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JOHN W. FRANKO,)
)
 Complainant,)
)
 vs.)
)
 NORTHERN ILLINOIS GAS COMPANY)
 d/b/a Nicor Gas Company,)
)
 Respondent.)

Docket No. 11-0415

RESPONDENT'S CLOSING BRIEF

Respondent, The Northern Illinois Gas Company ("Nicor") by and through its attorneys, Arnstein & Lehr LLP, files its Closing Brief at the request of the Hearing Examiner, and in support thereof states as follows:

I. **SUMMARY AND BACKGROUND**

John W. Franko, ("Complainant"), filed a formal Complaint with the Illinois Commerce Commission (the "Commission") on April 26, 2011 disputing a gas bill for service provided to a residence located at 5 North Michigan, Addison, Illinois (Respondent's Exhibit 1). Complainant cites Section 83 Ill. Admin. Code 280.50 and Section 83 Ill. Admin. Code 280.70(A) in his complaint as authority for his formal complaint. Those sections relate to service discontinuation (280.50) and deposits for service (280.70). The Complainant provides somewhat of a narrative in his complaint, and in no uncertain words, alleges that past tenants of 5 North Michigan, Addison, Illinois are responsible for the outstanding bills, therefore, Nicor must restore gas service. On August 9, 2011, an evidentiary hearing was conducted on this matter.

II. LEGAL STANDARD

Under the Illinois Public Utilities Act, Complainant bears the burden of proving the allegations in his formal complaint. 220 ILCS 5/9-244(d). The rules of evidence which apply in civil cases before the circuit courts of the State of Illinois apply to proceedings before the Illinois Commerce Commission. 83 Ill. Administrative Code 200.610. Therefore, the traditional and standard rules of evidence regarding the burden of proof apply. The term "burden of proof refers to the burden of both producing evidence and persuading the trier of fact that certain facts are true." Mashni Corp. Ex rel Mashni v. Laski, 286 Ill. Dec. 653, 814 N.E. 2d 879 (2004).

Complaint must make out a prima facie case in support of all allegations in his Formal Complaint. Complainant can only establish a prima facie case by proffering at least the "same evidence on every element essential to the plaintiff's cause of action. People ex rel Sherman v. Cryns 203 Ill. 2d 264, 275, 786 N.E. 2d 139, 148 (2003). If plaintiff has failed to meet this burden, the Commission should enter judgment in the defendant's favor. Id

III. ARGUMENT

At the evidentiary hearing on August 9, 2011, Complainant presented himself as a witness, but presented no other witnesses. Nicor presented customer relations associate Carlton Coleman as its sole witness. Complainant's case is premised upon his assertion that two tenants of his residential property located at 5 North Michigan, Addison, Illinois, John Franklin and Metera Mansports are responsible for the past due bills and for service disconnection. The Complainant, in his formal complaint, claims not to have resided at the 5 North Michigan, Addison, Illinois residence before December

21, 2010. The Complainant has not met his burden of proof by a preponderance of the evidence that Nicor violated any law, Commission rule(s) or utility tariff. Accordingly, Complainant's Formal Complaint should be dismissed and an Order should be entered in Nicor's favor.

The evidentiary hearing mainly concentrated upon establishing that Complainant has a history of using aliases, and in this case, used the name of John Franklin to deflect personal responsibility for past due services from Nicor.

There is no dispute that Complainant is the property owner of 5 North Michigan, Addison, Illinois (Tr. 26) and has owned the property approximately 20 years (Tr. 51). At the hearing, certified property tax bills were introduced into evidence (Resp. Exh. 2) for tax years 2005, 2006, 2007, 2008, 2009 and 2010 addressed to John Franko at 5 North Michigan Avenue, Addison, Illinois. Upon questioning, it became very evident that Complainant was going to contest and deny every piece of evidence which establishes ownership and evidence of his residency at the 5 North Michigan address. In response to the certified tax bills, Complainant denied any knowledge of these bills in a combative fashion. (Tr. 33-35).

