



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 7, 2016

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement
v. Tengiz Kalandadze t/a Philadelphia Limo; Docket No. C-2015-2458845

Dear Secretary Chiavetta:

Enclosed for filing is the Motion for Judgment on the Pleadings of the Bureau of Investigation and Enforcement in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Very truly yours,

Heidi L. Wushinske
Senior Prosecutor
PA Attorney ID No. 93792

Encl.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2458845
	:	
Tengiz Kalandadze t/a	:	
Philadelphia Limo,	:	
Respondent	:	


NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified to file a written response to the enclosed Motion for Judgment on the Pleadings of the Bureau of Investigation and Enforcement (I&E) within twenty (20) days from the date of service of this notice. If you do not file a written response denying the enclosed Motion for Judgment on the Pleadings within twenty (20) days of service, an Administrative Law Judge may rule on this Motion without further input.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

You must also serve a copy of your response on the undersigned prosecutor.


Heidi L. Wushinske, Senior Prosecutor
PA Attorney ID No. 93792

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: December 7, 2016

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Bureau of Investigation and Enforcement, :
Complainant :

v. :

Tengiz Kalandadze t/a :
Philadelphia Limo, :
Respondent :

Docket No. C-2015-2458845

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**MOTION FOR JUDGMENT ON THE PLEADINGS
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE HONORABLE ANGELA T. JONES:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), Complainant in the above-docketed matter, by and through its prosecuting attorneys, and pursuant to 52 Pa. Code § 5.102, hereby files this Motion for Judgment on the Pleadings against Tengiz Kalandadze t/a Philadelphia Limo (Respondent or Philadelphia Limo). In support thereof, I&E avers as follows:

I. BACKGROUND

1. On February 24, 2015, I&E filed a Formal Complaint (Complaint) against Philadelphia Limo alleging, *inter alia*, that Philadelphia Limo permitted its vehicles to be operated while its insurance coverage had lapsed. The Complaint seeks civil penalties in the amount of \$5,000 and cancellation of Respondent's certificate of public convenience.

2. Philadelphia Limo filed an Answer to the Complaint on April 17, 2015.

3. In its Answer, Philadelphia Limo alleged that despite the trips in question appearing on its trip sheets, it did not perform these trips, but referred them to other carriers.

4. On August 30, 2016, I&E propounded Interrogatories and Requests for Production of Documents – Set I (I&E Set I) upon Philadelphia Limo in this proceeding. I&E’s Interrogatories requested information regarding the names, certificate numbers, and contact information for the carriers to whom the trips in question were allegedly referred. I&E also sought information regarding the customers who took the trips in question. Further, I&E requested the production of documents to substantiate the referrals that Philadelphia Limo alleges it made for the trips at issue in I&E’s Complaint.

5. Pursuant to the Commission’s regulations, if Philadelphia Limo objected to I&E’s discovery, it was required to file objections within 10 days of service of the interrogatories. 52 Pa. Code § 5.342(e).

6. Philadelphia Limo’s objections to I&E Set I would have been due no later than September 12, 2016.

7. Philadelphia Limo did not file objections to I&E Set I.

8. The Commission’s regulations require answers to interrogatories to be filed within 20 days after service of the interrogatories. 52 Pa. Code § 5.342(d).

9. Philadelphia Limo’s answers to I&E Set I were due no later than September 22, 2016.

10. Philadelphia Limo did not provide answers to I&E Set I by September 22, 2016.

11. On October 3, 2016, I&E filed a Motion for Sanctions (Motion) requesting that Philadelphia Limo be prohibiting from asserting any claims or defenses that another carrier performed the trips at issue in I&E's Complaint. Motion at 4, ¶17.

12. In its Motion, I&E also requested that Administrative Law Judge Angela T. Jones (ALJ Jones) direct Philadelphia Limo to respond to the interrogatories and requests for production of documents and report in writing to ALJ Jones when it provided such responses. Motion at 4, ¶18.

13. In her Order dated November 7, 2016 (Order), ALJ Jones directed Philadelphia Limo to answer the outstanding discovery propounded by I&E Set I no later than close of business on November 14, 2016. Order at 6.

14. ALJ Jones informed Philadelphia Limo that if it failed to provide timely and sufficient answers to I&E's interrogatories and requests for production of documents, she would entertain a motion from I&E to prohibit Philadelphia Limo from providing evidence to support a finding that carriers and trips were allegedly referred by Respondent during the lapse of insurance coverage. Order at 6.

15. Philadelphia Limo failed to comply with ALJ Jones's Order and did not provide answers to I&E's interrogatories and requests for production of documents by November 14, 2016.

16. On November 23, 2016, I&E filed a Second Motion for Sanctions (Motion II), again requesting that Philadelphia Limo be prohibiting from asserting any claims or defenses that another carrier performed the trips at issue in I&E's Complaint.

17. On December 2, 2016, in an Order Granting Second Motion for Sanctions (Order II), ALJ Jones granted I&E's request that Philadelphia Limo be prohibiting from asserting any claims or defenses that another carrier performed the trips at issue in I&E's Complaint at Docket No. C-2015-2458845. Order II at 6.

