

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Emilia Zaslav	:	
	:	
v.	:	F-2016-2549869
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against a public utility. This decision dismisses the complaint because the customer failed to comply with an order directing her to provide more specific information.

HISTORY OF THE PROCEEDING

On May 19, 2016, Emilia Zaslav (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW or Respondent). On the complaint form, she checked only the preprinted box next to “Other,” but gave no facts in the space provided or otherwise except for the word, “Appeal.”

On June 27, 2016, PGW filed Preliminary Objections (POs) averring that the Complaint does not conform to the regulatory requirements for a formal complaint and requesting dismissal. PGW avers that the Complaint does not provide information which is sufficient to permit PGW to formulate an Answer.

On August 16, 2016, a Motion Judge Assignment Notice was issued which assigned the case to Administrative Law Judge Elizabeth Barnes for purposes of addressing the Preliminary Objection. I issued an order dated August 24, 2016, sustaining the Respondent's preliminary objections and directing the Complainant to file and serve an amended complaint within thirty days of the date of the order. I also warned the Complainant that failure to file an amended complaint in compliance with the order would result in dismissal of the complaint.

As of the date of this initial decision, the Complainant has not filed an amended complaint in this proceeding. This matter is ripe for decision. For the reasons set forth below, I will dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Emilia Zaslav.
2. The Respondent in this case is Philadelphia Gas Works.
3. On May 19, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. On June 27, 2016, the Respondent filed preliminary objections to the complaint alleging that the complaint lacked specificity.
5. The Complainant did not file an answer to the preliminary objections.
6. By order dated August 24, 2016, ALJ Barnes sustained the Respondent's preliminary objections and directed the Complainant to file and serve an amended complaint within thirty days of the date of the order.

7. The August 24, 2016 order also warned the Complainant that failure to file an amended complaint in compliance with the order would result in dismissal of the complaint.

8. The Complainant has not filed an amended complaint.

DISCUSSION

In the present case, the Complainant has failed to comply with my August 24, 2016 order granting the Respondent's preliminary objections. That order directed the Complainant to file an amended complaint within thirty (30) days of the date of the order. The order warned the Complainant that failure to file an amended complaint would result in dismissal of the complaint.

As of the date of this decision, the Complainant has neither filed an amended complaint nor communicated with the Commission regarding her failure to comply with the August 24, 2016 order. The sole issue in this proceeding is whether the Complainant's failure to comply with a Commission order warrants dismissal of the complaint. I conclude that it does.

Failure to comply with a presiding officer's order directing an action to be taken can warrant the dismissal of a formal complaint. Walter Randall v. Metropolitan Edison Company, Docket No. C-2013-2367046 (Order entered October 7, 2013). See also Snyderville Community Development Corp. v. Philadelphia Gas Works, Docket No. C-20055032 (Order entered July 31, 2006). "An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing." Id., citing, Treffinger v. PPL Electric Utilities Corp., C-2027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003), see also, Application of Black Diamond Cab Co., Docket No. A-00122566 (Order entered December 1, 1966).

Here the Complainant has failed to file an amended complaint as directed by the August 24, 2016 order. The Complainant's failure to file an amended complaint as directed by the August 24, 2016 order should result in the consequences set forth in the order. The order clearly

states that failure to comply with the order will result in dismissal. The Commission has previously discussed dismissal of a complaint in similar circumstances.

In Elliott v PECO Energy Company, Docket No. C-2010-2156422 (Order entered May 11, 2011), (Elliott), the ALJ sustained a preliminary objection alleging that the complaint lacked specificity and directed a complainant to file an amended complaint. The complainant failed to file an amended complaint and the ALJ issued an initial decision dismissing the complaint for failure to comply with a Commission order. The Commission reversed the initial decision of the ALJ and remanded the matter for further hearing.

In Elliott, the Commission stated that the complainant had indicated in her complaint that there were incorrect charges on her bill and requested help with her bill. The Commission observed that the complaint form mailed to a complainant at the conclusion of the informal complaint process contains check boxes to help the complainant state the nature of his or her complaint. The Commission found that in Elliott, the complainant had checked the boxes regarding incorrect charges and requesting a payment arrangement. The Commission concluded that this was sufficient to allow the utility to prepare an answer and prepare for a hearing.

