



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 6, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Transportation
and Safety v. Germantown Cab Company
Docket No. C-2010-2175330

Dear Ms. Chiavetta:

Enclosed for filing are an original and nine (9) copies of the Brief in Support of its Objection to Respondent's Motion to Dismiss, on behalf of the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Heidi L. Wushinske
Assistant Counsel

Counsel for the Bureau of
Transportation and Safety

Enclosures

cc: As per Certificate of Service

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**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Bureau of Transportation and Safety :
 :
v. : **Docket No. C-2010-2175330**
 :
Germantown Cab Company :

**COMPLAINANT PENNSYLVANIA PUBLIC
UTILITY COMMISSION'S BRIEF IN SUPPORT OF ITS
OBJECTION TO RESPONDENT'S MOTION TO DISMISS**

Heidi L. Wushinske
Assistant Counsel

Eric A. Rohrbaugh
Deputy Chief Counsel

P.O. Box 3265
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(717) 787-5000

Dated: March 6, 2012

STATEMENT OF THE QUESTION INVOLVED

1. Should Respondent's Motion to Dismiss be Granted when Respondent has Provided no Basis for Dismissal?

Suggested answer: No

STATEMENT OF THE CASE

Pursuant to its enforcement responsibilities, the Public Utility Commission's (Commission) Bureau of Transportation and Safety (BTS)¹ issued a complaint against Germantown Cab Company (Germantown or Respondent) for violations found during an annual inspection of Respondent's vehicles. On August 23, 2010, Germantown filed a timely answer in which it denied the allegations. The Honorable Cynthia W. Fordham held a hearing on October 25, 2011, at which both parties appeared and presented the testimony of witnesses. At the hearing, Petitioner raised the defense of lack of jurisdiction, stating that "the Public Utility Commission doesn't have jurisdiction to regulate the operations of Germantown taxicab." (Tr. 165). Based on its assertion that the Commission lacks jurisdiction over Germantown, Germantown made a motion to terminate the proceeding. In response, Judge Fordham ordered Respondent to file a motion and brief regarding jurisdiction and the Commission to file an answer and brief.

¹ Due to the Commission's reorganization, Law Bureau Prosecutory Staff and the Bureau of Transportation and Safety are now the Bureau of Investigation and Enforcement.

ARGUMENT

A. Respondent has not raised any basis for its request that this complaint be dismissed

In its brief, Respondent reversed its earlier position and stated that that it “does not contend that the Commission lacks jurisdiction over this proceeding.” (Respondent’s Motion at 6). This is a turnaround from Respondent’s position at hearing, where it argued that “the Public Utility Commission doesn’t have jurisdiction to regulate the operations of Germantown taxicab.” (Tr. 165). The BTS has maintained throughout this proceeding that the Commission has jurisdiction over Germantown’s operations outside of Philadelphia. In its brief, Respondent argues that the Commission has jurisdiction over Germantown.

In addition to Respondent ceding jurisdiction in its brief, several other factors support a finding that the Commission has jurisdiction over Germantown. First, the Commission’s powers are prescribed by statute and include the regulation of taxicab service in Pennsylvania, outside of Philadelphia. On the date of the inspection at issue and at all times since, Germantown held authority from the Commission to provide taxicab service outside of Philadelphia. *See* Docket No. A-00110733. Second, Germantown has tariffs on file with the Commission and pays annual assessments to the Commission. Finally, Germantown has acquiesced to the current regulatory structure since it was established by Act 94 of 2004 in 2005, never challenging it until recently. At no time during the course of the inspection at issue did Germantown challenge the Commission’s jurisdiction. Based on the above, it is clear that the Commission has

jurisdiction over Germantown's operations outside of Philadelphia. Therefore, as Respondent has raised no other basis for dismissal, this Complaint should not be dismissed for lack of jurisdiction. Furthermore, Petitioner has not provided any other basis on which this complaint should be dismissed.

B. Whether the Commission has concurrent or exclusive jurisdiction over Germantown is irrelevant to this proceeding.

In its brief, Germantown contends that the Commission has exclusive jurisdiction and regulatory authority over Germantown (emphasis in original). However, regarding Germantown's motion to dismiss, it does not matter whether the Commission has concurrent or exclusive jurisdiction. What matters is whether the Commission had jurisdiction over Germantown at the time of the conduct from which this Complaint arose. That the Commission had such jurisdiction is not in dispute.

Finally, Germantown's request for a declaratory order that the Commission has *exclusive jurisdiction and power to regulate Germantown's operations* should be denied. The only question regarding jurisdiction that is relevant to this proceeding is whether the Commission has jurisdiction over the operations of Germantown outside of Philadelphia. For the reasons stated above, it is clear that the Commission has jurisdiction.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Transportation and Safety urges this Honorable Administrative Law Judge to deny Respondent's motion to dismiss and request for a declaratory order that the Commission has exclusive jurisdiction and power to regulate Germantown's operations.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Brief in Support of its Objection to Respondent's Motion to Dismiss, in accordance with the requirements of 52 Pa. Code § 1.57 and § 1.58.

Notification by first class mail addressed as follows:

Michael S. Henry, Esquire
2336 S. Broad Street
Philadelphia, PA 19145

Administrative Law Judge
Cynthia W. Fordham
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107



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