



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

July 5, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Stanley Lampkin
Docket Nos. C-2016-2545901 and C-2016-2554744
Motion for Default Judgment

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Motion for Default Judgment with regard to the above-referenced proceedings. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Myers", is written over a light blue horizontal line.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosure

cc: Honorable Katrina L. Dunderdale
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket Nos. C-2016-2545901
v.	:	C-2016-2554744
	:	
Stanley Lampkin	:	

NOTICE TO PLEAD


To: Stanley Lampkin

Pursuant to 52 Pa. Code § 5.103, you are hereby notified to file a written response to the enclosed Motion for Default Judgment of the Bureau of Investigation and Enforcement (I&E) within twenty (20) days from the date of service of this notice. If you do not file a written response denying the enclosed Motion for Default Judgment within twenty (20) days of service, an Administrative Law Judge may rule on this Motion without further input.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

You must also serve a copy of your response on the undersigned prosecutor.



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: July 5, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket Nos. C-2016-2545901
v.	:	C-2016-2554744
	:	
Stanley Lampkin	:	

**MOTION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
FOR DEFAULT JUDGMENT**

TO THE HONORABLE KATRINA L. DUNDERDALE:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission or PUC), by and through its prosecuting attorney, files this Motion for Default Judgment against Stanley Lampkin (Respondent) pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103. In support thereof, I&E respectfully represents as follows:

I. BACKGROUND

1. Respondent is Stanley Lampkin.
2. Respondent has not been authorized by the Commission to operate as a motor carrier of passengers between points within the Commonwealth of Pennsylvania for compensation.
3. The Bureau of Investigation and Enforcement is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) at p. 5.

4. On May 13, 2016, PUC Enforcement Officer Ryan Balestra (Officer Balestra) conducted a sting operation intending to ensure that motor carriers of passengers operating within the Pittsburgh area were properly certificated with the Commission and providing safe and reliable service to the public. That same day, Respondent agreed to transport Officer Balestra, who was in plain clothes, from the Amtrak Station on Liberty Avenue in Pittsburgh, Pennsylvania to the North Shore in Pittsburgh, Pennsylvania in Respondent's vehicle, a 2004 Saturn sedan bearing Pennsylvania license plate number JPE9928, for a fare of \$12.

5. Accordingly, on May 19, 2016, I&E filed a Complaint (First Complaint) against Respondent at Docket No. C-2016-2545901 alleging that Respondent violated Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101, by holding out to provide passenger transportation service between points in Pennsylvania for compensation without first obtaining a Certificate of Public Convenience (Certificate) from the Commission. I&E seeks a civil penalty in the amount of \$1,000 and requests that Respondent's vehicle registration at license number JPE9928 be suspended by the Pennsylvania Department of Transportation (PennDOT).¹

6. On May 20, 2016, the First Complaint was served by certified mail to Respondent at 236 West 6th Avenue, Apt 1C, Tarentum, Pennsylvania 15084.

7. Included with the First Complaint was a Notice advising Respondent that he must file an Answer within twenty (20) days. The Notice also advised Respondent

¹ The Commission is authorized to seek the suspension of the registration of any vehicle determined to have been operating as a common carrier without Commission approval. *See* 75 Pa.C.S. § 1375.

that if he failed to answer the Complaint or if he filed an Answer admitting or failing to deny the allegations of the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

8. The twenty (20) day time frame for Respondent to file an answer to I&E's First Complaint expired on June 9, 2016.

9. On June 16, 2016, Respondent filed a letter in response to I&E's First Complaint wherein he admitted that he was guilty of violating Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101. Respondent did not contest any of the facts or violations alleged in I&E's Complaint.

10. Subsequent to the filing of I&E's First Complaint, on June 4, 2016, Officer Balestra again observed Respondent operating his vehicle, a 2004 Saturn sedan bearing Pennsylvania license plate number JPE9928, this time with a taxi dome light affixed to the dashboard, which displayed the word, "Yellow."