Complainant next denied being the named defendant, John W. Rodifer and John Blaster in a 1993 DuPage County bail bond for deceptive practices. (Resp. Exhibit 3), and stated that this defendant was his brother. Blaming his brother and others for "problems" became a reoccurring theme during the hearing.

Complainant was then presented a certified copy of conviction and arrest warrant in DuPage County Court for case 93 CF 699. (Resp. Exhibit 4) for deceptive practices. The certified copy of the conviction from the DuPage Circuit Court was introduced and

listed John Toscani a/k/a John Blaster, a/k/a John Rodifer as the defendant who plead guilty and sentenced to the Illinois Department of Corrections for 3 years (Resp. Exhibit 4). Complainant, again, stated that the named defendant was his brother. (Tr. 41). Complainant did then admit that he was John Rodifer at the age of 25 years of his life and changed his name to Franko when his mother remarried. (Tr. 36). Complainant testified that his birthday is February 20, 1961. (Tr. 26). Based on that statement, Complainant changed his name from Rodifer to Franklin in 1986.

Next, Complainant was confronted with Respondent Group Exhibit 5 – an arrest warrant from DuPage County Circuit Court on May 18, 2002 naming the wanted defendant as John W. Rodifer, a/k/a John W. Franko, a/k/a Ray B. White and a/k/a John Franklin with an address of 5 North Michigan, Addison, Illinois under case 02 CF 1461. Upon questioning, the Complainant admitted the arrest warrant was for him (Tr. 44). The Complainant also admitted to signing the name John Franko on property inventory slips for John Rodifer, as well as a bail bond slip with his address at 5 North Michigan, Addison, Illinois. The Complainant, by his own words, again admits to using at least two names John Franco and John Rodifer in the year 2002, despite his previous testimony which he claims to have changed his name years before. (Tr. 44). Upon questioning, Complainant incredibly stated that the criminal charges were his brothers and the case had nothing to do with him despite his earlier testimony that the arrest was for him. The Complaint acknowledged that the signature on the bail bond slip in the area designated for the defendant was his. Within the group exhibit is a court order from DuPage County on 7-15-04 drafted by John Rodifer's attorney which states that John Rodifer is now known as John Franko. Again, Complainant's explanation places blame on

another – his brother (Tr. 54). The timing of the name change is inconsistent with his previous testimony that he changed his adult name from Rodifer to Franko twenty-five (25) years ago or in the year of 1986. Again, the testimony of the Complainant is implausible, non-sensical and combative when asked to explain basic questions about his identity. It is also becoming clear that the Complainant has a tendency to use a different identification when the situation fits his needs.

The Complainant was next questioned about Respondent's Exhibit No. 6. This exhibit is another bail bond, dated July 14, 2009, from the Circuit Court of DuPage County under Case No. 09 CF 1411. This warrant alleges insurance fraud against a John Franko residing at 5 North Michigan, Addison, Illinois. Upon questioning, Complainant admitted that the signature on bail bond is his. (Tr. 60) and admitted to writing 5 North Michigan, Addison, Illinois as his address (Tr. 61). Complainant's testimony was less than credible and his explanation is inconsistent with his earlier testimony when he stated he only resided at 5 North Michigan, Addison, Illinois from December 2010 to present (memorialized in Resp. Exh. 1). Again, the Complainant's explanation is implausible, nonsensical and combative.

