

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Floyd Tillman

v.

Philadelphia Gas Works

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C-2014-2445229

**INITIAL DECISION ON REMAND**

Before  
Dennis J. Buckley  
Administrative Law Judge

This Initial Decision dismisses with prejudice a Complaint filed by Floyd Tillman (Complainant) against Philadelphia Gas Works (PGW or Company) due to lack of representational capacity on the part of the Complainant or, alternatively, failure by the Complainant to meet his burden of proof.

**HISTORY OF THE PROCEEDING**

This case originated as a Complaint filed on September 26, 2014, by Complainant against PGW. The Complaint alleged that PGW billed him improperly.

On September 30, 2014, the Secretary of the Commission served the Complaint on PGW.

On October 20, 2014, PGW filed an Answer to the Complaint, denying the allegations set forth therein.

On December 4, 2014, a hearing notice was issued setting January 9, 2015, as the date for an evidentiary hearing in this case.

On December 17, 2014, I issued a standard form Pre-Hearing Order which was served on both parties. That Order clearly stated that failure to appear and to participate in the hearing could result in the entry of a default judgment.

On January 5, 2015, counsel for PGW served proposed exhibits on myself and the Complainant in conformity with the instructions in the prehearing Order.

On January 9, 2015, a telephonic evidentiary hearing in this case convened originating from the Commission's Office at 400 North Street, Harrisburg, Pennsylvania. Counsel for PGW, Laureto A. Farinas, Esquire, was present as was Complainant. Complainant asked for a continuance of the hearing in order to consult with his counsel and to pursue possible settlement of the case.<sup>1</sup> Mr. Farinas did not oppose the requested continuance.

On April 3, 2015, a hearing notice was issued setting May 14, 2015, as the date for the continued hearing in this matter.

On May 11, 2015, counsel for PGW served additional proposed exhibits on myself and the Complainant.

On May 14, 2015, a telephonic evidentiary hearing in this case convened originating from the Commission's Office at 400 North Street, Harrisburg, Pennsylvania. Counsel for PGW, Laureto A. Farinas, Esquire, was present as was Complainant. It was asserted by counsel at hearing that the account for natural gas service in this matter is a commercial account, and that Complainant is supposedly a limited liability corporation. Further complicating the matter was the fact that the account is in the name of Martha Tillman, and the same bill in question had previously been the subject of adjudication in the case of

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<sup>1</sup> It turned out that the individual Complainant was conferring with was not an attorney but one Michael Brown, a financial advisor from a firm called Northwest Counseling Service, Inc.

*Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728 (Final Order entered January 10, 2011). The Final Order in that case dismissed the underlying Complaint with prejudice for non-prosecution. Counsel for PGW thereupon moved for dismissal of the Complaint in this case on two grounds: first, that the LLC<sup>2</sup> was not represented by counsel; and secondly, that consideration of the case was barred in that the matter had been previously decided by the Commission.<sup>3</sup> Complainant asked to be allowed to get his attorney on the line, and cognizant of the Commission's encouragement of flexibility in dealing with unrepresented complainants, I allowed this. Diane Barr, Esquire, was connected to the hearing in progress on behalf of the Complainant. Attorney Barr stated that she had represented Complainant in a Chapter 13 proceeding which was dismissed. Thus, counsel was not familiar with the present controversy and requested a continuance. PGW opposed that request. Counsel candidly stated that she had not been previously contacted by Complainant relative to representation in this case.<sup>4</sup> Having afforded Complainant an opportunity to be represented by counsel, and finding that Complainant had *not* made use of the previous continuance to obtain counsel and to prepare with counsel for the hearing, I declined to grant a further continuance and adjourned the hearing.

On November 4, 2015, I issued an Initial Decision in which I granted the Motion to Dismiss the Complaint on the basis of the doctrine of *res judicata* at Docket No. C-2014-2445229, and dismissed the Complaint of Floyd Tillman against Philadelphia Gas Works with prejudice.

On March 8, 2016, the Commission issued an Order in this case which reversed the Initial Decision and remanded the case for further proceedings so that the Complainant could have an opportunity to further articulate his claims.

