

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JAMILA YOUMANS,
individually and as representative of a class of
similarly-situated persons and entities,

Case No. 2016-152613-CZ
Hon. Daniel P. O'Brien

Plaintiff,

v.

CHARTER TOWNSHIP OF BLOOMFIELD,
a municipal corporation,

Defendant.

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JUDGMENT

At a session of the Oakland County Circuit Court
held in the City of Pontiac, State of Michigan
on this _____ day of September, 2018

PRESENT: DANIEL PATRICK O'BRIEN
Circuit Court Judge

The Court, having conducted a bench trial in this case and having issued its opinion on the record on July 12, 2018:

WHEREAS this case is a certified class action on behalf of a class consisting of persons and entities who paid Defendant Charter Township of Bloomfield (the "Township") for water and sanitary sewage disposal services at any time between April 21, 2010 and the date of this Order (the "Class Period");

WHEREAS Plaintiff filed a First Amended Complaint (“FAC”) containing the following five Counts:

Count I: Violation of the Headlee Amendment

Count II: Assumpsit/Money Had and Received – Unreasonable Water and Sewer Rates

Count III: Assumpsit/Money Had and Received – Violation of MCL 141.118 (Revenue Bond Act)

Count IV: Assumpsit/Money Had and Received – Violation of MCL 123.141 (Water Furnished Outside Territorial Limits Act)

Count V: Assumpsit/Money Had and Received – Violation of Township Ordinance § 38-225

WHEREAS the parties tried this case to the bench in February 2018;

WHEREAS Plaintiff presented its case to the Court by separating her claims into seven types of alleged overcharges as follows:

1. Non-Rate Revenues (Counts I, II and IV)
2. Sewer Only Revenues (Counts I and II)
3. Rent Charges (Counts I, II and IV)
4. Township’s Own Water Use (Counts II, III, and V)
5. OPEB Charges (Counts I, II and IV)
6. County Drain Charges (Counts I and II)
7. Public Fire Protection Service (Counts I, II, III and IV)

WHEREAS the Court read its Opinion in this case from the bench on July 12, 2018 and found in favor of Plaintiff on certain issues and in favor of the Township on other issues;

WHEREAS the Court’s Opinion adhered to Plaintiff’s division of her claims into the seven types of overcharges described above;

WHEREAS the Court has found certain types of overcharges to be unlawful under more than one count of Plaintiff’s FAC, and other types of overcharges to be lawful under one count but unlawful under another count, any refund awarded with respect to any of the types of overcharges

described above is not intended to be cumulative with any other refund awarded with respect to the same type of overcharge (i.e., an award of \$1 as to Non-Rate Revenues on Count II is not cumulative with an award of \$1 as to Non-Rate Revenues on Count IV, but is cumulative with an award of \$1 as to Sewer Only Revenues on Count II), such that multiple instances of relief as to any single type of overcharge, under multiple counts of the FAC, reflect only different reasons why Plaintiff is entitled to a single refund for a particular type of overcharge.

The final judgment of the Court is as follows:

I. IT IS ORDERED that as to Count I of Plaintiff's FAC, Violation of the Headlee Amendment, a judgment of no cause of action is entered in favor of the Township with respect to each claimed overcharge, for the reasons stated on the record.

II. IT IS FURTHER ORDERED that as to Counts II and IV of Plaintiff's FAC, to the extent those Counts are based upon Non-Rate Revenues not being deducted in the Township's rate model, a judgment in favor of the Plaintiff and the Class and against the Township is entered as follows:

1. For the reasons on the record, Defendant's rate method has impeded Plaintiff from proving its claim that Defendant's rates are disproportionate to costs. Due to that impediment, the Court is prevented from deciding the question.
2. For the reasons stated on the record, the Township is permanently ordered to explicitly document its consideration of the Non-Rate Revenue in setting its water and sewer rates.

