



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB06/0040 - June 21, 2006

THE SITUATION

The Complainant owns a rental house near her place of business. On the afternoon of March 16, 2006, the Complainant discovered that a former tenant of the rental house, Witness #3, had come to retrieve belongings that she had stored in the detached garage of the rental house. The Complainant was unaware that Witness #3 had an agreement with the second tenant to pay for the storage space in the garage.

After the subsequent tenant moved out pursuant to an eviction notice, Witness #3 came to retrieve her belongings. The Complainant was perturbed when she found Witness #3 was in the alley packing up her belongings. The Complainant ordered Witness #3 to get off of her property and told her that she could not take her things. Though the Complainant acknowledged that the personal property did not belong to her, she claimed that it was abandoned, and that Witness #3 owed her money for having stored the personal property. The Complainant intended to sell Witness #3's personal property in order to offset the rent owed by the evicted tenant. Due to the disagreement, one of the parties called the police.

Officer #1, and Officer #2 responded to the call. After talking to the parties involved, the officers found that the dispute centered on a civil claim regarding an alleged unpaid debt. The police officers explained to the Complainant that she could not hold someone else's property to pay an unpaid debt. They further explained that the Complainant's recourse against Witness #3 for the alleged debt was to file a civil action in court. The officers directed Witness #3 to remove her things and prevented the Complainant from interfering. After Witness #3 had removed most of her belongings, the officers left.

THE COMPLAINT

The Complainant contacted the ombudsman's office by electronic mail on March 31, 2006. She alleged that Boise Police Department officers had become involved in a civil matter over which they had no jurisdiction. Witness #3 had moved out four months earlier, leaving her belongings in the garage, and had never paid storage fees to the Complainant. When Witness #3 came to retrieve her belongings, the Complainant tried to stop her. The Complainant felt that Witness #3's belongings had become abandoned property. Consequently, the Complainant felt she had a possessory lien on Witness # 3's belongings.

The officers prevented the Complainant from holding Witness #3's property. The officers told the Complainant that she had no right to retain Witness #3's belongings. The officers also told her that her remedy was to pursue a civil cause of action through the court system. The Complainant alleged that the officers became involved in a civil matter over which they had no jurisdiction. This allegation, if true, would be a violation of the Boise Police Department's Policy § 11.03.02 Performance of Duty.

THE COMPLAINT INVESTIGATION

The investigation into this complaint included a review of the dispatch records, which identified the officers involved in the incident. Eleven digital audio recordings made by officers on the date of the incident were reviewed and analyzed for relevant evidence. Interviews of Witness #1, Witness #2, Witness #3, the Complainant, and Officer #1 were also conducted.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence obtained and reviewed in the course of this investigation, I issued the following findings of fact.

1. The Complainant owns a rental house near her place of business.
2. The rental house has a detached garage that is part of the residence and is not rented out separately.
3. Witness #3, together with two roommates, rented the house from the Complainant.
4. The Complainant did not have a written rental agreement with Witness #3 and her roommates, or with any of the subsequent tenants.
5. Witness #3 entered into an oral agreement to sublease storage space in the garage from the tenant who moved into the rental house after she and her roommates moved out.
6. The Complainant was not aware of the sublease agreement.
7. The Complainant evicted the tenant who moved in after Witness #3 and her roommates had moved out.
8. After the evicted tenant left, Witness #1 moved into the rental house.
9. Witness #1 requested permission from the Complainant to clean out the garage in order to move her own things into the garage.
10. The Complainant told Witness #1 to go ahead and clean out the garage and to bring anything of value over to her place of business so that she could sell it.
11. Neither the Complainant nor Witness #1 knew who owned the items in the garage.
12. On March 15, 2006, Witness #3 made arrangements to come and pick up her belongings.

13. The following day, when Witness #3 came to pick up her things, Witness #1 and Witness #2 were cleaning out the garage. They had already put some things in a dumpster and moved other things to the Complainant's place of business.
14. Witness #3 thought that Witness #1 and Witness #2 were trying to steal her things; and either she or Witness #4 called the police.
15. Officer #1 arrived with Officer #5, discussed the matter with both Witness #1 and Witness #3, and discovered that there had been a misunderstanding.
16. The situation was resolved and the officers left.
17. Witness #3 and Witness #4 worked into the afternoon to sort through and pack Witness #3's things.
18. Later in the afternoon of the 16th, the Complainant became aware that Witness #3 was in the process of picking up the belongings that she had had stored in the garage.
19. The Complainant told Witness #3 that she could not take her belongings.
20. One of the parties called the police.
21. Officer #1 and Officer #2 responded to the call and explained to the Complainant that she could not keep Witness #3's belongings.
22. The Complainant claimed that Witness #3 owed her money.
23. Officer #1 and Officer #2 further explained to the Complainant that if Witness #3 owed her money, she needed to file a court action for an unpaid debt. They also explained to the Complainant that she could not simply confiscate Witness #3's things.
24. The officers also explained that if the Complainant had a court order, they would be able to do something about it.
25. Officer #1 and Officer #2 had Witness #2 move Witness #3's belongings out of the backroom of the Complainant's place of business.
26. Witness #3 retrieved her belongings from the garage and from the alley behind the business.
27. The officers left the scene. No report of the incident was filed.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Boise Police Department Policy and Procedure Manual § 11.03.02 Performance of Duty states:

