

From: Wein Realty, LLC <weinrealtyllc@gmail.com>
Sent: Friday, June 30, 2023 11:29 AM
To: dps.sm.Secretary <Secretary@dps.ny.gov>
Cc: dps.sm.ocs.shared.meter <ocs.shared.meter@dps.ny.gov>
Subject: Shared Meter Case #258612

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Ms. Phillips,

I am in receipt of the 6/27/2023 letter from DPS denying my claim--attached. I respect the 30 day limit (Public Service Law 22) to appeal and as my counsel is on summer/July 4th vacation for a couple of weeks I am initiating the appeal here to be in full compliance with the 30 day limit. When counsel returns I will review further with him.

There are multiple errors of law and fact, pursuant to 16 NYCRR 3.7(b), on the 6/27 letter which justify the appeal, and if necessary, further legal action. Some of these errors are as follows:

1. On page 5 of the 6/27 letter, line 3 describes my claim as "the utility allegedly required him..." My claim can easily be substantiated through the same phone records the utility company provided DPS. "Allegedly" is not written by the utility company's arguments. This clearly indicates either the utility company played around with their records and recordings deleting the incriminating ones against them or there is illegal discrimination against me. This must be further investigated.
2. On page 6 of the 6/27 letter, the last paragraph "On November 22nd, 2022" through page 8 "Therefore, National Fuel only confirmed correction to that appliance" is likewise incorrect on multiple levels. The 12/22/2023 letter National Fuel sent me requesting access to the unit, likewise attached, clearly stated "If you decide to correct the condition, you must forward us a copy of your plumber's report, or contact us so that we can arrange to verify that the condition has been corrected." I immediately complied and sent them a report at my expense (3rd attachment) from a licensed plumber that there is no gas servicing upstairs at all and "Gas for 2nd floor stove has been terminated and capped in basement. No other gas supplies for second floor found." This clearly fulfilled their request. 1/24/2023 I got a letter from DPS (4th attachment) stating that wasn't acceptable and I needed to make arrangements for National Fuel to come out. I immediately complied and they sent me a letter 2/28/2023 (5th attachment) "the shared meter condition has not been eliminated. Two gas lines going to the upper apartment need to be removed" which completely contradicts the report from the licensed plumber I provided. Furthermore, there was no mention of a gas stove being there as a violation or capped & terminated gas lines being a violation until the 6/27 DPS letter. There was likewise never any non-compliance by me, as alleged in the 6/27 DPS letter.

I never put in the gas stove upstairs. I am unsure if the previous owner put it in there or if it was put in by the upstairs tenant or National Fuel to frame me--I have no way of knowing. I just know I never put in the gas stove upstairs.

As mentioned prior, Wein Realty, LLC is a partnership where the silent partner is a special needs trust which I have a legal & fiduciary responsibility to protect. My late father's will created the special needs trust and specifically requested it to be invested in real estate, hence the founding of Wein Realty,

LLC. The State of California, specifically FTB, failed to respect this and I have been in litigation against them since 2019 (6th attachment.) I do not want to have to litigate as well against NY.

Please take the time to review this initial appeal where I clearly explain just some of the multiple errors of law and fact. This was an honest mistake by National Fuel which they, with the assistance of DPS, are now attempting to cover up a la Watergate, turning an honest mistake into multiple crimes.

I respectfully believe gas service should immediately be turned over into same name as it was in before me as there is no shared meter issue in any way at 20 Charles as gas is solely servicing downstairs. I also respectfully believe I am in no way responsible for the gas usage from September 2022 through today.

Thank you.

Motti Wein
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Wein Realty, LLC closes 12pm on Fridays and reopens 8pm on Sundays. Please visit our website for further information on our hours.

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6 *Counsel for Plaintiff and the Putative Classes*

7 [Additional counsel appear on the signature page.]
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN FRANCISCO**

11 WEIN REALTY, LLC, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 CALIFORNIA FRANCHISE TAX BOARD,
16 a California agency,

17 Defendant.
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NO SUMMONS ISSUED

FILED
San Francisco County Superior Court

MAY 14 2019

CLERK OF THE COURT

BY:  Deputy Clerk

Case No.:

**CLASS ACTION COMPLAINT
FOR:**

**Refund of Franchise Taxes Pursuant
to Cal. Rev. & Tax. Code § 19382**

BY FAX
ONE LEGAL LLC

CLASS ACTION COMPLAINT

1 Plaintiff Wein Realty, LLC ("WR"), by and through its attorneys, alleges as follows upon
2 personal knowledge as to itself and its own acts and experiences and, as to all other matters,
3 upon information and belief, including investigation conducted by its attorneys:

4 NATURE OF THE ACTION

5 1. The California Franchise Tax Board ("Tax Board") is the tax collection agency
6 authorized to collect, in relevant part, income taxes on those conducting business *in* the State of
7 California.

8 2. Unfortunately, the Tax Board has been interpreting "doing business in California"
9 broadly and taking the position that out-of-state passive members in limited liability companies
10 ("LLC") and other entities are subject to California taxes even when they do not actually conduct
11 business in California, do not have offices or employees located anywhere in California, and do
12 not have property located in California.

13 3. Plaintiff WR is just one of many out-of-state companies that have been forced by
14 the Tax Board to pay a minimum \$800 annual tax even though they have repeatedly notified the
15 Tax Board that they do not conduct business in California.

16 4. Accordingly, Plaintiff brings this action, on behalf of itself and two classes of
17 entities (defined below), to recover the annual franchise taxes, interest, and penalties, the Tax
18 Board has unlawfully collected from businesses that are not actually "doing business" in the
19 State of California.

20 PARTIES

21 5. Plaintiff Wein Realty, LLC is a limited liability company existing under the laws
22 of the State of New Jersey.

23 6. Defendant Franchise Tax Board is a State of California public agency.

24 JURISDICTION AND VENUE

25 7. This Court has jurisdiction over this action pursuant Cal. Rev. & Tax. Code §§
26 19382 and 19385.

8. Pursuant to Cal. Rev. & Tax. Code § 19388, venue is proper in the County of San Francisco because the California Attorney General maintains an office here.

FACTUAL BACKGROUND

I. California's Minimum Franchise Tax.

9. The Tax Board requires that entities “doing business” in California must file an annual return and pay a minimum \$800 annual tax “for the privilege of doing business in [the] state.” *See* Cal. Rev. & Tax. Code § 23153; *see also* Cal. Rev. & Tax. Code §§ 17935(a), 17941(a), 17948(a), 23800.5(1)(B), 23802(c).

