



## TABLE OF CONTENTS

<u>Table of Contents</u> .....	(2)
<u>Table of Citations</u> .....	(3)
<u>Table of Authorities</u> .....	(3)
<u>Statement of the Question Presented</u> .....	(4)
<u>Concise Statement of the Case</u> .....	(5)
<u>Summary of Argument</u> .....	(6)
<u>Argument</u> .....	(8)
<u>Conclusion</u> .....	(16)

**TABLE OF CITATIONS**

*51 I&N, Inc. v. Rosen*.....(10)

*Apex Financial Corp. v. Decker*, 369 A.2d 483, 245 Pa. Super. 439 (Pa. Super. 1976).....(11)

*Basile v. H&R Block, Inc.*, 761 A.2d 1115, 563 Pa. 359 (Pa. 2000).....(10)

*Daniel Adams Associates, Inc. v. Rimbach Pub., Inc* 360 Pa. Super. 72, 519 A.2d 99.....(9)

*Metzgar v. Star Pontiac Inc.*, 75 Pa. D&C 4<sup>th</sup>. 144 (Pa. Com. Pl. 2005).....(13)

*Myszkowski v. Penn Stroud Hotel*, 430 Pa. Super. 315, 634 A.2d 622 (Pa. Super. 1993).....(12)

**TABLE OF AUTHORITIES**

66 Pa. C.S. §1304 .....(15)

**STATEMENT OF THE QUESTION PRESENTED**

1. WHETHER COMPLAINANT'S ELECTRICAL SERVICE WAS IMPROPERLY SWITCHED FROM PPL ELECTRIC TO BLUE PILOT ENERGY? (Suggested answer: YES)

### CONCISE STATEMENT OF THE CASE

On March 31, 2014, Complainant, Alan J. Haulman, filed a Formal Complaint with the Public Utility Commission. Complainant alleged that his electrical service was switched without authorization from PPL Electric to Blue Pilot Energy, LLC, and that as a result of that switch Complainant's electrical bill jumped from a rate of approximately \$2,800 per month to over \$12,000 per month during the months of February and March of 2014.

Respondent Blue Pilot Energy, LLC, filed an Answer with New Matter on April 29, 2014, denying the allegations of the Formal Complaint and raising twenty four affirmative defenses. Complainant filed a Reply to New Matter on May 7, 2014, denying the affirmative defenses raised by Respondent Blue Pilot Energy.

The parties held a Joint Resolution Conference on June 19, 2014. The parties were unable to reach a resolution, and indicated that they did not wish to participate in mediation. The matter was originally scheduled for hearing on August 27, 2014, but was continued until November 4, 2014, to be held before Administrative Law Judge Dennis Buckley.

## SUMMARY OF ARGUMENT

The facts will show that on September 6<sup>th</sup>, 2012, Complainant, Alan J. Haulman, contacted PPL Electric in order to activate an electrical service account for Al's Pizza, located at 6581 Carlisle Pike, Mechanicsburg, PA 17050 ("The Property"). Complainant was listed as the owner of the account, and provided his federal tax identification to PPL. Electrical service was initiated for the Property.

In November, 2012, the business equipment located at the Property was formally sold to Ashley and James Killinger, who operated a pizza restaurant on the premises. The Killingers began paying the electric bills for the restaurant. Early bills were provided to the Killingers at an address in Enola, until Ashley Killinger requested that the bills be sent to the Property. At that time, PPL identified Ashley Killinger, not Complainant, as the account owner. In February of 2013, the electrical account was switched from a fixed rate contract with PPL Electric to a variable rate contract with Blue Pilot Energy, LLC.

The facts will show that at some point prior to November 1, 2013, the Killingers defaulted on their Sales Agreement, and Complainant reassumed control over the business equipment at the Property effective November 1, 2013. Complainant contacted PPL Electric on October 28, 2013, to arrange for the reactivation of electrical service for the Property under the AJH Pizza, Inc., account, but Complainant was informed that the account was already active and was in arrears. When Complainant received electrical bills for \$12,801.91 and \$12,613.57, from PPL Electric for February and March, 2014, respectively, he learned that electrical service for the Property was switched from a fixed rate plan with PPL Electric to a variable rate plan with Blue Pilot Energy, LLC.

