

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Mike Hatch,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Northtown Village Limited Partnership, d/b/a
Northtown Village Apartments,

Defendant.

The State of Minnesota, by its Attorney General, Mike Hatch, alleges as follows:

INTRODUCTION AND PARTIES

1. Northtown Village Limited Partnership d/b/a Northtown Village Apartments (“Northtown Village”) has violated Minnesota consumer protection laws, including Minnesota Statutes § 504B.215 (2002), by billing its tenants in single-metered residential buildings for services and benefits it receives from a third party in addition to their apportioned water and sewer charges. The State seeks an injunction and other equitable relief to prevent such surcharges and other practices in violation of Minn. Stat. § 504B.215 (2002).

2. Mike Hatch, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. chapter 8, including Minn. Stat. §§ 8.01 and 8.31, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens, to enforce Minnesota’s consumer protection laws.

3. Northtown Village is a Minnesota limited partnership with its principal place of business at 400 Degree of Honor Building, St. Paul, Minnesota 55101. It owns Northtown

Village Apartments, located at 7879 University Avenue Northeast, Spring Lake Park, Minnesota 55432-2650. Robert Bisanz is the general partner of Northtown Village Limited Partnership in addition to a number of other limited partnerships owning rental property throughout the Twin Cities area.

JURISDICTION

4. This Court has personal jurisdiction over the defendant and, pursuant to Minn. Stat. §§ 8.31, 8.32, subd. 2(a), and 504B.215 (2002), jurisdiction over the subject matter of this action.

VENUE

5. Venue in Anoka County is proper under Minn. Stat. § 542.09 (2002) because the cause of action arose, in part, in Anoka County.

THE REQUIREMENTS OF MINN. STAT. § 504B.215

6. Minnesota Statutes § 504B.215 was recently amended, effective August 2000, to allow landlords to bill tenants for utilities separate from rent in single-metered residential buildings, provided certain conditions are met. A “single-metered residential building” is a multiunit rental building with one or more separate residential living units where the utility service measured through a single meter provides service to an individual unit and other units or common areas. Minn. Stat. § 504B.215, subd. 1 (2002).

7. To take advantage of the billing method permitted by this statute, a number of conditions must be met, including the following:

- a) the landlord must equitably apportion the utility charges for the building;
- and

b) the lease must contain a provision that, upon the tenant's request, the landlord must provide a copy of the actual utility bill for the building along with each apportioned bill. Minn. Stat. § 504B.215, subd. 2a (2002).

NORTHTOWN VILLAGE'S BILLING PRACTICES

8. Northtown Village is managed by Real Estate Equities/Village Green, L.L.C. ("Village Green"). Village Green along with its joint venture partner, Village Green Management Company, manage eleven separate rental properties (containing over 2,000 rental units) in Minnesota that qualify as single-metered residential properties for water and sewer utilities. After the statute allowing the practice became effective, Village Green began implementing a system to bill tenants living in each of these properties for water and sewer utilities.

9. Village Green has been incorporating new tenants into the billing system with their initial lease and current tenants by providing them with a new lease upon renewal. The leases contain a utility addendum setting forth the water and sewer billing system. A copy of the utility addendum is attached as Exhibit A. Paragraph 14 of the addendum states:

If Resident wishes to see a copy of the actual water/wastewater bill for the Property, for the current billing period or for any period during which you paid an apportioned Utility Bill, as well as an account of individual water/wastewater bills issued to all Property residents for the current billing period, a request must be made to the Property Manager.

10. Village Green contracted with American Utilities Management, Inc. ("AUM") to administer this utility billing system in all eleven properties. A copy of this contract with respect to one property managed by Village Green is attached as Exhibit B. In fact, Village Green's joint venture partner, Real Estate Equities/Village Green, L.L.C., and AUM have teamed up to educate landlords and management companies throughout the state on this method of utility

billing. A copy of a brochure for a seminar where both companies appear to speak on submetering and utility billing is attached as Exhibit C.

11. AUM bills tenants in rental property for utilities on behalf of landlords. AUM advertises to landlords by describing itself as follows:

With decades of collective experience consulting with property owners and managers, recommending strategies and implementing solutions, AUM helps you put money where it belongs: on your bottom line.

