

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Alan Haulman d/b/a AJH Pizza, Inc.
Complainant

v.

C-2014-2415273

PPL Electric Utilities Corporation

and

Blue Pilot Energy, LLC,
Respondents

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BRIEF OF THE COMPLAINANT, ALAN HAULMAN D/B/A AJH PIZZA, INC. IN
SUPPORT OF THE FORMAL COMPLAINT

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51 I&N, Inc. v. Rosen, 430 Pa. Super. 653, 630 A.2d 467 (Pa. Super. 1993) (8)

Basile v. H&R Block, Inc., 563 Pa. 359, 761 A.2d 1115 (Pa. 2000) (8)

Daniel Adams Associates, Inc. v. Rimbach Pub., Inc 360 Pa. Super. 72, 519 A.2d 99 (Pa. Super. 1987) (7)

STATEMENT OF THE QUESTION PRESENTED

1. DID ASHLEY KILLINGER AND JAMES KILLINGER HAVE THE ABILITY TO BIND THE CORPORATION AJH PIZZA, INC. TO AN ELECTRIC SUPPLY CONTRACT WITH BLUE PILOT ENERGY, LLC? (Suggested answer: NO)

CONCISE STATEMENT OF THE CASE

On March 31, 2014, Complainant, Alan J. Haulman, filed a Formal Complaint with the Public Utility Commission. Complainant alleged that his electrical service was set up without proper authorization with Blue Pilot Energy, LLC, and that as a result of that change Complainant's electrical bill jumped from a rate of approximately \$2,800 per month to over \$12,000 per month during the months of February and March of 2014. (N.T. 18, 23-24, 44, 57, 65).

Respondent Blue Pilot Energy, LLC, filed an Answer with New Matter on April 29, 2014, denying the allegations of the Formal Complaint.

A Joint Resolution Conference was held on June 19, 2014. The parties were unable to reach a resolution, and indicated that they did not wish to participate in mediation. The matter was originally scheduled for hearing on August 27, 2014. The hearing was continued to November 4, 2014, to be held before Administrative Law Judge Dennis Buckley.

On September 26, 2014, PPL filed a "Request for Relief" asking that the parties be directed to pre-file written testimony. On October 14, 2014, Complainant filed a Reply to this Request for Relief opposing the request. On October 13, 2014, Blue Pilot filed a Motion for Summary Judgment. The hearing scheduled for November 4, 2014, was continued to give Complainant an opportunity to respond to the motion.

On July 31, 2015, Complainant filed a Motion for Summary Judgment. On October 14, 2015, an Order was issued denying Blue Pilot's Motion for Summary Judgment and Complainant's Motion for Summary Judgment. A hearing was held on December 15, 2015. At the hearing, Complainant withdrew its Complaint against PPL only.

SUMMARY OF ARGUMENT

On September 6th, 2012, Complainant, Alan J. Haulman, contacted PPL Electric to activate an electrical service account for an Al's Pizza, located at 6581 Carlisle Pike, Mechanicsburg, PA 17050 ("The Property"). Electrical service was initiated for the Property.

In November 2012, the pizza business located on the Property was sold to Ashley Killinger and James Killinger. As the new owners of the pizza restaurant, Mr. and Mrs. Killinger began paying the electric bills for the restaurant. Early bills were provided to the Killingers at an address in Enola, Pennsylvania. Ashley Killinger subsequently requested that the bills be sent to the Property at 6581 Carlisle Pike, Mechanicsburg, Pennsylvania. At that time, PPL identified Ashley Killinger, not Complainant, as the account owner. In February of 2013, the electrical account was changed from a fixed rate contract with PPL Electric to a variable rate contract with Blue Pilot Energy, LLC, at the request of Ashley Killinger.

The Killingers defaulted on their Purchase Agreement for the pizza restaurant, and thus Complainant reassumed control over the business property. Complainant then contacted PPL Electric on October 28, 2013, to arrange for the reactivation of electrical service for the Property at 6581 Carlisle Pike, Mechanicsburg, Pennsylvania, under the account name AJH Pizza, Inc., but Complainant was informed that the account was already active and was in arrears. When Complainant received electrical bills for \$12,801.91 and \$12,613.57, from PPL Electric for February and March, 2014, respectively, he learned that while the Killingers owned the

restaurant, electrical service for the Property had been changed from a fixed rate plan with PPL Electric to a variable rate plan with Blue Pilot Energy, LLC.

The Killingers were not agents, employees, officers, or directors of AJH Pizza, Inc., and had no authority to bind Complainant to a variable rate electricity contract.

