

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dolores Mitchell

v.

Philadelphia Gas Works

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:

F-2016-2548959

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

This Initial Decision grants an oral motion to dismiss the complaint with prejudice for failure to appear and prosecute.

**HISTORY OF THE PROCEEDING**

On or about May 27, 2016, Dolores Mitchell (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission), alleging that Respondent incorrectly charged her for service at 2416 North 50<sup>th</sup> Street, Philadelphia, PA 19131 (Service Address). Complainant believes she was incorrectly charged for services that are the responsibility of another person. As relief, Complainant seeks a credit on her account and the striking of the municipal lien from the property. This is a timely appeal of the Commission's Bureau of Consumer Services' (BCS) decision at BCS No. 3394567.

On June 23, 2016, PGW filed its Answer, which denies that there are incorrect charges on the Complainant's account. PGW states that it correctly transferred a balance owed by Calvin Johnson of \$3,151.29 to Complainant's account because she had assumed the balance

owed at the time. PGW's Answer also admits a municipal lien was filed by the City of Philadelphia against the property at the Service Address. PGW filed Preliminary Objections and a Motion to Strike Impertinent Matter on June 23, 2016.

By Motion Judge Assignment Notice, the matter was assigned to me on August 28, 2016. By Order dated August 30, 2016, the Preliminary Objections were granted in part and denied in part. The relief requested of the removal of a municipal lien was stricken from the complaint as impertinent matter. However, whether PGW provided unreasonable service remained an issue for an evidentiary hearing. A hearing was scheduled for October 26, 2016. However, Complainant requested a continuance on or about October 20, 2016, which was granted. The hearing was rescheduled to December 8, 2016.

On December 8, 2016, Complainant failed to appear at the hearing. Mr. Laureto Farinas, Esquire appeared with one witness, Jessica Glace, Senior Customer Review Officer, on behalf of Philadelphia Gas Works. Mr. Farinas made an oral motion to dismiss the complaint with prejudice for failure to prosecute the complaint, which was taken under advisement. The record closed on December 8, 2016. The motion to dismiss is ripe for a decision.

#### FINDINGS OF FACT

1. Complainant is Dolores Mitchell, an individual residing at 2416 North 50<sup>th</sup> Street, Philadelphia, PA 19131 (Service Address).
2. Respondent is Philadelphia Gas Works (PGW).
3. Complainant is the owner for the Service Address.
4. On August 30, 2016, an Order Granting in Part and Denying In Part Preliminary Objections was issued striking from the complaint the relief requested of the removal of a municipal lien; however, allowing the remainder of the complaint to proceed to an evidentiary hearing.

5. By Call-In Telephonic Hearing Notice dated August 30, 2016, a Telephonic Hearing was scheduled for October 26, 2016.

6. On September 23, 2016 a prehearing order was issued in this case.

7. The Telephonic Hearing Notice and the Prehearing Order were both mailed to the complainant at 2416 N. 50<sup>th</sup> St., Philadelphia, PA 19131.

8. On October 20, 2016, the presiding officer received a letter dated October 16, 2016, from Complainant requesting a continuance of the hearing.

9. Complainant's request for continuance was granted, and the hearing was rescheduled to December 8, 2016 by Notice dated October 21, 2016.

10. The address at 2416 N. 50<sup>th</sup> St., Philadelphia, PA 19131 is the same address complainant listed as the mailing address on the Complaint form.

11. The Initial Call-In Telephonic Hearing convened at 10:00 a.m., as scheduled, on December 8, 2016.

12. Respondent appeared at the scheduled time represented by legal counsel with one potential witness and was prepared to proceed.

13. When the presiding officer telephoned Complainant's phone number as provided by Complainant on the complaint, the presiding officer received a recorded message.

14. The presiding officer left a message instructing Complainant to dial the call-in number if she wished to proceed with her scheduled complaint.

15. Complainant did not appear at the telephonic hearing per instructions on either the notice or prehearing order at 10:00 – 10:10 a.m. on December 8, 2016.

16. Respondent's counsel indicated he had no other phone number for Complainant.

17. Respondent's counsel made a motion to dismiss the Complaint with prejudice for failure to prosecute, and notified the ALJ that he had also attempted to contact Complainant, but was unsuccessful.

18. Complainant was advised of the date and time of the scheduled Initial Telephonic Hearing by the Telephonic Hearing Notice, and the Prehearing Order.

19. Complainant was advised of the procedures for requesting a continuance of a scheduled hearing by the Prehearing Order.

20. Complainant was advised that "[y]ou may lose this case if you do not take part in the hearing and present evidence on the issues raised" by the Prehearing Order.

21. Complainant neither settled nor withdrew the Complaint and she did not receive a continuance prior to the scheduled Telephonic Hearing on December 8, 2016.

#### DISCUSSION

As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), app. denied, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than

that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd.*, 612 A.2d 434 (Pa. 1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

By not appearing for the scheduled Telephone Hearing, Complainant failed to bear the burden of proof. Consequently, the Complaint must be dismissed.

Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 165 Pa.Cmwlth. 671, 645 A.2d 944 (1994), app. denied, 539 Pa. 696, 653 A.2d 1234 (1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996). Mere assertion that the document was not received, without corroboration, is insufficient to overcome the presumption of receipt. *Donegal Mutual Ins. Co. v. Insurance Dep't*, 719 A.2d 825 (Pa.Cmwlth. 1998); *Geise v. Nationwide Life and Annuity Co.*, 939 A.2d 409 (Pa.Super. 2007).

Due to the waste of the Commission's and the respondent's time, money, and energy occasioned by complainant's failure to appear at a hearing of which Complainant had notice, the dismissal will be with prejudice. *Martin W. Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892, (Opinion and Order adopted October 26, 1995, entered December 26, 1995); *Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885,

(Opinion and Order entered February 14, 2006). *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

### 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. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the complainant.
3. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), app. denied, 653 A.2d 1234 (Pa. 1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, (Opinion and Order entered May 10, 1996).
4. By failing to appear at the scheduled telephonic hearing, complainant has failed to satisfy the burden of proof. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).
5. Failure by a complainant to appear for a scheduled hearing of which the complainant had notice warrants dismissal of the Complaint with prejudice. *Martin W. Jefferson v. UGI Utilities, Inc.*, Docket Number Z-00269892, (Opinion and Order entered December 26, 1995); *Maurice Jones v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket Number C-20054885, (Opinion and Order entered February 14, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' oral Motion to Dismiss is granted.
2. That the Complaint of Dolores Mitchell against Philadelphia Gas Works at Docket Number F-2016-2548959 is dismissed, with prejudice.
3. That the case at Docket Number F-2016-2548959 be marked closed.

Date: December 8, 2016

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/s/  
Elizabeth H. Barnes  
Administrative Law Judge