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<sup>2</sup> Tillman filed the complaint as an individual and not an LLC for the very sound reason that the business is not incorporated.

<sup>3</sup> Though counsel did not expressly use the term, I inferred that he was arguing for dismissal on the theory of *res judicata*.

<sup>4</sup> On April 26, 2016, attorney Barr filed a letter restating that she does not represent Complainant in this case and that she would not attend the hearing on April 29, 2016.

Consistent with the Commission's Order, a hearing on remand was held on April 29, 2016. This was a telephonic evidentiary hearing originating from the Commission's Office at 400 North Street, Harrisburg, Pennsylvania. Counsel for PGW, Laureto A. Farinas, Esquire, was present as was Complainant. Complainant testified but offered no exhibits. PGW presented the testimony of Patricia Bernard, a customer review officer employed by PGW. PGW offered four exhibits, previously served on Complainant and the presiding officer, that were received into evidence: PGW-1A, a Statement of Account; PGW-3A Contacts for Account; PGW-6, a shut off notice; and, post-hearing, PGW-7, a Return Receipt from Fed Ex. These exhibits and a 40 page transcript were filed with the Secretary of the Commission on May 25, 2016.

The record in this case consists of three hearing transcripts, that of January 9, 2015, that of May 14, 2015, and that of April 29, 2016 and related exhibits. The record closed on June 1, 2016, with the filing of the transcript and exhibits from the April 29, 2016 hearing.

This case is now ready for decision.

#### FINDINGS OF FACT

1. Floyd Tillman, the Complainant in this case, is the spouse of Martha Tillman. Tr. May 14, 2015, at 7.
2. Philadelphia Gas Works is a Commission jurisdictional provider of natural gas service.
3. The account in this case is a commercial account located at 4946 North Broad Street, Philadelphia, Pennsylvania, in the name of Martha Tillman. Tr. at 24, 32, 36; PGW Exhibit 1A.
4. The business is a clothing store/boutique, Tillman's Boutique, that being a fictitious name registered in 2002 with the Commonwealth's Corporation Bureau. Tr. at 27, 31; <https://www.corporations.pa.gov/search/corpsearch>.

5. The Tillman's reside at 1513 Gwynedd View Road, North Wales, Pennsylvania. Tr. at 34.

6. Floyd Tillman is not an attorney licensed to practice in the Commonwealth of Pennsylvania.

7. Floyd and Martha Tillman filed separate but identical Complaints alleging that Martha Tillman's business account had been incorrectly billed by Philadelphia Gas Works for natural gas service at 4946 North Broad Street, Philadelphia, Pennsylvania in the amount of circa \$5,252.05 due to an inaccurate meter rebilling. Tr. at 7, 36.

8. The formal Complaint of Martha Tillman at Docket No. F-2009-2146728 (Final Order entered January 10, 2011), was dismissed with prejudice by the Commission.

9. Both the present Complaint and that at Docket No. F-2009-2146728 are based on the same faulty meter billing recalculation. Tr. at 7.

10. As of April 9, 2016, the balance owed on Martha Tillman's commercial account was \$25,012.43. Tr. at 17-18.

### 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 parties are afforded notice and the opportunity to appear and be heard. *Id.*

As the proponent of a rule or order, the Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a). Thus, the Complainant has the burden of proving that PGW violated a provision of the Public Utility Code or a regulation of the Commission. The Complainant has not met this burden, and his Complaint must be dismissed.

To establish a sufficient case and satisfy the burden of proof, a 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*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 602 A.2d 863 (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*, 364 Pa. 45, 70 A.2d 854 (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*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (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. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (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*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

If a complainant establishes a prima facie case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant's evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

If respondent submits evidence of "co-equal" weight to refute Complainant's evidence, Complainant has not satisfied the burden of proof unless she presents additional evidence opposing Respondent's evidence. *Morrissey v. PA Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. Pub. Util. Comm'n.* 66 Pa. Cmwlth Ct. 282, 443, A.2d 1373 (1982), *aff'd.* 501 Pa. 443, 461 A.2d 1234.