ARGUMENT

1. ASHLEY KILLINGER HAD NO AUTHORITY TO ESTABLISH AN ACCOUNT WITH BLUE PILOT ENERGY, LLC, IN THE NAME OF COMPLAINANT, AJH PIZZA, INC.

The issue is whether Ashley Killinger had corporate authority to establish a contract for a variable rate between Complainant and Blue Pilot Energy, LLC.

The facts show that Complainant initially activated the electrical services account for the Property on September 06, 2012. *See Complainant's Exhibit G* at 3. Complainant listed himself as the owner of the account, and provided his federal tax identification to verify his ownership of the account at that time. *Id.*

Ashley Killinger and James Killinger subsequently purchased the business located on the Property on or before November 19, 2012. N.T. 16 – 17, 37; *See Complainant's Exhibit C*. On November 19, 2012, Ashley Killinger called Blue Pilot Energy, LLC, to request a switch in electrical provider from PPL Electric to Blue Pilot Energy. N.T. 40; *See Complainant's Exhibit I*. On that date, Ashley Killinger identified herself as the owner of the Property. N.T. 44; *Id.* By December 10, 2012, PPL Electric's internal records reflected that [sic] "Ashley Jillinger" was considered to be the owner of the account for the Property. *See Complainant's Exhibit G* at 3. On December 19, 2012, Blue Pilot Energy, LLC, wrote a letter to Ashley Killinger welcoming her as a customer of Blue Pilot Energy. N.T. 59; *See Complainant's Exhibit H*. Ashley Killinger wrote checks payable to PPL for the Property's electric bills during that period, using checks drawn

from either her personal bank account or in her name and the name of J & A Pizza, LLC. N.T. 20 – 22, 30 – 32, 42 – 43; *See Complainant's Exhibit F* at 4, 5. J & A Pizza, LLC was the company created by James Killinger and Ashley Killinger to operate the business. No checks were written to PPL in the name of AJH Pizza, Inc. while the Killingers operated the business. N.T. 20 – 22, 32. The electrical service contract was switched from a fixed rate plan with PPL Electric to a variable rate plan with Blue Pilot Energy, LLC, by Ashley Killinger. N.T. 44, 56, 60, 65; *See Complainant's Exhibit E* at 1.

The facts show that on October 18, 2013, PPL Electric's internal records reflected that Ashley Killinger had the electrical service for the Property removed from her name. *See Complainant's Exhibit G* at 4. On October 28, 2013, Complainant's son contacted PPL Electric, and asked that electrical service for the Property be reconnected, in the name of AJH Pizza, Inc. N.T. 21, 24, *See id.* at 2. A PPL representative spoke to Complainant's son by telephone, and communicated that Complainant was considered to be the record owner of the electrical account since September 06, 2012. *Id.* The PPL representative also communicated that Complainant was responsible for paying the arrears on the account accumulated by the Killingers. *See id; see also, Complainant's Exhibit E* at 5-7. Complainant paid the electric bills for the Property from that point forward, using checks drawn on the name of AJH Pizza, Inc. N.T. 32, 34. Complainant also informed PPL Electric that AJH Pizza, Inc. was not responsible for the arrears, and that PPL should contact the Killingers with regard to collecting the arrears. *See Complainant's Exhibit G.*

It is well-settled law that a corporation may act only through its officers, directors and agents. In *Daniel Adams Associates, Inc. v. Rimbach Publishing, Inc.*, 360 Pa. Super. 72, 519 A.2d 997 (Pa. Super. 1987), the Pennsylvania Superior Court held that,

“A corporation is a creature of legal fiction which can ‘act’ only through its officers, directors and other agents. *Lokay v. Lehigh Valley Cooperative Farmers, Inc.*, 342 Pa. Super. 89, 97, 492 A.2d 405, 408 (1985).” *Rimbach, supra* at 80.

The facts show that there is only one director of AJH Pizza, Inc, and that director is the Complainant, Alan J. Haulman. N.T.12, 13, 14; *See Complainant's Exhibit A* at 25. There is also only one officer of AJH Pizza, Inc.: the Complainant N.T. 14; *See id.* at 23. Ashley Killinger and James Killinger were not officers, directors or agents of AJH Pizza, Inc. N.T. 18 – 19, 39, *See id.* The Killingers must be found to be agents of AJH Pizza, Inc., in order to bind AJH Pizza, Inc. to the variable rate electrical generation contract with Blue Pilot Energy.

