

EXHIBIT B

Logen, Lynn

From: Logen, Lynn
Sent: Thursday, April 09, 2009 1:28 PM
To: 'La Monica, Rich (ATG)'; 'Cupp, John (UTC)'
Subject: FW: SALMON SHORES / BINKLEY
Attachments: Follow-up investigation report.docx

I have made some suggested changes to the attached document using the "Track Changes" tool in Word. If you cannot see the changes let me know and I will format the changes differently. I also inserted a couple of comments to explain a couple of changes.

Please let me know if you have any questions.

Thanks.

Lynn

From: La Monica, Rich (ATG) [mailto:RichL@ATG.WA.GOV]
Sent: Thursday, April 09, 2009 8:15 AM
To: Cupp, John (UTC); Logen, Lynn
Cc: Bernstein, Jake (ATG); Caldwell, Cathie (ATG); Harper, Mary (ATG); Phillips, Amanda (ATG); Rodriguez, Toy (ATG)
Subject: SALMON SHORES / BINKLEY

Hello John and Lynn,

First of all let me thank you for the time and assistance you both have provided to this Office in regards to the above referenced matter. It is always a pleasure to work with individuals who not only possess expert knowledge in their respective fields but are able to communicate it to laymen such as myself in a professional manner.

To this end I have completed what we would call a follow-up investigative report. This report which is attached to this e-mail, will accompany my original investigative report. In an effort to ensure that I have articulated the information that was provided / agreed upon during our tele-conference, I am submitting it to both of you with a view to obtain any comment / corrections that either of you feel should be included. I have not included all the attachments, but I believe the content of the report should suffice. However, if you require the attachments let me know and I will arrange for them to be included in a pdf file attached to the report.

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When you have reviewed the document please feel free to send me any comments / corrections electronically.

I hope you both have a great week-end and look forward to meeting you both one day soon.

Regards,

Richard La MONICA

Office of Attorney General of Washington

10/5/2009

Investigations – *Seattle*

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8 March 2009

CONSUMER PROTECTION DIVISION – MHU
COMPLIANCE INVESTIGATIVE REPORT FOLLOW-UP

MATTER #:	316894
MATTER NAME:	SALMON SHORES / BINKLEY
INVESTIGATOR:	R.S. La MONICA

ALLEGED VIOLATIONS:

1. Section 59.20.070(6) Prohibited acts by landlord RCW 59.20 *Manufactured / mobile home land-lord tenant Act*
2. Section 59.20.130(1) Duties of a landlord RCW 59.20 *Manufactured / mobile home land-lord tenant Act*

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OVERVIEW OF INVESTIGATION:

OVERVIEW OF ALLEGATIONS

This follow-up compliance investigation stems from a complaint lodged on 11 May 2008 with the Washington State Attorney Generals Office Manufactured Housing Dispute Resolution Program [AGOMHU] by Tenant, Mr. Kenneth BINKLEY [BINKLEY] who resides at space 33B SALMON SHORES [SALMON SHORES] RV Park located at 5446 Black Lake Blvd SW Olympia WA 98512-2262

The complainant alleged that the landlord was charging utility fees in excess actual rates [RCW 59.20.070(6)].

The investigation also identified an additional violation applicable to this matter:

- A breach of 59.20.130(1) Duties of a landlord may apply. Specifically, in that a mark-up in the per kilowatt-hour rate of utility fees constitutes a resale of utilities in violation of the Washington State Utilities and Transportation Commission rules pursuant to WAC 480-100-108.

OUTLINE OF INITIAL INVESTIGATION FACTS

The initial investigation was completed and submitted to AAG Jake BERNSTEIN on 26 February 2009. The findings of the investigation detailed and supported by exhibits referred to in the final investigative report were used to support the following conclusions:

- There was strong evidence to support the fact that SALMON SHORES was not compliant with RCW 59.20.070(6) Prohibited acts by a landlord with respect to allegations that the landlord had charged a utility fee to the tenants in excess of the actual utility fee from February 2008 up to and inclusive of January 2009.
- There was strong evidence to support the fact that SALMON SHORES was not compliant with RCW 59.20.130(1) Prohibited acts by a landlord in that they were not authorized to re-sell electricity at a rate other than the billable rate which was not \$0.16 cents per kilowatt hour.

OVERVIEW OF INITIAL DISPUTE RESOLUTION PROCESS:

OUTLINE OF INITIAL DISPUTE RESOLUTION FACTS

As part of the Dispute Resolution process, this Office drafted a Settlement Agreement whereby SALMON SHORES was to pay restitution to the complainant and engage in actions with PSE with a view to identify and implement a utility billing rate compliant with the PSE tariff.