10. The \$800 minimum franchise tax is supposed to be imposed on entities that are (1) incorporated or otherwise organized under the laws of California, (2) qualified to transact intrastate business in the state, or (3) "doing business" in the state. *See* Cal. Rev. & Tax. Code § 23153.

11. The California Tax Code narrowly defines the phrase “doing business” to mean “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.” *See* Cal. Rev. & Tax. Code § 23101(a). “Doing business” is also defined under Cal. Code Regs., tit. 18, (“18 CCR”) § 23101 and specifically “includes the purchase and sale of stocks or bonds, endorsing the notes of a subsidiary corporation by a parent corporation and the leasing of real property by the parent corporation to the subsidiary and other tenants, and liquidating activities consisting of sales, rentals, collections on notes, etc.” That regulation clarifies, however, that the “mere receipt of dividends and interest by a corporation and the distribution of such income to its shareholders does not constitute ‘doing business.’” *See* 18 CCR § 23101(b).

12. The Tax Board, on the other hand, interprets “doing business” broadly and unfairly takes the position that certain types of business entities, including passive members in LLCs, “do business” in California even when their ownership interests are completely passive, purely investment related, and they conduct no business of their own in the State of California, and have no offices, employees, property or any other presence in California.

1 13. As a result, the Tax Board wrongfully assessed and collected California franchise
2 taxes from many out-of-state businesses, including Plaintiff and the Classes.

3 **II. Plaintiff WR's Experience.**

4 14. Plaintiff WR is a New Jersey LLC that maintains its headquarters and principal
5 place of business in Lakewood, NJ. WR does not conduct business in the State of California, has
6 no offices or employees in California, and does not have property located in California. Further,
7 WR has not registered with the California Secretary of State to conduct business in the State, is
8 not qualified to transact intrastate business in the State, and is not otherwise engaged in business
9 activities in California.

10 15. WR's sole connection with California is that it is a member of a manager-
11 managed California LLC called UGI 15th, LLC ("UGI"). During the periods at issue, UGI
12 maintained its headquarters and principal place of business in San Francisco, CA. UGI issued to
13 Dragonfly Assets C-52, LLC, a Delaware LLC, a loan secured by a first priority deed of trust on
14 real property located at 1721 15th Street, San Francisco, CA. UGI has not conducted any
15 business unrelated to the loan.

16 16. Even though WR has never actually conducted any business in California, it
17 received a demand from the State of California on May 23, 2018 for the \$800 minimum
18 franchise tax for the 2016 tax year. In response, WR paid the minimum franchise tax for the
19 2016 and 2017 tax years, plus interest and penalties.¹

20 17. On February 28, 2017, the Tax Board issued a notice to inform taxpayers it will
21 follow the holding of *Swart Enterprises, Inc. v. Franchise Tax Board*, 7 Cal. App. 5th 497 (2017),
22 and that taxpayers may file a claim for refund citing *Swart* and explaining how their factual
23 situation is similar to the factual situation in *Swart*. Relying on that notice, on October 8, 2018,
24 WR timely sent the Tax Board a written claim for refund for tax years 2016 and 2017. The claim
25

26 ¹ WR received two additional notices on September 14, 2018. One notice assessed penalties and
27 interest related to the minimum franchise tax due for the tax year 2016. The other notice stated
28 WR had a zero-balance due for the tax year 2017.

1 for refund referenced *Swart*, explained why WR's factual situation was similar to that in *Swart*,
2 and was in compliance with all of the statutory requirements including Cal. Rev. & Tax. Code §
3 19322. Despite this, on February 14, 2019, the Tax Board denied the claim for refund on the
4 basis that WR "did not meet one or more of the relevant facts as per the *Swart* decision."

5 18. WR has therefore exhausted the administrative remedies available to contest and
6 recover the overpayment of taxes and timely filed this lawsuit under California law, including
7 Cal. Rev. & Tax. Code § 19382.

8 CLASS ALLEGATIONS

9 19. **Class Definition:** Plaintiff Wein Realty, LLC brings this action pursuant to
10 California Code of Civil Procedure § 382 on behalf of itself and two classes of all others
11 similarly situated, defined as follows:

12 **Form Class:** All entities in the United States that (i) checked 'NO' on boxes 4
13 through 30 of Section C of the California Franchise Tax Board Form 4684-A, (ii)
14 paid the minimum franchise tax and/or interest and penalties to the Tax Board,
15 (iii) timely filed a refund claim of the foregoing amount, and (iv) either had their
16 refund claim denied after February 13, 2019 or have not been mailed notice of
17 action on their refund claim within 6 months prior to the date of Plaintiff's motion
18 for class certification.

19 **No Form Class:** All entities in the United States that (i) paid the minimum
20 franchise tax and/or interest and penalties to the Tax Board, (ii) timely filed a
21 refund claim of the foregoing amount, (iii) either had their refund claim denied
22 after February 13, 2019 or have not been mailed notice of action on their refund
23 claim within 6 months prior to the date of Plaintiff's motion for class certification,
24 and (iv) included in their refund claim a statement that they were not doing
25 business in the State of California because their sole connection to the State is a
26 direct or indirect ownership interest in a limited liability company registered to
27 conduct business in California, and/or a citation to the decision in *Swart*
28 *Enterprises Inc. v. Franchise Tax Board*, Case No. F070922 (Jan. 12, 2017).

(the "Classes"). Excluded from the Classes are: (1) any Judge or Magistrate presiding over this
action and members of their families; (2) Defendant, Defendant's subsidiaries, parents,
successors, predecessors, and any entity in which the Defendant or its parents have a controlling
interest and its current or former employees, officers and directors; (3) persons who properly
execute and file a timely request for exclusion from the Classes; (4) persons whose claims in this

1 matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel
2 and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such
3 excluded persons.

4 **20. Ascertainability and Numerosity:** The exact number of class members is
5 unknown to Plaintiff at this time, but on information and belief, there are thousands of entities in
6 the classes, making joinder of each individual member impracticable. Additionally, the Classes
7 are ascertainable because their members will be easily identified through Defendant's records.