In Pennsylvania, the party asserting an agency relationship has the burden of proving that relationship. *See 51 I&N, Inc. v. Rosen*, 24 Phila. 98 (Pa. Com. Pl. 1992) (“The burden of establishing an agency relationship rests with the party asserting it. *Girard Trust Bank v. Sweeney*, 426 Pa. 324, 231 A.2d 407 (1967)).” Blue Pilot Energy must assert an agency relationship between AJH Pizza, Inc. and the Killingers in order to enforce the variable rate agreement against AJH Pizza, Inc. The burden of proving the existence of an agency relationship falls on Blue Pilot.

Regarding the test for whether an individual is an agent of a corporation, the Pennsylvania Supreme Court held,

“The law is clear in Pennsylvania that the three basic elements of agency are: ‘the manifestation by the principal that the agent shall act for him, the agent’s acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking.’” *Basile v. H&R Block, Inc.*, 761 A.2d 1115, 1120, 563 Pa. 359, 367 (Pa. 2000).

In the instant case, there is no principal-agent relationship between Complainant and the Killingers. The facts show that there was no manifestation by Complainant that the Killingers could act on behalf of the corporation. There was no acceptance by the Killingers to act on behalf

of Complainant corporation, and there was no understanding that Complainant corporation would be in control of any undertaking involving the Killingers.

The *Basile* Court also held that,

“[A]gency results only if there is an agreement for the creation of a fiduciary relationship with control by the beneficiary...[T]hus, in all matters affecting the subject of the agency, the agent must act with the utmost good faith in furthering and advancing the principal’s interests, including a duty to disclose to the principal all relevant information.” *Basile, supra* at 1120, 367-368 (citations omitted).

There was no fiduciary relationship between Complainant and the Killingers, because the Killingers were operating **their own pizza restaurant** under a separation corporation.

The facts show that the Killingers did not have the authority to establish an electrical generation contract for AJH Pizza, Inc., because they did not have any authority to act on behalf of Complainant. In fact, the change was made while the Killingers were operating their own pizza restaurant under their separation corporation. Therefore, Complainant respectfully requests that Your Honor find that Complainant is not responsible for the \$12,441.00 and \$12,057.89 electric bills for February and March, 2014. *See Complainant’s Formal Complaint*, at ¶5.

In the instant case, there is no negligence on the part of Complainant, because Complainant had no knowledge that Respondents wrongfully considered the Killingers to be agents of AJH Pizza, Inc. The facts show that Complainant took no actions to hold out the Killingers as being connected with AJH Pizza, Inc. The Killingers acted to assert their independence from AJH Pizza, Inc., first by having the electric bills for the Property sent to their home address, and later by paying for the bills under their J & A Pizza, LLC account. At no time did the Killingers pay for the electric bills with a bank account associated with AJH Pizza, Inc.

Additionally, the facts show that there was no justifiable reliance on the part of Respondents. Respondents’ records indicate their awareness of multiple owners of the property.

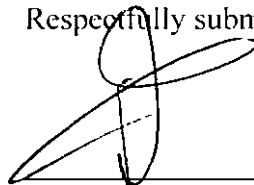
Respondents' records indicate that they accepted payment for bills accrued on that account from AJH Pizza, Inc., J & A Pizza, L.L.C. and Ashley Killinger. Respondents mailed electrical bills to the Property, as well as Ashley Killinger at an address in Enola, Pennsylvania. It would be unreasonable for Respondents to now allege that they relied on a principal-agent relationship between Complainant and the Killingers, when the Respondents' own records indicate that they treated Complainant's AJH Pizza, Inc. and the Killingers as independent owners of the separate businesses being supplied electricity by Blue Pilot Energy, LLC.

CONCLUSION

Complainant respectfully requests that the Public Utility Commission determine that AJH Pizza, Inc. is not responsible for the electric bills for electric generation by Blue Pilot Energy, LLC, for February and March 2014.

Date: 1-18-17

Respectfully submitted,



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v.	:	C-2014-2415273
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PPL Electric Utilities Corporation	:	
	:	
and	:	
	:	
Blue Pilot Energy, LLC,	:	
Respondents	:	

I, Darrell C. Dethlefs, Esq., the undersigned, hereby certify that a true and correct copy of the foregoing document, the Brief of the Complainant, Alan Haulman D/B/A AJH Pizza, Inc. in Support of the Formal Complaint was served on the following:

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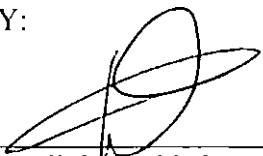
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