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October 10, 2017

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

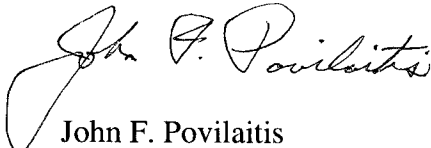
Re: Carla Guzman v. Rasier-PA LLC
Docket No. C-2017-2621783

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I have enclosed for electronic filing Preliminary Objections to the Complaint of Carla Guzman in the above-captioned case.

Thank you for your consideration of this matter.

Very truly yours,


John F. Povilaitis
Counsel for Rasier-PA LLC

JFP/jls
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CARLA GUZMAN

v.

RASIER-PA, LLC

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Docket No. C-2017-2621783

NOTICE TO PLEAD

TO: Carla Guzman
1302 Edge Hill Road
Abington, PA 19001

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections of Rasier-PA LLC to the Formal Complaint of Carla Guzman within **ten (10) days** from service of this Notice, the Preliminary Objections may be granted. All responsive pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Rasier-PA LLC, and where applicable, the Administrative Law Judge presiding over the case.

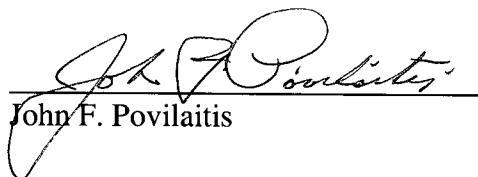
File with:

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

With a copy to:

John F. Povilaitis
Brian C. Wauhopp
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: October 10, 2017



John F. Povilaitis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CARLA GUZMAN

v.

RASIER-PA, LLC t/a UBER

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Docket No. C-2017-2621783

**PRELIMINARY OBJECTION OF RASIER-PA, LLC t/a UBER
TO THE COMPLAINT OF CARLA GUZMAN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Rasier-PA, LLC t/a Uber (“Raiser-PA,” “Uber” or the “Company”), by and through its counsel, John F. Povilaitis, Brian C. Wauhop, and Buchanan Ingersoll & Rooney PC, files this Preliminary Objection pursuant to Section 5.101 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.101(a)(1) and (2), and in support thereof avers as follows:

I. Introduction

1. In her recently filed Formal Complaint, Carla Guzman (“Complainant”) alleges she sustained emotional distress and other damages as a result of a ride she accepted with a Company driver. (Compl. ¶¶ 4, 5.) The Formal Complaint demands that the Commission direct the Company to reimburse the Complainant for emotional distress and other expenses stemming from alleged losses. (*Id.*)

2. As explained below, the Commission does not have the power and legal authority to award money damages. As a result, the Company requests that this Preliminary Objection be granted and that the Commission (i) strike all allegations in the Formal Complaint regarding money damages; (ii) prohibit the Complainant from introducing at hearing any evidence

purporting to address money damages, and (iii) grant the Company such other relief as may be just and reasonable under the circumstances.

II. Background

3. The Company provides transportation network company (“TNC”) services under Commission license, in accordance with all lawful authorizations previously provided by and received from the Commission.

4. On or about August 28, 2017, the Complainant filed with the Commission a Formal Complaint against Raiser-PA at the above-captioned docket demanding that the Commission direct Raiser-PA to provide “monetary damages for emotional distress, costs incurred and loss of wages.” (Compl. ¶ 5.)

5. On September 19, 2017, the Commission Secretary issued an extension of time to October 10, 2017 for the Company to file an Answer in this matter.

6. Raiser-PA is timely filing its Answer with New Matter contemporaneously with this Preliminary Objection.

III. Argument

7. The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994).

8. The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code §5.101(a) as follows:

- (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 the proceeding.

9. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, Docket No. C-00935435 (July 18, 1994).

A. Preliminary Objection to Complainant's Request for Damages Pursuant to 52 Pa. Code § 5.102(a)(2).

10. The Commission's procedural regulations allow a party to object to pleadings that fail to comply with the rules of administrative practice or that include scandalous or impertinent matters. *See* 52 Pa. Code § 5.102(a)(2).

11. In the Formal Complaint, the Complainant demands the following: "Monetary damages for emotional distress, costs incurred and loss of wages." (Compl. ¶ 5.) Clearly, the Formal Complaint is seeking monetary damages from the Company.

12. The Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. 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 the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature,

the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.*

13. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995); *Elkin v. Bell Tel. Co. of PA.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); *Nagy v. Bell Tel. Co. of PA.*, 436 A.2d 701 (Pa. Super. 1981).

14. In *Feingold*, the Pennsylvania Supreme Court explained:

. . . the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

Feingold, 383 A.2d at 794.

15. A prayer for damages which are not legally recoverable in the cause of action is “impertinent matter” in the sense that it is irrelevant to that cause of action, and is correctly challenged through preliminary motion. *Boone v. Philadelphia Gas Works*, Docket No. C-2015-2521142 (Order Granting Preliminary Objection entered March 3, 2016 dismissing claims requesting monetary damages); *see also Third Avenue Realty Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286 (Final Order entered September 30, 2010) (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).


16. Therefore, in accordance with Pennsylvania law, the Complainant’s request for money damages is an impertinent matter that must be stricken because the Commission does not have the power to award monetary damages.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Rasier-PA, LLC respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainant's request for money damages; (2) expressly prohibit the Complainant from introducing any testimony or exhibits at the evidentiary hearing regarding any alleged damages; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: October 10, 2017



John F. Povilaitis, Esquire
Brian C. Wauhop, Esquire
Buchanan Ingersoll & Rooney P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4975

Attorneys for Rasier-PA, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CARLA GUZMAN

v.

RASIER-PA LLC

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Docket No. C-2017-2621783


CERTIFICATE OF SERVICE

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

Via Regular U.S. Mail and electronic mail:

Carla Guzman
1302 Edge Hill Road
Abington, PA 19001
sostutores@hotmail.com

Dated this 10th day of October, 2017.



John F. Povilaitis