

13-0744

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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ROGER F. HOLT,

Plaintiff,

v.

CIVIL ACTION NO. 13-C-656  
Honorable J. Stucky

CATHY S. BAISON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

WEST VIRGINIA-AMERICAN WATER  
COMPANY,

Defendant.

**ORDER GRANTING MOTION TO DISMISS OF  
DEFENDANT WEST VIRGINIA-AMERICAN WATER COMPANY**

On Thursday, May 30, 2013, the Court heard the parties, by counsel, on the April 19, 2013 motion to dismiss of West Virginia-American Water Company (WVAW).

Mr. Holt alleges that WVAW engaged in “unfair or deceptive” acts or practices in violation of West Virginia Consumer Credit and Protection Act (WVCCPA) that “arise out of the defendant’s business policies and practices regarding leaks in the plaintiff’s water line” when Mr. Holt attempted to have leak-related charges reimbursed. *Complaint*, ¶¶ 1, 20-22. Mr. Holt’s efforts included the filing of a formal complaint with the Public Service Commission of West Virginia (PSC). *Complaint*, ¶¶ 8-19, *Exhibits A, B*. The Complaint alleges that the PSC ordered WVAW to reimburse Mr. Holt for certain leak-related charges, and to remove any inappropriate late penalty charges from his account, but concluded that it lacked jurisdiction to award damages. *Complaint*, ¶ 19. Mr. Holt now seeks damages, penalties, and attorney fees under the WVCCPA. *Complaint*, ¶ 26.

WVAW seeks dismissal on two bases. WVAW first asserts that Mr. Holt’s claims, on the face of the complaint, arise from “[t]ransactions under public utility or common carrier tariffs” that are excluded from the WVCCPA because the PSC is “a subdivision or agency of this

state or of the United States [that] regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.” W. Va. Code § 46A-1-105(a)(3). WVAW further asserts that, even if the WVCCPA lacked this exclusion, the complaint alleges no “unfair or deceptive” act or practice. W. Va. Code § 46A-6-102(7).

Having considered WVAW’s motion, Mr. Holt’s response (May 28, 2013), and WVAW’s reply (May 28, 2013), as well as the oral argument of counsel at the May 30, 2013 hearing, the Court FINDS that Mr. Holt’s pled claims arise from transactions encompassed by W. Va. Code § 46A-1-105(a)(3), and thus are statutorily excluded from the WVCCPA. Accordingly the complaint is hereby DISMISSED, and this matter is stricken from the docket of the Court.

Mr. Holt’s objections and exceptions to the foregoing are noted and preserved.

It is so ORDERED. The Clerk shall mail copies of this order to the parties at their addresses below.

ENTER this 24 day of June, 2013.

James C. Stucky  
James C. Stucky, Judge, 13<sup>th</sup> Judicial Circuit

Presented by:

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STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 20th  
DAY OF June, 2013  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA