

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UNIFIED ENERGY ALLIANCE, LLC,	:	
Complainant	:	
v.	:	DOCKET NO. C-2015-2492473
	:	
RODGER K. WALTER,	:	
ERNIE HORNING,	:	
J. NICK STORCH,	:	
DUANE ALBRIGHT,	:	
ANDY YOUNDT,	:	
DON SHIPP,	:	
FUTURE ENERGY SOLUTIONS, LLC, and	:	
NAVIGATE POWER, LLC,	:	
Respondents		

**BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF  
RESPONDENTS WALTER, ALBRIGHT, YOUNDT AND SHIPP**

**PROCEDURAL HISTORY**

Complainant filed a Formal Complaint alleging, among other things, that the independent consultants listed above, provided inaccurate and misleading information in the course of the sales of electric power contracts to customers and engaged in “slamming.” See Formal Complaint at ¶¶ 25-38; 49-58.

Pursuant to the Order entered following the prehearing conference, the Complainant submitted written testimony and exhibits from the following witnesses: Ricardo Hernandez, II and Joseph Mazer who are affiliated with Complainant and Teresa Ledger, Nicholas Porcaro, Jr., and Allen Emmel who are customers.<sup>1</sup> All Respondents submitted written testimony, as well.

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<sup>1</sup> Relevant excerpts of the Hernandez, Mazer, Ledger, Porcaro and Emmel written testimony is attached to the motion for summary judgment as Exhibits A, B, C, D, and E, respectively.

This motion is filed on behalf of four of the six individual Respondents, Walter, Albright, Youndt and Shipp (“these Respondents”).

This case is set for hearing the week of March 14, 2016.

### FACTS

UEA is an electrical energy consultant. See Exhibit A, p. 1, l. 14. UEA utilized the services of independent contractors sell contracts for electric power to customers. UEA pays a commission for such sales. *Id.*, p.2, l. 2-3. UEA does most of its business with Liberty Power Holdings, LLC. *Id.*, p. 3, l. 5-6.

These Respondents served as independent contractors for UEA. *Id.*, p. 4, l. 1-2; p. 5, l. 10-11; p. 5, l. 19-20; p. 6, l. 1-2. As of March 12, 2015, UEA formally terminated the relationships with these Respondents. *Id.* These Respondents are alleged in the Formal Complaint to have provided inaccurate and misleading information to customers about their relationship with UEA and engaged in “slamming.” See Formal Complaint at ¶¶ 25- 38; 49-58. These Respondents are also alleged to have violated the Public Utility Code by not being licensed to act as a broker/marketer in the Commonwealth. Formal Complaint at ¶¶ 59-67.

Hernandez’s written testimony does not address any specific instances of these Respondents providing inaccurate and misleading information or slamming. There is also nothing in the written testimony regarding these Respondents acting as a broker/marketer which would be the prerequisite for needing a license.

Complainant has also submitted written testimony of three customers, Teresa Ledger, who stated that she had been approached by Respondent Horning (Exhibit C), and Nicholas W. Porcaro, Jr., (Exhibit D) and Allen Emmel (Exhibit E), who stated that they had been approached by Respondent Storch, and persuaded to change their electric power supplier from UEA to

another provider. There is no written testimony that specifically states that Respondents Walter, Albright, Youndt and/or Shipp approached any customer and/or what information was provided to them by these Respondents that was inaccurate or misleading. There is also no evidence that these Respondents engaged in slamming.

### **SUMMARY JUDGMENT STANDARD**

Pursuant to the PUC's Rules of Administrative Practice and Procedure, any party may move for summary judgment after the pleadings are closed. 52 Pa.Code § 5.102(a). Similar to the summary judgment standard under the Pennsylvania Rules of Civil Procedure, the presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact, and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1).345. The PUC must view the record in the light most favorable to the non-moving party, giving that party the benefit of reasonable inferences. All doubts as to existence of a genuine issue of material fact must be resolved against the moving party. However, to preclude summary judgment, the non-moving party must establish that a genuine issue of material fact exists. *United Transp. Union v. Pennsylvania Pub. Util. Comm'n*, 68 A.3d 1026, 1033 (Pa. Commw. 2013).