In reaching its determination in Elliott, the Commission cited Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock) for the proposition that it would not dismiss *pro se* complaints without providing a hearing because *pro se* complainants may find it difficult to address prehearing motions and should be given the opportunity to orally describe their issue and supporting facts. Since the complainant in Elliott was *pro se*, the Commission concluded that dismissing the complaint at the pleadings stage was in error. After reviewing Elliott and Carlock, I conclude that they are distinguishable from this case.

In Elliott, the Commission found that where a customer indicated in his or her complaint that there were incorrect charges, the utility could access its account records for the customer and review the records for inaccuracies and determine the nature of the customer's complaint. In addition, the complainant requested a payment arrangement and the Commission

concluded that when a customer requests a payment arrangement, no other facts need to be averred. Here, the Complainant has neither requested a payment arrangement nor averred that there are incorrect charges on her bill. Instead, only the box, “Other” is checked and the word “appeal” is written on the Complaint.

Although an inference may be drawn that Complainant wishes to appeal the Bureau of Consumer Services’ Decision dated April 22, 2016 at Case No. 3357327, the Complaint does not have attached to it a copy of the decision, and the complaint lacks enough specificity for PGW to formulate and provide a meaningful answer to the Complaint. PGW cannot determine the nature of the alleged problem with its service from the Complaint. More detail will also permit PGW to address the perceived problem and pursue a possible settlement of the matter.

Recently, in Alice Ann Belmonte-Gates v PECO Energy Company, Docket No. F-2012-2332583 and Alice Ann Belmonte-Gates v Pennsylvania-American Water Company, Docket No. F-2012-2332589 (Order entered August 15, 2013) (Belmonte-Gates), the Commission distinguished that case from Carlock. In Belmonte-Gates the Commission characterized the complaint as incomprehensible and held that the complainant’s failure to set forth a clear and concise statement of the facts alleged and relief being sought would deprive the respondents of the opportunity to prepare adequate defenses. I conclude that in this case, the complaint is similarly incomprehensible and would deprive the Respondent of the opportunity to prepare an adequate defense.

The Respondent should not have to speculate as to the nature of the Complainant’s complaint. The Complainant could have removed any doubt as to the nature of the complaint by filing an amended complaint. The Complainant failed to file such an amended complaint as directed by the August 24, 2016 order.

The Commission’s regulations provide that the content of a formal complaint must include “A clear and concise statement of the act or omission being complained of

including the result of any informal complaint or informal investigation,” and “A clear and concise statement of the relief sought.” 52 Pa. Code § 5.22(1), (5) and (6).

The Commission’s rule is based on Pennsylvania’s Rule of Civil Procedure 1019, which requires a plaintiff to plead all the facts that she must prove in order to achieve recovery on the alleged cause of action. The pleading must be sufficiently specific so that the defending party will know how to prepare its defense. Department of Transportation v Shipley Humble Oil Co., 370 A.2d 438 (Pa. Cmwlth. 1977). Pennsylvania is a fact pleading, rather than notice, state. Therefore, the pleadings should conform to the elements necessary to state a cause of action. Pappert v. Tapp Pharmaceuticals, et al., 868 A.2d 624 (Pa. Cmwlth. 2005).

This is why the appropriate remedy for a complaint which is insufficient on its face is to permit the complainant an opportunity to remedy the deficiency by filing an amended complaint with the necessary facts properly pleaded. I explained this in the August 24, 2016 order directing the Complainant to file an amended complaint.

The Complainant has failed to comply with the August 24, 2016 order. The Complainant has not provided any reason for her failure to comply with the order. The Complainant’s failure to comply with the August 24, 2016 order constitutes a sufficient basis to dismiss her complaint without a hearing.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa. C.S. § 701.

2. The averments in the Complainant’s complaint are insufficient to enable the Respondent to formulate a meaningful response. 52 Pa. Code § 5.22(1), (5) and (6).

3. The Complainant had sufficient notice that his failure to file an amended complaint would result in dismissal of his complaint. Order entered August 24, 2016.

4. A presiding officer's orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss a complaint. Walter Randall v. Metropolitan Edison Company, Docket No. C-2013-2367046 (Order entered October 7, 2013).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Emilia Zaslav against Philadelphia Gas Works at Docket No. F-2016-2549869 is dismissed for failure to comply with the August 24, 2016 order issued in this proceeding and file an amended complaint.

2. That the case at Docket No. F-2016-2549869 is marked closed.

Date: September 27, 2016

/s/
Elizabeth H. Barnes
Administrative Law Judge