11. Accordingly, on August 10, 2016, I&E filed another Complaint (Second Complaint) against Respondent at Docket No. C-2016-2554744 alleging that Respondent violated Section 29.314(d) of the Commission's Regulations, 52 Pa. Code § 29.314(d), by affixing a taxi dome light to the dashboard of his vehicle when dome lights are only permitted on vehicles operated by call and demand carriers and Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101, for holding out to provide passenger transportation service between points in Pennsylvania for compensation without first obtaining a Certificate from the Commission. I&E seeks a civil penalty in the amount of

\$1,000 and requests that Respondent's vehicle registration at license number JPE9928 be suspended by PennDOT.

12. On August 10, 2016, the Second Complaint was served by certified mail to Respondent at 236 West 6th Avenue, Apt 1C, Tarentum, Pennsylvania 15084.

13. Included with the Second Complaint was a Notice advising Respondent that he must file an Answer within twenty (20) days. The Notice also advised Respondent that if he failed to answer the Complaint or if he filed an Answer admitting or failing to deny the allegations of the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

14. The twenty (20) day time frame for Respondent to file an answer to I&E's Second Complaint expired on August 30, 2016.

15. On September 8, 2016, Respondent filed a letter in response to I&E's Second Complaint wherein he denied "running an illegal Yellow Cab Service," but admitted "taking fare from casino to bus station."

16. On April 3, 2017, I&E reassigned the First and Second Complaint proceedings to the Commission's Office of Administrative Law Judge (OALJ) to be scheduled for hearings.

17. On May 16, 2017, OALJ issued a Hearing Notice which scheduled an Initial Hearing in the Second Complaint proceeding for July 11, 2017 before Administrative Law Judge Katrina L. Dunderdale (ALJ Dunderdale).

18. On May 17, 2017, ALJ Dunderdale issued a Prehearing Order in the Second Complaint proceeding.

19. The Hearing Notice and Prehearing Order in the Second Complaint proceeding were mailed to Respondent at 236 West 6th Avenue, Apt 1C, Tarentum, Pennsylvania 15084 and both mailings were returned to the Commission as undeliverable by the United States Postal Service.

20. Section 1.24(a) of the Commission's regulations mandates that "a change in address which occurs during the course of the proceeding **shall** be reported to the Secretary **promptly**." 52 Pa. Code § 1.24(a) (emphasis added).

21. Respondent did not report a change in his current address to the Commission.

22. By Interim Order dated May 25, 2017, ALJ Dunderdale ordered, *inter alia*, that I&E's First and Second Complaints be consolidated, that the Initial Hearing scheduled in the Second Complaint proceeding be converted to a telephonic status conference to be conducted on July 11, 2017, and that I&E provide the presiding officer with an updated address for service upon Respondent as soon as a valid address is ascertained.

23. Pursuant to the directives of ALJ Dunderdale's Interim Order, I&E's Motor Carrier Enforcement Division conducted periodic searches of PennDOT's database in an attempt to obtain a valid and current address for Respondent.

24. On June 29, 2017, I&E located a new address for Respondent at 1821 Park Line Drive, Apt 34, Pittsburgh, PA 15227 and notified ALJ Dunderdale, by electronic mail, of Respondent's latest address.

II. MOTION FOR DEFAULT JUDGMENT

25. Pursuant to Section 5.61(a) of the Commission's regulations answers to complaints **shall** be filed with the Commission within **20 days** after the date of service. 52 Pa. Code § 5.61(a) (emphasis added).

26. Pursuant to Section 5.61(c) of the Commission's regulations, 52 Pa. Code § 5.61(c), a Respondent who fails to file an answer to a complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted.

27. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

28. Respondent was clearly advised in the attached Notices to I&E's First and Second Complaints that if he failed to answer the Complaint within twenty (20) days, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

29. Respondent clearly received I&E's Complaints and Notices as he filed letter-responses to them, however, Respondent failed to respond to I&E's Complaints within the required twenty (20) days.

