

Colin T. Barrett
cbarrett@preti.com
617.226.3845

May 11, 2023

Clerk – Civil
Southern Berkshire District Court
9 Gilmore Avenue
Great Barrington, MA 01230

**RE: Debra Herman v. Housatonic Water Works Company
Civil Action No. 2329CV000029**

Dear Sir or Madam:

Enclosed herewith for filing in the above-entitled matter is Housatonic Water Work Company's Answer and Affirmative Defenses to Plaintiff's Statement of Claim.

Sincerely,

/s/ Colin T. Barrett

Colin T. Barrett

CTB:ems

Enclosure

cc: Debra Herman
373 N. Plain Road
Great Barrington, MA 01236

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

Trial Court of Massachusetts
Civil Docket No. 2329CV929

_____)
DEBRA HERMAN,)
)
Plaintiff,)
)
v.)
)
HOUSATONIC WATER WORKS)
COMPANY,)
)
Defendant.)
_____)

DEFENDANT HOUSATONIC WATER WORKS COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S STATEMENT OF CLAIM

NOW COMES Defendant, Housatonic Water Works Company ("HWWC") and pursuant to Mass. R. Civ. P. 12 hereby submits this answer to Plaintiff, Debra Herman's ("Plaintiff") Statement of Small Claim ("Statement"). Because Plaintiff's Statement reflects the relaxed pleading standards of the Small Claims session, HWWC is unable to respond on a paragraph-by-paragraph basis as normally required under the Rules. Therefore, for sake of clarity, HWWC has assigned Plaintiff's allegations to numerical paragraphs and responds to the same as follows below. Plaintiff's allegations are restated in normal type. HWWC's responses are in bold.

PLAINTIFF'S CLAIM

1. Housatonic Water Works Company (HWWC) provides water to my home in Housatonic.

ANSWER: Upon information and belief, admitted.

2. HWWC has been cited for unsafe water quality and violations of the drinking water regulations by the Department of Environmental Protection (DEP) on multiple occasions

in the past several years. The water has elevated levels of manganese and haloacetic acids (HAA5), both disease-causing substances.

ANSWER: To the extent the foregoing allegations refer to records retained by the Massachusetts DEP, such records speak for themselves and HWWC denies all allegations inconsistent therewith. Answering further, to the extent the allegations noted in paragraph 2 above expand beyond the referenced citations and DEP records, HWWC denies all such allegations characterizations, and implications, including any that seek to impute liability on HWWC.

3. On March 3, 2022, DEP issued HWWC a Notice of Noncompliance with Drinking Water Regulations for Violation of the maximum containment level (MCL) for HAA5, failure to notify the public of the violation of the MCL for HAA5 and failure to report to DEP the violation of the MCL for HAA5. Pursuant to 940 CMR 3.16, HWWC's violation of the Drinking Water Regulations is a violation of G.L. c. 93A.

ANSWER: To the extent the foregoing allegations refer a Notice of Noncompliance, such Notice speaks for itself and HWWC denies all allegations inconsistent therewith. Answering further, HWWC denies any statement or allegation that mischaracterizes and/or takes this Notice out of context. This allegation also contains one or more conclusions of law, to which no response is required. To the extent a response is required, HWWC denies this allegation.

4. I installed a water filtration system on March 21, 2023 (\$2,757.92) to remediate both the manganese and the HAA5 problems. Previously, I relied on my refrigerator filter and filtering water bottles (\$505). The HAA5 filter must be replaced every 6 months (\$292.23). The green sand filter needs maintenance every 3 years (\$662.06). (10 year cost \$4246.42).

ANSWER: HWWC is without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations and therefore denies the same.

5. My total damages are at least \$7509.52. I and other Housatonic residents sent a demand letter to HWWC pursuant to G.L. c. 93A, sec. 9 to HWWC on January 25, 2023. HWWC has failed to grant the relief requested. I request that my damages be trebled pursuant to G.L. c. 93A.

ANSWER: HWWC is without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations and therefore denies the same. This allegation also contains one or more conclusions of law, to which no response is required. To the extent a response is required, HWWC admits that Plaintiff sent a letter to HWWC but denies that it satisfied the written demand requirements of G.L. c. 93A, sec. 9 and denies that Plaintiff is entitled to any of the requested relief. Finally, HWWC denies that Plaintiff is entitled to any relief under c. 93A insofar as her allegations are meritless and she has failed to attach a copy of the purported Demand to her Statement and therefore the same is fatally flawed.

Answering further, to the extent the Statement could be liberally interpreted to include other allegations not enumerated and denied above, HWWC unequivocally denies any liability under c. 93A, or any other applicable statutory, common law or regulatory authority.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief may be granted and therefore the Statement must be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

2. Plaintiff has failed to meet the statutory prerequisites for filing suit under G.L. c. 93A, § 9.
3. Although Plaintiff references her c. 93A demand, the demand is not included in the pleading as required under c. 93A and therefore the Statement must be dismissed.
4. Plaintiff's counsel, who issued the c. 93A demand, continues to pursue her claims outside this Action and therefore her Statement is premature, severed from the actual pre-suit settlement negotiations and must be dismissed.
5. Plaintiff has not suffered or demonstrated any cognizable damages.
6. Plaintiff has failed to mitigate damages, if any. HWWC does not assume the burden of proof or persuasion as to Plaintiff's claims set forth above.

HWWC reserves the right to assert additional affirmative defenses as the same become evident through discovery.

WHEREFORE, HWWC respectfully requests that this Court:

1. Dismiss Plaintiff's claim against HWWC in this matter with prejudice;
2. Award HWWC all recoverable damages and attorney fees; and
3. Grant such other and further relief as this Court determines is just, equitable, and appropriate.

Respectfully submitted,
Housatonic Water Works Company,
By its attorneys,

/s/ Colin T. Barrett

Shana M. Solomon (BBO# 664188)
Colin T. Barrett (BBO# 690726)
Preti Flaherty Beliveau & Pachios LLP
60 State Street, Suite 1100
Boston, Massachusetts 02109
Telephone: 617.226.3800
Fax: 617.226.3801

Dated: May 11, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document
was served upon the Plaintiff by US mail on May 11, 2023.

/s/ Colin T. Barrett

Colin T. Barrett