



THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@thomaslonglaw.com

September 6, 2012

Via E-Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

In re: Docket No. C-2012-2314036
Chateau Woods, Inc. v. United Water Pennsylvania Inc.

Dear Secretary Chiavetta:

We are counsel for United Water Pennsylvania Inc. in the above matter and are enclosing for filing the Company's Motion for Judgment on the Pleadings. A copy of the Motion is being served in accordance with the certificate of service attached to it.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable David A. Salapa (w/encl.)
John D. Hollenbach (w/encl.)

120906-Chiavetta (Motion for Judgment on Pleadings).wpd

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CHATEAU WOODS, INC.,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2314036
	:	
UNITED WATER PENNSYLVANIA	:	
INC.,	:	
Respondent	:	

MOTION OF UNITED WATER PENNSYLVANIA INC.
FOR JUDGMENT ON THE PLEADINGS

*Pursuant to 52 Pa. Code § 5.102, Notice Is Hereby Given
That A Responsive Pleading Shall Be Filed
Within 20 Days of Service*

AND NOW, comes United Water Pennsylvania Inc. (“UWPA”), by its attorneys, and, pursuant to 52 Pa. Code § 5.102, moves for judgment on the pleadings. In support thereof, UWPA submits as follows:

1. This proceeding concerns the Complaint of a developer, Chateau Woods, Inc., (“Complainant”) asking the Public Utility Commission (“Commission”) to modify a Water Main Extension Agreement For A Non-Bona Fide Customer (“Agreement”) and to direct UWPA to return monies of Complainant allegedly held on deposit by UWPA.
2. The Complaint was filed on or about June 27, 2012. UWPA filed an Answer with New Matter on August 6, 2012. Complainant filed an Answer to New Matter on August 28, 2012.¹

¹ Complainant’s Answer to New Matter is attached to this Motion as Attachment A.

3. The water main extension sought by Complainant was not economically feasible for UWPA, and Complainant and UWPA entered into the aforementioned Agreement.

4. The Agreement is fully consistent with UWPA's tariff as averred by UWPA in Paragraph 37 of its New Matter and admitted by Complainant in Paragraph 37 of its Answer to New Matter.

5. No basis exists for the Commission to modify the Agreement. Section 1303 of the Public Utility Code, 66 Pa. C.S. § 1303, requires a utility to adhere to its tariff. A utility's tariff, moreover, has the force and effect of law and is binding on the customer as well as the utility. *Pennsylvania Electric Co. v. Pa. P.U.C.*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995).

6. There, moreover, is no genuine issue as to any material fact.

7. Paragraph First of the Agreement required Complainant to pay UWPA for construction overhead which was originally estimated to be \$9,792.

8. Complainant deposited \$9,792 with UWPA for estimated construction overhead -- an initial deposit of \$1,000 followed by a second deposit of \$8,792 on July 25, 2000. Complainant's check No. 1093 in the amount of \$8,792 is attached as Attachment B.

9. The construction overhead as finally determined based on actual costs was \$7,082. UWPA refunded the difference of \$2,710.00 to Complainant on or about December 2000 consistent with Paragraph First (2).C of the Agreement.

10. UWPA, moreover, paid Complainant Per Customer Refund Amounts totaling \$6,782 over the agreed upon ten (10) year period ending in July 2010.

11. Complainant has no facts which would establish that the deposit circumstances are other than the foregoing. In its Answer to New Matter, Complainant demanded proof from UWPA that Complainant did not pay \$46,620 to UWPA.² Proof is set forth above.

12. Complainant, acting essentially as the general contractor for the main extension required for its real estate development, would have paid the contractors it engaged to construct the main, fire hydrants and services. It did not pay UWPA for this construction work.

13. The law is clear and there is no genuine issue as to any material fact. The Complaint, accordingly, should be dismissed on the basis of the pleadings and without hearing.

WHEREFORE United Water of Pennsylvania Inc. requests that the Public Utility Commission grant this Motion for Judgment on the Pleadings.

Respectfully submitted,

By 

Thomas T. Niesen, Esquire
PA Attorney ID No. 31379
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

*Attorneys for
United Water Pennsylvania Inc.*

Dated: September 6, 2012

UW Motion for Judgment on the Pleadings (Chateau Woods).wpd

² Complainant, not UWPA, has the burden to prove to whom Complainant made the payment for which it now seeks refund. Complainant, nevertheless, did not pay \$46,620 to UWPA.

ATTACHMENT A

JACOBSON, JULIUS & McPARTLAND

ATTORNEYS & COUNSELORS AT LAW

LESLIE DAVID JACOBSON
CHAD J. JULIUS
SCOTT McPARTLAND

8150 DERRY STREET, SUITE A
HARRISBURG, PA 17111-5260
Phone: (717) 909-5858 Fax: (717) 909-7788

August 28, 2012

Thomas T. Niesen, Esq.
Thomas, Long, Niesen & Kennard
P.O. Box 9500
Harrisburg, PA 17108

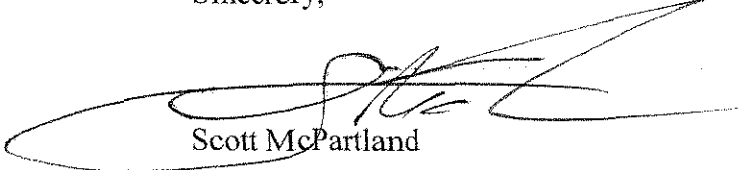
RE: Chateau Woods, Inc. v. United Water PA
No. C-2012-2314036

Dear Attorney Niesen:

Please find enclosed a copy of Complainant's Answer to Respondent's New Matter in the above listed matter.

