

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement :**

vs.

William R. Smoley

:
:
:
:

Docket No. C-2012-2311630

NOTICE TO PLEAD

PLEASE TAKE NOTICE that you have 20 days from the date of service of the attached Respondent's Answer and New Matter To Complaint to plead or otherwise respond to the Respondent's New Matter.



Charles M. McCuen, Esq.
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Dated: July 12, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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JUL 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement :

vs. :

Docket No. C-2012-2311630

William R. Smoley :

DEFENDANT'S ANSWER TO COMPLAINT AND NEW MATTER

Respondent, William R. Smoley, by and through his attorney, Charles M. McCuen, Esq., for his Answer and New Matter to the Complaint of the Public Utility Commission (the "PUC"), Bureau of Investigation and Enforcement states as follows:

1. - 3. Admitted.

4. Admitted in part and denied in part. It is admitted that the Respondent is William R. Smoley and that Mr. Smoley until September of 2011 had a principal place of business located at 100 Pennsylvania Avenue, Selinsgrove, PA 17870. It is specifically denied that Mr. Smoley continues to have a principal place of business at that address after his joint filing with his wife of a Chapter 7 bankruptcy case in the United States District Court for the Middle District of Pennsylvania on September 15, 2011, such case being designated as Case No. 11- 06342 (the "Chapter 7 Case").

5. Admitted in part and denied in part. It is admitted that the Respondent, William R. Smoley, to and until September of 2011 provided a "public utility" and engaged in transporting passengers in the Commonwealth of Pennsylvania for compensation. It is specifically denied that Mr. Smoley continues to provide such a public utility after his joint filing with his wife of the Chapter 7 Case on September 15, 2011.

6. Denied. Prior to the filing of the Chapter 7 Case, the insurance coverage for all of

the transportation services being provided by Respondent, William R. Smoley, was cancelled as of September 8, 2011, and notice of such discontinuation was given directly to the PUC by the insurance carrier. All transportation services were discontinued on September 8, 2011. Moreover, Respondent filed paperwork with the PUC to specifically terminate his certificates.

7.-11. Paragraphs 7 through 11 of the Complaint set forth conclusions of law as to which no response is required.

2010-2011 FISCAL YEAR

12.-13. Respondent is without sufficient information to form a belief as to the truth of the allegations of Paragraphs 12 and 13 of the Complaint, copies of the alleged documents not having been provided with the Complaint, and therefore such allegations are denied and strict proof thereof at trial is demanded.

14. Respondent is without sufficient information to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint, no basis for such conclusion having been provided, and therefore such allegations are denied and strict proof thereof at trial is demanded.

15. Admitted.

16. Admitted in part and denied in part. It is admitted that the Respondent, William R. Smoley, did receive an assessment for the 2010-2011 Fiscal Year. It is denied that the Respondent failed to make payments against such assessment as he managed to make two payments of \$500.00 each from his dwindling cash flow from local business in the Susquehanna Valley.

2011-2012 FISCAL YEAR

17.-18. Respondent is without sufficient information to form a belief as to the truth of the allegations of Paragraphs 17 and 18 of the Complaint, copies of the alleged documents not having

been provided with the Complaint, and therefore such allegations are denied and strict proof thereof at trial is demanded.

19. Admitted.

20. Respondent is without sufficient information to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint, copies of the alleged document not having been provided with the Complaint, and therefore such allegations are denied and strict proof thereof at trial is demanded. It is further noted that no attempt is made in the Complaint to give a reasonable basis for the PUC to increase an assessment by over 17% year-to-year at a time when the PUC is well aware based upon its own records that business revenues from transportation in Pennsylvania were drastically falling.

21.-23. Respondent is without sufficient information to form a belief as to the truth of the allegations of Paragraphs 21, 22 and 23 of the Complaint, copies of the alleged documents not having been provided with the Complaint, and therefore such allegations are denied and strict proof thereof at trial is demanded. It is further noted that the alleged notice would have been given to Respondent both after he had discontinued all operations as well as after the filing of the Chapter 7 Case.

24.-25. Admitted.

26. Admitted, it being noted that the total shown as due is not simply the total of the two assessments but rather reflects a \$1000 credit against the 2010-2011 assessment as noted above.

Violations

27. Paragraph 27 of the Complaint sets forth a conclusion of law to which no response is required. Respondent objects to the trebling of the requested penalty associated with the failure

to file an assessment report when the PUC already increased the year-to-year assessment by \$554, or more than 17%, at a time when the PUC knows based upon its own records that business revenues from transportation in Pennsylvania were drastically falling and not increasing and moreover after the Respondent has been forced to liquidate his business in the Chapter 7.

28. Paragraph 28 of the Complaint sets forth a conclusion of law to which no response is required. Respondent objects to the assessment of a 15% civil penalty against the Respondent based upon his failure to pay the earlier assessments. Despite his best efforts, he was forced to liquidate all of his business and personal assets in connection with the Chapter 7 case. Moreover, the assessment of a greater amount in penalties against Respondent because he can't pay the original amounts due is not fair and equitable, and there would be a deterrent effect whatsoever against Respondent because he was already driven out of business long before such request.

NEW MATTER

29. As noted above, the insurance coverage for all of the transportation services being provided by Respondent, William R. Smoley, was cancelled effective as of September 8, 2011, and notice of such discontinuation was given directly to the PUC by the insurance carrier.

30. All transportation services provided by the Respondent were discontinued on September 8, 2011.

31. Moreover, the Respondent jointly filed with his wife the Chapter 7 Case on September 15, 2011.

32. The Respondent also filed paperwork with the PUC directly cancelling his authority to operate as a common carrier.

33. In connection with the Chapter 7 Case, the PUC was specifically listed as an

unsecured creditor of the Respondent in Schedule F of the Schedules of Assets and Liabilities filed with the Bankruptcy Court and listed therein and on the case matrix as having an address of: PA PUC, P.O. Box 3265, Harrisburg, PA 17105-3265.