12. Pursuant to the contract, AUM provides Village Green with an extensive list of services for each of its properties (including defendant's). The services include the following: training of Village Green management personnel; monthly billing services; collecting, recording, and processing incoming payments; recording and applying "Account Activation Charges," "Late Fees," and "NSF Charges"; and providing monthly account statements, billing and arrears reports.

13. On a regular basis, Village Green forwards to AUM copies of the water and sewer bills it receives from the municipalities providing the utilities to Village Green managed properties. AUM allocates and bills the tenants in each of these properties for a share of the utility charges by using a formula which takes into account the number of units, occupants per unit, days billed in the period, and the percent of the bill allocated to common areas. In the month of April 2002, the allocated share for a single occupant in Northtown Village was about \$4.50 for water charges and about \$8.50 for sewer charges.

14. In addition, AUM adds on a series of charges unrelated to the tenants' allocated share of the utility bill. These charges are not utility charges and include:

a) a \$10.00 Account Activation Charge for each resident receiving their first bill that month;

b) a \$3.50 Monthly Administrative Charge for each resident every month;
and

c) a \$5.00 Late Fee if the resident's check for the prior month's bill was not received by AUM in Chicago within 22 days from the date AUM issued that month's bill.

15. Thus, in the first month of being incorporated into the billing system, a single occupant in a Village Green managed property receives a bill for his or her allocated share of utility charges plus \$13.50 in administrative fees. As a result, more than half of an average tenant's first month's bill pays for administrative fees. After that, approximately one-fourth of each bill is for fees, assuming the tenant never incurs any late or NSF charges.

NORTHTOWN VILLAGE RENTERS

16. A significant number of the tenants in Northtown Village's property are receiving renters' aid from the U.S. Department of Housing and Urban Development ("HUD"). Renters' aid is available to persons earning less than approximately \$2,237 per month before taxes.

17. One such tenant is an elderly, disabled woman who is living on social security. Even with assistance from HUD, half of her monthly income goes to pay her rent. Her monthly shares of the allocated water and sewer charges are \$4.79 and \$9.08, respectively. The administrative charges for the first month (\$13.50) amounted to half of her bill. Since then, the fees have amounted to nearly one-third of her monthly bill. Because she cannot afford paying the additional fees, she pays only for her allocated share of utility costs. As a result, every month AUM tacks on another \$5.00 late fee (and of course, another \$3.50 administrative fee) despite receiving full payment for all allocated water and sewer charges. The tenant presently owes about \$95.00 in outstanding late fees and administrative.

18. Altha Austin, a single mother who works as a paraprofessional with disabled children at a public school, is another tenant receiving assistance from HUD. When she signed her initial lease containing the Utility Addendum, Northtown Village's property manager assured Ms. Austin that her monthly bill would be approximately \$8.00 a month.

a. In her first month in Northtown Village's utility billing program, her bill, including the \$10.00 activation fee, the \$3.50 administrative fee and the allocation of water and sewer charges for she and her son, totaled \$44.04 (this bill apparently spanned more than a single month of water and sewer services). The bill she received for her second month totaled \$30.69, nearly one-third of which consisted of the \$3.50 administrative fee and a \$5.00 late fee.

b. When she called her landlord to ask how her utility bill could be so high, the Northtown Village representative referred her to AUM. In response to Ms. Austin's questions, AUM simply sent her another copy of her own bill and has never explained how her water and sewer bill is calculated.

AUM'S MONTHLY PAYMENTS ALLOW NORTHTOWN VILLAGE TO EARN INTEREST ON TENANTS' MONEY

19. AUM collects payments from tenants on a monthly basis in advance of quarterly payments owed by the defendant to the utility. AUM immediately deposits the tenants' money into an interest bearing account. Three business days after the collection period closes each month, AUM remits to Village Green (on behalf of Northtown Village):

- a. the money collected for each tenants' allocated water and sewer charges;
- and
- b. fifty percent of the late fees collected from the tenants that month.

20. Village Green (on behalf of Northtown Village) retains these advance monthly payments and earns interest on this money. Village Green pays the utility bill on a quarterly basis, thus earning interest on the advance payments. For example, in January 2003 tenants will pay their allocated share of utility charges to AUM for the month. Three days following the end of the month, AUM will pay this money, plus half of late fees collected, to Village Green. Village Green will retain and earn interest on this money until it pays the quarterly utility bill in March or April of 2003.