8 **21. Commonality and Predominance:** There is a well-defined community of interest
9 in the question of law and fact between Plaintiff and the Classes. Questions of law and fact
10 common to the claims of Plaintiff and the other members of the Classes predominate over any
11 questions that may affect individual members of the Classes. Common questions for the Classes
12 include but are not limited to the following:

- 13 (a) whether Plaintiff and the Classes are "doing business" in
14 California for purposes of Cal. Rev. & Tax. Code §§ 17935(a),
15 17941(a), 17948(a), 23800.5(1)(B), 23802(c).
- 16 (b) whether the Tax Board wrongfully assessed and then collected
17 taxes on entities, including Plaintiff and the Classes, that are not
18 "doing business" in California;
- 19 (c) whether Plaintiff and the Classes were improperly denied refunds
20 from the Tax Board for the taxes wrongfully collected; and
- 21 (d) whether Plaintiff and the Classes are entitled to a refund for the
22 franchise taxes, interest, and penalties, they paid under protest to
23 the Tax Board.

24 **22. Typicality:** Plaintiff's claims are typical of the claims of all the other members of
25 the Classes. Plaintiff and the Class members sustained substantially similar damages as a result
26 of Defendant's uniform wrongful conduct, based upon the same transactions that were made
27
28

1 uniformly with Plaintiff and the Classes.

2 23. **Adequate Representation:** Plaintiff will fairly and adequately represent and
3 protect the interests of the other members of the Classes. Plaintiff has retained counsel with
4 substantial experience in prosecuting complex litigation and class actions. Plaintiff and its
5 counsel are committed to vigorously prosecuting this action on behalf of the members of the
6 Classes and have the financial resources to do so. Neither Plaintiff nor its counsel have any
7 interest adverse to those of the other members of the Classes.

8 24. **Superiority:** This case is also appropriate for class certification because class
9 proceedings are superior to all other available methods for the fair and efficient adjudication of
10 this controversy as joinder of all parties is impracticable. The damages suffered by the
11 individual members of the Classes will likely be relatively small, especially given the burden and
12 expense of individual prosecution of the complex litigation necessitated by Defendant's actions.
13 Thus, it would be virtually impossible for the individual members of the Classes to obtain
14 effective relief from Defendant's misconduct. Even if members of the Classes could sustain such
15 individual litigation, it would still not be preferable to a class action, because individual litigation
16 would increase the delay and expense to all parties due to the complex legal and factual
17 controversies presented in this Complaint. By contrast, a class action presents far fewer
18 management difficulties and provides the benefits of single adjudication, economies of scale, and
19 comprehensive supervision by a single Court. Economies of time, effort, and expense will be
20 fostered and uniformity of decisions ensured.

21 **FIRST CAUSE OF ACTION**

22 **Refund of Franchise Taxes Pursuant to Cal. Rev. & Tax. Code § 19382**
23 **(On Behalf of Plaintiff and the Classes)**

24 25. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

25 26. Plaintiff and the Classes are entitled to their claimed refunds pursuant to Cal. Rev.
26 & Tax. Code § 19382 because they do not do business in California and, therefore, should not
27 have been required to pay California Franchise Taxes.

1 27. For instance, Plaintiff WR is a New Jersey LLC that maintains its headquarters
2 and principal place of business in Lakewood, New Jersey. WR did not conduct business in the
3 State of California, had no offices or employees in California, and had no property located in
4 California. Further, WR was not registered with the California Secretary of State to conduct
5 business in the State, was not qualified to transact business in the State, and was not otherwise
6 engaged in business activities in California.

7 28. WR's sole connection with California was that it was a member of a California
8 LLC that administered to a Delaware LLC a loan secured by real property located in California.

9 29. As such, WR was not "doing business" in California and was not required to pay
10 California franchise tax to the Tax Board.

11 30. Cal. Rev. & Tax. Code §§ 17935(a), 17941(a), 17948(a), 23800.5(1)(B), 23802(c),
12 as applied to Plaintiff and/or the class members, violate the California and United States
13 Constitutions, including but not limited to the Due Process Clauses of the California and federal
14 Constitutions and the Commerce Clause of the federal Constitution.

15 31. Accordingly, Plaintiff, on behalf of itself and the Classes, seeks an order (a)
16 requiring the Tax Board to refund Plaintiff and the Classes the franchise taxes, interest, and
17 penalties wrongfully paid with interest; and (b) awarding reasonable costs and attorneys' fees
18 pursuant to Cal. Code Civ. Proc. § 1021.5.

19
20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff Wein Realty, LLC, individually and on behalf of the Classes,
22 prays for the following relief:

23 (a) An order certifying this case as a class action on behalf of the Classes defined
24 above, appointing WR as the representative of the Classes, and appointing its counsel as Class
25 Counsel;

26 (b) An order requiring the Tax Board to refund Plaintiff and the Classes the franchise
27 taxes, interest, and penalties wrongfully paid with interest;

- 1 (c) An award of reasonable attorneys' fees and costs; and
2 (d) Such other and further relief that the Court deems reasonable and just.
3

4 Respectfully submitted,

5 **WEIN REALTY, LLC**, individually and on behalf
6 of all others similarly situated.

7 Dated: May 14, 2019

8 By: /s/ [Signature]
9 One of Plaintiff's Attorneys.

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Counsel for Plaintiff and the Putative Classes

*Admission *pro hac vice* to be sought.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Rafey S. Balabanian (315962), 123 Townsend St., San Francisco, CA 94107 Amy L. Silverstein (154221), 12 Gough St. #2, San Francisco, CA 94103 John Ormonde (308524), 12 Gough St. #2, San Francisco, CA 94103		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 5px;">FILED</div> San Francisco County Superior Court MAY 14 2019 CLERK OF THE COURT <i>[Signature]</i> Deputy Clerk	
TELEPHONE NO.: 415.595.3502 FAX NO.: 415.593.3501 ATTORNEY FOR (Name): Wein Realty, LLC			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102-3680 BRANCH NAME:			
CASE NAME: Wein Realty, LLC v. California Franchise Tax Board			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 19-576007 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **1**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/14/2019
John Ormonde

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX
ONE LEGAL LLC

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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INVOICE NUMBER

61383

DATE 1/6/23

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Exp. Date 11/27 Code 7087

Check # CASH 07601

P.O. #

TECHNICIAN

Kevin/Kyle

20. Charles

Gamestown

ESTIMATE: YOU HAVE THE RIGHT TO AN ESTIMATE IF THE EXPECTED COST OF REPAIRS OR SERVICES WILL BE MORE THAN TWENTY-FIVE DOLLARS. INITIAL YOUR CHOICE. ☐ Written Estimate ☐ Oral Estimate ☐ No Estimate

DESCRIPTION

AMOUNT

CUSTOMER OBSERVATION: Verify no gas usage in upstairs Unit.

