

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Alan Haulman d/b/a AJH Pizza, Inc.	:	
Complainant	:	
	:	
v.	:	C-2014-2415273
	:	
PPL Electric Utilities Corporation	:	
	:	
And	:	
	:	
Blue Pilot Energy, LLC,	:	
Respondents	:	

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BRIEF OF THE COMPLAINANT IN OPPOSITION TO THE SUMMARY JUDGMENT  
MOTION OF MOVANT BLUE PILOT ENERGY, LLC

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**STATEMENT OF THE QUESTION PRESENTED**

1. WHETHER THERE EXISTS A GENUINE ISSUE OF MATERIAL FACT WHICH DEFEATS MOVANT'S MOTION FOR SUMMARY JUDGMENT? (Suggested answer: YES)
  
2. WHETHER IT IS IRRELEVANT THAT MOVANT SECURED A THIRD PARTY VERIFICATION FROM, AND MAILED A DISCLOSURE STATEMENT TO SOMEONE WHO HAD NO CONNECTION WHATSOEVER TO COMPLAINANT'S CORPORATION DURING THE PERIOD IN QUESTION? (Suggested answer: YES)
  
3. WHETHER YOUR HONOR PROPERLY HAS JURISDICTION OVER THIS MATTER AND MAY AWARD COMPLAINANT THE RELIEF REQUESTED? (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. Movant, Blue Pilot Energy, LLC, filed a Motion for Summary Judgment on October 13, 2014.

## **SUMMARY OF ARGUMENT**

Complainant respectfully submits that there are several genuine issues of material fact present, the determination of which directly control the resolution of the case. Should it be found that the Killingers were not agents of AJH Pizza, Inc., then Complainant will prevail on the merits because the Killingers did not have authority to bind AJH Pizza to their variable rate contract. Should the Killingers be found to be agents of AJH Pizza, Inc., but have acted outside of their corporate authority when they switched the AJH Pizza electrical account to a variable rate, then likewise Complainant will prevail on the merits because of the want of authority. Both Complainant and Ashley Killinger have submitted affidavits to this effect, which on their own should be sufficient to create a credibility dispute, which must be resolved by Your Honor at a hearing on the merits.

Complainant further submits that it is irrelevant that Movant, Blue Pilot Energy, secured a third party verification from, and mailed a disclosure statement to, someone who was not connected with AJH Pizza, Inc., in any way, during the period in dispute. Movant, Blue Pilot Energy, and Respondent, PPL Electric, by their own records, have reflected three independent owners of the AJH Pizza, Inc. electrical service account. On the face of the record, it appears that anyone who articulated that they were the owner of this account was treated as such. Complainant submits that it is unreasonable and inequitable for him to be bound by a contract implemented in such a manner.

Finally, Complainant submits that Your Honor does have the authority to hear this matter and to grant the relief requested. The Public Utility Commission has the authority to revise or reform a disputed contract when equity and the public interest demands such, and the relief available to the PUC includes relieving Complainant from paying the disputed bills.

Additionally, Complainant submits that the application of a variable rate contract against him, when he in no way knew about or authorized that contract, constitutes an unreasonably discriminative and prejudicial rate under 66 Pa. C.S. §1304. Therefore, Complainant submits that there is a genuine issue of material fact that Your Honor must decide upon at a hearing, that it is irrelevant that Movant, Blue Pilot Energy, secured a third party verification from, and mailed a disclosure statement to someone who had no relationship with AJH Pizza, Inc., during the period of dispute, and submits that Your Honor does have the authority to hear this dispute and to grant Complainant the relief requested.

## ARGUMENT

### 1. A GENUINE ISSUE OF MATERIAL FACT EXISTS, WHICH DEFEATS MOVANT'S MOTION FOR SUMMARY JUDGMENT

The issue is whether Complainant's pleadings contain a genuine issue of material fact, defeating Movant's Motion for Summary Judgment.

As explained by the Pennsylvania Supreme Court, summary judgment,

"[I]s properly granted where 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.' Pa. R.C.P. 1035(b). 'The record must be viewed in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.' *Marks v. Tasman*, 527 Pa. 132, 135, 589 A.2d 205, 206 (1991). Summary judgment may be entered only in those cases where the right is clear and free from doubt. *Musser v. Vilsmeier Auction Co., Inc.*, 522 Pa. 367, 369, 562 A.2d 279, 280 (1989)." *Pennsylvania State University v. County of Centre*, 615 A.2d 303, 304, 532 Pa. 142, 144-145 (Pa. 1992).

