

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Kossman

v.

PECO Energy Company

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C-2017-2583425

**INITIAL DECISION GRANTING MOTION FOR JUDGEMENT ON THE PLEADINGS
AND DISMISSING COMPLAINT**

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A customer filed a complaint requesting a payment arrangement. This decision dismisses the complaint because the Commission lacks jurisdiction to order a payment arrangement where the customer has filed a Chapter 13 bankruptcy.

HISTORY OF THE PROCEEDING

On January 9, 2017, Andrew Kossman (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint states that Respondent has threatened or has already terminated service and requests that the Commission order a payment arrangement.

The Respondent filed an answer with new matter on January 12, 2017. The answer admits that the Respondent has provided service to the Complainant at the address shown on the complaint. The answer denies that the Complainant is entitled to another payment arrangement and avers that the Complainant had defaulted on three Commission issued payment

arrangements and one company issued payment arrangement. In addition, the answer alleges that the Commission lacks jurisdiction to order a payment arrangement because the Complainant is the debtor in an active bankruptcy proceeding.

The new matter asserts that the Respondent was notified that the Complainant had filed for protection under Chapter 13 of the United States Bankruptcy Code on June 24, 2016, Docket No. 11-12659. When the Respondent became aware of the Complainant's Chapter 13 bankruptcy filing, it transferred \$7,354.92 from the Complainant's account and assessed a bankruptcy deposit of \$328.47. Attached to the answer with new matter is a copy of the Complainant's Chapter 13 bankruptcy filing case summary. According to the new matter, the Complainant's Chapter 13 bankruptcy is an active proceeding and the Commission lacks the authority to order a payment arrangement for a utility customer when the customer has an active bankruptcy proceeding. The answer with new matter requests that the Commission dismiss the complaint. The Complainant did not file an answer to the new matter.

On February, 2017, the Respondent filed a motion for judgment on the pleadings. The motion contends that there is no dispute of material facts and the Respondent is entitled to judgment as a matter of law. According to the motion, there is no dispute that the Complainant filed for protection under Chapter 13 of the United States Bankruptcy Code on June 24, 2016. There is also no dispute that the Complainant's bankruptcy is an active proceeding.

According to the motion, the Commission has ruled that when a customer files for protection under Chapter 13 of the United States Bankruptcy Code, the Bankruptcy Court has exclusive jurisdiction of all property of the debtor. Therefore, the Commission may not order a payment arrangement with regard to any amounts owed by the Complainant to the Respondent. The motion requests that the Commission grant judgment to the Respondent and dismiss the complaint.

By notice dated June 5, 2017, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to the Respondent's motion for judgment on the pleadings.

The motion for judgment on the pleadings is ready for decision. For the following reasons, I will grant the motion.

FINDINGS OF FACT

1. The Complainant in this case is Andrew Kossman, who resides at 6360 Congress Ct., Bensalem.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant filed for protection under Chapter 13 of the United States Bankruptcy Code on June 24, 2016, Petition No. 16-14493-jkf.
4. When the Respondent became aware of the Complainant's Chapter 13 bankruptcy filing, it transferred \$7,354.92 from the Complainant's account and assessed a deposit fee of \$328.47.
5. On January 9, 2017, the Complainant filed a complaint against the Respondent.
6. The Respondent filed an answer with new matter on January 12, 2016.
7. The Complainant has not filed an answer to the new matter.
8. The Respondent filed a motion for judgment on the pleadings on February 8, 2016.
9. The Complainant has not filed an answer to the motion for judgment on the pleadings.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code §5.102 govern motions for judgment on the pleadings. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise. Williams v. Lewis, 466 A.2d 682 (Pa. Super. 1983); Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Docket No. C-20028539 (Order entered December 19, 2003) In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits. Judgment on the pleadings should be entered only when the case is clear and free from doubt. Reuben v. O'Brien, 496 A.2d 913 (Pa. Super. 1985)

Viewing the averments in the Complainant's complaint as true for purposes of disposing of the motion for judgment on the pleadings, the complaint simply requests that the Commission order a payment arrangement for the Complainant.

The Respondent asserts in its new matter that the Complainant filed for protection under Chapter 13 of the United States Bankruptcy Code on April 3, 2011. When the Respondent became aware of the Complainant's Chapter 13 bankruptcy filing, it transferred \$7,354.92 from the Complainant's account and assessed a deposit fee of \$328.47. The Complainant's Chapter 13 bankruptcy is an active proceeding. Since the Complainant's Chapter 13 bankruptcy is active, the Respondent argues that the Commission lacks the authority to order a payment arrangement for the Complainant. The Respondent is correct.

The Commission has previously addressed this issue. In Chavous v. PECO Energy Company, Complaint-Appellant, Docket No. F-2010-2215689 (Order entered December 20, 2011) (Chavous), the Commission allowed the initial decision of Administrative Law Judge (ALJ) Marlane R. Chestnut to become final without further action. In Chavous, ALJ Chestnut ruled that

the Commission lacked jurisdiction to order a payment arrangement to a debtor with an active Chapter 13 bankruptcy proceeding, even where the subject of the payment arrangement is a post-petition arrearage.

ALJ Chestnut explained that a Chapter 13 bankruptcy is an ongoing payment plan in which all of the debtor's assets are included in the estate under the control of the bankruptcy trustee. A Chapter 13 bankruptcy allows the debtor to repay his or her debts under the management of the bankruptcy trustee, who controls the debtor's estate and makes the payments until the bankruptcy petition is discharged or dismissed. Pursuant to Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. §1306(a)(1) and (2), the debtors estate includes both property and earnings acquired after the commencement of the case but before the case is closed or dismissed.

ALJ Chestnut concluded that the Commission was without jurisdiction to issue an order that affects the disposition of the debtor's income or assets since all of the debtor's estate is subject to the exclusive control of the bankruptcy trustee. All of the debtor's assets are included in the estate for disposition by the Bankruptcy Court, whether those assets were acquired before or after the debtor filed for protection under Chapter 13. The Commission followed Chavous in McGrath v. PECO Energy Co., Docket No. C-2012-2284024 (Final Order Entered July 2, 2012).

The Complainant has not denied that he filed for protection under Chapter 13 of the United States Bankruptcy Code on April 3, 2011. The Complainant has not denied that his Chapter 13 bankruptcy is an active proceeding. Because the Complainant failed to file a reply to the Respondent's new matter, the facts stated in the new matter regarding the filing and status of the Complainant's Chapter 13 bankruptcy are deemed admitted. 52 Pa. Code §5.63(b)

Since no factual issue pertinent to the resolution of this case exists, a hearing is unnecessary. The Respondent is entitled to judgment as a matter of law. The Commission's ruling in Chavous controls the outcome of this case. Granting the Respondent's motion for judgment on the pleadings is appropriate in these circumstances.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to this proceeding. 66 Pa.C.S. § 701.
2. In this case there are no material facts in dispute. 52 Pa.Code § 5.102.
3. The Respondent is entitled to judgment as a matter of law. 52 Pa.Code § 5.102.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for judgment on the pleadings filed by PECO Energy Company at Docket No. C-2017-2583425 is granted.
2. That the complaint filed by Andrew Kossman at Docket No. C-2017-2583425 is dismissed.
3. That the record at Docket No. C-2017-2583425 is marked closed.

Date: June 13, 2017

_____/s/_____
David A. Salapa
Administrative Law Judge