCIATION	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 2000-379
	)	
FOURTH AVENUE CORPORATION - LONG	)	
CORPORATION, JOINT VENTURE D/B/A SHADOW	)	
WOOD SUBDIVISION SEWER SERVICE	)	
	)	
DEFENDANT	)	

O R D E R

On July 28, 2000, The Harbor at Harrods Creek Condominium Association (“The Harbor”), through Craig Oliver, its Treasurer, filed a formal complaint against Fourth Avenue Corporation – Long Corporation, Joint Venture d/b/a Shadow Wood Subdivision Sewer Service (“Fourth Avenue”). The Harbor is a non-profit, Kentucky corporation (identification number 0157714) authorized to do business in Kentucky since June 1981. Fourth Avenue is a Kentucky corporation (identification number 0114621) authorized by the Office of the Secretary of State of the Commonwealth of Kentucky to do business in Kentucky since April 1914. Fourth Avenue is a utility located in Jefferson County, Kentucky that provides sewer service to 248 customers. Fourth Avenue is subject to Commission jurisdiction pursuant to KRS 278.040.

In its complaint, The Harbor alleges that it has been and is being incorrectly billed for water services provided by the Louisville Water Company to a waste treatment plant owned by Fourth Avenue. The total amount allegedly over-billed for the past 8 years is \$5,684.08. The Harbor also alleges that it has been paying excessive drainage costs to Metropolitan Sewer District (“MSD”) of Louisville because Fourth Avenue, when it transferred management responsibility to The Harbor 13 years ago, failed to inform The Harbor that it should conduct a survey that could reduce the drainage costs. The Harbor estimates that it has been over-billed approximately \$60,000 for drainage costs. Finally, The Harbor alleges that Fourth Avenue is over-billing it for sewer services.

Fourth Avenue’s rates are based upon the number of bedrooms per unit. Three-bedroom units are charged at \$26.50 per month and two-bedroom units are charged at \$19.90 per month. The Harbor states that it contains 144 two-bedroom units and 24 three-bedroom units, while Fourth Avenue is billing The Harbor for 77 two-bedroom units and 91 three-bedroom units. The Harbor claims that because of this discrepancy in the types of units in the complex, Fourth Avenue has over-billed The Harbor \$68,983.20 during the past 13 years.

Fourth Avenue filed its answer, citing numerous defenses, on August 18, 2000. In its answer, Fourth Avenue first addresses The Harbor’s allegation that Fourth Avenue failed to inform The Harbor that The Harbor was paying for water service for a waste treatment plant. Fourth Avenue argues that it is not a utility with respect to the provision of water; the Commission has no jurisdiction over that allegation; there was no overcharge for water service; and that The Harbor has failed to establish the amount of any alleged overcharge paid by the members, collectively or individually.

In addressing The Harbor's allegation that Fourth Avenue should have informed The Harbor that a survey should be conducted, Fourth Avenue denies that any survey was necessary or required. It also denies that it was under any duty to conduct such a survey, to obtain credits for The Harbor, or to request a reduction in rates from MSD. Fourth Avenue also argues that Fourth Avenue is not a utility with respect to drainage costs and, therefore, that the Commission has no jurisdiction over this allegation. Fourth Avenue next denies over-billing and asserts that The Harbor has not established the amount of any alleged overcharge paid by The Harbor's members.

Fourth Avenue also states that Complainant's and Craig Oliver's representation of The Harbor and individual property owners before the Commission constitutes the unauthorized practice of law in violation of KRS 424.130 and Supreme Court Rule 3.020. Upon independent investigation, the Commission has determined that Mr. Oliver is not licensed to practice law in the Commonwealth of Kentucky.

The Commission shall address each of these issues in turn.

First, Fourth Avenue is correct in stating that only an attorney may represent the Complainant herein. No person may engage in the practice of law in Kentucky without first obtaining a license to practice. SCR 2.100. The practice of law is "any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services." Kentucky Supreme Court Rule 3.020. The practice of law includes, as Kentucky's highest court held in Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967), the representation of a corporation before a state administrative agency.

This Commission, accordingly, requires that those representing the interests of others before us be licensed attorneys. In a previous case, the Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.

Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. P.S.C. June 15, 1981) at 2.

Commission regulations concerning formal complaints incorporate, at least in part, these sentiments. Administrative Regulation 807 KAR 5:001, Section 12(2), states in part: “Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address.” The regulation requires that a corporation or other organization, from the outset of a complaint proceeding, be represented by an attorney. The Harbor is a self-defined “association” and as such must be represented by an attorney in proceedings before the Commission.

Fourth Avenue also is correct in its assertion that the Commission lacks jurisdiction over the issues of water costs and drainage costs in this case. These portions of The Harbor’s complaint do not concern a dispute concerning utility service provided to The Harbor by Fourth Avenue. Fourth Avenue is not assessing the drainage costs; MSD, an entity over which the Commission has no jurisdiction, is.

IT IS THEREFORE ORDERED that:

1. Within 10 days of the date of this Order, an attorney shall enter an appearance in this case on behalf of The Harbor. If no such appearance is entered in the record, the complaint will be dismissed without prejudice.

2. The portions of The Harbor's complaint concerning water costs and drainage costs are hereby dismissed.

3. An informal conference is scheduled for November 9, 2000 at 1:00 p.m. Eastern Standard Time, in Conference Room 1 of the Commission's offices located at 211 Sower Boulevard, Frankfort Kentucky 40601. The purpose of the informal conference shall be to consider the possibility of settlement, the simplification of issues, the adoption of a procedural order and any other matters which may aid in the handling of the disposition of this case.

Done at Frankfort, Kentucky, this 30<sup>th</sup> day of October, 2000.

By the Commission

ATTEST:

  
Executive Director