30. Therefore, Respondent's failure to file a timely answer to both the First and Second Complaints should be deemed in default and the relevant facts stated in I&E's Complaints at Docket Nos. C-2016-2545901 and C-2016-2554744 should be deemed admitted pursuant to 52 Pa. Code § 5.61(c).

III. ALTERNATIVE MOTION FOR JUDGMENT ON THE PLEADINGS

31. In the event that I&E's Motion for Default Judgment is not granted in its First and Second Complaints at Docket Nos. C-2016-2545901 and C-2016-2554744, I&E moves for judgment on the pleadings in its First and Second Complaints on the grounds that Respondent expressly admitted to committing the alleged violation in the First Complaint and Respondent failed to deny any of the allegations set forth in the Second Complaint and as such, there are no material facts in dispute and based on those facts, I&E is entitled to judgment in its favor as a matter of law.

32. Section 5.102(a) of the Commission's regulations, 52 Pa. Code § 5.102(a), permits a party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing.

33. Pursuant to Section 5.102(d)(1) of the Commission's regulations, 52 Pa. Code § 5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

34. "Judgment on the pleadings is only appropriate where no material facts remain in dispute." *Williams v. Lewis*, 466 A.2d 682, 683 (Pa. Super. Ct. 1983), citing *Pa. Ass'n of State Mental Hosp. Physicians, Inc. v. State Employee Ret. Bd.*, 399 A.2d 93 (Pa. 1979).

35. A fact is material if “its resolution could affect the outcome of the case under the governing law.” *Farabaugh v. Pa. Tpk. Comm’n*, 911 A.2d 1264, 1267 (Pa. 2006).

36. “Only where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise should a judgment on the pleadings be entered.” *Williams*, 466 A.2d at 683, citing *Nevling v. Natoli*, 434 A.2d 187 (Pa. Super. Ct. 1981). *See also Mahn v. PECO Energy Co.*, Docket No. C-2014-2444240 (Initial Decision issued November 18, 2014) (Final Order adopting Initial Decision entered January 26, 2015).

37. “When 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.” *Reuben v. O’Brien*, 496 A.2d 913, 915 (Pa. Super. Ct. 1985). “Judgment on the pleadings should be entered only when the case for determination is clear and free from doubt.” *Id.*

38. A hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593 (Pa. Cmwlth. 2003).

39. Further, the Commission’s regulations at 52 Pa. Code § 5.61(b)(1)-(4) require that an answer be set forth in numbered paragraphs corresponding with the Complaint, advise the parties and the Commission as to the nature of the defense, specifically admit or deny all material allegations of the Complaint, and concisely state the facts and matters of law relied upon.

40. Here, the material factual averments in I&E's First Complaint at Docket No. C-2016-2545901 are not in dispute.

41. Respondent filed a letter in response to I&E's First Complaint, wherein he specifically admits that he was guilty of violating Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101. Section 1101 of the Public Utility Code provides, in pertinent part, as follows:

Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth.

66 Pa.C.S. § 1101. Section 1101 of the Public Utility Code clearly requires an individual or company to first obtain a Certificate of Public Convenience before providing intrastate transportation for compensation. *Collins v. Public Service Commission*, 84 Pa. Super 58 (1924).

42. In the first sentence of Respondent's letter, Respondent states, "I am defenetely [sic] guilty of the motor vehicle infraction that happened on May 13, 2016." Because Respondent specifically admits to holding out to provide passenger transportation service between points in Pennsylvania while not having operating authority with the Commission, that fact must be considered against him.

43. In the letter, Respondent explains, "I was desperately in need of a few bucks [sic] is why I committed the infraction." The clear implication from Respondent's admission is that he held himself out to the public as an uncertificated motor carrier of passengers and sought to receive compensation from his service. Respondent held

himself out to provide passenger transportation service to Officer Balestra for compensation and Respondent did not deny this fact.

44. Moreover, Respondent was clearly advised in the attached Notice to I&E's First Complaint that if he filed an Answer admitting or failing to deny the allegations of the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

45. Thus, there are no material facts in dispute regarding I&E's allegation in its First Complaint that Respondent violated Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101.