On 25 February 2009, SALMON SHORES counsel, John WOODRING drafted a proposed response to the initial Settlement Agreement. [See Exhibit 1]

On same date, La MONICA received an e-mail from PSE Tariff Consultant Lynn LOGEN advising that SALMON SHORES was still not in compliance with the tariff agreement. [See Exhibit 2]

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On 3 March 2009 AAG BERNSTEIN advised WOODRING that the proposed draft he had sent could not be accepted by the AGO due to information obtained that the billing protocols implemented by SALMON SHORES was still not in compliance. [See Exhibit 3]

On 26 March 2009, WOODRING sent a letter to the AGO disputing that SALMON SHORES was not compliant with the PSE tariff. [See Exhibit 4] He attached an e-mail from LOGEN and indicated that based upon his interpretation of the e-mail, that SALMON SHORES was in fact compliant. [See Exhibit 5]

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A review of said e-mail however, could not support this position.

On 3 April 2009, La MONICA received an e-mail from LOGEN advising that he was still working with SALMON SHORES regarding the billing procedures. [See Exhibit 6] An attached e-mail stream including an e-mail from LOGEN to SALMON SHORES dated 2 April 2009 confirmed that although he agreed with their methodology, the billing rate was still not correct and that SALMON SHORES was in fact overcharging tenants an amount of \$820.98 more that

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what PSE charged in March 2009. The 2 April 2009 email also included a FAX from SALMON SHORES to LOGEN dated 31 March 2009. [See Exhibit 7]

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On 7 April 2009, complainant BINKLEY sent an e-mail to La MONICA with additional information specific to the manner in which SALMON SHORES was continuing to bill tenants utility charges. [See Exhibit 8] In addition to the e-mail, BINKLEY attached the following documents:

- Invoice for 04-01-09 to BINKLEY [See Exhibit 9]
- Invoice for 04-01-09 to METTLER [See Exhibit 10]
- Billing statement issued by SALMON SHORES to BINKLEY for 04-01-09 [See Exhibit 11]

A review of said documents confirmed the following:

- That BINKLEY had been charged with \$158.40 as a 'Balance forward' which was based upon the amounts SALMON SHORES allege he was in 'rears' pursuant to his miscalculation of utility charges
- That an Electric Availability Charge [EAC] was included in his utility charge in the amount of \$21.86
- That an Electric Availability Charge [EAC] was included in METTLER's utility charge in the amount of \$2.71

As a result, La MONICA contacted both LOGEN and John CUPP of the UTC with a view to conduct a telephone conference intended to identify the following:

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- a. Determine whether SALMON SHORES Billing protocols regarding utility billing to tenants is compliant with tariff and UTC
- b. Determine whether tenant BINKLEY issue of concern as per e-mail 7 April 2009 requires corrective action
- c. Confirm whether BINKLEY in calculating his billable rate is accurate and in line with what SALMON SHORES should be billing

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FOLLOW-UP INVESTIGATION:

OUTLINE OF TELEPHONE CONFERENCE WITH UTC AND PSE FACTS

On 8 April 2009 at 10:00 hours, La MONICA facilitated a telephone conference between the AGO, John CUPP of the UTC and Lynn LOGEN of PSE. The following matters were resolved:

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- **SALMON SHORES CALCULATION OF UTILITY CHARGE RATE:**

Based upon the 2 April 2009 e-mail sent by LOGEN to SALMON SHORES, he advised that the billing rate calculation methodology SALMON SHORES proposed "was fine." However, the March 2009 PSE Billed Total of \$4655.84 was \$820.98 more than what he [LOGEN] showed PSE billed to SALMON SHORES. Additionally, that the spread sheet [attached] also calculated the average rate per kWh and that the average rate per kWh was slightly higher. LOGEN explained that there was not an increase in rates in March,

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rather the opposite a new rate credit was added. LOGEN also explained that the reason for the increase in the average rate per kWh was that there were fewer kWh in the March bills over which the monthly basic charge was spread.

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Thus, although the proposed methodology used by SALMON SHORES to calculate the billable rate was fine, the manner in which it was applied was in fact incorrect.

