

**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 RESPONSE IN OPPOSITION TO COMPLAINANT'S
MOTION FOR SUMMARY DISPOSITION AND LEGAL MEMORANDUM**

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

**RESPONSE TO COMPLAINANT'S ALLEGED STATEMENT OF
UNCONTROVERTED MATERIAL FACTS**

1. Michael and Darla Brower contracted to build and are the sole owners of a two story structure on lot 7 of Branson Cedars Resort which was completed in June 2016. This structure has (1) one service connection for water and (1) one service connection for sewer affluent connected to Branson Cedars Resort Utility Company main utility lines.

RESPONSE: OBJECTION: Complainant provided no "specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts" as is required under 4 CSR 240-2.117 (Summary Disposition). Such fact should be stricken. Without waiving said objection: Complainant filed the Complaint with the allegation that Michael Brower was the owner. See Complaint at ¶1. Moreover, as Complainant

refused to pay for the service connections referenced above, it is questionable whether those service connections should be part of the structure. *See* Affidavit of Hyams at ¶¶19-20.

2. Branson Cedars Resort Utility Company, LLC Issued its Rules and Regulations Governing Rendering of Water Service on September 25, 2015 to become effective November 1, 2015. This structure was completed after the effective date and is therefore subject to the Company Rules and Regulations as approved by the Missouri Public Service Commission. Reference Rule 2-D. on sheet 9.

RESPONSE: OBJECTION: Complainant provided no “specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts” as is required under 4 CSR 240-2.117 (Summary Disposition). Such fact should be stricken.

3. This structure is a commercial structure rented on a nightly basis in compliance with all state and county regulations. It is advertised and rented as a (8) bedroom (6) bathroom log cabin capable of accommodating a single group up to 24 people. The first paid rental was made to a single party on July 5, 2016. Since then it has only been rented to single party customers. We have no business plan that allows this structure to be rented as anything other than a single party structure.

RESPONSE: OBJECTION: Complainant provided no “specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts” as is required under 4 CSR 240-2.117 (Summary Disposition). Such fact should be stricken.

4. On April 7, 2017 a staff report was issued by the Missouri Public Service Commission outlining all of the applicable rules and regulations in the Company Tariff and

concluded that, “..based on its investigation and review of the tariff, that there is sound basis in fact and in the tariff for the Commission to determine that the Company should bill Mr. Brower for only one customer charge for the cabin at 310 Heavy Timber Drive”.

RESPONSE: **OBJECTION:** This “fact” is not a fact, but is merely a legal conclusion.

ADDITIONAL 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 “pleaded” 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.

LEGAL MEMORANDUM IN OPPOSITION

COMES NOW Respondent, Branson Cedars Resort Utility Company, LLC, by and through undersigned counsel, and for its Legal Memorandum in Support of its Response in Opposition to Complainant’s Motion for Summary Disposition, states to the Court as follows:

Complainant’s Motion for Summary Disposition is invalid on its face. No facts were supported by “specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts” as is required under 4 CSR 240-2.117 (Summary Disposition). Complainant’s “Argument” also contains facts—void of any references—that were not even set forth in Complainant’s statement of facts. As such, summary disposition is not appropriate.

Even if Complainant had complied with the rules, the Complaint fails. As such, Respondent hereby incorporates its own Motion for Summary Disposition and Legal

Memorandum in Support as if it were stated fully herein.

WHEREFORE, Respondent respectfully requests that Complainant's Motion for Summary Disposition be denied.

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 21st day of August, 2017:


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