46. Similarly, the material factual averments in I&E's Second Complaint at Docket No. C-2016-2554744 are not in dispute.

47. Respondent states in his letter-response to I&E's Second Complaint that "This is in response to me supposedly running a cab (Yellow) business team [sic] my house" and that such allegation is "totally untrue." However, Respondent's denial is completely irrelevant and non-responsive to the material allegations set forth in I&E's Second Complaint.

48. In the Second Complaint, I&E does not allege that Respondent is running a Yellow Cab business from his home. I&E specifically alleges that Respondent was observed on June 4, 2016 operating his vehicle with a dome light affixed to the dashboard, which displayed the word, "Yellow" and that dome lights are only permitted on vehicles operated by certificated call and demand carriers pursuant to Section

29.314(d) of the Commission's regulations, 52 Pa. Code § 29.314(d). Respondent failed to specifically deny these allegations and make well-pleaded averments.

49. More importantly, Respondent further states in his letter, "I admit too [sic] taking fare from casino to bus station." The clear inference from Respondent's admission is that he provided uncertificated passenger transportation service for compensation and that fact must be considered against him.

50. Respondent was clearly advised in the attached Notice to I&E's Second Complaint that if he filed an Answer admitting or failing to deny the allegations of the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

51. Thus, there are no material facts in dispute regarding I&E's allegations in its Second Complaint that Respondent violated Section 29.314(d) of the Commission's regulations, 52 Pa. Code § 29.314(d) and Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101.

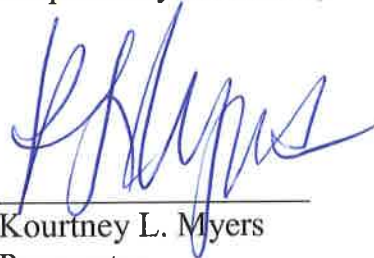
52. Consequently, as the letters filed by Respondent did not contest any of the facts of I&E's First and Second Complaints and did not raise any defenses, Respondent's letters should be deemed to admit the relevant facts stated in I&E's First and Second Complaints.

53. Because there are no genuine issues of material fact, a hearing in I&E's First and Second Complaint proceedings is not necessary or in the public interest and would be a fruitless exercise. I&E is entitled to judgment as a matter of law.

IV. CONCLUSION

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Office of Administrative Law Judge and Pennsylvania Public Utility Commission enter a judgment against Stanley Lampkin that sustains I&E's Complaints at Docket Nos. C-2016-2545901 and C-2016-2554744, directs Respondent to pay the civil penalty of \$1,000 as requested in I&E's First Complaint at Docket No. C-2016-2545901 and the civil penalty of \$1,000 as requested in I&E's Second Complaint at Docket No. C-2016-2554744 for a total civil penalty of \$2,000, directs Respondent to cease and desist from further violations of the Public Utility Code and the Commission's regulations, and requests the Pennsylvania Department of Transportation to suspend Respondent's vehicle registration at license number JPE9928.

Respectfully submitted,



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 705-4366
komyers@pa.gov

Dated: July 5, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

Stanley Lampkin

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Docket Nos. C-2016-2545901
C-2016-2554744

VERIFICATION

I, Cathy Royer, Compliance Specialist, Bureau of Investigation and Enforcement, Motor Carrier Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau of Investigation and Enforcement will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: July 5, 2017



Cathy Royer, Compliance Specialist
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

Stanley Lampkin

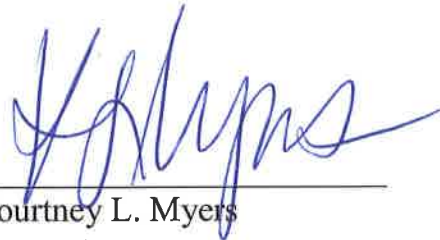
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: C-2016-2554744
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail:

Stanley Lampkin
1821 Park Line Drive
Apt 34
Pittsburgh, PA 15227



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Dated: July 5, 2017