

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCOTT LUELLEN,

Complainant

v.

Docket C-2016-2539599

MAROADI TRANSFER & STORAGE, INC.

1801 Lincoln Hwy, North Versailles, PA 15137

Respondent

**COMPLAINANT'S MOTION TO CONSTRUE
REPLY TO RESPONDENT'S ANSWER AS MOTION TO STRIKE ANSWER AS
UNTIMELY & MOTION TO DEEM COMPLAINT ADMITTED
(§ 5.1(a)(6))**

NOW COMES Complainant and moves this Court (1) construe ¶ one (1) of its reply to Respondent's answer, to which Respondent has objected alleging replies are outside the rules of procedure for the Commission, as a Motion to Strike Respondent's Answer for being filed out of time without leave, and (2) construe ¶¶ 2-40 of Complainant's reply as a Motion to Deem the Formal Complaint Admitted because of Respondent's will failure to fully and completely answer the Formal Complaint, and in support, states as follows:

1. Respondent procedurally defaulted because its willfully chose to answer out of time; pursuant to 52 Pa. Code §§ 5.62 and 5.63, it only had 20 calendar days to file its answer, where after its willful failure to timely answer constituted a procedural default and the amended complaint's averments and allegations in the Amended Complaint were to be deemed true and admitted. Moreover, respondent's procedural default was knowing and willful because it demonstrated its awareness of the rule in its own Notice to Plead filed on

May 25, 2016. Under Pennsylvania's civil rules, a respondent who procedurally defaults must (a) file a formal motion for leave to file out of time; AND, (b) Respondent must then be found by the Commission to have demonstrated good cause for doing so before authority to answer a complaint can be filed. Because the Respondent is represented by counsel who is a member of the Pennsylvania Bar Association, they know this and choose to ignore it. For this Commission to permit the Respondent to answer out of time, without leave, without formal motion, or even attempting to show good cause, much less showing it, when represented by counsel would substantively impact the rights of the Complainant in an impermissible way. Respondent knowingly and willfully disobeying the rules must have consequences. Respondent must be held accountable by this Commission for its conscious choice to disobey the rules of civil procedure. Rules exist for a reason, to create a fair and level playing field. Were this Commission to ignore these compounding and willful choices by counsel it would create a disallowed bias or perception of bias constituting plain error and would be overturned on appeal.

2. Respondent knowingly and repeatedly refused to answer averments or respond to factual allegations in the formal complaint by presuming in conclusory fashion it had no liability; however, only this Commission or Court can determine that and it is never a permissible reason to refuse to answer.
3. Respondent knowingly and repeatedly refused to answer averments or respond to factual allegations in the formal complaint by presuming in conclusory fashion that it had no *respondeat superior* liability; however, it is well settled under Pennsylvania law that *respondeat superior* liability can only be determined by a jury and is **never allowed** in preliminary objections (See *Norton v. Railway Express Agency, Inc.*, 412 F.2d 112 (3d Cir.

1969); *Mauk v. Wright*, 367 F. Supp. 961 (M.D.Pa. 1973); *Anzenberger v. Nickols*, 198 A.2d 309 (Pa. 1964); and, *Schneider v. Albert Einstein Medical Center*, 390 A.2d 1271 (Pa. Super. 1978)).

4. Chapter 1, Subchapter A, Sub-Section (c) of § 1.2 of the Rules of Administrative Practice and Procedure, entitled “Liberal Construction,” authorizes this Commission to waive a requirement for formal pleadings whenever necessary or appropriate for substantial justice, which Complainant asks this Commission to do so construe his Reply to the Respondent’s Answer. Subsection (d) requires this Commission to act with such liberal construction with “particularity” toward pro se litigants such as Complainant here.

VERIFICATION

I, Scott Luellen, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

/s/ _____
Scott Luellen
14 Marlboro Street
Belmont, MA 02478
Tel. 412-915-7468
E-mail: SEricLuellen@gmail.com

Tuesday, June 28, 2016
Date:

CERTIFICATE OF SERVICE

I, Scott Luellen, hereby certify that a true and correct copy of the foregoing motion was sent via pre-paid, first-class US Postal Service to John A. Pillar, Esq., Counsel for Respondent MAROADI, 150 Green Commons Drive, Pittsburgh, PA 15243 on or before Tuesday, the 28th day of June 2016.¹

/s/ _____

Scott Luellen

14 Marlboro Street

Belmont, MA 02478

Tel. 412-915-7468

E-mail: SEricLuellen@gmail.com

Tuesday, June 28, 2016

Date:

¹ A courtesy copy was also sent to Mr. Pillar via his electronic mail address found on the pleadings (pillarlaw@verizon.net) and to the General Manager (JMessmer@maroadi.com) and owner (Mary@Maroadi.com) of MAROADI MOVING & STORAGE, Inc.