The conclusion agreed to by PSE, UTC and the AGO was the following:

1. The proposed methodology used by SALMON SHORES in the 31 March 2009 FAX to LOGEN was appropriate provided that the correct numbers were used,
2. The rate per kilowatt-hour (kWh) used by SALMON SHORES to calculate the amount billed to tenants of SALMON SHORES cannot be greater than the average per kilowatt-hour (kWh) rate based on the total amount billed by PSE to SALMON SHORES. This would indicate that SALMON SHORES was in fact re-selling utilities and thus cause SALMON SHORES to be out of compliance with the PSE tariff,
3. That in order for an appropriate billable rate to be determined, a monthly average of the utility charges billed to SALMON SHORES by PSE would need to be calculated as indicated in the spread sheet developed by LOGEN and provided to SALMON SHORES in his e-mail dated 2 April 2009,

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• **ELECTRIC AVAILABILITY CHARGE [EAC]:**

A review of the documents provided by BINKLEY in his e-mail dated 7 April 2009 to the AGO, there was evidence to support that SALMON SHORES had implemented a billing rate for the EAC that was not equally distributed among all tenants. Both the UTC and PSE advised that the equitable distribution of the EAC charge was not a matter of concern provided that the resulting fees were not based on the kWh.

However, as the EAC charge is based upon the electricity provided to the common areas within the park the appropriate billing protocol would be to divide that segment of the utility bill equally among all tenants, provided that this fee does not exceed the bill from PSE to SALMON SHORES.

Comment [11]: Lynn Logen: The total of the energy charges based on the average PSE rate per kWh and the EAC charges can be greater than the total bill from PSE to SALMON SHORES. For example SALMON SHORES may need to recover costs of maintenance or billing. As long as the EAC charge is not a per kWh charge they are not in violation of our tariff. There may be other laws that prohibit charging more than the total amount of the PSE bill, if so they should be cited here.

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• **RELATIONSHIPS BETWEEN ALL PARTIES:**

A matter that was addressed between all parties related to the appropriateness of relationships established between all parties regarding this matter. Although the assistance provided by both the UTC and PSE to the AGO in this matter was vital to gaining an understanding of the utility billing protocols and tariff requirements, it is important to note the following:

Comment [12]: Lynn Logen: see my comment above regarding Salmon Shores bills, in total, exceeding PSE's bills. I always suggest a methodology something like this as I think it is fair, but it is not required to be in compliance with our tariff.

1. The UTC currently does not have any regulatory authority over SALMON SHORES and as such communication with the UTC by parties to include SALMON SHORES, complainants and or other parties involved in this matter should be limited to matters that would directly relate to the jurisdiction and or authority of the UTC,

2. *The manner in which SALMON SHORES complies with the PSE tariff requirements is a matter to be addressed between these two entities. The AGO can not act as a mediator to ensure SALMON SHORES complies with said requirements. However, pursuant to RCW 59.20.130(1) Duties of a landlord, the AGO will monitor the matter with a view to ensure compliance with applicable codes, rules, regulations and or statutes.*

Additionally, this investigation was initiated based upon allegations that the landlord was in violation of RCW 59.20.070(6) Prohibited acts by landlord. To this extent, the AGO will take appropriate actions based upon any findings relating to this allegation.

CONCLUSIONS:

FINDINGS RELATING TO ORIGINAL INVESTIGATION

Based upon this follow-up investigation it can be concluded that the initial investigation findings as contained in the Investigative Report Summation and detailed in the 'CONCLUSIONS' Section should stand and are supported by the evidence provided as exhibits.

Additionally, the follow-up investigation has concluded that:

- SALMON SHORES up to and inclusive of March 2009 has not been in compliance with the tariff requirements established between SALMON SHORES and PSE.
- SALMON SHORES has implemented a billing rate to tenants for a fee identified as the 'EAC charge' [An electrical utility fee for the common areas within the park] that is not equally distributed among the tenants of SALMON SHORES.
- That although the investigation was unable to establish whether SALMON SHORES over-billed tenants for utilities between May 2008 and up to December 2008 it could establish that the billing methodology used by SALMON SHORES resulted in SALMON SHORES not being in compliance with the PSE tariff agreements during said time period and inclusive of March 2009.
- It appears, from the 31 March 2009 FAX, that SALMON SHORES has developed a methodology that meets the requirements of PSE's tariff if implemented.

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Logen, Lynn

From: La Monica, Rich (ATG) [RichL@ATG.WA.GOV]
Sent: Thursday, April 09, 2009 2:17 PM
To: Logen, Lynn
Subject: RE: SALMON SHORES / BINKLEY

Thanks Lynn,

I included your changes. Thanks for your help and sorry about misspelling of your name.

Regards,

Rich

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