Movant fails to meet their burden of showing that no genuine issues of material fact exist. There are several genuine issues of material fact, which must be heard at a hearing on the merits and determined by Your Honor. For example, Complainant raised a genuine issue of material fact over whether the Killingers were agents of AJH Pizza, Inc. If the Killingers were not agents of AJH Pizza, Inc., then they had no authority to act on behalf of Complainant and could not have bound Complainant to the variable rate electric contract.

Complainant raised a genuine issue of material fact over whether the Killingers, if they are found to be agents of AJH Pizza, Inc., also had the corporate authority to bind AJH Pizza, Inc., to a variable rate electric contract. Complainant submitted an affidavit averring that only he had the authority to exert control over the electrical account at issue, and that he never approved of a switch to a variable rate contract.

Complainant raised a genuine issue of material fact over whether PPL Electric and Blue Pilot Energy, LLC, improperly treated the AJH Pizza, Inc., electrical account as having multiple concurrent, independent owners. The records and exhibits of Movant and Respondent, PPL Electric Utility, demonstrate that the electrical account in question was treated as having at least three independent concurrent owners, who by necessity would require independent notice of any changes to the account. Complainant submits that this was improper, and that only Complainant had authority to switch the account from a fixed rate to a variable rate plan. Complainant further submits that he never approved, or was even informed about, such a switch. Clearly these facts are material, because resolving any of those questions in Complainant's favor would necessarily result in Complainant prevailing.

Additionally, as held in *Gruenwald v. Advanced Computer Applications, Inc.*, 730 A.2d 1004 (Pa. Super. 1999),

“Pursuant to the rule set forth in *Nanty-Glo Borough v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932), a party moving for summary judgment may not rely ‘exclusively upon oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact.’ *Porterfield v. Trustees of Hosp. of Univ. of Pa.*, 441 Pa.Super. 529, 657 A.2d 1293, 1295 (1995). However, the nonmoving party may respond to the motion by relying solely on an affidavit to create a genuine issue of material fact, i.e., a credibility determination for the jury. *See White, supra*; *Accu-Weather v. Prospect Communications*, 435 Pa.Super. 93, 644 A.2d 1251, 1255-56 (1994) (reversing order granting summary judgment because affidavits submitted by both parties conflict as to whether appellee gave appellant adequate notice of termination); *Johnson*, 615 A.2d at 775 (stating that a party responding to a motion for summary judgment may not rest on pleadings; “[r]ather, it is his responsibility to show that a genuine issue of fact exists by affidavit or otherwise.’)” (emphasis in original)

In response to the Motion for Summary Judgment Complainant submitted two affidavits, one from himself and one from Ashley Killinger, asserting that the Killingers had no connection whatsoever to AJH Pizza, Inc., during the period in dispute. Complainant further asserted that only he had the authority to switch the electrical services contract for AJH Pizza, Inc. Because

those two affidavits raise genuine issues of material fact, Your Honor must determine whether Complainant and Ms. Killinger are credible, and whether there was a corporate relationship between the Killingers and Complainant.

Similar to *Gruenwald*, by submitting two affidavits in response to the Motion for Summary Judgment and creating a credibility determination for Your Honor, Complainant sufficiently raised a genuine issue of material fact. Therefore, Your Honor should hold in favor of Complainant and dismiss the Motion for Summary Judgment of Movant, Blue Pilot Energy, LLC.

2. IT IS IRRELEVANT THAT MOVANT SECURED A THIRD PARTY VERIFICATION FROM, AND MAILED A DISCLOSURE STATEMENT TO, SOMEONE WHO WAS NOT CONNECTED TO COMPLAINANT'S BUSINESS IN ANY WAY DURING THE PERIOD IN DISPUTE

Movant states that its acts of mailing a disclosure statement to Ashley Killinger, and its conducting a third party verification with Ashley Killinger, are sufficient to bind Complainant to the variable rate contract and merit an award of summary judgment. Complainant submits that this position is, *prima facie*, a question of fact that must be determined by Your Honor. Ergo, Movant has advanced arguments contrary to their own summary judgment motion.

