



City of Tacoma
Hearing Examiner

August 14, 2017

Tal Chang
3145 Coastal Highway, Apt. 1146
St. Augustine, FL 32084-2277
(First Class & Electronic Mail Delivery)

Kathryn Weller, Customer Accounts Supervisor
Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409-3192
(Interoffice & Electronic Mail Delivery)

Re: *Tal Chang v. City of Tacoma, Tacoma Public Utilities*
File No. HEX 2017-020 (CA #100564401)

Dear Parties,

In regard to the above entitled matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on August 14, 2017, as the result of a hearing held on July 27, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1): Findings, Conclusions, and Decision, including Exhibit A.

cc: John Hoffman, Customer Services Assistant Manager (Interoffice & Electronic Mail)

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED August 14, 2017, at Tacoma, WA.

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TAL CHANG,**

4 **Appellant,**

5 **v.**

6 **TACOMA PUBLIC UTILITIES,**

7 **Respondent.**

HEX NO. 2017-020
(CA # 100564401)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION

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10 **THIS MATTER** came on for hearing before JEFF H. CAPELL, Hearing Examiner
11 for the City of Tacoma, Washington (the “City”), on July 27, 2017. The Appellant, Tal Chang,
12 appeared at hearing telephonically *pro se*. Tacoma Public Utilities (“TPU”) was represented
13 by Kathryn Weller, Customer Accounts Supervisor, also without legal counsel.

14 Witnesses were placed under oath and testified. Exhibits were admitted and reviewed
15 and the parties made closing arguments.

16 Based upon the evidence submitted, the Hearing Examiner makes the following:

17 **FINDINGS OF FACT**

18 1. Appellant Tal Chang (“Chang”), together with her spouse Greg Chang, and
19 Steven J. Lacey (“Lacey”) formed a business relationship in 2009, incorporated as Natural
20 Technologies LLC, a Washington limited liability company. *Chang Testimony; Washington*
21 *Secretary of State filing attached as Exhibit A to this Decision.* Natural Technologies LLC

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768

- 1 -
ORIGINAL

1 operated under a “d/b/a” moniker of “Natural Aquatics.” *Chang Testimony.*

2 2. Natural Aquatics was located at 2534 Tacoma Ave. S., Tacoma, Washington
3 98402-1307. *Chang Testimony; Exhibit R-2.* Electricity to Natural Aquatics was supplied by
4 Tacoma Public Utilities, Tacoma Power Division (“TPU”) under Account No. 100564401 and
5 customer names “Steven J Lacey & Tal Chang” (the “Account”). *Weller Testimony; Exhibit R-*
6 *2.* Lacey opened the Account with TPU in March of 2009. *Chang Testimony; Exhibit A-1.*

7 3. Chang managed the Natural Aquatics office “like a partner.” *Chang Testimony.*
8 At some point in the existence of Natural Aquatics, Lacey became a “non-active” member of
9 the business and Chang took over all remaining business obligations such as paying utility
10 bills. *Chang Testimony.*

11 4. Starting in 2012, changes in the regulation of pet businesses forced the closure of
12 Natural Aquatics. *Chang Testimony; Exhibit A-5.* About this same time, Chang experienced
13 severe family difficulties that required her to travel frequently overseas.¹ *Chang Testimony.*
14 Shortly thereafter, the Changs moved to Florida to pursue other business opportunities, which
15 did not pan out. *Chang Testimony; Exhibit A-5.* Chang testified that, prior to leaving Tacoma,
16 she made every effort to close out all Natural Aquatics accounts, including the Account with
17 TPU.

18 5. On November 13, 2012, Chang contacted TPU Customer Service to request a
19 disconnection of service to 2534 Tacoma Ave. S., and closure of the Account. *Chang*
20 *Testimony, Weller Testimony; Exhibit R-1.* Chang recollects that she paid the amount
21

¹ Chang testified that her father was diagnosed with cancer and that she travelled frequently to Israel to be with him and to provide care. *Chang Testimony; Exhibit A-5, Exhibit A-6, Exhibit A-7.*

1 outstanding at the time of her call. She does not recollect being told that there would be one
2 more final invoice issued after that. *Chang Testimony*. No forwarding address was given to
3 TPU for the Account. *Weller Testimony; Exhibit R-1*.

4 6. TPU mailed a final invoice (*Exhibit R-2*) totaling \$656.95 for the Account on
5 November 21, 2012, to the service address of 2534 Tacoma Ave. S. *Weller Testimony; Exhibit*
6 *R-1*. This final invoice was turned over to MSB collections after it remained unpaid as of
7 approximately February 11, 2014. *Weller Testimony; Exhibit R-1*. MSB's first collection letter
8 was mailed to the service address (2534 Tacoma Ave. S.) on or around this same date. *Weller*
9 *Testimony; Exhibit R-1*.

10 7. Chang testified that it was her understanding that Lacey was the primary on the
11 Account, and as a result, if there were any issues with the Account, she believed that TPU
12 would have no problem contacting him for resolution. The foregoing notwithstanding, Chang
13 also testified that she placed no responsibility on Lacey to pay any outstanding balance to TPU,
14 and that such was entirely her responsibility.

15 8. Once the Account was turned over to MSB, MSB used a process referred to as a
16 "skip trace" to try to locate a viable address for the former Account holders. *Weller Testimony;*
17 *Exhibit R-1*.

