

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bernard and Arlene Shuster
and Scott Shuster

v.

Philadelphia Gas Works

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C-2016-2578901

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision dismisses a formal complaint for failure to sustain the burden of proof, in which Complainants alleged Respondent improperly billed Complainants for natural gas service charges in their rental unit.

HISTORY OF THE PROCEEDING

On November 28, 2016, Bernard and Arlene Shuster and Scott Shuster (Shusters or Complainants) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) alleging PGW was in error to bill Complainants for natural gas service charges at their rental property, which was registered in PGW's Landlord Cooperation Program, from October 2015 until the property was sold in September 2016, because no one lived there. On December 27, 2016, Respondent filed an Answer in which it generally denied the allegations.

On January 26, 2017, the Commission issued a Call-In Telephone Hearing Notice scheduling this matter for an initial telephonic hearing on Friday, March 10, 2017 from the Commission's offices in Pittsburgh, Pennsylvania. On January 27, 2017, the presiding officer issued the Prehearing Order which set forth various procedural rules and guidelines for how the proceeding would be handled.

On February 2, 2017, the Commission issued a Corrected Hearing Notice which corrected an error in the caption of the case and reiterated that this matter was scheduled for an initial call-in telephonic hearing on Friday, March 10, 2017 from the Commission's offices in Pittsburgh, Pennsylvania.

The presiding officer conducted the hearing as scheduled on March 10, 2017. Complainants appeared *pro se*. Bernard Shuster testified on his own behalf. Complainants Arlene Shuster and Scott Shuster were present during the hearing but did not testify or speak on their own behalf. Complainant Bernard Shuster (Mr. Shuster) offered one exhibit that was marked and admitted as Complainants' Exhibit 1. PGW was represented at the hearing by Laureto Farinas, Esquire. PGW presented the testimony of one witness, Joyshalyn Moore, and offered five exhibits that were marked and admitted as PGW Exhibits 1 through and including Exhibit 5. No briefs were requested, and the parties entered their final statements at the hearing. The record consists of the 89-page transcript and the six aforementioned exhibits. The record was closed by Interim Order dated April 5, 2017.

FINDINGS OF FACT

1. Complainants, Bernard and Arlene Shuster and Scott Shuster, reside in New Jersey and owned a two-story duplex located at 211 Erica Terrace, Philadelphia, Pennsylvania (service address or duplex) from 1974 until September 19, 2016. (Tr. 7-10, 21, 65; PGW Exhibit 2).

2. PGW provided natural gas distribution service to the service address while Complainants owned the duplex. (Tr. 11).

3. Complainants participated in PGW's Landlord Cooperation Program from 2012 until the duplex was sold in September 2016. (Tr. 10, 18, 21).

4. PGW's Landlord Cooperation Program exempts participating owners from financial responsibility when tenants accrue high natural gas bills. (Tr. 10).

5. On June 1, 2015, a new tenant established service at the service address. (Tr. 73, 74; PGW Exhibit 5).

6. On October 16, 2015, Bernard Shuster called Respondent and requested gas service in his name at the service address until a new tenant could be found for the first floor unit. (Tr. 55, 56, 69, 70; PGW Exhibit 1).

7. The second floor tenant at the service address had threatened and abused the first floor tenant at the service address until the first floor tenant evacuated the first floor unit of the service address. (Tr. 11, 12, 46).

8. When Complainants became aware of the second floor tenants' threats and their operation of a business from the first floor unit, Complainants changed the locks on the first floor unit and began eviction proceedings against the second floor tenant. (Tr. 12-16, 46).

9. After the first floor tenant evacuated, the second floor tenants repeatedly broke the locks Complainants kept installing on the first floor apartment, and then operated a food service business from the first floor unit and threatened Complainants, the realtor and the police. (Tr. 11-18).

10. Local sheriffs removed the second floor tenants in August 2016 after the second floor tenants issued threats. (Tr. 12-18).

11. On December 2, 2016, Complainants won a \$1,500 judgment against the second floor tenants. (Tr. 13, 14, 18).

12. On April 5, 2016, Complainants called PGW to complain that PGW should stop sending bills for the first floor unit because there were no tenants in the first floor unit, and Complainants themselves did not live there. (Tr. 15-21, 56, 57; PGW Exhibit 1).

13. Complainants did not ask PGW to terminate service after the first floor tenants vacated the service address because they wanted the natural gas service working while they attempted to sell the real estate. (Tr. 23-25, 41, 42).