If after reviewing this correspondence you should have any questions or comments, please feel free to contact me at your convenience.

Sincerely,



Scott McPartland

CHATEAU WOODS, INC. : BEFORE THE PUBLIC UTILITY
Complainant, : COMMISSION
 :
vs. : NO.: C-2012-2314036
 :
UNITED WATER PENNSYLVANIA :
Respondent :

COMPLAINANT'S ANSWER TO RESPONDENT'S NEW MATTER

AND NOW COMES, Chateau Woods, Inc., Plaintiff, by and through its attorneys, Jacobson, Julius & McPartland, who hereby files the following Complaint against United Water Pennsylvania, Defendant, and in support thereof states the following:

NEW MATTER

34. Admitted.

35. Admitted.

36. Complainant lacks knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 36; therefore, they are denied.

37. Admitted in part and denied in part. It is admitted that the Agreement between Complainant and Respondent is fully consistent with Respondent's Tariff. It is denied that the Agreement and/or the Tariff are reasonable, fair or legal.

38. Admitted.

39. Admitted in part and denied in part. It is admitted that Complainant paid Respondent \$7,082.00 for construction overhead. It is denied that these are the only funds Complainant provided to Respondent for this project.

40. Admitted.

41. Admitted.

42. Denied. It is denied that Complainant is entitled to no additional Per Customer Refund Amounts under the terms of the Agreement.

43. Admitted.

44. Denied. It is denied that Complainant paid the \$46,620.00 to the contractors engaged by Complainant to construct and install the main extension, fire hydrants and services and strict proof to the contrary is demanded.

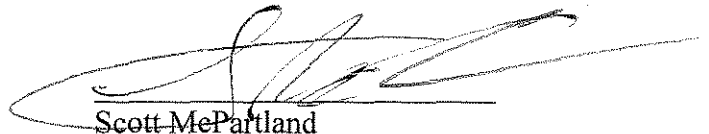
45. Denied. It is denied that Complainant did not pay the \$46,620.00 to Respondent and strict proof to the contrary is demanded.

46. Denied. It is denied that the Agreement is just and reasonable, or that it is consistent with Respondent's Tariff, the Public Utility Code or applicable regulatory principles.

47. Paragraph 47 contains legal assertions or conclusions of law to which no responsive pleading is required.

WHEREFORE, Complainant respectfully requests this Commission declare the July 25, 2000 Contract modified so that the balance of Complainant's deposit shall be refunded, and grant such other relief deemed just and appropriate.

Respectfully Submitted,



Scott McPartland

Attorney I.D. No.: 209669

Leslie David Jacobson

Attorney I.D. No.: 52673

Jacobson, Julius & McPartland

8150 Derry Street, Ste. A

Harrisburg, PA 17111

717.909.5858

FAX: 717.909.7788

Dated: 08/28/2012

CHATEAU WOODS, INC. : BEFORE THE PUBLIC UTILITY
Complainant, : COMMISSION
 :
vs. : NO.: C-2012-2314036
 :
UNITED WATER PENNSYLVANIA :
Respondent :

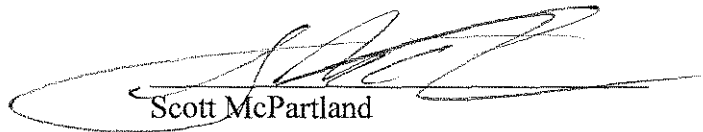
CERTIFICATE OF SERVICE

I, Scott McPartland, do hereby certify that a copy of the foregoing document was this day served upon the following person in the manner indicated below:

FIRST CLASS MAIL

Thomas T. Niesen, Esq.
Thomas, Long, Niesen & Kennard
P.O. Box 9500
Harrisburg, PA 17108

DATED: August 28, 2012


Scott McPartland

ATTACHMENT B

1093

CHATEAU WOODS INC.

8150 DERRY STREET
HARRISBURG, PA 17111

DATE

7/25/00

60-880-313

PAY
TO THE
ORDER OF

United Wates PA.

\$8,792.⁰⁰/₁₀₀

Eight thousand seven hundred ninety two

DOLLARS

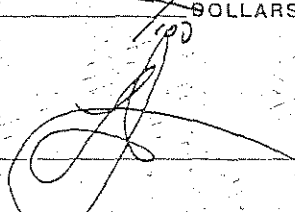
Security Features
Included
Details on Back

MID PENN BANK
HARRISBURG, PA 17111

FOR

CONTRACT - *with lines*

MP



⑈001093⑈ ⑆031308807⑆ 650402⑈ 1⑈

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION


CHATEAU WOODS, INC.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2314036
	:	
UNITED WATER PENNSYLVANIA	:	
INC.,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of September 2012, served a true and correct copy of the foregoing Motion for Judgment on the Pleadings, upon the persons and in the manner set forth below:

FIRST CLASS MAIL, POSTAGE PREPAID

Scott McPartland, Esquire
Leslie David Jacobson, Esquire
Jacobson, Julius & McPartland
8150 Derry Street, Ste. A
Harrisburg, PA 17111



Thomas T. Niesen
PA Attorney ID No. 31379