18 9. Over the course of 2014 and 2015, and on into 2016, MSB sent multiple
19 collection letters to the service address of 2534 Tacoma Ave. S. *Weller Testimony; Exhibit R-1*.
20 Over that same period, MSB attempted multiple "skip trace" searches for a newer, viable
21 address for Lacey or Chang. *Weller Testimony; Exhibit R-1*.

1 10. Finally, in January of 2016, MSB found an updated phone number for Lacey
2 through its latest “skip trace;” however, no contact was ever established via the phone number.
3 *Weller Testimony; Exhibit R-1.* MSB also obtained an updated address for Lacey around this
4 same time, but there is no extant record of what the updated address was. *Weller Testimony;*
5 *Exhibit R-1.*

6 11. In both January and March of 2017, MSB made additional updates to the
7 Account’s mailing address—still without creating an extant record of what that update was. In
8 March of 2017, MSB sent an additional collection letter to a Seattle address that appeared to
9 belong to Lacey. *Weller Testimony; Exhibit R-1.* Chang testified that Lacey did, in fact, receive
10 a collection letter around this time and contacted her to take care of it. As a result of receiving
11 the March 2017 letter, Lacey called TPU Customer Service and denied responsibility for the
12 outstanding balance on the Account. *Weller Testimony; Exhibit R-1.*

13 12. Thereafter, on or around March 22, 2107, Chang contacted TPU Customer
14 Service and a dialogue was initiated regarding the outstanding amount on the Account. *Chang*
15 *Testimony, Weller Testimony; Exhibit R-1.* Chang is not challenging the amount or that it is
16 owed, but rather contended at the hearing that (a) her personal circumstances should excuse her
17 from having to pay the late fees and penalties that have accrued on the Account, and (b) that
18 TPU should be estopped from collecting the late fees and penalties because it failed to
19 ascertain Lacey’s Seattle contact information sooner, which contact would have led to Chang’s
20 resolving the outstanding balance on the Account before it reached its current pay-off amount.
21 *Chang Testimony.*

1 decided by a hearing examiner, including but not limited to: ... (b) Appeals of administrative
2 decisions or determinations; ...

3 5. As evidenced by the foregoing, hearing examiners are creatures of statute and
4 have only the authority they are given by those same statutes. In the present matter, as stated
5 above, that authority comes from TMC 1.23.050.B.21, which states as follows:

6 B. In regard to the matters set forth below, the Examiner shall conduct
7 adjudicative proceedings, maintain a record thereof, and enter findings of fact,
8 conclusions of law, and a final decision or other order, as appropriate: ...

9 21. Appeals arising from the imposition of charges for service issued by the
10 Department of Public Utilities, as well as those arising from disputes
11 concerning utility service, use of watershed or other Department property, and
12 termination of any use; provided, that the Hearing Examiner shall not
13 adjudicate claims with respect to any rate set by the City Council in a rate
14 ordinance nor hear any challenge to the rate-making process (Chapters 12.06
15 and 12.10);

16 6. Chang's arguments here (*See FF 12 above*) essentially result in requests for relief
17 through either waiver of the late fees and penalties and/or equitable estoppel against TPU's
18 collecting them. Again, Chang does not dispute the utility charges, or that late fees and
19 penalties have accrued. *Chang Testimony*. She simply wants to be absolved of paying them.

20 7. Waiver and estoppel are equitable remedies.⁵ Washington courts generally are in
21 agreement that hearing examiners do not have the discretion to grant equitable remedies
unless the ability to do so is expressly granted in authorizing legislation.⁶

⁵ See e.g. *Go2Net, Inc. v. FreeYellow.com, Inc.*, 158 Wn.2d 247, 254, 143 P.3d 590, 593 (2006).

⁶ *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 638 689 P.2d 1084 (1984); see also *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 843, 899 P.2d 1290, (1995) (*The scope and nature of an administrative appeal or review must be determined by the provisions of the statutes and ordinances which authorize them*). *Skagit Surveyors & Engr's, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998) (*The power of an administrative tribunal to fashion a remedy is strictly limited by statute.*).

1 paid in full either in a one-time lump sum payment or pursuant to a payment schedule
2 acceptable to Tacoma Public Utilities.

3 **DATED** this 14th day of August, 2017.

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6 **JEFF H. CAPELL, Hearing Examiner**

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

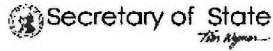
4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of motions
13 for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for
14 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set
15 forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole
16 discretion of the Examiner to determine whether an opportunity shall be given to other parties
17 for response to a motion for reconsideration. The Examiner, after a review of the matter, shall
18 take such further action as he/she deems appropriate, which may include the issuance of a
19 revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*).

20 **APPEAL OF EXAMINER'S DECISION TO MUNICIPAL COURT:**

21 **NOTICE**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to Tacoma Municipal Court. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Examiner, unless otherwise provided by statute.

EXHIBIT A



Corporations

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Corporations Division - Registration Data Search

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NATURAL TECHNOLOGIES LLC

Purchase Documents for this Corporation >

UBI Number	602935964
Category	LLC
Active/Inactive	Inactive
State Of Incorporation	WA
WA Filing Date	06/29/2009
Expiration Date	06/30/2013
Inactive Date	01/03/2013
Duration	Perpetual

Registered Agent Information

Agent Name	STEVEN LACEY
Address	2115 S MASSACHUSETTS ST
City	SEATTLE
State	WA
ZIP	98144

Governing Persons (as defined in RCW 23.95.105 (12))

Title	Name
Governor	LACEY, STEVE
Governor	CHANG, GREG

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

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