Model #

Serial #

TECHNICIAN OBSERVATION: Upon arrival, verified location of 1st Floor & 2nd Floor gas appliances.

- Verified 1st Floor Gas stove is still connected to gas & operational, as well as gas furnace for 1st Floor heat.

- Gas for 2nd Floor Stove has been terminated & capped in basement. no other gas supplies for 2nd floor found.

- Termination of 2nd floor gas has been completed upon arrival. No work was completed, just an observation of gas usage for which units
* No work completed upon arrival, termination was completed beforehand *

SUB TOTAL 169.00

NY Tax

13.52

☒ I believe these repairs need immediate attention and I therefore agree to waive my right to the three (3) day waiting period to rescind a contract.
☒ We strongly recommend all homeowners install carbon monoxide detectors in their home.

CUSTOMER IS RESPONSIBLE FOR ANY AND ALL COLLECTION COSTS THAT MAY ARISE FROM THIS AGREEMENT INCLUDING ATTORNEY'S FEES.

Work satisfactorily completed ☒

Payment due upon completion. A \$20.00 service charge will be charged for all returned checks.

A FINANCE CHARGE OF 1 1/2% PER MONTH OR 18% PER YEAR WILL BE CHARGED ON ALL ACCOUNTS 30 DAYS PAST DUE.
We are an Equal Opportunity Employer.

TOTAL 182.52



Department of Public Service

3 Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Public Service Commission

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Diane X. Burman
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John B. Maggione
Commissioners

January 24, 2023

Wein Realty LLC
Max Wein
40 Whispering Pines Lane
Lakewood, NJ 08701

RE: Case #258612



Dear Complainant:

In your correspondence received beginning on September 20, 2022, sent to the Department's Office of Consumer Services, you disputed National Fuel Gas' determination of a shared gas meter condition concerning the above referenced premises.

On your behalf, I have reviewed documentation provided by National Fuel regarding your concerns. National Fuel's documentation indicated that on July 14, 2022, a call was made from you stating that the property was being purchased and requesting gas service in your name for the upper apartment. On that date, National Fuel advised there was not a gas meter for the upper apartment, and you informed National Fuel that you would check with the prior owner. On September 13, 2022, September 14, 2022, September 19, 2022, and September 20, 2022, National Fuel received additional calls and emails from you and the upper tenant asking about the upper floor gas service. National Fuel advised during that call that there was only one gas meter and the upper tenant stated that she had heat and hot water but did not have cooking gas. Please note, during the September 13, 2022, email correspondence, the Company indicated that they did advise you that the property had not been previously designated as having a shared gas meter investigation or determination of a shared gas meter condition.

During the September 19, 2022, telephone call, you advised a National Fuel supervisor that the premises had no gas service at all; therefore, the supervisor issued a "no gas inside" order. Upon arrival of the National Fuel technician, the technician noted that the upper apartment had heat and hot water, but the gas stove was disconnected.

Public Service Law Section 52, commonly known as the "Shared Meter Law" can be found for your review at www.dps.ny.gov/sharedmeter. Based on the description of events provided by National Fuel, if there is only one gas meter at the premises supplying a premises consisting of more than one dwelling, that meter would be considered a shared meter. The meter in question

was formerly in another tenant's name, who had not complained about a possible shared meter nor did they contact National Fuel to discontinue service.

Due to the ongoing concerns raised by yourself, and the need for clarification as to exactly what gas service was being used in the upper apartment, I requested that National Fuel contact you to complete a full field inspection. The intention of this inspection was to either confirm that there was a shared meter condition, or to confirm your statement that a shared meter condition did not exist. National Fuel scheduled the appointment with you for November 27, 2022; however, reported to me that upon arrival no parties were present at the premises to provide access nor was the contact phone number called by the inspector answered.

On December 2, 2022, I again directed National Fuel to complete the required full inspection to ascertain whether or not the charges billed to you were valid.

Please note that only the utility inspector can verify if a shared meter condition exists or does not exist. Therefore, I respectfully request that you contact National Fuel directly to coordinate an inspection. I strongly recommend you have a property manager, or representative available at the property to act on your behalf if you are not available.

I do understand you wish to file a claim against National Fuel for their actions related to the designation of a shared meter. The Department of Public Service does not have the jurisdiction to adjudicate claims for damages such as this; therefore, you may wish to consult with your attorney.

In the interim, because you have been billed for service on the shared meter, I am forwarding your case to the Commission's Designee for review of the billing.

You may contact the Shared Meter Unit Staff directly at 800-342-3377 by choosing the options "Natural Gas/Electric" and "Shared Meter" Monday through Friday between 8:30 am and 4:00 pm for additional assistance.

Sincerely,

Kelley Tuohy
Manager, Shared Meter Unit
Office of Consumer Services

New York State Notice of Important Document

English	This is an important document. If you need help to understand it, please call 800-342-3377. An interpreter will be provided free.
العربية Arabic	هذه وثيقة هامة إذا كنت بحاجة للمساعدة في فهمها، يرجى الاتصال بالرقم 800-342-3377. سيتم توفير مترجم فوري بدون مقابل.
বাঙালি Bengali	এটি একটি গুরুত্বপূর্ণ নথি। যদি এই নথি বুঝতে আপনার কোনো সাহায্যের প্রয়োজন হয়ে থাকে, তাহলে অনুগ্রহ করে আমাদের ফোন নম্বরে 800-342-3377 ফোন করুন। এই জন্য একজন দোভাষী বিনামূল্যে সরবরাহ করা হবে।
简体字 Simplified Chinese	这是一份重要文件。如果您需要帮助理解此文件，请打电话至800-342-3377。您会得到免费翻译服务。
繁體字 Traditional Chinese	这是一份重要文件。如果您需要帮助理解此文件，請打電話至800-342-3377。您会得到免費翻譯服務。
French	Ceci est un document important. Si vous avez besoin de le comprendre, veuillez appeler le 800-342-3377. Un interprète vous sera offert gratuitement.
Kreyòl Ayisyen Haitian Creole	Sa a se yon dokiman enpòtan. Si ou bezwen èd pou konprann li, tanpri rele: 800-342-3377. Y ap ba ou yon entèprèt gratis.
Italiano Italian	Il presente documento è importante. Per qualsiasi chiarimento può chiamare il numero 800-342-3377. Un interprete sarà disponibile gratuitamente.
한국어 Korean	이것은 중요한 서류입니다. 도움이 필요하시면, 연락해 주십시오: 800-342-3377. 무료 통역이 제공됩니다.
Język Polski Polish	To jest ważny dokument. Jeżeli Pan/Pani potrzebuje pomocy w zrozumieniu go, prosimy zadzwonić pod numer 800-342-3377. Bezpłatnie zapewnimy usługi tłumaczeniowe.