Setting aside for the moment the fact that Complainant presented no evidence of mis-billing by PGW at any point in this case, it is clear that Floyd Tillman has sought to re-litigate the same Complaint that had already been filed by his spouse, Martha Tillman. However, the Commission found in its Remand Order of March 8, 2016:

. . . [W]e do not believe it is clear that all of the issues raised in Mr. Tillman's Complaint were or should have been litigated in Mrs. Tillman's Complaint. Some of those issues may have been litigated previously, and the doctrine of issue preclusion may preclude Mr. Tillman from re-litigating those issues. Nevertheless, we believe the ALJ's Initial Decision dismissing the case should be reversed and the matter should be remanded for further proceedings so that the Complainant may have an opportunity to further articulate his claims.

Similarly, since we do not believe it is clear that all of the issues raised in Mr. Tillman's Complaint were or should have been litigated in Mrs. Tillman's Complaint, we believe it is premature at this time to dismiss Mr. Tillman's Complaint based on Section 316 of the Code.

Opinion and Order of March 8, 2016, at 8.

According to the Commission's records, Martha Tillman claimed that she had been incorrectly billed for service at 4946 North Broad Street, Philadelphia, Pennsylvania. That is the address of Tillman's Boutique, which is a sole proprietorship operated by Martha Tillman. The Final Order in that case, *Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728 (Final Order entered January 10, 2011), dismissed the underlying Complaint *with prejudice* for non-prosecution. The amount in controversy in that Complaint was \$5,252.05. That case was an appeal of a determination by the Commission's Bureau of Consumer Services at Case No. 2391518.

As Floyd Tillman ultimately conceded, the faulty meter re-billing in 2008 is the genesis of both the present case and the underlying case at Docket No. F-2009-2146728. (Tr. at 7) This is dispositive of the present Complaint, and though imperfectly argued at the time was, no doubt, the basis for PGW's original Motion for Dismissal of the present Complaint under the doctrine of *res judicata*. It is clear that all of the issues raised in Mr. Tillman's Complaint were or should have been litigated in Mrs. Tillman's Complaint.

That re-billing was being contested by Martha Tillman in the 2009 proceeding, but she failed to prosecute that case. Thereafter, Floyd Tillman "took charge," of the matter (Tr. at 7, 36) and filed the present Complaint. As this case was remanded because it was felt that there may exist some distinction between the allegations of Martha Tillman and those of Floyd Tillman, it is critical to understand that Floyd Tillman specifically testified at the hearing on April 29, 2016, that this matter has been going on since 2008 and is based on the same faulty meter billing recalculation. Tr. at 7. Floyd Tillman's Complaint cited no specific dollar amount in controversy, but alleged mis-billing and asked for mediation. Complainant unequivocally testified at the hearing on April 29, 2016, that his sole issue in this case is the re-billing by PGW of \$5,230.94 [sic] *on June 8, 2008*. Both cases involve the same account, Account Number 6113005732.

As the Commission directed, at the hearing on April 29, 2016, Complainant was afforded an opportunity to further articulate his claims. Complainant unequivocally testified that his sole issue in this case is the billing by PGW of \$5,230.94 [sic] on June 8, 2008, which Complainant claims was a mis-billing, based upon the inaccurate meter re-billing referred to in BCS Case No. 2391518, appealed at Docket No. F-2009-2146728. Tr. April 29, 2016 at 6-7. Setting aside for the moment the issue as to whether Floyd Tillman could represent Martha Tillman in her capacity as the owner of Tillman's Boutique, the fact is that Floyd Tillman offered no evidence at any hearing in this case to demonstrate that a mis-billing had occurred.

With respect to the issue of Floyd Tillman's capacity to file a Complaint or to represent Tillman's Boutique in this case, it was previously established that Floyd Tillman and Martha Tillman are husband and wife. Tr. May 14, 2015, at 7. The service address for Tillman's Boutique is 4946 North Broad Street, Philadelphia, Pennsylvania. PGW Exhibit 1-A. It is now

clear that the business is run by Martha Tillman with occasional and incidental maintenance help from her husband, Floyd Tillman. Tr. at 27-29. Mr. Tillman is not the owner/proprietor of the business, nor is he a partner, nor is he an attorney licensed to practice in the Commonwealth of Pennsylvania. Mr. Tillman stated that the account is not his, that he did not open it, but asserted that he is taking “personal charge,” to “settle” what he characterizes as a mis-billing. Tr. 35-37.