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. Whether an agency relationship existed between Complainant and the Killingers is a question of material fact, which must be determined by Your Honor and, by necessity, must defeat Movant's Motion for Summary Judgment.

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. Regardless, the issue of whether the Killingers were operating in any way under the aegis of AJH Pizza, Inc., is a question of material fact that must be determined by the fact finder, Your Honor. Therefore, Complainant respectfully requests that Your Honor find in his favor and dismiss the Motion for Summary Judgment of Movant, Blue Pilot Energy.

3. YOUR HONOR PROPERLY HAS THE AUTHORITY TO HEAR THIS MATTER,  
AND TO GRANT COMPLAINANT THE RELIEF REQUESTED

The Public Utility Commission has the general authority to enforce the provisions contained within 66 Pa. C.S. §501, et seq. Specifically,

“In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full

intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.” 66 Pa. C.S. §501.

Pursuant to 66 Pa. C.S. §508, the Public Utility Commission has the:

“[P]ower and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or grant thereof, or are otherwise affected or concerned with the public interest and general well-being of this Commonwealth.

Complainant submits that Your Honor has the authority to vary, reform or revise, upon a fair, reasonable and equitable basis, the obligations, terms or conditions of the variable rate electrical contract that was applied against him by Movant, Blue Pilot Energy, without his knowledge or consent. In the instant case, it would be fair, reasonable and equitable to reform the contract that Movant and Respondent, PPL Electric, are attempting to enforce against Complainant, from a variable rate contract into a fixed rate contract for the months of February and March, 2014. Complainant had no notice of, or knowledge about the existence of the contract until February, 2014, when he received an electric bill in excess of \$12,000. The balance of public interest and general well-being of the Commonwealth of Pennsylvania also tilts in Complainant’s favor, because it is in the public interest for parties that are bound by a contract to be informed of the existence of that contract, before its provisions are leveraged against them to their detriment.

Complainant further submits that 52 Pa. Code §57.177(b) is not dispositive to the instant case. In the instant case, the switch of Complainant’s electric account from a fixed rate plan to a variable rate plan was concealed by Movant and Respondent, PPL Electric Utilities, until

February 2014. Complainant's electric bills made no disclosure that the account was being charged at a variable rate, and Complainant's electric bills did not even explain that Blue Pilot Energy, and not PPL Electric, was providing Complainant's electricity. Complainant filed the formal complaint that initiated the instant action on April 2, 2014, within the two billing cycle time limit imposed by the Code. Likewise, 52 Pa. Code §57.177(b) provides Complainant with the relief requested, namely that "the customer is not responsible for EGS bills rendered during that period."

Finally, Complainant submits that the facts will show that the contract Movant, Blue Pilot Energy, and Respondent, PPL Electric Utilities, 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, Movant, Blue Pilot Energy, and Respondent, PPL Electric Utilities, are 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 had been properly charged for fixed rate electricity. That is clearly disadvantageous and prejudicial.

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.

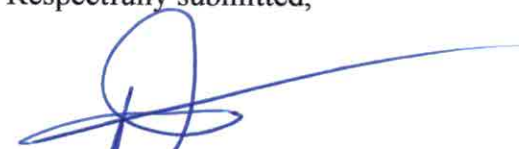
Movant and Respondent, PPL Electric Utilities, never took action to inform Complainant of the existence of the variable rate electric contract entered into with the Killingers, despite knowing that the Killingers were no longer associated with the electric account after October 2013. Movant and Respondent, PPL Electric Utilities, never took action to notify Complainant that the contract entered into between Movant and the Killingers would be unilaterally applied against Complainant. It would be inequitable and against the public interest for Movant, and Respondent, PPL Electric Utilities, to unilaterally apply contracts against their electric customers while providing those customers with no notice of the terms. Therefore, Complainant respectfully submits that Your Honor does have the authority to hear this case, and to grant to Complainant the relief he requests.

**CONCLUSION**

For the foregoing reasons, Complainant respectfully requests that Your Honor dismiss, with prejudice, Movant, Blue Pilot Energy, LLC's Motion for Summary Judgment.

Respectfully submitted,

Date: 10/3/14



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**Certificate of Service**

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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 Opposition to the Motion for Summary Judgment of Movant, Blue Pilot Energy, LLC, was served by first class mail on the following:

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