NEW YORK
STATE OF
OPPORTUNITY.

Office of General Services
Office of Language Access

Русский Russian	Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 800-342-3377. Переводчик предоставляется бесплатно.
Español Spanish	Este es un documento importante. Si necesita ayuda en entenderlo, por favor llame al 800-342-3377. Se le proveerá un intérprete gratis.
Urdu	یہ ایک اہم دستاویز ہے۔ اگر اس کو سمجھنے کے لیے آپ کو معاونت درکار ہو تو براہ مہربانی اس نمبر پر کال کریں 800-342-3377 ۔ مترجم مفت فراہم کیا جائے گا۔
אידיש Yiddish	דאס איז א וויכטיגע דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, רופט ביטע 800-342-3377. איינער וועט עס אייך איבערזייטשן אומזיסט.



National Fuel

February 28, 2023

Please Address Reply To:
6363 Main St
Williamsville NY 14221

Max Wein
40 Whispering Pines Lane
Lakewood NJ 08701

Dear Owner:

RE: [REDACTED] Meter No: 41872025

New York State Law does not require a tenant to pay for gas service used in areas outside the tenant's own dwelling – either for another tenant's dwelling or for a common area. This is known as a "shared meter" condition.

As requested, we inspected the premises at [REDACTED] and found that the shared meter condition has not been eliminated. Two gas lines going to the upper apartment need to be removed.

If you need more information, please call 686-6123 in the Buffalo area. Outside the Buffalo area, please call 1-800-365-3234.

Sincerely,

National Fuel Gas



Department of Public Service

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Public Service Commission
Rory M. Christian
Chair and
Chief Executive Officer

Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore
Commissioners

VIA Electronic Mail and First Class Mail

June 27, 2023

Wein Realty LLC
40 Whispering Pines Lane
Lakewood, NJ 08701

National Fuel Gas Distribution Corporation (National Fuel or Utility)
Attention: Andrea Vasbinder
6363 Main Street
[REDACTED]

Re: Shared Meter Case # 258612
[REDACTED]

This is to inform you that a decision has been reached in the above captioned complaint. The attached decision is effective on the date of this letter.

You may petition the Public Service Commission (Commission) for rehearing or may challenge this decision in New York State Supreme Court through judicial review pursuant to Article 78 of the Civil Practice Law and Rules. If you request a Commission rehearing, the request will consider the petition and any response filed, and does not include an in-person hearing. Pursuant to Public Service Law §22, a petition must be received by the Secretary no later than 30 days from the date on this letter. The Secretary may reject petitions that are untimely. The petition must be sent to:

Email: secretary@dps.ny.gov
Fax: (518) 474-9842
Michelle L. Phillips, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

A petition for rehearing must also meet the requirements of the Commission's regulation, 16 NYCRR §3.7(b), which provides that, "[R]ehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination." This regulation also requires that a rehearing petition "separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing." A rehearing petition that does not meet the requirement for separate identification of each alleged error or new circumstance, and for explanation of how each error or new circumstance warrants rehearing, may be rejected.

You may also seek judicial review, without first requesting rehearing by the Commission. The time limit under state law for commencing an Article 78 proceeding to obtain judicial review of a Commission determination in New York State Supreme Court is four months from the date that the Designee determination becomes final and binding on the party seeking review.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Berkley", with a stylized, cursive script.

Richard Berkley
Director
Office of Consumer Services
As Designee of the New York State
Public Service Commission

Enclosure



Department of Public Service

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Public Service Commission

Rory M. Christian
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VIA Electronic mail and First Class Mail

June 27, 2023

Wein Realty LLC
40 Whispering Pines Lane
Lakewood, NJ 08701

National Fuel Gas Distribution Corporation (National Fuel or Utility)
Attention: Andrea Vasbinder
6363 Main Street
[REDACTED]

Re: [REDACTED]

Introduction

On September 20, 2022, the Public Service Commission (Commission) received a letter from Motti Wein, on behalf of Max Wein and Wein Realty LLC¹ (Owner), appealing National Fuel's October 5, 2022 determination finding a shared gas meter condition. The Utility billed the Owner for gas service from September 19, 2022 to the present. The Owner disagreed with the Utility's finding of a shared gas meter condition and subsequent billing and alleges that the Utility and Department of Public Service (Department) Staff improperly handled this matter on

¹ Property deed records indicate the property was purchased on July 18, 2022, by Wein Realty LLC. Wein Realty LLC is registered with the State of New Jersey. Max Wein is identified as a Registered Agent on file for the LLC.

multiple occasions, which the Owner states has caused him economic harm.² The Commission's Designee now denies the Owner's appeal and affirms the Utility's finding of a shared gas meter condition and subsequent billing under the provisions of Public Service Law § 52 (PSL § 52) for the reasons stated below.

Background

The Utility records show that on July 14, 2022, the Utility received a call from the Owner stating the home had been purchased.³ During that call, the Owner requested gas service for the upstairs apartment be established in his name as the customer of record. The Owner also stated that the downstairs unit was already occupied by tenants. The Utility then advised the Owner that its records listed the premises as a single-family home with one gas meter. The Owner advised National Fuel that a conversation would take place with the tenant. At that time, the Utility suggested that the Owner speak with the prior owner to ascertain gas service arrangements between the landlord and tenants. The Utility stated its representative informed the Owner about the shared meter requirements under PSL § 52, including the Owner's responsibilities.

On September 13, 2022, the Utility received e-mail from the Owner, where he stated the upstairs tenant applied for gas service in their name at the premises but was denied.⁴ On that

² The Owner specified that he was seeking punitive damages related to the Utility and Department's handling of this case. There is no authority in the PSL to adjudicate claims for civil damages. The Owner may pursue this claim in a court of competent jurisdiction.

³ Supra footnote 1.