I note that from the outset, Complainant delayed the evidentiary hearing and then obfuscated the facts, demonstrating that he is not a credible witness. Prior to the hearing on January 9, 2015, Complainant claimed that he was represented by a Mr. Mark Brown, who turned out to be not an attorney, but a financial counselor at Northwest Counseling Services, Inc., in Philadelphia, Pennsylvania. At the hearing on May 14, 2015, Complainant claimed that he was represented by counsel, one Diane Barr, Esquire. This claim, which proved to be false, only served to further complicate the proceedings. Complainant, who is not an attorney or a partner in the business of Martha Tillman, then misled the presiding officer and the Commission to believe that he was legally qualified to speak on behalf of the account holder, Martha Tillman. Tr. at 39. Complainant continued this pose even through the hearing on April 29, 2016, until it was ultimately established that Mr. Tillman has no legal standing vis-à-vis his wife’s business. Finally, Complainant falsely claimed that he did not receive PGW’s hearing exhibits when in fact he had, as proved by PGW Exhibit 7, a receipt from FedEx with proof of delivery.

PGW established that Complainant is not disputing any bills in his name or that were incurred after the time period covered by the decision in *Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728 (Final Order entered January 10, 2011). Tr. April 29, 2016 at 7-8; 16-17. PGW moved for dismissal of the present Complaint as Floyd Tillman is not legally qualified to bring the instant Complaint or to represent Martha Tillman in her capacity as sole proprietor of Tillman’s Boutique.

I agree with PGW. The account in this case is a commercial account, therefore Floyd Tillman cannot represent Martha Tillman, as she is a sole proprietor. See 52 Pa. Code § 1.21. Even if we accepted, *arguendo* and against the weight of the evidence, that Floyd Tillman had a proprietary role or interest in Tillman’s Boutique, he failed to establish mis-billing by PGW or that

PGW has violated any provision of the Public Utility Code or a regulation of the Commission. Floyd Tillman is precluded from re-litigating the same Complaint that was dismissed with prejudice in *Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728 (Final Order entered January 10, 2011). For each and all of these reasons, the Complaint which he improvidently filed at this docket will be dismissed.

Finally, the Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the system. In *Sheri Seidenstricker v. Metropolitan Edison Company*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009), the Commission adopted the Administrative Law Judge's Initial Decision which, *inter alia*, ordered that complainant in that case be precluded from filing further informal and formal complaints pertaining to the same account until such time as the current balance on that account was paid in full, after finding that complainant had abused the system by using its provisions to prevent termination of service over the course of many years while receiving electric utility service from respondent and accruing a large outstanding balance. Similarly, in the instant case, the Complainant should be precluded from filing further informal and formal complaints pertaining to the inaccurate meter re-billing referred to in BCS Case No. 2391518, and appealed at *Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728 (Final Order entered January 10, 2011).

For all of the foregoing reasons, the Complaint of Floyd Tillman at Docket No. C-2014-2445229 is dismissed with prejudice.

#### CONCLUSIONS OF LAW

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

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

3. Individuals may represent themselves in proceedings before the Commission, but otherwise persons in adversarial proceedings shall be represented in accordance with 52 Pa. Code § 1.22 (relating to appearance by attorneys and legal interns). 52 Pa. Code § 1.21.

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

5. The Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the system. In *Sheri Seidenstricker v. Metropolitan Edison Company*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss the Complaint of Floyd Tillman at Docket No. C-2014-2445229 due to lack of representational capacity is hereby granted.

2. That, alternatively, the Complaint of Floyd Tillman at Docket No. C-2014-2445229 is dismissed because Complainant failed to meet his burden of proof pursuant to 66 Pa.C.S.A. § 332(a).

3. That the Complainant is precluded from filing further informal and formal complaints pertaining to the issues already adjudicated with respect to the inaccurate meter re-billing referred to in BCS Case No. 2391518, and appealed at *Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728 (Final Order entered January 10, 2011).