The facts will show that Complainant had no prior notice that the electrical services contract was altered, and that Complainant would be charged for electricity on a variable, rather than fixed-rate basis. The Killingers were not agents of AJH Pizza, Inc., and had no authority to bind Complainant to a variable rate electricity contract. Alternatively, if the Killingers were found to be agents of the Complainant, then changing the electrical contract for the Property should be found to be outside of their authority to act. Additionally, Complainant was not a party to the contract negotiations between the Killingers and Blue Pilot Energy, LLC, so binding Complainant to that contract would be unconscionable. Lastly, Complainant believes the facts will show that Respondents have engaged in a violation of 66 Pa. C.S. §1304 by unreasonably prejudicing or disadvantaging Complainant. Therefore, Your Honor should find in favor of Complainant, and hold that the AJH Pizza, Inc. electric account was improperly switched from a fixed rate to a variable rate plan.

## ARGUMENT

### 1. COMPLAINANT'S ELECTRICAL SERVICE WAS IMPROPERLY SWITCHED FROM PPL ELECTRIC TO BLUE PILOT ENERGY, LLC.

The issue is whether Complainant's electrical service was improperly switched from a fixed rate contract to a variable rate contract, when neither Complainant nor any of his agents authorized the change.

The facts will show that Complainant activated the electrical services account for the Property on September 06, 2012. *See Complainant's Exhibit G* at 3. Complainant listed himself as the owner of the account, and provided his federal tax identification to verify his ownership of the account. *Id.* Ashley and James Killinger purchased the business equipment contained within the Property on or before November 19, 2012. *See Complainant's Exhibit C.* On November 19, 2012, Ashley Killinger called Blue Pilot Energy, LLC, to request a switch in electrical provider from PPL Electric to Blue Pilot Energy. *See Complainant's Exhibit I.* Ashley Killinger identified herself as the owner of the Property. *Id.* By December 10, 2012, PPL Electric's internal records reflected that [sic] "Ashley Jillinger" was considered to be the owner of the account for the Property. *See Complainant's Exhibit G* at 3. On December 19, 2012, Blue Pilot Energy, LLC, wrote a letter to Ashley Killinger welcoming her as a customer of Blue Pilot Energy. *See Complainant's Exhibit H.* Ashley Killinger wrote checks payable to PPL for the Property's electric bills during that period, using checks drawn from either her personal bank account or in her name and the name of J & A Pizza, LLC. *See Complainant's Exhibit F* at 4, 5. No checks were written to PPL in the name of AJH Pizza, Inc. while the Killingers operated the business.

The electrical service contract was switched from a fixed rate plan with PPL Electric to a variable rate plan with Blue Pilot Energy, LLC, allegedly by Ashley Killinger, on or about February 04, 2013. *See Complainant's Exhibit E* at 1.

The facts will show that on October 18, 2013, PPL Electric's internal records reflected that Ashley Killinger had the electrical service for the Property removed from her name. *See Complainant's Exhibit G* at 4. On October 28, 2013, Complainant's son contacted PPL Electric, and asked that electrical service for the Property be reconnected, in the name of AJH Pizza, Inc. *See id.* at 2. A PPL representative spoke to Complainant's son by telephone, and communicated that Complainant was considered to be the record owner of the electrical account since September 06, 2012. *Id.* The PPL representative also communicated that Complainant was responsible for paying the arrears on the account accumulated by the Killingers. *See id.* Complainant paid the electric bills for the Property from that point forward, using checks drawn on the name of AJH Pizza, Inc. Complainant also informed PPL Electric that AJH Pizza, Inc. was not responsible for the arrears, and that PPL should contact the Killingers with regard to collecting the arrears. *See id.* While Respondents diligently recorded these events, the facts will show that they did not inform AJH Pizza, Inc. that the variable rate contract entered into by the Killingers with Blue Pilot Energy, LLC would be considered binding against AJH Pizza, Inc.