⁴ At the time of this call, the Owner was not listed as the customer of record for the only gas meter present at the premises. The gas account and associated gas meter was active in another party's name.

same date, a Utility representative advised the Owner via e-mail that the premises in question had not yet been coded as a shared meter in their system.⁵

On September 14, 2022, the applicant requesting service in the upstairs apartment contacted the Utility, stating that although there was heat and hot water in the upstairs apartment, the gas cooking stove was not operational. The applicant then advised that her brother, the downstairs tenant, had been the previous customer of record for the gas service prior to that date. The Utility instructed the applicant to verify which meter she was applying for as there was only one gas meter at the premises and suggested that the downstairs tenant contact National Fuel. On September 19, 2022, National Fuel received a telephone call from the Owner asking to start gas service at the premises. National Fuel asked the Owner to verify the meter number to ensure the correct meter serving the upstairs apartment was to be connected. That same day, the Owner received a follow up call from a National Fuel supervisor. At that time, the Owner advised the Utility supervisor that there was no gas going to the entire house. Therefore, the supervisor requested a “no gas inside” order to be issued.⁶ On September 19, 2022, the National Fuel technician went to the premises and found that the upstairs apartment did have heat and hot water. The technician also found that the existing gas stove was not connected to the exposed gas flex line within the upstairs apartment; however, the stove was located directly adjacent to the existing gas flex line. Although the applicant requested the National Fuel technician to

⁵ National Fuel had not received a complaint from the current or any prior customer of record for the gas service at this time. Therefore, the Utility had neither performed an investigation nor classified the account as a shared meter.

⁶ A “no gas inside” order within National Fuel is a field visit where the Utility sends a technician to identify if there is a problem with the gas supply going into the premises, such as a safety concern, leak, or to see if service had been inadvertently disconnected.

connect the gas stove to the existing gas line, the National Fuel technician did not connect the stove to the service.

Effective September 18, 2022, the prior customer of record's account was closed and the Utility had a valid basis to believe the gas meter was supplying service to more than one apartment. The Utility requested that the Owner establish the service in his name effective September 19, 2022. During this telephone call with the Utility, the Owner identified the name to be used on the account as "Max Wein" and the Owner provided necessary identification to support that request.⁷

On September 20, 2022, the Owner spoke with a National Fuel shared meter specialist, who advised that a September 14, 2022 e-mail from the Utility stated that there was no prior documentation of a shared meter condition at the premises.⁸ The Utility representative then advised the Owner that the Utility cannot knowingly establish service in a tenant's name to a meter that has a shared meter condition, such as in this case where there are two separate dwelling units taking service from only one gas meter. At that time, the Owner verbally advised National Fuel that the customer of record on file at National Fuel for the downstairs unit was unknown to them and no longer living there.

⁷ As a partner of Wein Realty LLC, the private name could be used as the customer of record at the discretion of the Owner per their request. Should the Owner wish to complete a name change on the account for charges going forward, the Owner would need to contact National Fuel with proper documentation to effectuate this change.

⁸ National Fuel had not previously conducted a full shared meter investigation at this premises. Further, the customer of record for the downstairs unit did not contact National Fuel to initiate or report a possible shared meter condition at any point prior to the disconnection of services in his name.

Owner's Position

On September 20, 2022, the Owner stated that the Utility advised him verbally of a shared meter condition at the premises, and he was unsure it actually existed. During the verbal conversation the Utility allegedly required him to provide a social security number to establish an account in his name for the gas service at the premises. The Owner stated that at that point, he had not received anything in writing from the Utility regarding the finding of a shared meter condition. He alleges that there can be no gas shared meter condition because the upstairs apartment is heated by use of electric baseboard units and there is no gas in the upstairs apartment. On December 11, 2022, the Owner alleged that the real estate rental listing for the property shows the lower unit pays utilities and the upper unit has utilities included in the cost of rent. On December 29, 2022, the Owner submitted a licensed home inspector's written report to the Office of Consumer Services (OCS) indicating his inspection found no shared meter condition.⁹ On December 2, 2022, OCS requested the Utility and Owner coordinate an inspection. The Owner alleges that another bill for the shared meter was received, even though documentation had been submitted from independent inspectors and plumbers that a shared gas meter condition did not exist. The Owner also alleges that the Utility's shared meter determination was a "pure lie" and there has never been gas service to the upstairs apartment the

⁹ The Owner's private inspector stated that on April 5, 2022, an inspection found there was gas heat to the first floor, electric heat to the second floor, and that both units had natural gas ranges/ovens. The report then stated that on December 11, 2022, the private inspector inspected the premises a second time and reaffirmed the sources of heat for each unit, confirming the water heaters serving each unit were electric. The second inspection also found that because the gas range/oven in the upstairs unit was not operational, the incoming gas line had been capped and the tenant was using a hot plate for cooking.

entire time since the building was created. Lastly, the Owner stated that future legal action will be taken against the Utility and the Department.

Analysis

Based on prior telephone conversations with the Owner and applicant, the Utility declared a shared gas meter condition existed at the premises and informed the Owner on October 5, 2022 in writing. PSL § 52 states that the Owner is responsible for service used outside of a Tenant's dwelling. The record indicates that the Owner and applicant for service both made statements to National Fuel on July 14, 2022, September 13, 2022, September 14, 2022, September 19, 2022, and September 20, 2022, that a possible shared gas meter condition existed. The Utility was not allowed by statute to establish service in a new tenant's name until after a full inspection to verify a shared meter condition did not exist was completed by National Fuel.¹⁰

On November 22, 2022, in response to the Owner's concerns, OCS Staff directed National Fuel to contact the Owner and complete a full investigation at the earliest convenience of the Utility and the Owner. The Utility scheduled an inspection with the Owner to be held on November 27, 2022. Upon arrival at the premises, the National Fuel inspector called the Owner notifying them of their pending arrival to the site and arrived on site as per the schedule.

¹⁰ PSL § 52.4(a) states in part "upon receipt of information indicating that a shared meter may exist, such metering utility shall investigate and determine whether such service is or is not measured by a shared meter." PSL § 52.4(c) states in part "failure of an owner to provide access to any common area in the building or to cooperate with any reasonable request made by the investigating utility shall result in a determination that a customer's dwelling is served by a shared meter." PSL § 52.5(b) states in part "if the owner has not eliminated the shared meter... the utility shall establish an account in the owner's name as the customer of record for service measured through the shared meter and bill the owner for all applicable shared area charges and all future service measured through the shared meter."

However, the Owner or Owner's representative was not present for the inspection and no access was made available.

