

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Roy Winston

Public Meeting: March 29, 2012

v.

2181504-ALJ

Philadelphia Gas Works

Docket No. C-2010-2181504

MOTION OF COMMISSIONER CAWLEY

Before us is the Initial Decision of Administrative Law Judge Angela Jones in which the high bill complaint of Roy Winston (Complainant), brought against the Philadelphia Gas Works (PGW), is dismissed due to the application of the doctrine of *res judicata*. While I agree that the complaint should be dismissed, the dismissal should not be based on the doctrine of *res judicata*.

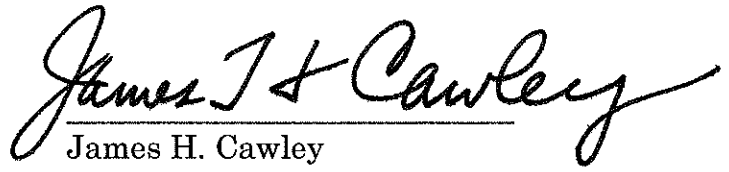
The Initial Decision contains a thorough explanation of the applicability of the doctrine of *res judicata* (claim preclusion) which precludes matters which were actually litigated in a prior action, as well as those issues which should have been litigated in that prior action, from being re-litigated in a subsequent action. Thus a future suit between the same parties on the same cause of action is barred when a court of competent jurisdiction renders a final judgment on the merits. *Scott v. Mershon*, 657 A.2d 1304, 1307 (Pa.Super.Ct. 1995). As we stated recently in *Horton v. National Fuel Gas Distribution Corporation*, Docket No. C-2009-2097173, Opinion and Order entered on Oct. 13, 2009, for the doctrine of *res judicata* to apply the following four conditions must be met: (1) identity of issues; (2) identity of causes of action; (3) identity of persons and parties to the action: and (4) identity of the quality and capacity of the parties to be sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316, 1317 (Pa. Super. Ct. 1983); *Pa. Pub. Util. Comm'n v. Katrina V. Waddington, t/d/b/a Waddington Tours*, Docket No. A-00108279C0101 (Feb. 1, 2002); *Thomas P. O'Toole v. The Bell Telephone Company of Pennsylvania*, 1992 Pa. PUC LEXIS 83, 16-18. The ALJ dismissed the instant case because another case brought by the complainant, *Winston v. Philadelphia Gas Works*, Docket No. F-2010-2171931, entered July 26, 2011, had been dismissed previously for failure to prosecute. While the four conditions referenced above were satisfied, the Order in the earlier litigation did not dismiss the matter with prejudice, nor was the case fully litigated on its merits. As such, the previous ruling

was not a ruling on the merits of the case.¹ Mr. Winston was free to again file this instant complaint based on the same set of facts and arguments of law. Since the doctrine of *res judicata* does not apply, Respondent's Motion for Dismissal, on those grounds, was incorrectly granted.

Having found that this determination was in error, the proper remedy would ordinarily be to remand the matter. This case, however, provides unique circumstances. As the ALJ noted, it appears that Complainant is deceased. Respondent stated that it had information that Complainant passed away on July 21, 2010 and that phone service to the property is disconnected and gas service at the service address is no longer in the name of Complainant. The ALJ took notice of this information in her decision.² Therefore, in the interest of judicial economy and in an effort to ensure the protection of Mr. Winston's due process rights or that of his estate, we will dismiss this matter again without prejudice.

THEREFORE, I move that:

1. The Initial Decision of the Administrative Law Judge be modified consistent with this Motion.
2. The Office of Special Assistants prepare an appropriate order.


James H. Cawley
Commissioner

Dated: March 29, 2012

¹ The law is unsettled about whether a dismissal without an actual fact finding can constitute dismissal on the merits. In at least one instance a court has held that a dismissal *with prejudice* is an adjudication "on the merits" for the purposes of applying the doctrine of *res judicata*. The court reasoned that, since a dismissal with prejudice disposes of the claimant's rights to pursue any further remedy on his claim, such action was in essence an action on the merits of the case. See *Sebrell v. Philadelphia Police Dept.*, 2005 U.S. App. LEXIS 27296. Under *Sebrell*, this case should not have been dismissed based upon the doctrine of *res judicata* because it was not dismissed "with prejudice" but rather merely "dismissed."

² Initial Decision at page 3.