



Philadelphia Gas Works

800 West Montgomery Avenue, Philadelphia, PA 19122

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November 2, 2009

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

Re: Dung Phat, LLC v. PGW, Docket No. C – 2009 – 2135667

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original of its Preliminary Objections to the Complaint in the above captioned matter.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristine Trock", is written over the typed name.

Kristine Trock

Enclosure

cc: Dung Phat, LLC (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dung Phat LLC

v.

Philadelphia Gas Works

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:
:
:
:

Docket No. C – 2009 – 2135667

NOTICE TO PLEAD

To: Dung Phat, L.L.C., Complainant

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objections and Motion to Strike, within ten (10) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

November 2, 2009



Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Attorney I.D. No. 50415
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dung Phat LLC	:	
	:	
v.	:	Docket No. C – 2009 – 2135667
	:	
Philadelphia Gas Works	:	

**Philadelphia Gas Works’
Preliminary Objections and
Motion to Strike Impertinent Matter**

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works (“PGW”) hereby files its Preliminary Objections to the Complaint filed in the above captioned matter on the grounds that the Commission lacks jurisdiction over the subject matter of the Complaint, and that the Complaint includes impertinent matter in its requested relief to remove (or forbear collection of) the lien, and moves to strike the requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a)(1) and (2).

In support of its preliminary objections and motion to strike, PGW hereby avers the following:

1. On or about October 1, 2009, the Complainant filed a formal complaint against PGW with the Commission under Docket No. C-2009-2135667, regarding unpaid debt for gas service to 1100 Washington Avenue, #2, Philadelphia, Pennsylvania (1100 Washington Avenue, #2).
2. The Complaint avers that Dung Phat, L.L.C. is the owner of 1100 Washington Avenue, #2 and that the Bao Bao Hao Chinese Restaurant, owned by Wang Ru Qiang L.L.C., was the Complainant’s tenant.
3. According to PGW records the Complainant’s tenant, the owner of the Bao Bao Hao Chinese Restaurant was the Customer of Record for the period from June 1, 2006 through May 22, 2008, at 1100 Washington Avenue, #2, when gas service was terminated for nonpayment with a final balance of \$6,107.01.

4. When PGW finalized the account for gas service of Bao Bao Hao Chinese Restaurant, neither Bao Bao Hao Chinese Restaurant, nor its owners, Wang Ru Qiang L.L.C., disputed the accuracy of the final bill or filed a complaint with this Commission concerning the amount of the final bill.

5. The Bao Bao Hao Chinese Restaurant's account is classified as commercial with gas heat and other gas consuming appliances. The property is equipped with an automatic meter reading device (AMR).

6. PGW has filed municipal a lien upon 1100 Washington Avenue, #2, for the unpaid debt for gas service to the Bao Bao Hao Chinese Restaurant, pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq.

7. Pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, PGW has the right to collect on municipal claims owed to PGW for gas service to a Service Address and file liens with the court of common pleas.

8. The Complaint avers that PGW is holding the Complainant responsible for the unpaid debt of the Bao Bao Hao Chinese Restaurant.

9. PGW has not held the Complainant personally responsible for the unpaid debt the Bao Bao Hao Chinese Restaurant, rather, PGW has informed the Complainant of its right to file a lien on municipal claims owed to PGW for gas service to a Service Address, pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq.

10. The Complaint requests relief in the form of a Commission order to PGW refrain from making the Complainant responsible for the unpaid balance for gas service rendered to 1100 Washington Avenue, #2, and (presumably) to do so by having the lien removed.

11. Under the Commission's Rules of Administrative Practice and Procedure at 52 Pa. Code §5.101, the treatment of preliminary objections is comparable to that of Pennsylvania civil practice. (See: Order Sustaining Preliminary Objection in *Paul W. Fricker v. PECO Energy Company*, Docket No. C-2009-2094757 (May 21, 2009))

The Commission's regulations provide, in relevant part:

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections...must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

52 Pa. Code §5.101(a) (2)¹

12. In this case, as the Complaint states that the bills that are the subject of the lien were from gas service under the Complainant's tenant and not the Complainant's PGW account and that the Complainant did not request the gas service. The Complainant opines that under circumstances, PGW should not hold it responsible for the bill.

13. Pursuant to the Natural Gas Choice and Competition Act, 66 Pa. C.S.A Section 2201 et seq., section 2212(n), which specifically provides, "Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, or otherwise." Thus, under 66 Pa. C.S.A Section 2212(n), the Commission has no jurisdiction over the filing of such a lien.²

14. Pursuant to the Responsible Utility Customer Protection Act at 66 Pa. Cons. Stat. § 1414, which states: "[a] city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas

¹ 52 Pa. Code §5.101(a) (2) emphasis added.

² 52 Pa. Code §5.101(a) (1)

distribution service and other related costs, including natural gas supply ...,” clarifies and confirms such rights to impose a lien.

15. The Complainant disputes the imposition of the lien because he did not incur the debt for gas service.

16. The nature of a lien is such that it encumbers the real estate, regardless who caused the event, which results in the imposition of a municipal claim. PGW may collect as a municipal claim, unpaid debt for gas service rendered, even when the gas service was not rendered to the owner of the property. *Newberry Township v. Ray Stambaugh*, 848 A.2d 173; (Pa. Cmwlth. 2000)

17. In the instant matter, the Complainant simply wishes not to be responsible for the gas he did not use. Actually, the Complaint disputes the effect of the lien.

18. As PGW has not held the Complainant personally responsible for the unpaid balance for gas service rendered to 1100 Washington Avenue, #2, the Commission need not grant the requested relief of finding that the Complainant is not to be held personally responsible for the unpaid balance for gas service of the Complainant’s former tenant.

19. A prayer for relief from a condition that does not exist (held personally responsible for unpaid balance for gas service rendered to another) is not recoverable in the cause of action before this Commission. It is irrelevant to the instant cause of action and therefore “impertinent matter” within the use and meaning of 52 Pa. Code §5.101(a) (2) and, should be stricken from the Complaint pursuant to Pa. Code §5.101(a)(2).

Wherefore, PGW respectfully requests that this Commission sustain PGW's preliminary objections to the Complaint and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

November 2, 2009



Laureto Farinas, Esquire
Attorney I. D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

VERIFICATION

I, Laureto Farinas, hereby declare that I am counsel for the Philadelphia Gas Works. I am authorized to make this verification on its behalf. The facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information and belief. I expect to be able to prove these facts at a hearing held in this matter. This verification is made subject to the penalties of 18 Pa. C.S. §4904, concerning false statements to authorities.

November 2, 2009


Laureto Farinas, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

For Complainant:

For Complainant:

Dung Phat LLC
1100 Washington Avenue
Philadelphia, PA 19147

November 2, 2009



Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982