18. Order II also ordered that the matter remain set for hearing as scheduled. Order II at 6.

19. A hearing in this matter is currently scheduled for December 21, 2016, in Philadelphia.

20. To date, Philadelphia Limo has ignored the Commission's regulations and ALJ Jones's Order, by failing to respond to I&E's discovery requests.

21. The information sought by I&E in its discovery requests, that another carrier performed the trips at issue in I&E's Complaint at Docket No. C-2015-2458845 forms the basis of Respondent's Answer.

II. MOTION FOR JUDGMENT ON THE PLEADINGS

22. Motions for summary judgment and judgment on the pleadings are governed by the Commission's Regulations at 52 Pa. Code § 5.102. Section 5.102(c) provides that "[a] motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits."

23. Pursuant to Section 5.102(d)(1) of the Commission's regulations, 52 Pa. Code § 5.102(d)(1), the presiding officer will grant the motion 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.

24. “Judgment on the pleadings is only appropriate where no material facts remain in dispute.” *Williams v. Lewis*, 466 A.2d 682, 683 (Pa. Super. 1983), citing *Pa. Ass’n of State Mental Hosp. Physicians, Inc. v. State Employee Ret. Bd.*, 399 A.2d 93 (Pa. 1979).

25. “Only where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise should a judgment on the pleadings be entered.” *Williams*, 466 A.2d at 683, citing *Nevling v. Natoli*, 434 A.2d 187 (Pa. Super. 1981). *See also Mahn v. PECO Energy Co.*, Docket No. C-2014-2444240 (Initial Decision issued November 18, 2014) (Final Order adopting Initial Decision entered January 26, 2015).

26. “When ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits.” *Reuben v. O’Brien*, 496 A.2d 913, 915 (Pa. Super. 1985). “Judgment on the pleadings should be entered only when the case for determination is clear and free from doubt.” *Id.*

27. A hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc., v. Pa. Pub. Util. Comm’n*, 817 A.2d 592, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Cmwlth. 2003); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 548 (Pa. Cmwlth. 1989).

28. I&E’s Complaint alleged that Philadelphia Limo permitted its vehicles to

be operated while its insurance coverage had lapsed, in violation of 52 Pa. Code §32.2 and §32.11 and 66 Pa. C.S. §501(c).

29. In its Answer, Respondent alleged that it did not take the trips in question, but cancelled them or referred them to other carriers.

30. In its discovery (I&E Set I), I&E requested information regarding the names, certificate numbers, and contact information for the carriers to whom the trips in question were allegedly referred.

31. I&E also sought information regarding the customers who took the trips in question so that it could verify the allegations contained in Respondent's Answer.

32. Further, I&E requested the production of documents to substantiate the referrals that Philadelphia Limo alleges it made for the trips at issue in I&E's Complaint.

33. Philadelphia Limo provided none of this information and continuously ignored I&E's discovery request, as well as the ALJ's Order.

34. As ordered by ALJ Jones in Order II, Philadelphia Limo is prohibited from asserting any claims or defenses that another carrier performed the trips at issue in I&E's Complaint. Order II at 6.

35. Furthermore, as ALJ Jones stated in Order II, Respondent cannot be rewarded for failing to comply with a Commission Order or provide a reasonable excuse for failing to comply with a Commission Order. Order II at 5.

36. As ALJ Jones also stated, "I&E has complied with the appropriate procedure to obtain the information sought regarding Phila. Limo's alleged defenses." Order II at 5.

37. Given that the only fact in dispute was whether Respondent or another carrier performed the trips at issue, and given that Your Honor's Order II now prohibits Respondent from asserting any claim or defense that another carrier performed these trips, there remain no disputed facts at issue in this case.

38. In this case, a hearing would be a fruitless exercise as ALJ Jones's Second Order prohibits Respondent from asserting any claims or defenses that another carrier performed the trips at issue in I&E's complaint.

39. Therefore, I&E asserts that its right to prevail is clear and that a Judgment on the Pleadings should be entered in favor of I&E.

40. Accordingly, I&E proposes that Your Honor issue an Order :

- (a) Directing that Philadelphia Limo file an Answer to the instant Motion within 10 days, which would make Respondent's Answer due on December 20, 2016, necessitated by the fact that the hearing in the above-docketed matter is scheduled for December 21, 2016; and
- (b) Awarding Judgment on the Pleadings to I&E; or, in the alternative,
- (c) Deferring a ruling on I&E's Motion for Judgment on the Pleadings until the time of the hearing.

III. CONCLUSION

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests, as a result of Respondent's lack of ability to raise defenses that another carrier performed the trips at issue in I&E's Complaint, that the Honorable Angela T. Jones issue an Order granting I&E the following relief: (a) awarding I&E Judgment on the Pleadings; and (b) grant any other relief that Your Honor deems appropriate.

Respectfully submitted,



Heidi L. Wushinske
Senior Prosecutor
PA Attorney ID No. 93792

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

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Dated: December 7, 2016

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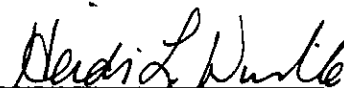
CERTIFICATE OF SERVICE

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 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail:

Tengiz Kalandaze,
T/A Philadelphia Limo
839 Selmer Road
Philadelphia, PA 19116

The Honorable Angela T. Jones
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia, PA 19107


Heidi L. Wushinske
Senior Prosecutor
PA Attorney ID No. 93972

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