III. IT IS FURTHER ORDERED that as to Count II of Plaintiff's FAC, to the extent that Count is based upon Sewer-Only Revenues not being deducted in the Township's rate model, a judgment in favor of the Plaintiff and the Class and against the Township is entered as follows:

1. For the reasons on the record, Defendant's rate method has impeded Plaintiff from proving its claim that Defendant's rates are disproportionate to costs. Due to that impediment, the Court is prevented from deciding the question.
2. For the reasons stated on the record, the Township is permanently ordered to explicitly document its consideration of all Sewer Only Revenue in setting its water and sewer rates.

IV. IT IS FURTHER ORDERED that as to Counts II and IV of Plaintiff's FAC, to the extent those Counts are based upon the Township's inclusion in its water and sewer rates of rent expense for space in its Department of Public Works Building that is used by the Water and Sewer Division, a judgment in favor of Plaintiff and the Class and against the Township is entered as follows:

1. The Township is liable to Plaintiff and the Class, but Plaintiff and the Class have suffered no damages and are entitled to no refund, for the reasons stated on the record.
2. For the reasons stated on the record, the Township is permanently ordered to explicitly document all instances where the Township exchanges money or "in-kind" services belonging to its General Fund for money or in-kind services belonging to its Water and Sewer Fund.

V. IT IS FURTHER ORDERED that as to Counts II, III and V of Plaintiff's FAC, to the extent those Counts are based upon the Township's Own Water Use, a judgment in favor of Plaintiff and the Class and against the Township is entered as follows:

1. For the reasons stated on the record, the Township shall pay a refund to Plaintiff and the Class in the amount of \$3,690,241.00, which, subject to further orders of the Court, shall be paid into a common fund for distribution to the Class and payment of class

counsel's fees and costs.

2. For the reasons stated on the record, the Township is permanently ordered to explicitly document all instances where in-kind provision of services is used to reimburse the Township's Water and Sewer Fund for services provided by the Township's General Fund or instances where the General Fund pays for certain water used for operation and maintenance but then properly charges the Water and Sewer Fund for these operational expenses.

VI. IT IS FURTHER ORDERED that, as to Counts II and IV of Plaintiff's FAC, to the extent that those Counts are based upon the Township's inclusion of OPEB Charges in the Rates, a judgment in favor of Plaintiff and the Class and against the Township is entered as follows:

1. For the reasons stated on the record, the Township is liable to Plaintiff and the Class, but Plaintiff and the Class are not entitled to any refund.
2. For the reasons stated on the record, the Township is permanently ordered to explicitly document the OPEB dollars in setting its water and sewer rates.

VII. IT IS FURTHER ORDERED that, as to Count II of Plaintiff's FAC, to the extent that that Count is based upon the Township's inclusion of County Drain Charges in the Rates, a judgment of no cause of action is entered in favor of the Township.

VIII. IT IS FURTHER ORDERED that, as to Counts II, III and IV of Plaintiff's FAC, to the extent that those Counts are based upon the Public Fire Protection costs, a judgment in favor of Plaintiff and the Class and against the Township is entered as follows:

1. For the reasons stated on the record, the Township is required to pay the cost of water that passes through fire hoses. The Township already pays for this water, however, through the provision of in-kind services provided to the Water and Sewer Fund by the General Fund, therefore there is no refund owed to Plaintiff

and the Class.

- 2. For the reasons stated on the record, the Township is permanently ordered to explicitly document payment of the cost of water that passes through fire hoses by providing in-kind services from its General Fund to its Water and Sewer Fund.

This order is not a final order and does not close the case. The Court retains jurisdiction for all purposes including, but not limited to, considering an award of attorney fees and costs to Class counsel and an incentive award to the class representative.

9/17/2018

/S/DANIEL PATRICK O'BRIEN

Circuit Court Judge MRS

Approved as to form only, all
appellate rights and arguments retained:

/s/ Gregory D. Hanley
Gregory D. Hanley (P51204)
Attorney for Plaintiff

/s/ Mark S. Roberts
Mark S. Roberts (P44382)
Attorney for Defendant