21. On a quarterly basis, AUM also pays Village Green a portion of the interest earned on its interest bearing account in which the tenants' monthly charges are deposited prior to remittance to Village Green.

COUNT I
BILLING TENANTS FOR MORE THAN AN EQUITABLE
APPORTIONMENT OF UTILITY COSTS IN VIOLATION OF
MINN. STAT. § 504B.215

22. Plaintiff realleges all prior paragraphs of this complaint.

23. Minn. Stat. § 504B.215, subdivision 2a, provides, in part:

If the landlord of a single-metered residential building bills for utility charges separate from the rent, the following conditions apply:

(2) an equitable method of apportionment [of the utility charges] and the frequency of billing by the landlord must be predetermined and put in writing for all leases.

24. Northtown Village is billing tenants for activation charges, monthly administrative charges, late fees, and NSF fees in addition to the tenants' apportionment of water and sewer charges.

25. While Minn. Stat. § 504B.215, subd. 2a, authorizes the allocation of utility charges, it does not authorize the imposition of any additional charges or fees.

26. Defendant's conduct described above constitutes multiple, separate violations of Minn. Stat. § 504B.215, subd. 2a (2002).

COUNT II
FAILURE TO STATE IN ITS LEASE THAT UPON
REQUEST, NORTHTOWN VILLAGE MUST PROVIDE A COPY
OF ACTUAL UTILITY BILL FOR BUILDING IN VIOLATION
OF MINN. STAT. § 504B.215

27. Plaintiff realleges all prior paragraphs of this complaint.

28. Minn. Stat. § 504B.215, subdivision 2a, further provides that:

If the landlord of a single-metered residential building bills for utility charges separate from the rent, the following conditions apply:

The lease must contain a provision that, upon a tenant's request, a landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill.

29. Paragraph 14 of the "Utility Addendum" is the only provision in Northtown Village's lease that comes close to containing the language required by Minn. Stat. § 504B.215.

It states:

If Resident wishes to see a copy of the actual water/wastewater bill for the Property, for the current billing period for any period during which you paid an apportioned Utility Bill, as well as an account of individual water/wastewater bills issued to all Property residents for the current billing period, a request must be made to the Property Manager.

30. Paragraph 14 fails to make clear to tenants that the landlord must provide them with a copy of the actual utility bill for the building along with each apportioned utility bill if they make a request. Therefore, Northtown Village's lease does not comply with the statute's requirement for the specified language.

31. Defendant's conduct described above constitutes multiple, separate violations of Minn. Stat. § 504B.215, subd. 2a (2000).

RELIEF

WHEREFORE, Plaintiff, the State of Minnesota, by its Attorney General, Mike Hatch, respectfully asks this Court to award judgment against defendant Northtown Village Limited Partnership:

- I. Declaring that Northtown Village's acts described in this Complaint constitute multiple, separate violations of Minn. Stat. § 504B.215, subd. 2a.
- II. Enjoining Northtown Village, and its employees, officers, directors, agents, successors, assignees, affiliates, independent contractors, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from:
 - A. collecting or attempting to collect charges or fees from residents of any of its single-metered residential buildings for services other than an allocation of utility charges;
 - B. retaining interest earned on payments for utility charges by residents of any of its single-metered residential buildings;
 - C. collecting or attempting to collect utility charges from residents of any of its single-metered residential buildings without a lease with each such resident that contains a provision that states that upon tenant's request, Northtown Village must provide a copy of the actual utility bill for the building along with each apportioned utility bill; or
 - D. violating in any other way Minn. Stat. § 504B.215.
- III. Awarding judgment against Northtown Village for civil penalties pursuant to Minn. Stat. § 8.31, subdivision 3, for each separate violation of Minn. Stat. § 504B.215.

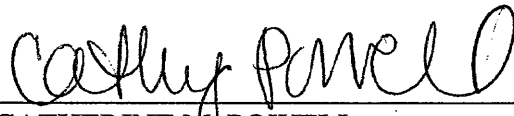
IV. Awarding judgment against Northtown Village for restitution under the *parens patriae* doctrine, Minn. Stat. § 8.31, the general equitable powers of this Court, and any other authority for all persons injured by Northtown Village's acts described in this Complaint.

V. Awarding plaintiff its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. § 8.31, subdivision 3a.

VI. Granting such further relief as the Court deems appropriate and just.

Dated: Jul. 10, 2003.

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