An employee shall perform his/her duties in a manner which will maintain the highest standards of efficiency in carrying out the Department's functions and objectives. Satisfactory performance and competence is demonstrated by:

- *Adequate knowledge of the application of laws required to be enforced*
- *Willingness and ability to perform assigned tasks properly*
- *Conformance to the work standards established for the employee's rank, grade, or position*
- *Taking appropriate and timely action when a crime, disorder, or other situation requiring police action occurs*

The above referenced policy states that satisfactory performance and competence is demonstrated by an adequate knowledge of the application of laws to be enforced. In this case, the Complainant alleges that Officer #1 failed to perform her duty because she interfered in a civil matter. The Complainant claims that the officers should not have allowed Witness #3 to remove her belongings because it interfered with the Complainant's ability to file a claim for a possessory storage lien on the property and then foreclose on the claim.

The Complainant is correct that an unpaid debt is a civil matter. The Complainant claims that Witness #3 owed her money for storing her belongings in the garage. The Complainant also claims that she had a right to hold or to sell off Witness #3's belongings until money owed by an evicted tenant was paid. Though the Complainant would have liked to have sold Witness #3's belongings in order to offset the loss she incurred when the evicted tenant failed to pay the rent, only the courts have jurisdiction to determine whether Witness #3 was responsible for paying the rent of a subsequent tenant.

Similarly, the courts have sole jurisdiction to determine whether Witness #3 owed a storage fee to both the evicted tenant and the Complainant. When Witness #3 and her roommates moved out of the rental house, Witness #3 agreed to pay the subsequent tenant a small fee to continue to store her things in the garage. This agreement existed between Witness #3 and the second tenant. Witness #3 paid the fee to the subsequent tenant through February 2006. No agreement existed between Witness #3 and the Complainant; and the Complainant had no written agreement prohibiting the sublease of storage space in the garage.

When Witness #3 came to retrieve her belongings, the Complainant tried to stop her. Officer #1 and Officer #2 questioned the witnesses who were present. The officers found that Witness #3 owned the things stored in the garage, as well as some of the things that were in the backroom of the Complainant's business. The officers also established that the dispute between the Complainant and Witness #3 was over a question of an alleged unpaid debt. When the police talked to the Complainant, she acknowledged that Witness #3's belongings were not hers. Thus, there was no question as to who actually owned Witness #3's belongings.

The Complainant gave the officers two reasons for keeping Witness #3's personal property. First, she argued that she had a right to Witness #3's belongings because they were abandoned. Second, she contended that she had a right to sell Witness #3's personal property to offset the rent that was left unpaid by the evicted tenant.

Officer #1 told the Complainant that the property was not abandoned. This is correct. The Complainant claimed that the property was abandoned because it had been stored in the garage for four months; however, the Complainant did not know that Witness #3 had an agreement to rent storage space in the garage from the second tenant, who was later evicted. Though Witness #3 did not pay storage fees for March 2006, sixteen days of unpaid storage does mean that her property was abandoned.

The second issue was whether the Complainant had the right to confiscate and dispose of Witness #3's belongings. By allowing Witness #3 to retrieve her belongings, the Complainant felt that the police had deprived her of the opportunity to claim and foreclose upon a storage lien. However, it is important to note that, although she claimed the items had been abandoned for four months, the Complainant had taken no legal action to establish any type of lien.

The Complainant essentially wanted to recoup an economic loss on a rental property by taking the law in her own hands. The Complainant stated that the officers wanted to be "the judge, jury, and executioner;" however, it appears that the situation was actually reversed. The Complainant wanted to confiscate Witness #3's personal property to offset a debt owed by a different tenant. The Complainant then became perturbed with the officers when they interfered with her self-help justice.

The resolution of a debt is a civil matter. Officer #1 and Officer #2 advised the Complainant that her recourse against Witness #3 was to bring a cause of action in civil court. Without a court order, the Complainant could not keep personal property that did not belong to her. Had she done so, she would have committed the crime of theft.

Boise Police Department Policy (§ 11.03.02) Performance of Duty requires that officers take appropriate action when there is an incident of civil disorder. In this case, the officers helped to prevent a crime from occurring. At best, the Complainant had an indeterminate and constantly mutating claim against Witness #3. The claim was untested in a court of law; moreover, the facts suggest that the Complainant would have had a difficult time proving a claim of any kind against Witness #3. On the other hand, it was clear that, had the Complainant held Witness #3's personal property and sold it at a garage sale, Witness #3 could easily have requested that the police charge the Complainant with the crime of theft.

The officers showed a great deal of patience with the situation. They explained the issues to the Complainant a number of times. As both Witness #2 and Witness #3 observed, the officers handled the situation professionally. Everyone involved, except the Complainant, was pleased with the way the situation was resolved; and everyone else involved had words of praise for the officers. Officer #1 and Officer #2 went above and beyond the call of duty to help resolve the dispute without an escalation of the situation and without having to charge anyone with a crime. The officers should be commended for their common sense and professionalism. There was no policy violation here.

For these reasons I have issued a finding of exonerated for § 11.03.02 Performance of Duty.



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org