

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William R. Regli for Revere Realty	:	
Investment Corporation	:	
	:	
v.	:	C-2016-2581162
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**  
**GRANTING PRELIMINARY OBJECTION AND DISMISSING COMPLAINT**

Before  
Joel H. Cheskis  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses a complaint filed against a natural gas distribution company by a customer who averred that there are incorrect charges on its bill that resulted in the imposition of a municipal lien in 2010. Even when accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to the complainant, it is clear that the complainant is not entitled to relief under any circumstances as a matter of law. As a result, the preliminary objections filed by the company will be granted and the complaint will be dismissed.

**HISTORY OF THE PROCEEDING**

On December 16, 2016, William R. Regli for Revere Realty Investment Corporation (Revere) filed a formal complaint against Philadelphia Gas Works (PGW), docket number C-2016-2581162. In its complaint, Revere argued that there are incorrect charges on its

bills. Revere attached to the complaint several documents regarding its attempts to resolve with PGW a matter involving a charge for service of \$925.16 imposed on December 14, 2010. Revere further noted that the charge of \$925.16 led to the imposition of a lien on the property that Revere would like removed. Revere added that part of the lien is associated with consumption at the property from May 1998 to February 2000.

On January 12, 2017, PGW filed an answer with new matter in response to Revere's complaint. In its answer, PGW admitted or denied the various averments made in Revere's complaint. In particular, PGW denied that there are incorrect charges on the bill for service at the service address. In its new matter, which was not accompanied by a notice to plead, PGW averred that Revere lacks standing to bring this action and that the statute of limitations prohibits recovery unless the action is brought within three years from the date the liability arose. PGW further averred in its new matter that the Commission has no jurisdiction over the imposition of a lien. PGW concluded that the complaint should be dismissed.

Also on January 12, 2017, PGW filed a preliminary objection in response to Revere's complaint. In its preliminary objection, which was accompanied by a notice to plead, PGW reiterated its arguments that the complainant lacks standing to bring the required action, that the Commission lacks jurisdiction over the subject matter of the complaint and that the request to remove the lien is impertinent matter that should be stricken. PGW provided extensive legal argument in support of its position and concluded that the complaint should be dismissed.

Revere's answer to PGW's preliminary objection was due no later than January 27, 2017. Revere did not file an answer to PGW's preliminary objection.

On March 29, 2017, a motion judge assignment notice was issued informing the parties that I was assigned as the Presiding Officer and responsible to resolve any issues which might arise during the preliminary phase of this proceeding. The preliminary objection filed by PGW is ready for disposition. For the reasons discussed below, PGW's preliminary objection will be granted and the complaint will be dismissed.

## FINDINGS OF FACT

1. The Complainant in this case is William R. Regli for Revere Realty Investment Corporation.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 2844 Cottman Avenue, Philadelphia, PA.
4. On December 16, 2016, Revere filed a formal complaint against PGW.
5. On January 12, 2017, PGW filed an answer with new matter in response to Revere's complaint.
6. Also on January 12, 2017, PGW filed a preliminary objection in response to Revere's complaint.
7. Revere did not file an answer to PGW's preliminary objection.

## DISCUSSION

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable).

Section 5.101(a) provides:

- (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Revere and should dismiss the complaint only if it appears that Revere would not be entitled to relief under any circumstances as a matter of law. Equitable, supra; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979). The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

In this case, Revere argued in its complaint that PGW imposed a lien on its property in 2010 for an outstanding balance of \$925.10 accrued by the complainant's lessee. Revere requested that the lien be removed. In response, PGW argued in its preliminary objection that Revere is improperly seeking to challenge the billing on someone else's account and therefore lacks standing. PGW also argued that the Commission does not have jurisdiction to hear an action brought more than three years from the date the liability arose and therefore

Revere has lost the right to pursue the claim because the balance accrued prior to 2014. Finally, PGW also argued that the Commission has repeatedly recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. PGW concluded that the complaint should be dismissed.

Revere's complaint will be dismissed because, even when accepting as true all well pleaded averments in the complaint, as well as every reasonable inference from those averments, and viewing the complaint in the light most favorable to Revere, it appears that Revere would not be entitled to relief under any circumstances as a matter of law. PGW's preliminary objections will, therefore, be granted and the complaint will be dismissed.

To begin, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993). PGW is correct that the Commission has recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. Cornelia Strowder v. Philadelphia Gas Works, Docket No. C-20028036, Order (entered December 30, 2002); Debra Williams Lawrence v. Philadelphia Gas Works, Docket No. C-20066672, Order (entered January 22, 2007); Tina L. Francis-Young v. Philadelphia Gas Works, Docket No. C-2008-2029672, Order (entered February 23, 2009); *see also*, 66 Pa. C.S. §§ 1414(a) and 2212(n).

