

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kareem Compton

v.

Philadelphia Gas Works

:
:
:
:
:

C-2017-2593792

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

This decision dismisses a complaint for failure to appear and prosecute. On March 13, 2017, Kareem Compton (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). The Complainant alleged that Respondent threatened to terminate his gas service and that there were incorrect charges on his bill. As relief, Complainant requested that certain charges be removed from his bill and that he be granted a payment arrangement.

The Respondent filed an answer on April 5, 2017. Respondent denied the material averments set forth in the complaint.

By notice dated April 4, 2017, the Commission scheduled this matter for a call-in telephonic hearing on June 2, 2017, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated April 17, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements. The prehearing order was returned with a notation from the postal service stating "RETURN TO SENDER VACANT UNABLE TO FORWARD."

By notice dated July 31, 2017, the Commission re-scheduled this matter for a call-in telephonic hearing on September 8, 2017, at 10:00 a.m. and assigned the case to me.

The hearing notices dated April 4, 2017 and July 31, 2017 were sent to the Complainant at the address listed on his complaint. Neither hearing notice was returned to the Commission.

On September 1, 2017, counsel for Respondent provided the undersigned presiding officer and Complainant with correspondence referencing the hearing date and time and including copies of Respondent's proposed exhibits. The correspondence provided to Complainant was sent by Federal Express.

I conducted a telephonic hearing on September 8, 2017, at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on the hearing notice dated July 31, 2017. The hearing was recessed until 10:20 a.m. to permit the Complainant additional time to call into the hearing. The Complainant did not call into the hearing.

Laureto Farinas, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. The motion was taken under advisement. The record closed following receipt of the transcript on September 11, 2017. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is Kareem Compton.
2. Respondent in this case is Philadelphia Gas Works.
3. On March 13, 2017, Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on April 5, 2017.
5. By notice dated July 31, 2017, the Commission scheduled this matter for a call-in telephonic hearing on September 8, 2017, at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. Complainant failed to appear at the September 8, 2017 telephonic hearing.

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 administrative agency provides the parties' notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on July 31, 2017, by regular first-class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ. The notice, which was mailed to Complainant at the address shown on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary

course of business, was received by Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

In addition, on September 1, 2017, counsel for Respondent provided the undersigned presiding officer and Complainant with correspondence referencing the hearing date and time and including copies of Respondent's proposed exhibits. The correspondence provided to Complainant was sent by Federal Express. At the hearing, counsel for Respondent stated that he received verification from Federal Express that the correspondence was delivered to the address stated on the complaint. Complainant did not appear for the scheduled hearing because he did not call the conference number shown on the July 31, 2017 hearing notice. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear for the hearing and proffer any evidence to support the complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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 Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the complaint filed by Kareem Compton at Docket No. C-2017-2593792 is granted.

2. That the complaint of Kareem Compton against Philadelphia Gas Works at Docket No. C-2017-2593792 is dismissed with prejudice for failure of Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2017-2593792 is marked closed.

Date: September 28, 2017

_____/s/
Jeffrey A. Watson
Administrative Law Judge