Resp. Group Exhibit No. 7 was next introduced and presented to Complainant. This exhibit is a civil complaint filed in the Circuit Court of Cook County in 2002 titled John Wesley Franko, Jr. a/k/a John Franklin v. Key Bank, N.A. The facts of the case are that Key Bank, N.A. unlawfully repossessed a 1998 Corvette purchased by John Wesley Franko, Jr. a/k/a John Franklin. John Wesley Franko, Jr. a/k/a John Franklin is the moving and complaining party in this action. Because the lawsuit is in contract, the plaintiff attached documents related to the transaction. The Sales Agreement

references the purchaser as John Franklin residing at 5 North Michigan, Addison, Illinois. In Key Bank, N.A.'s answer and counterclaim, a document attached is titled "Fixed Rate Consumer Note Disclosure and Security Agreement." The borrower listed on this document is listed as John W. Franko residing at 5 North Michigan, Addison, Illinois and contains his signature. The signature on this document is consistent with the signature in the previous exhibits. Complainant, again, was not credible with his denials and far-fetched explanation (Tr. 69-73). Again, Complainant's testimony was implausible, non-sensical and combative.

Lastly, Resp. Exh. 8 was introduced into evidence. This exhibit is a certified copy of conviction from the Cook County Circuit Court for a John Franko. When questioned about this 2002 conviction, Complainant strangely enough stated that he was aware of the case because "sometimes on the street you hear things." (Tr. 78). This time Complainant blamed a "Mike Babulo" for this crime but never made an attempt to clear his name (Tr. 79-80). The Complainant's explanation again was non-sensical, implausible and combative.

From the very start of the evidentiary hearing, the Complainant displayed disrespect for these proceedings – which he chose to bring – and outright belligerence towards Respondent's questions. This Court should consider the demeanor of the Complainant during the course of these proceedings and in particular, the evidentiary hearing. "Demeanor can be a significant component of credibility and related determinations. Indeed, the Supreme Court has said that the demeanor of a witness may satisfy the tribunal not only that the witness' testimony is not true but that the truth is the opposite of his story," for the denial of one, who has a motive to deny, may be

uttered with such hesitation, discomfort, arrogance or defiance, as to give assurances that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies.” Nomanbhoy Family Limited Partnership v. McDonald’s Corporation, 579 F. Supp. 2d 1071 (2008).

Complainant’s demeanor, particularly at the evidentiary hearing, was discordant and demeaning to this Court. Complainant’s reference to law enforcement officials (Tr. 52), the legal profession (Tr. 72), and his portrayal of Respondent’s attorney (Tr. 88) are matters which this Court should consider in assessing credibility.

The Complainant’s uncorroborated explanations and testimony should also be disregarded in their entirety under “falsus in uno, falsus in omnibus.” This principle states that when a witness testifies falsely to one material point, the trier of fact may disregard the uncorroborated testimony of that witness regarding other points. Best v. Best, 358 Ill. App 3d 1046, 832 N.E. 2d 457 (2005). The Complainant has clearly testified falsely to his residency and his various “identities” during the course of the hearing and as such, the Court should disregard the uncorroborated balance of his testimony particularly that of his alleged past tenants.

IV. CONCLUSION

The Complainant presented little or no evidence to establish that someone other than he is responsible for the gas charges at 5 North Michigan Avenue, Addison, Illinois. The certified records show that by a preponderance of the evidence that the Complainant has a history of using false names and aliases with the Courts and legal system. The Complainant cannot, nor should he be allowed to mislead this Court into

believing that other "individuals" are responsible for gas service at 5 North Michigan, Addison, Illinois, because it is clear that he resided at that location for a period longer than he stated under oath, and that which he stated in his formal complaint. If he is to be found credible and believable, the Complainant makes a strong case for being the most unlucky person the State of Illinois who has been taken advantage of time and time again. However, that is not the case. The evidence establishes by a preponderance of the evidence that the Complainant, John W. Franko, is also John Franklin, John Rodifer, John Blaster and Ray B. White. The Complainant has failed to meet his burden of proof required for this hearing.

For the reasons stated in this closing brief, Respondent, Nicor requests that this Court dismiss Complaint No.11-0415

NORTHERN ILLINOIS GAS COMPANY


By: One of Its Attorneys

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CERTIFICATE OF SERVICE

James B. Durkin, an attorney, certifies that he served the foregoing Respondent's Closing Brief, by mailing a copy to the persons listed below on the 6th day of September, 2011, with proper postage prepaid:

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|---|--|
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