## ARGUMENT

### I. **SUMMARY JUDGMENT SHOULD BE GRANTED AS TO THESE RESPONDENTS BECAUSE THERE IS NO WRITTEN TESTIMONY FROM A NON-HEARSAY SOURCE THAT SPECIFICALLY STATES THAT THEY PROVIDED INACCURATE OR MISLEADING INFORMATION TO CUSTOMERS AND/OR ENGAGED IN SLAMMING.**

No written testimony from any customer who dealt with Respondents Walter, Albright, Youndt or Shipp has been submitted in this matter. The only testimony about these Respondents appears in the written testimony of Hernandez and Mazer. That written testimony contains no specific information tying any customer to any one of these Respondents. Rather, the testimony is general and conclusory in nature. For example, Mr. Hernandez states that “UEA received dozens of complaints from customers who had been visited by one or more of the Individual Respondents, and described all manner of unfair, deceptive, and misleading practices.” Exhibit A, p. 7, l. 21-23. Mr. Hernandez further testifies that “One customer reported that Respondent Albright utilized a false name when he visited her establishment. Another customer reported that Respondent Albright visited while wearing a shirt with the ‘UEA’ logo despite the fact that he no longer was affiliated with UEA.” Exhibit A, p. 7, l. 23 – p. 8, l. 1-3. The balance of Mr. Hernandez’s testimony is general in nature and without attribution to any specific source. He states that there are “complaining customers” without identifying any of them or tying any of the “complaints” to any of these Respondents. See Exhibit A, p. 8, l. 3-8; p. 9, l. 21-25.

Similarly, the written testimony of Mr. Mazer mentions that he learned from customers that they were not told that the Individual Respondent who called upon them were no longer representing UEA or selling Liberty Power. See Exhibit E, p. 1, l. 21-25.

Neither Mr. Hernandez nor Mr. Mazer has any firsthand knowledge of what occurred when these Respondents called upon customers other than through what the customers reported to them. The statements made by customers and reported by Hernandez and Mazer are statements made outside the hearing, and, as here, when they are offered to prove the truth of the matters asserted, they meet the classic definition of hearsay. *Yellow Cab Company of Pittsburgh v. Pennsylvania Public Utility Commission*, 673 A.2d 1015, 1020 (Pa. Commw. 1996).

“Hearsay evidence admitted without objection will be given probative effect and may support a finding of the Board only when it is corroborated by any competent evidence within the record.” *Feinberg v. Unemployment Compensation Board of Review*, 635 A.2d 682, 685 (PA. Commw. 1993) citing *Bailey v. Unemployment Compensation Board of Review*, 597 A.2d 241 (1991). A thorough review of the record reveals no trace of any corroborating evidence with regard to these Respondents. Unlike Respondents Horning and Storch, there is no written testimony from any customer who had an interaction with these Respondents that would tend to corroborate the hearsay statements that appear in the written testimony of Hernandez and Mazer.

Complainant attached recorded customer statements to the Formal Complaint. However, these statements are not evidence as they have not been authenticated and serve no purpose for the hearing.

Simply put, there is no evidence that supports the allegations of the Formal Complaint that these Respondents provided inaccurate and misleading information to customers engaged in slamming. Because no credible and admissible evidence has been submitted, the record does not support the charges made in the Formal Complaint and summary judgment should be granted as to Respondents Walter, Albright, Youndt, and Shipp.

**CONCLUSION**

For the reasons stated in the motion and the law cited in this brief, the motion for summary judgment as to Respondents Walter, Albright, Youndt and Shipp should be granted.

Respectfully submitted,

METTE, EVANS & WOODSIDE



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**CERTIFICATE OF SERVICE**

I certify that I am this day serving a copy of the foregoing document upon the person(s) by U.S. First Class mail addressed as follows, which service satisfies the requirements of the Commissions formal rules at 52 Pa. Code Section 1.1:

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Date: March 3, 2016