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Alderwoods (Pennsylvania), Inc., a wholly
owned subsidiary of Service Corporation
International, t/a Burton L. Hirsch Funeral
Home

ALDERWOODS (PENNSYLVANIA), INC., a
wholly owned subsidiary of SERVICE
CORPORATION INTERNATIONAL, t/a
BURTON L. HIRSCH FUNERAL HOME,

Complainant,

v.

DUQUESNE LIGHT COMPANY,

Respondent

IN THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION

Docket No. C-2016-2522634

AS TRANSFERRED BY THE COURT
OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNA.,
CIVIL ACTION NO. GD-09-14720

**COMPLAINANT’S RESPONSE IN OPPOSITION TO RESPONDENT’S MOTION TO
STRIKE COMPLAINANT’S PRELIMINARY OBJECTION TO JURISDICTION**

Complainant, Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home (“Complainant” or “Hirsch”), by and through its attorneys White and Williams LLP, responds in opposition to Respondent’s Motion to Strike Complainant’s Preliminary Objection to Jurisdiction as follows:

1. Admitted.
2. Denied. It is denied that Complainant’s Preliminary Objection is legally insufficient. To the contrary, the Preliminary Objection is consistent with, and supported by, 52 Pa. Code § 5.101, which in relevant part provides that “Preliminary objections are available *to parties* and may be filed in response to a pleading. . . .” (Emphasis added.) The conflicting

orders of the Court of Common Pleas – orders which fail to state any basis whatsoever for the manifest disregarding of clearly articulated Pennsylvania appellate authority – leave Hirsch no choice but to object to jurisdiction under Section 5.101.

While Section 5.101 clearly authorizes Hirsch’s Preliminary Objection, it looks far less favorably upon Respondent’s Motion to Strike. In practice before the P.U.C., Section 5.101(a) expressly bars preliminary objections to preliminary objections. Section 5.101(f)(2) provides that responses to preliminary objections are to be by way of an answer. No P.U.C. rule permits a motion to strike a preliminary objection along with an answer to the same preliminary objection, nor has Respondent cited any authority supporting the filing of such a motion. The alleged legal insufficiency of a preliminary objection may be raised in an answer by the responding party. In fact, Respondent’s motion to strike is nothing more than a preliminary objection to a preliminary objection in different garb. It is proscribed by Section 5.101(a).

Accordingly, the instant motion is a legal nullity and should be disregarded.

By way of further response, as of this date Hirsch has not been served with a copy of Respondent’s Answer in Opposition to Complainant’s Preliminary Objections.

3. Denied. It is manifestly erroneous to assert, as Respondent does, that the Superior Court decided anything in denying Hirsch’s Petition for Review. “[A]n order granting a dismissal of an appeal does not amount to an adjudication of the underlying merits of the case.” 17 Standard Pennsylvania Practice 2d § 92:9, citing Griffin v. Tedesco, 355 Pa. Super. 475, 513 A.2d 1020 (1986). See also Exhibit “A” attached, the one-sentence order of the Superior Court filed December 16, 2015, stating, *in toto*, “The Court hereby DENIES the petition for review.”

Moreover, in transferring the instant matter to the P.U.C., the Court of Common Pleas never issued an opinion and never explained its justification for egregiously disregarding well-

settled appellate authority holding that the P.U.C. has no jurisdiction to hear this case. See Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977); Elkin v. Bell Telephone Company of Pennsylvania, 491 Pa. 123, 420 A.2d 371 (1980); DeFrancesco v. Western Pennsylvania Water Company, 499 Pa. 374, 453 A.2d 595 (1982); Schriner v. Pennsylvania Power and Light Company, 348 Pa. Super. 177, 501 A.2d 1128 (1985) and Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa. Cmwlth. 1995).

4. Denied as stated. The litigation is *almost* seven years old. The dispute is *over* seven years old. Most of the seven years were spent by Hirsch eradicating the error of the same Court of Common Pleas judge who later transferred jurisdiction to the P.U.C.