34. When the Chapter 7 Case was filed on September 15, 2011, within a week thereafter the PUC received notice of the commencement of the case, the case number, the location of the Section 341 meeting of creditors and other pertinent information.

35. Based upon its receipt of the aforementioned Notice, the PUC was fully informed in September 2011 that Respondent was out of business, as operations in a Chapter 7 case are only allowed in extraordinary circumstances following approval by the Court after notice to creditors and a hearing.

36. Despite such knowledge by the PUC of the Chapter 7 case, representatives of the PUC continued to claim ignorance of the Chapter 7 case and to serve papers and other process upon the Respondent in an effort to collect the outstanding assessments, again despite actual knowledge of the case filing. Such claimed ignorance is reflected in the Complaint itself by the request that the Respondent's Certificate of Public Convenience should be cancelled and that his vehicle registrations should be suspended or revoked.

37. Moreover, the PUC received all additional notices to creditors generated in the Chapter 7 Case and continued to make claims upon the Respondent in direct violation of the provisions of the automatic stay provisions of Section 362 of the United States Bankruptcy Code.

38. More significantly, the filing of the Chapter 7 Case and the complete liquidation of the Respondent's business by his Bank, including his sole personal vehicle as well as his hunting cabin in favor of his Bank, leaves Respondent and his wife, both of whom are in their 60s, without

a business, without jobs, and with no reasonable prospect of their recovering financially prior to their retirement.

39. Enforcement of the assessments and the imposition of additional penalties as requested in this case would not be fair and equitable given all of the facts of this case and the demonstrated inability of the Respondent to satisfy any such claims.

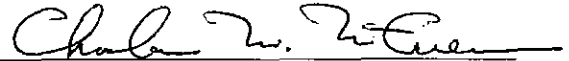
40. Respondent objects to the trebling of the requested penalty associated with the failure to file an assessment report when the PUC already increased the year-to-year assessment by \$554, or more than 17%, at a time when the PUC knows based upon its own records that business revenues from transportation in Pennsylvania were drastically falling and not increasing and moreover after the Respondent has been forced to liquidate his business in the Chapter 7.

41. Respondent further objects to the assessment of a 15% civil penalty against the Respondent based upon his failure to pay the earlier assessments. Despite his best efforts, he was forced to liquidate all of his business and personal assets in connection with the Chapter 7 case. Moreover, the assessment of a greater amount in penalties against Respondent because he can't pay the original amounts due is not fair and equitable, and there would be no deterrent effect whatsoever against Respondent because he was already driven out of business long before such request.

WHEREFORE, for the foregoing reasons, the Respondent, William R. Smoley, respectfully requests that:

- (A) Judgment be entered in favor of Respondent and against the Movant regarding the claimed assessments and civil penalties, and that the Complaint be dismissed with prejudice;

- (B) The alternative relief requested by the Movant for cancellation of Respondent's Certificates of Public Convenience, suspension or cancellation of Respondent's transport vehicle licenses, and referral to the Pennsylvania Attorney General's Office be denied as being both moot and inappropriate in this case; and
- (C) The Public Utility Commission provide the Respondent with such other and further relief as shall be deemed just and proper in the circumstances.

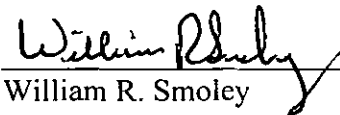


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Dated: July 12, 2012

VERIFICATION

I hereby verify that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



William R. Smoley

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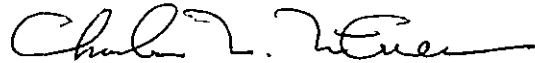
William R. Smoley

CERTIFICATE OF SERVICE

The undersigned certifies that I served my Notice of Appearance and Respondent's Answer To Complaint And New Matter both filed in the above-referenced case by first class mail, postage pre-paid upon the following:

Wayne T. Scott
First Deputy Prosecutor
Pennsylvania PUC
Bureau of Investigation
And Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Stephanie M. Wimer, Esq.
Prosecutor
Pennsylvania PUC
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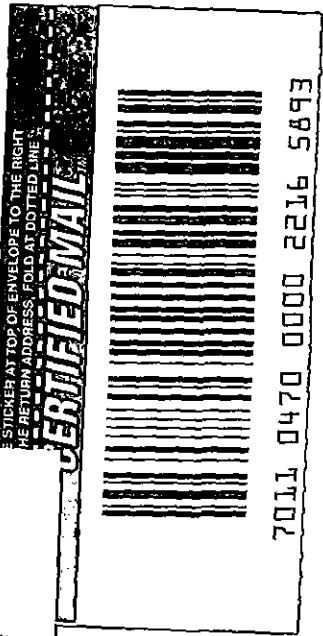
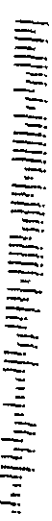
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Dated: July 13, 2012

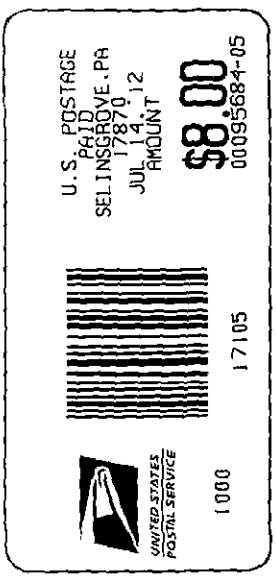
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Rosemary Chiavetta, Secretary
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