OCS Staff then directed National Fuel to make one additional call to the Owner requesting access, and to provide at least two letters to the Owner requesting access.¹¹ OCS Staff mailed the Owner a letter dated January 24, 2023, upholding the Utility's determination of a shared gas meter condition. OCS Staff also advised the Owner that due to the Owner's concerns and statements regarding the existence of the shared meter condition, OCS Staff had previously directed the Utility to contact the Owner to coordinate the inspection. OCS Staff's letter stated, "the intention of this inspection was to either confirm that there was a shared meter condition, or to confirm your statement that a shared meter condition did not exist." OCS Staff requested that the Owner comply with the request by contacting National Fuel directly to coordinate the inspection and recommended that a property manager, or representative be available during the inspection to act on the Owner's behalf should the Owner not be available. Subsequently, on February 2, 2023, National Fuel inspected the premise and found the building's gas meter was supplying service to: a forced air furnace only supplying heat to the downstairs unit; a gas range/stove in the downstairs unit; and, to gas lines leading to the upstairs unit, which were capped. The Utility inspection also found a gas range in the upstairs unit adjacent to one of the capped gas lines. To eliminate the shared gas meter condition in this case, the gas appliance

¹¹ National Fuel requested access to the premises to complete a full inspection by letters dated December 2, 2022 and December 9, 2022. The Owner responded to the Utility via email on December 12, 2022 and December 20, 2022, stating a private home inspector was at the property on December 11, 2022, finding that the heat was electric and that the gas-powered cooking stove was present but not operational (not connected to gas service). The home inspector also noted that a gas line was present in the upstairs but was currently capped. Only the Utility inspector is considered the expert in the field of shared metering. As required by PSL § 52.4(a), the Utility inspector is the party that must complete the inspection.

must be removed from the apartment and the gas flex line must be removed and capped to the wall. To confirm the repairs, the Owner would be required to coordinate a reinspection to be completed by the Utility inspector.

By letter dated February 28, 2023, National Fuel advised the Owner that the shared meter condition was considered to still exist at the premises. The inspection report from February 2, 2023 identified that permanent repairs to the gas range condition had not been completed as the gas stove was still present and had not been permanently removed from the area and the capped gas flex line which was capped was still in place for reconnection to the unit. Therefore, the shared meter condition still existed. A second gas line was identified going to the upstairs unit, which previously had a large space heater connected. However, that gas line was capped, and the appliance had been permanently removed. Therefore, National Fuel only confirmed correction to that appliance.

In cases where a tenant is listed by the Utility as the customer of record, and that same tenant initiates a shared meter investigation, the Utility should review the tenant's billed consumption history, the tenant's appliances, and the shared appliances to determine the shared meter condition's estimated monthly shared usage.¹² If the Utility determines a shared gas meter condition of 5 ccf of gas or more per month, the Utility would also be required to credit the tenant¹³ for shared usage, credit the tenant 25 percent of a twelve-month assessment, and

¹² PSL § 52.12 states "the commission shall establish guidelines for estimating the amount of utility use in other space outside the shared meter customer's dwelling and for apportioning costs required by this section."

¹³ The "tenant" would have been required to be an active customer of record with the Utility.

debit the Owner for shared usage and 100 percent of a twelve-month assessment.¹⁴ Because the prior tenant and customer of record for the downstairs apartment did not initiate the complaint and because the Owner was the customer of record during the period an inspection transpired, neither shared usage charges nor a twelve-month assessment were required.¹⁵

Conclusion

In compliance with the Public Service Law, as Owner of the property, Max Wein and Wein Realty LLC is responsible for the bills rendered on the shared gas account from September 19, 2022, until such date when National Fuel verifies that repairs have been completed. The Owner is responsible for these charges under the provisions of the statute.

¹⁴ PSL § 52.5(a) states in part that the Utility is responsible to apportion the charges for service measured by the shared meter and establish “a separate account in the owner’s name as the customer of record for all applicable shared area charges and all future service measured by the shared meter.” PSL § 52.5(d) states in part, if the discovery of a shared meter condition is not in response to an Owner’s request, the utility shall “bill the owner and refund to the shared meter customer an estimated amount of charges for twelve-months of all service measured by the shared meter; provided, however, that this paragraph shall not apply to a shared meter condition if service measured through the shared meter is minimal under commission rules adopted pursuant to subdivision eight of this section.”

¹⁵ Supra footnote 14.

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Digital Fax						
Dec 11,	8:53pm	Fax Sent	15184728502	2:16 N/A	5	OK

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
				Digital Fax		
Dec 11,	8:49pm	Fax Sent	15183224916	3:03 N/A	5	OK

WEIN REALTY, LLC

NYS Dept of Consumer Affairs
Shared Meter Department
Tel 800 342 3377
Fax 518 322 4916
Fax 518-472-8502
Email OCS.Shared.Meter@DPS.NY.Gov
Case #258612

12/11/2022

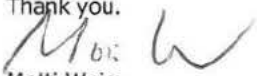
Hi,

Attached please find evidence I have been attempting to submit, illustrating [REDACTED] is not a shared gas meter as upstairs is heated by electric. Upstairs has no gas, as I originally thought.

National Fuel sent me a harassing letter claiming they couldn't get into the units to verify. They had no difficulty getting into the units to falsely accuse me a couple of months ago that there was a shared gas meter and rough me up to put the account into my name, why is there suddenly difficulty?

I would like National Fuel to verify their error, reimburse me for all gas utilities I paid under duress to date as well as \$5,000,000 in damages for their blatant harassment to milk us for money.

Thank you.


Motti Wein
President



40 Whispering Pn Ln
Lakewood, NJ 08701
USA

PHONE 732-415-8446
FAX 732-370-7911
EMAIL WeinRealtyLLC@gmail.com
URL www.WeinRealtyLLC.com



Department of Public Service

3 Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Public Service Commission
Rory M. Christian
Chair and
Chief Executive Officer

Diane X. Burman
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David J. Valesky
John B. Maggiore
Commissioners

November 1, 2022

Wein Realty LLC
Max Wein
40 Whispering Pines Lane
Lakewood, NJ 08701

RE: Case #258612



Dear Complainant:

As requested, we have opened a case to investigate your complaint against National Fuel Gas Distribution. A representative of the Office of Consumer Services will review the matter and advise you of our determination when the investigation has been completed.

For purposes of our investigation, we have set the disputed at \$0.00. During the investigation, National Fuel Gas Distribution will continue your service as long as you pay or enter into an agreement to pay any other charges you owe and pay any current bills you receive.

If yours is a non-residential account and is subject to late payment charges, you should know that late payment charges will continue to accrue on the account (both the disputed and the undisputed amount) while the case is pending. Only if the case is decided in your favor will all or part of the late payment charges be removed, as appropriate. If, on the other hand, you wish to pay the disputed amount and it is found that you have overpaid, you will be paid interest on your overpayment.

