

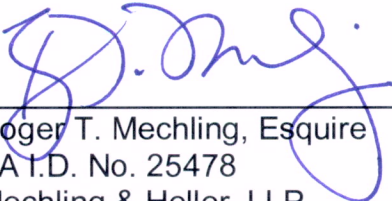
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :	:	
Law Bureau Prosecuting Staff, :	:	Docket No. C-2014-244-7794
Complainant :	:	
	:	
vs. :	:	
	:	
Kelly Ballock nee Kelly Fink, Claude :	:	
Joseph Fink, Jr., Claude J. Fink and :	:	
Lois A. Fink, individually and jointly :	:	
t/d/b/a Fink Gas Co., :	:	
Respondents :	:	

NOTICE TO PLEAD

TO: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHING TEN (10) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.



Roger T. Mechling, Esquire
PA I.D. No. 25478
Mechling & Heller, LLP
216 N. Jefferson Street
Kittanning, PA 16201

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Lois A. Fink, individually and jointly :
t/d/b/a Fink Gas Co., :
Respondents :

PRELIMINARY OBJECTIONS

Filed On Behalf Of Claude J. Fink\
and Lois A. Fink, his wife

Counsel of Record for this Party:

Roger T. Mechling, Esquire
PA I.D. No. 25478
Mechling & Heller, LLP
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PRELIMINARY OBJECTIONS TO COMPLAINT

AND NOW, comes the respondents, Claude J. Fink and Lois A. Fink, his wife, by and through their attorney, Roger T. Mechling, Esquire and preliminarily objects to the Complaint as provided for by 52 Pa. Code §5.101 and avers as follows:

No. 1 Lack of Commission Jurisdiction

1. 52 Pa. Code §5.101 provides for the filing of a Preliminary Objection by Respondent to a Complaint for lack of commission jurisdiction.

2. The Order of March 27, 2013 dismissed Claude J. Fink and Lois A. Fink from the case (2011-2246921) referenced by complainant as the source of the alleged violations.

3. Said order was without condition or contingency.

4. Claude J. Fink and Lois A. Fink were not ordered or directed to do anything in said order.

5. Claude J. Fink and Lois A. Fink cannot be fined for failure to comply with said order when they were not ordered to do anything therein.

6. In support of the above please see the following:

Paragraphs 22, 23, 24, 26, 27 of complainant's complaint admit that Claude J. Fink and Lois A. Fink were dismissed from the action and all matters of compliance thereafter with the Order of the Administrative Law Judge were to be accomplished by Claude Joseph Fink, Jr. and Kelly Ballock nee Kelly Fink.

7. The Order of the Administrative Law Judge of January 18, 2013 and the Commission's Order of March 27, 2013 were final and conclusive as to Claude J. Fink and Lois A. Fink being dismissed from this matter with no further obligations therefor or thereto.

8. It is self evident that Claude J. Fink and Lois Fink have not failed to comply with the Commission's Order of March 27, 2013 and have no further obligations regarding this matter and the same has been admitted by the Complainant in their complaint.

WHEREFORE, Respondents respectfully request that Complainant's Complaint as against Claude J. Fink and Lois A. Fink be dismissed for lack of Commission Jurisdiction.

No. 2 – Legal Insufficiency Of A Pleading

9. Paragraphs 1-8 of Preliminary Objection No. 1 are incorporated herein as if fully set forth herein.

10. Complainant's Pleading is legally insufficient in that it fails to set forth any thing or matter which were or are obligations of Claude J. Fink and Lois A. Fink. In support thereof please see the Settlement Agreement, Paragraph 8 thereof and the Complainant's Complaint Paragraph 24 wherein it is clearly stated that all obligations regarding the operations of the gas service company were those of Claude Joseph Fink, Jr. and Kelly Fink nee Kelly Ballock solely. The subsequent orders incorporated this language.

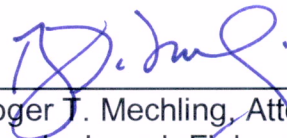
11. Every paragraph of the alleged violations are matters which the Settlement Agreement and the Order stated were and are the obligations of Claude Joseph Fink, Jr. and Kelly Fink nee Kelly Ballock.

12. Commission Preliminary Objection practice is comparable to PA Civil Practice, Equitable Small Transportation Intervenors v. Equitable Gas Co. 1994 PA PUC Lexis 69, Docket No. C-00935435 (July 18, 1994). In civil practice a Preliminary Objection based on legal insufficiency is referred to as a demurrer. Preliminary Objection in the

form of a demurrer will be sustained in cases which are free and clear of doubt and where dismissal is clearly warranted by the record, Community Life Support Systems, Inc. v. Commonwealth of PA 689 A2d 1014, 1017 (PA Commonwealth 1997). The question presented by the demurrer is whether are the facts averred, the law states with certainty that no recovery is possible, Hoffman v. Misericordia Hospital of Philadelphia 439 Pa. 501, 267 A2d 867 (1970). If the Order dismissed Claude J. Fink and Lois A. Fink and imposed no further obligations upon them and instead places those obligations upon others, namely Claude Joseph Fink, Jr. and Kelly Ballock nee Kelly Fink, who were solely charged with operating this gas service company in a compliant manner, then no sufficient case is stated against Claude J. Fink and Lois A. Fink.

WHEREFORE, Respondents respectfully request that Complainant's Complaint against them be dismissed for lack of legal sufficiency.

Respectfully Submitted,



Roger T. Mechling, Attorney for Respondents
Claude Joseph Fink and Lois Fink, his wife
216 N. Jefferson Street
Kittanning, PA 16201


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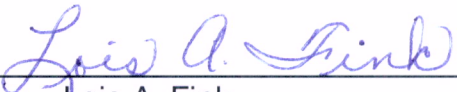
VERIFICATION

We, Claude J. Fink and Lois A. Fink, do hereby aver that the statements made in the foregoing Preliminary Objections are true and correct to the best of our knowledge, information and belief. We understand that any false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: DECEMBER 22, 2014



Claude J. Fink



Lois A. Fink

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CERTIFICATE OF SERVICE

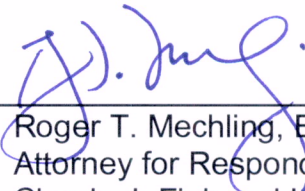
I hereby that a true and correct copy of the foregoing Preliminary Objections to Complaint was served by U. S. Mail as follows:

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Attention: Heidi L. Wushinske, Prosecutor
P.O. Box 3265
Harrisburg, PA 17105-3265

Linda L. Ziembicki, Esquire
P.O. Box 535
Rural Valley, PA 16249

Claude J. Fink, Jr.
324 Harrison Street
Kittanning, PA 16201

Date: December 22, 2014



Roger T. Mechling, Esquire
Attorney for Respondents
Claude J. Fink and Lois A. Fink
216 N. Jefferson Street
Kittanning, PA 16201