

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tamika Butler

v.

Aqua Pennsylvania, Inc.

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C-2016-2565917

**INITIAL DECISION**

Before  
Tiffany L. Tran  
Special Agent

**INTRODUCTION**

This decision dismisses the Complaint filed in this matter for failure of the complainant to appear for the hearing and prosecute the complaint.

**HISTORY OF THE PROCEEDING**

On September 9, 2016, Tamika Butler (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Respondent). The complaint alleges the Respondent issued a 10-day shut off notice, and that the Complainant provided the Respondent with medical emergency forms from her doctor to prevent termination. The Complainant further states that she is currently on public assistance and is in need of a payment arrangement. She alleges medical problems, including asthma and environmental allergies, and states that she needs her water service to run a humidifier and clear her home of allergens. As relief, the Complainant requests that the Commission grant her a payment arrangement.

The Respondent filed an answer on September 29, 2016. The answer admits and denies the various allegations in the Complaint. Specifically, the Respondent denies that there are incorrect charges or overcharges on the Complainant's bill, and also denies that any collection and termination notices sent to the Complainant were improper. The Respondent avers that the Complainant's bills are based on actual meter readings and usage that accrued over a period of time. The Respondent denies that it will not enter into a payment arrangement with the Complainant, and alleges that the Complainant has failed to return completed medical certificates. The Respondent further states that it has been unable to contact the Complainant to discuss the complaint. The Respondent also notes that it gave a payment arrangement to the Complainant in May, 2016.

By notice dated October 27, 2016, the Commission scheduled this matter for an initial telephonic hearing on November 22, 2016, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated October 31, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements, and cautioning the Complainant that she might lose her case if she failed to appear.

I attempted to contact the Complainant using the telephone number provided on the formal complaint form on November 22, 2016, at 10:00 a.m. There was no response. The answering machine had an automated response that identified the number as belonging to "Tamika." I left a voice message identifying myself and the reason for the call, indicating that I would attempt to call her again in ten minutes, and cautioned that the hearing would proceed in her absence and that she might lose her case.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted that office to indicate that the Complainant would be unable to participate in the telephonic hearing. I also verified that my voice mail and email had no messages from the Complainant stating that she would be unable to participate in the hearing.

After verifying that the Complainant had not contacted OALJ in Harrisburg, I made a second attempt to contact the Complainant using the telephone number provided on the formal complaint form at 10:13 a.m. Again, there was no response, and I left another message again identifying myself and the reason for the call, and stated that the hearing would proceed in her absence.

Upon commencement of the hearing at approximately 10:15 a.m., Mary McFall Hopper, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute.<sup>1</sup> I advised the Respondent that I would take its motion under advisement.

The record closed on November 22, 2016, at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Tamika Butler.
2. The Respondent in this case is Aqua Pennsylvania, Inc.
3. On September 9, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on September 29, 2016.
5. By notice dated October 27, 2016, the Commission scheduled this matter for an initial telephonic hearing on November 22, 2016 at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.

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<sup>1</sup> A tape recording was made, no court reporter being present.

7. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the November 22, 2016 telephonic hearing.
9. The Complainant did not settle, withdraw or request a continuance of the matter.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n., 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on October 27, 2016, by regular first-class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated October 31, 2016, which, inter alia, directed the parties to notify me if the telephone numbers where she could be reached at the time of the hearing changed. The prehearing order, which was mailed to the Complainant at the address shown on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing. I twice called the number provided on the formal complaint form and left voice messages identifying myself

and the reason for my call. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa. Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
3. By failing to appear for the hearing and proffer any evidence to support the complaint, the Complainant had failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Aqua Pennsylvania, Inc. to dismiss the complaint filed by Tamika Butler at Docket No. C-2016-2565917 is granted.

2. That the complaint of Tamika Butler against Aqua Pennsylvania, Inc. at Docket No. C-2016-2565917 is dismissed with prejudice for failure of the complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2016-2565917 is marked closed.

Date: December 6, 2016

/s/  
Tiffany L. Tran  
Special Agent