5. Denied. The Superior Court’s denial of Hirsch’s Petition for Review could hardly be considered a lost *argument*, as the denial did not consider the merits of the Petition. See paragraph 3 above and Exhibit “A” attached. Moreover, in presenting its tally, Respondent fails to include Judge Luty’s order of August 31, 2015, which denied Respondent’s Motion to Bifurcate – also without explanation.

6. Denied. The P.U.C. is not bound by the coordinate jurisdiction rule when the Court of Common Pleas’ orders were clearly erroneous. See Gerrow v. John Royle & Sons, 572 Pa. 134, 141, 813 A.2d 778, 782 (2002), quoting Com. v. Starr, 541 Pa. 564, 576, 664 A.2d 1326, 1332 (1995). See also paragraphs 155 – 164 of Hirsch’s Preliminary Objection, which Hirsch herein incorporates by reference. Respondent’s averment regarding the “law of the case” fails to address the deeper question of *why* the orders of the Court of Common Pleas should be left undisturbed.

7. Denied. In fact, under 52 Pa. Code § 5.101(a)(4), the P.U.C. may sustain a preliminary objection to a pleading’s legal *insufficiency*. The averment is further denied because

the Superior Court did not rule on any substantive issue, see Paragraph 3 *supra*, and because the Court of Common Pleas' orders – at least those orders unfavorable to Hirsch – are manifestly, egregiously and inexplicably contrary to well-settled Pennsylvania law and need not be followed. See Paragraph 6, *supra*, and paragraphs 155 – 164 of Hirsch's Preliminary Objection, which Hirsch herein incorporates by reference.

8. Denied. There is simply no basis for rejecting Hirsch's Preliminary Objection *ab initio* without consideration of its merits. Longstanding, well-settled, precedential authority both in the appellate courts and within the P.U.C. holds that the P.U.C. lacks jurisdiction over Hirsch's claims. The unexplained, self-contradictory orders of the Court of Common Pleas do not overcome that authority.

WHEREFORE, Complainant, Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home, respectfully requests that Respondent's Motion to Strike Complainant's Preliminary Objection to Jurisdiction be denied.

Respectfully submitted,

WHITE AND WILLIAMS LLP

/s/ Alan J. Charkey

By: Alan J. Charkey, Esquire
Attorneys for Complainant,
Alderwoods (Pennsylvania), Inc., a wholly
owned subsidiary of Service Corporation
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Home

Date: January 25, 2016

EXHIBIT “A”

ALDERWOODS (PENNSYLVANIA), : IN THE SUPERIOR COURT OF
INC., : PENNSYLVANIA
 :
 :
 V. :
 :
 :
 :
 DUQUESNE LIGHT : No. 82 WDM 2015

ORDER OF COURT

The Court hereby DENIES the petition for review.

PER CURIAM

IN THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALDERWOODS (PENNSYLVANIA), INC., a
wholly owned subsidiary of SERVICE
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ORDER

AND NOW, this _____ day of _____, 2016, in consideration of Respondent's Motion to Strike Complainant's Preliminary Objections to Jurisdiction, and Complainant's Response in Opposition thereto, it is hereby ORDERED and DECREED that the Motion is DENIED.

**BY THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

_____, A.L.J.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Bradley S. Tupi, Esquire
Erin Beckner Conlin, Esquire
Jeremy V. Farrell, Esquire
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222,

Counsel for Respondent,
Duquesne Light Company,

by first class U.S. mail, postage prepaid, and by e-mail to btupi@tuckerlaw.com, ebeckner@tuckerlaw.com and jfarrell@tuckerlaw.com.

The document was filed electronically on the Commission's electronic filing system.

Dated this twenty-fifth day of January, 2016.

WHITE AND WILLIAMS LLP

/s/ Alan J. Charkey

By: Alan J. Charkey, Esquire

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