14. Bernard Shuster has owned rental properties since 1974 but claimed he never called PGW to terminate service after a tenant moved out of one of the rental units. (Tr. 41-44).

15. Four payments totaling \$578.25 were made, from November 2015 to March 2016, on the natural gas service account after Complainant Bernard Shuster requested PGW put the account in his name.

16. As of the date of the hearing, Complainants owed \$926.23 to PGW for unpaid natural gas service at the service address. (Tr. 62-64, 72; PGW Exhibits 2, 3 & 5).

DISCUSSION

Complainants, as the party seeking affirmative relief from the Commission, bear the burden of proving by substantial evidence that PGW has violated the provisions of the Code, this Commission's regulations or some other law or order that this Commission has authority to enforce. 66 Pa.C.S.A. § 332(a).

The Commission has broad powers to supervise and regulate all public utilities doing business within the Commonwealth and is empowered to determine whether a public utility is providing safe, adequate and reasonable service. 66 Pa.C.S.A. §§ 501, 1501.

The Public Utility Code defines “service” as follows:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered or performed, any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities... (Emphasis added).

66 Pa.C.S.A. § 102.

Complainants contend that they should not be responsible to pay for the natural gas service which the second floor tenant stole from the first floor. Complainants were not billed for the unpaid natural gas service in the second floor unit and they aver PGW was in error to require Complainants to pay for the stolen utility service to the first floor unit. Complainants argued that as owners, under the Landlord Tenant Cooperation Program, they were not responsible to pay for natural gas service if the first floor tenant moved out, even though PGW continued to provide natural gas service while Complainants attempted to sell the service address, because they did not live there.

Complainants contacted PGW when they learned the first floor tenants left after enduring threats from the second floor tenants. During that initial contact on October 16, 2015, Bernard Shuster asked to have the natural gas service provided in his name. Complainants wanted natural gas service to be functional at the service address because their intention was to either re-rent the premises or sell the property.

PGW cannot be expected to cover the cost of the utility service which it provided to the service address and which made it possible for Complainants to show the real estate to potential buyers. PGW did not learn until April 2016 about Complainants’ suspicion that the second floor tenants might be stealing utility service. Respondent cannot be expected to know that Complainants should have asked to have the utility service terminated until such time as Complainants could have the second floor tenants evicted. Complainants were in control of the first floor unit (or at least had more control over the first floor unit than PGW did) and could have had the utility service terminated once they learned the first floor tenants left the unit.

In fact, Complainants should have had the service terminated to the first floor unit, and if they had called PGW to terminate service, Complainants could have prevented the second floor tenants from stealing utility service and from taking possession of the first floor unit. Complainants did not take any actions to reduce the amount of utility service stolen by the second floor tenants, despite knowing about the theft of utility service by the second floor tenants in the first floor unit. Despite taking no meaningful actions to reduce or prevent the loss of unnecessary natural gas service, Complainants expect PGW to cover the cost of the natural gas service after the first floor tenants left the service address and after Bernard Shuster had called to ask for service to be provided in his name.

Accordingly, Complainants failed to meet the burden of proving that PGW violated the Commission's regulations or statutes when it charged Complainants for the utility service used in the first floor unit from October 16, 2015 until September 19, 2016 when Complainants sold the service address.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. Feingold v. Bell of Pennsylvania, 477 Pa. 1383 A.2d 791 (1977); 66 Pa.C.S.A. § 701.
2. Complainants, as the party seeking affirmative relief from the Commission, have the burden of proof. 66 Pa.C.S.A. § 332(a).
3. Complainants failed to satisfy their burden of proving that Respondent violated the Public Utility Code, Commission regulations or any order of the Commission.
4. PGW was not in violation of the Public Utility Code, Commission regulations or any order of the Commission when it billed Complainants for natural gas service from the time service was requested on October 16, 2015 until the service address was sold on September 19, 2016. 66 Pa.C.S.A. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Bernard and Arlene Shuster, and Scott Shuster against Philadelphia Gas Works, at Docket No. C-2016-2578901, is dismissed.

2. That the Secretary shall mark the complaint of Bernard and Arlene Shuster, and Scott Shuster against Philadelphia Gas Works, at Docket No. C-2016-2578901, as closed.

Date: June 14, 2017

/s/
Katrina L. Dunderdale
Administrative Law Judge