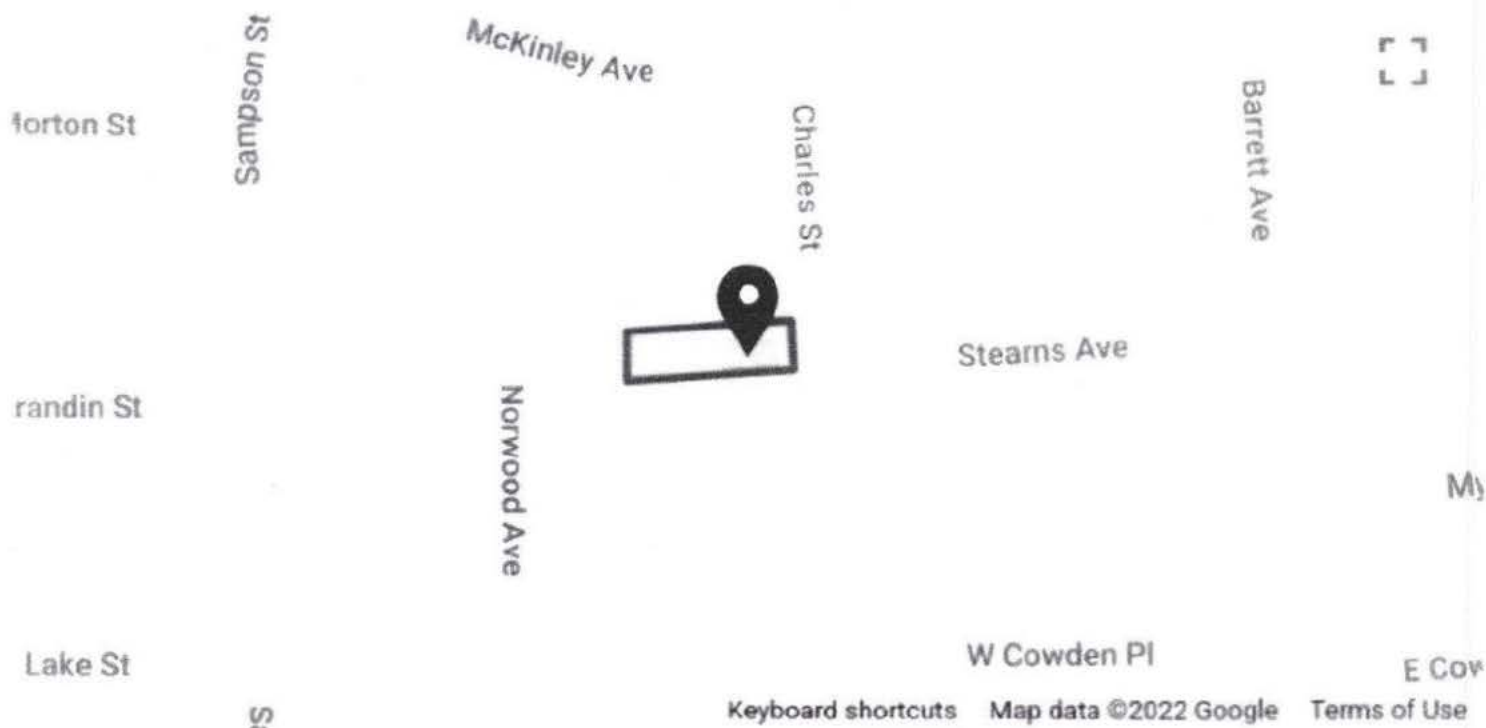
You may contact the Shared Meter Unit Staff directly at 800-342-3377 by choosing the options "Energy" and "Shared Meter" Monday through Friday between 8:30 am and 4:00 pm for additional assistance.

Sincerely,

Shared Meter Unit
Office of Consumer Services

Location

Compass ▸ NY ▸ Jamestown ▸ [REDACTED]



Listing Courtesy of Keller Williams Realty

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Description

Fully occupied two family for sale. Exterior is vinyl sided with vinyl windows. Lower is rented for \$550 plus utilities and upper is rented for \$700 with utilities included. One water meter that owner pays for. Hot water tanks were recently upgraded. Gas furnace heat for lower unit, electric heat for the upper unit.



Wein Realty, LLC <weinrealtyllc@gmail.com>
To: ebillsupport@natfuel.com

Tue, Sep 13, 2022 at 2:32 PM

Hi,

My tenant is trying to get gas service into their name. They told me they were told there is only one line and it has to stay in owner's name. Is that correct?

Motti Wein
Wein Realty, LLC
732-415-8446 (Office)
732-370-7911 (Fax)
732-608-3492 (Mobile)
WeinRealtyLLC@gmail.com
www.WeinRealtyLLC.com

Wein Realty, LLC closes 12pm on Fridays and reopens 8pm on Sundays. Please visit our website for further information on our hours.

ebillsupport <ebillsupport@natfuel.com>
To: Wein Realty, LLC <weinrealtyllc@gmail.com>
Cc: ebillsupport <ebillsupport@natfuel.com>

Tue, Sep 13, 2022 at 3:09 PM

In what town is 20 Charles?

From: Wein Realty, LLC <weinrealtyllc@gmail.com>
Sent: Tuesday, September 13, 2022 2:32 PM
To: ebillsupport <ebillsupport@natfuel.com>
Subject: 20 Charles

***** THIS IS AN EXTERNAL EMAIL, DO NOT OPEN LINKS OR ATTACHMENTS UNLESS YOU TRUST THE SENDER *****

[Quoted text hidden]

Please consider the environment before printing this email

Wein Realty, LLC <weinrealtyllc@gmail.com>
To: ebillsupport <ebillsupport@natfuel.com>

Tue, Sep 13, 2022 at 3:36 PM

Jamestown

Motti Wein
Wein Realty, LLC
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732-370-7911 (Fax)
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WeinRealtyLLC@gmail.com
www.WeinRealtyLLC.com

Wein Realty, LLC closes 12pm on Fridays and reopens 8pm on Sundays. Please visit our website for further information on our hours.

[Quoted text hidden]

ebillsupport <ebillsupport@natfuel.com>
To: Wein Realty, LLC <weinrealtyllc@gmail.com>
Cc: ebillsupport <ebillsupport@natfuel.com>

Tue, Sep 13, 2022 at 3:51 PM

Motti,

I'm not showing a shared meter issue at 20 Charles St in Jamestown.



J MOORE

Consumer Business

NATIONAL FUEL

O: 1-800-323- 3234
ebillsupport@natfuel.com

6363 Main St. Williamsville NY
14221



[Quoted text hidden]