The Commission may, however, retain jurisdiction if there are underlying issues involved in the complaint over which the Commission does have jurisdiction. Larry and Gail Newman v. Philadelphia Gas Works, Docket Number C-2011-2273565, Opinion and Order (entered March 29, 2012) ("the [Public Utility] Code gives us authority to impose civil penalties, or order such other relief as is contained in the Code, if we find that a jurisdictional entity such as

PGW has violated the Code, our Regulations or our Orders”). In this case, however, the underlying issue resulting in the imposition of the lien is barred by the statute of limitations.

PGW is correct that, in this case, the underlying issue is barred by the statute of limitations. Section 3314 of the Public Utility Code provides:

**§ 3314. Limitation of actions and cumulation of remedies.**

**(a) General Rule.** No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). When accepting as true Revere’s averment that the municipal lien was imposed on Revere’s tenant for a disputed amount of \$925.16 accrued on December 14, 2010, it is clear that the date at which the liability arose was older than three years. Since the disputed amount accrued on December 14, 2010, Revere would have had to timely raise its complaint by December 14, 2013. Instead, Revere filed its complaint three years later – on December 16, 2016. Therefore, any claim that arose prior to December 16, 2013 is barred by the statute of limitations. As a result, Revere’s underlying issue is barred by the statute of limitations and the complaint should be dismissed.

Since the complaint is being dismissed because the underlying issue that led to the imposition of the lien is beyond the statute of limitations, PGW’s argument that the complaint should be dismissed because the complainant lacks standing to bring the required action is moot and will not be addressed in this Decision.

Finally, it is noted that PGW’s failure to attach a notice to plead to its new matter in this case does not alter whether the preliminary objection should be granted. PGW’s preliminary objection is being granted based on the averment in the complaint that the lien was imposed on Revere’s tenant for a disputed amount that accrued in 2010. The preliminary

objection is not being granted based on accepting any averment in the new matter as true because it was not responded to. The fact that Revere did not respond to PGW's new matter does not change whether, when accepting as true all well pleaded averments in the complaint, as well as every reasonable inference from those averments, and viewing the complaint in the light most favorable to Revere, Revere would be entitled to relief under any circumstances as a matter of law. In this case, this conclusion is drawn based solely on a reading of the complaint and without regard to PGW's averments in its new matter. PGW's failure to attach a notice to plead to its new matter does not change the underlying disposition of the preliminary objection.

In conclusion, even when accepting as true all well pleaded facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Revere, it is clear that Revere is not entitled to relief under any circumstances as a matter of law. As a result, PGW's preliminary objection will be granted and the complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101.
3. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).
4. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following: (1) lack of Commission jurisdiction or improper service of the pleading initiating the proceeding; (2) failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent

matter; (3) insufficient specificity of a pleading; (4) legal insufficiency of a pleading; (5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; (6) pendency of a prior proceeding or agreement for alternative dispute resolution; or (7) standing of a party to participate in a proceeding. 52 Pa.Code § 5.101(a)(1)-(7).

5. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlt. 1988).

6. For purposes of disposing of preliminary objections, the Commission must view the complaint in this case in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

7. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

8. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977).

9. The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super. 1945).

10. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

11. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlt. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

12. The Commission has recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. Cornelia Strowder v. Philadelphia Gas Works, Docket No. C-20028036, Order (entered December 30, 2002); Debra Williams Lawrence v. Philadelphia Gas Works, Docket No. C-20066672, Order (entered January 22, 2007); Tina L. Francis-Young v. Philadelphia Gas Works, Docket No. C-2008-2029672, Order (entered February 23, 2009).

13. The Commission may retain jurisdiction over a complaint involving a municipal lien if there are underlying issues involved in the complaint over which the Commission does have jurisdiction. Larry and Gail Newman v. Philadelphia Gas Works, Docket Number C-2011-2273565, Opinion and Order (entered March 29, 2012).

14. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part. 66 Pa.C.S. § 3314(a).

15. Even when accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those fact, and viewing the complaint in the light most favorable to Revere, it is clear that Revere would not be entitled to relief under any circumstances as a matter of law and the complaint should be dismissed. 52 Pa.Code § 5.101.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection filed by Philadelphia Gas Works at Docket Number C-2016-2581162 on January 12, 2017 is hereby granted.

2. That the formal complaint filed by William R. Regli for Revere Realty Investment Corporation against Philadelphia Gas Works dated December 16, 2016 is hereby dismissed.

3. That this matter be marked closed.

Date: April 7, 2017

\_\_\_\_\_/s/  
Joel H. Cheskis  
Administrative Law Judge