It is well-settled law that a corporation may act only through its officers, directors and agents. In *Daniel Adams Associates, Inc. v. Rimbach Publishing, Inc.*, 360 Pa. Super. 72, 519 A.2d 997 (Pa. Super. 1987), the Pennsylvania Superior Court held that,

“A corporation is a creature of legal fiction which can ‘act’ only through its officers, directors and other agents. *Lokay v. Lehigh Valley Cooperative Farmers, Inc.*, 342 Pa. Super. 89, 97, 492 A.2d 405, 408 (1985).” *Rimbach, supra* at 80.

The facts will show that there is only one director of AJH Pizza, Inc, and that director is the Complainant, Alan J. Haulman. *See Complainant's Exhibit A* at 25. There is only one officer of AJH Pizza, Inc. *See id.* at 23. Ashley and James Killinger are not officers of AJH Pizza, Inc. *See id.* The Killingers must be found to be agents of AJH Pizza, Inc., in order to bind the corporation to the variable rate electrical generation contract with Blue Pilot Energy.

In Pennsylvania the party asserting an agency relationship has the burden of proving that relationship. *See 51 I&N, Inc. v. Rosen*, 24 Phila. 98 (Pa. Com. Pl. 1992) (“The burden of establishing an agency relationship rests with the party asserting it. *Girard Trust Bank v. Sweeney*, 426 Pa. 324, 231 A.2d 407 (1967)).” PPL Electric and Blue Pilot Energy must assert an agency relationship between AJH Pizza, Inc. and the Killingers in order to enforce the variable rate agreement against AJH Pizza, Inc. The burden of proving the existence of an agency relationship falls on the Respondents.

Regarding the test for whether an individual is an agent of a corporation, the Pennsylvania Supreme Court held,

“The law is clear in Pennsylvania that the three basic elements of agency are: ‘the manifestation by the principal that the agent shall act for him, the agent’s acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking.’ *Basile v. H&R Block, Inc.*, 761 A.2d 1115, 1120, 563 Pa. 359, 367 (Pa. 2000).

In the instant case, there is no principal-agent relationship between Complainant and the Killingers. The facts will show that there was no manifestation by Complainant that the Killingers act on his behalf. There was no acceptance by the Killingers to act on behalf of Complainant, and there was no understanding that Complainant would be in control of any undertaking involving the Killingers.

The *Basile* Court also held that,

“[A]gency results only if there is an agreement for the creation of a fiduciary relationship with control by the beneficiary... [T]hus, in all matters affecting the subject of the agency, the agent must act with the utmost good faith in furthering and advancing the principal’s interests, including a duty to disclose to the principal all relevant information.” *Basile, supra* at 1120, 367-368 (citations omitted).

There was no fiduciary relationship between Complainant and the Killingers. The Killingers were not acting in the best interests of Complainant by switching the Property’s electrical service without informing him. The Killingers did not act with the utmost good faith in furthering Complainant’s interests, notably by failing to disclose to Complainant that the electrical contract had been switched from a fixed rate to a variable rate service. Such a disclosure would clearly be relevant information that would be required to be disclosed to the principal in a principal-agent relationship.

The facts will show that the Killingers did not have the authority to switch the electrical generation contract for AJH Pizza, Inc., because they did not have any authority to act on behalf of Complainant. Therefore, Complainant respectfully requests that Your Honor find that the electrical service for AJH Pizza, Inc., was impermissibly switched from PPL Electric to Blue Pilot Energy, LLC. Complainant should not be held responsible for the \$12,441.00 and \$12,057.89 electric bills for February and March, 2014. *See Complainant’s Formal Complaint*, at ¶5. Instead, Complainant should be credited with \$19,145.38, as the difference between the rates Complainant was charged for variable rate service from Blue Pilot, and the \$2,563.01 and \$2,790.50 monthly bills that PPL Electric would have charged for February and March 2014. *Id.*

In the alternative, even if Your Honor finds that the Killingers were agents of AJH Pizza, Inc., the Killingers must be found to be acting within the scope of their authority in order to bind the principal of the corporation to a contract with Blue Pilot Energy. Specifically, in *Apex*

*Financial Corp. v. Decker*, 369 A.2d 483, 485, 245 Pa. Super. 439, 443 (Pa. Super. 1976), the Pennsylvania Superior Court held that,

“The liability of a principal to third parties for the act of an agent must rest on (1) express authority, or that which is directly granted; (2) implied authority, to do all that is proper, usual and necessary to the exercise of the authority actually granted; (3) apparent authority, as where the principal holds one out as agent by words or conduct, and (4) agency by estoppel. *Passarelli v. Shields*, 191 Pa. Super. 194, 156 A.2d 343 (1959).”

The facts will show that the Killingers did not have any express authority to act on behalf of AJH Pizza, Inc. Because they were not granted any authority to act on behalf of AJH Pizza, Inc., they cannot be found to have acted under implied authority. Because Complainant never held out the Killingers as agents by his words or conduct, there can be no apparent authority for the Killingers to act on behalf of AJH Pizza, Inc. The only remaining avenue to bind Complainant would be agency by estoppel.

As noted by the Pennsylvania Superior Court,

“Agency by estoppel is defined by section 8B. of the Restatement (Second) of Agency and the doctrine has been embraced by this court... [We have] emphasized two basic elements of agency by estoppel: (1) there must be negligence on the part of the principal in failing to correct the belief of the third party concerning the agent; and (2) there must be justifiable reliance by the third party.... Agency by estoppel is generally deemed to be closely related to apparent authority. Thus, alternatively stated, a principal who clothes his agent with apparent authority is estopped to deny such authority.” *Myszkowski v. Penn Stroud Hotel*, 430 Pa. Super. 315, 328, 634 A.2d 622, 629 (Pa. Super. 1993).

In the instant case, there is no negligence on the part of Complainant, because Complainant had no knowledge that Respondents wrongfully considered the Killingers to be agents of AJH Pizza, Inc. The facts will show that Complainant took no actions to hold out the Killingers as being connected with AJH Pizza, Inc. The Killingers acted to assert their independence from AJH Pizza, Inc., first by having the electric bills for the Property sent to their home address, and later

by paying for the bills under their J & A Pizza, LLC account. At no time did the Killingers pay for the electric bills with a bank account associated with AJH Pizza, Inc.

Additionally, the facts will show that there was no justifiable reliance on the part of Respondents. Respondents' records indicate their awareness of multiple alleged owners of the AJH Pizza, Inc., electrical account. Respondents' records indicate that they accepted payment for bills accrued on that account from AJH Pizza, Inc., J & A Pizza, LLC, and Ashley Killinger. Respondents mailed electrical bills to the Property, as well as Ashley Killinger at an address in Enola. It would be unreasonable for Respondents to now allege that they relied on a principal-agent relationship between Complainant and the Killingers, when the Respondents' own records indicate that they treated Complainant's AJH Pizza, Inc. and the Killingers as independent owners of the AJH Pizza, Inc. electrical account.

Therefore, even if Your Honor decides that the Killingers were agents of AJH Pizza, Inc., during the period in question, the Killingers must be found to have acted outside of their authority with regard to binding AJH Pizza, Inc., to a variable rate electrical contract with Blue Pilot Energy, LLC. Complainant respectfully requests that Your Honor find in his favor, and hold that the Killingers did act outside of their authority with respect to binding AJH Pizza, Inc., to a variable rate electrical contract with Blue Pilot Energy, LLC.

Additionally, Complainant submits that attempting to enforce the contract negotiated between the Killingers and Respondents against AJH Pizza, Inc. would be unconscionable. According to the Pennsylvania Superior Court, unconscionability in a contract requires two factors.

“The test of unconscionability in a contract is two-fold: (1) the party signing the contract must have lacked a meaningful choice in accepting the challenged provision; and (2) the challenged provision must unreasonably favor the party asserting it. *Todd Heller Inc. v.*

*United Parcel Service Inc.*, 754 A.2d 689, 700-701 (Pa. Super. 2000).” *Metzgar v. Star Pontiac Inc.*, 75 Pa. D&C 4<sup>th</sup>. 144 (Pa. Com. Pl. 2005).

In the instant case, Complainant submits that the facts will show that the entire contract is unconscionable. Only the Killingers and Respondents signed the contract. Complainant had no meaningful choice to accept it, because Complainant was never informed of the terms of the contract. The variable rate contract was unilaterally applied by the Respondents against Complainant, with Complainant only learning that the Property’s electrical contract had been switched by the Killingers after receiving a monthly electric bill in excess of \$12,000. Because Complainant did not have any choice in accepting the variable rate contract, enforcing it would be unconscionable.

Additionally, because Respondents never informed Complainant of the terms of the contract while still applying that contract against Complainant, the terms clearly and unreasonably favored the Respondents. The facts will show that only the Respondents knew the terms of the contract that they were applying to AJH Pizza, Inc. Respondents never informed Complainant of the terms of the Killingers’ contract, despite knowing that the Killingers were no longer owners of the account as of October 2013. As demonstrated by the grossly excessive rates billed to Complainant for February and March, 2014, the terms of the contract were clearly in Respondents’ favor. Knowledge of the terms of the contract was exclusively in Respondents’ control. Therefore, Complainant respectfully requests that Your Honor find that enforcement of the contract against AJH Pizza, Inc. would be unconscionable.

Finally, Complainant submits that the facts will show that the contract Respondents are attempting to enforce violates 66 Pa. C.S. §1304, regarding discrimination in rates. Specifically, the statute provides that,

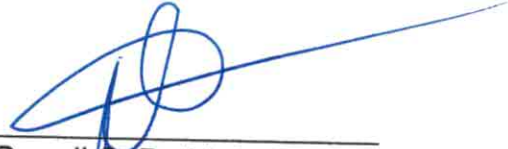
“No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.” 66 Pa. C.S. §1304.

In attempting to bind Complainant to a variable-rate contract that he did not participate in the formation of, sign or otherwise have any involvement with, Respondents are clearly subjecting Complainant to an unreasonable prejudice or disadvantage. Complainant accrued nearly twenty thousand dollars in additional electric bills that he would not have accrued if Respondents had properly charged him for fixed rate electricity. Complainant's electric bills only state that there was a multi-thousand dollar charge to Blue Pilot Energy. The bills do not mention the rate charged by Blue Pilot for the billing period. *See Complainant's Exhibit E* at 5-7. The only rate that is mentioned is the fixed rate that would have been charged by PPL Electric for the billing period. Hence, Complainant had no notice whatsoever that his electric service was being provided at a variable rate until he received monthly bills in excess of \$12,000. *Id.* Because Complainant had no notice whatsoever that his electricity was being provided at a variable rate, it would clearly be unreasonably prejudicial or disadvantageous to require Complainant to pay an extra twenty thousand dollars for service that he did not request or want.

**CONCLUSION**

For the foregoing reasons, Complainant respectfully requests that the Public Utility Commission determine that AJH Pizza, Inc. be awarded a credit of \$19,145.38, as the difference between the electric rates that PPL Electric would have billed for February and March, 2014, and what Blue Pilot Energy, Inc., actually did bill for that term.

Respectfully submitted,



Date: \_\_\_\_\_

\_\_\_\_\_  
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**Certificate of Service**

Alan Haulman d/b/a AJH Pizza, Inc.  
Complainant

v.

C-2014-2415273

PPL Electric Utilities Corporation

And

Blue Pilot Energy, LLC,  
Respondents

I, Darrell C. Dethlefs, Esq., the undersigned, hereby certify that a true and correct copy of the foregoing document, the Brief of the Complainant in Support of the Formal Complaint Against Respondents PPL Electric Utilities Corporation and Blue Pilot Energy, LLC, was served on the following:

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