

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronika Brooks	:	
	:	
v.	:	F-2015-2483477
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision dismisses Ronika Brooks' Complaint in which she alleged that she was not responsible for the accrued balance from accounts for service at other service addresses. The Complainant failed to meet her burden of proof to establish that she was not responsible for the outstanding balances from these previous addresses.

HISTORY OF THE PROCEEDING

On May 15, 2015, Ronika Brooks (Ms. Brooks or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (the Respondent, the Company or PGW) with the Pennsylvania Public Utility Commission (Commission) which alleges that she was the victim of identity theft. As relief, Complainant requests that gas service be placed in her name and that charges from other addresses be taken off her account.

This formal Complaint is an appeal of the informal decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS# 3268043.

On June 10, 2015, Respondent filed an Answer. The Respondent denied the main averments of the Complaint. The Respondent alleged that the Complainant is responsible for the outstanding balance from the prior accounts.

A Hearing Notice dated June 11, 2015, notified the parties that an in-person initial hearing was scheduled for Friday, August 7, 2015, at 10:00 a.m.

A Prehearing Order was issued on June 12, 2015, advising the parties of the date and time of the scheduled hearing, and also informing them of the procedures applicable to this proceeding.

The initial hearing took place as scheduled on August 7, 2015. The Complainant appeared *pro se* and testified on behalf of the Complaint. Laureto Farinas, Esq., represented the Respondent, and presented the testimony of Jessica Glace. The Complainant presented three exhibits which were entered into the record. The Respondent presented five exhibits which were also entered into the record.

A Further Hearing Notice was issued on August 19, 2015 scheduling another hearing for Friday, September 18, 2015 at 10:00 a.m. This further hearing was scheduled because both parties had additional documents and evidence that they wished to present related to the Complaint.

The further hearing convened as scheduled on September 18, 2015. Ms. Brooks appeared *pro se* and testified again on behalf of the Complaint. Mr. Farinas represented the Respondent, and presented additional testimony from Ms. Glace. Respondent also sponsored five additional exhibits all of which were admitted into the record at the time of the hearing. The Complainant sponsored six additional exhibits which were also admitted into the record at the time of the hearing.

The two hearings resulted in a transcript that was a total of 102 pages. The record closed on November 9, 2015 when I received the second hearing transcript.

FINDINGS OF FACT

1. Complainant is Ronika Brooks, who resides at 7306 Devon Street, Apartment 106, Philadelphia, Pennsylvania 19119 (Service Address). Tr. 7.
2. Respondent is Philadelphia Gas Works.
3. The Complainant established service with PGW at the Service Address on September 30, 2013. Tr. 14-15, 35; PGW Exhs. 1, 2.
4. The Complainant has a police report from 2007 indicating a home robbery. Tr. 8-9; Complainant Exh. 1.
5. The Complainant has one daughter named Zaniya Howard with the date of birth of March 12, 2012 who resides at the Service Address with her. Tr. 29.
6. PGW had prior accounts for the Complainant at the addresses of 5409 Mulberry Street and 1528 East Mayland Street, respectively. Tr. 34; PGW Exhs. 1, 2.
7. The Complainant had an account for service in her name at 5409 Mulberry Street from May 21, 2008 through November 1, 2009. Tr. 34; PGW Exhs. 1, 2.
8. The Complainant left an unpaid balance of \$224.03 on the account for service at 5409 Mulberry Street. Tr. 34; PGW Exhs. 1, 2.
9. The Complainant had an account for service in her name at 1528 East Mayland Street from November 1, 2009 through September 30, 2013. Tr. 34; PGW Exhs. 1, 2.

10. The Complainant left an unpaid balance of \$2,728.71 on the account for service at 1528 East Mayland Street which also included the \$224.03 balance from the Mulberry Street account. Tr. 34-35; PGW Exhs. 1, 2.

11. On February 1, 2011, the Complainant submitted an application for CRP while living at 1528 East Mayland Street. Tr. 44; PGW Exh. 6.

12. For the CRP application, Complainant provided a Pennsylvania Driver's License for Ronika Davida Johnson-Brooks which listed an address of 1528 East Mayland Street. Tr. 92; PGW Exh. 6.

13. The Complainant's picture and signature on the driver's license for 1528 East Mayland Street is similar to the picture and signature that appears on the driver's license that the Complainant provided at the hearing. *See* PGW Exh. 6 and Complainant Exh. 3.

14. The social security number the Complainant provided at the hearing was the same as the social security number indicated on the CRP application for Zion Jhabree Deas, who was listed as her son. Tr. 85, 96; PGW Exh. 6; Complainant Exh. 3.

15. The CRP application for 1528 East Mayland Street also indicates that Devin Mitchell Howard was a household member. Tr. 89; PGW Exh. 6.

16. Devin Mitchell Howard is the Complainant's estranged husband. Tr. 85.

17. The Complainant went to a PGW district office on March 6, 2012 to recertify for the Customer Responsibility Program (CRP), at which time she indicated she was on maternity leave. Tr. 45-46; PGW Exh. 1.

18. The Complainant requested that a medical form (for a medical hold) be faxed to Dr. Mary Kline for her daughter, Zaniya Howard, date of birth March 12, 2012. Tr. 46-47; PGW Exh. 1.

19. The Complainant filed prior informal complaints with BCS on March 24, 2009, September 3, 2009, September 30, 2010 and July 25, 2014. PGW Exh. 5.

20. The Complainant's telephone numbers provided to BCS for the informal complaint filed on March 24, 2009 were (215) XXX-2369 and (215) XXX-3484. Tr. 36-37; PGW Exh. 5.

21. The Complainant's telephone numbers provided to BCS for the informal complaint filed September 3, 2009 were (215) XXX-2369 and (215) XXX-3484. Tr. 42; PGW Exh. 5.

22. The Complainant's telephone number provided to BCS for the informal complaint filed September 30, 2010 was (215) XXX-3484. Tr. 42; PGW Exh. 5.

23. The Complainant's telephone number provided to BCS for the informal complaint filed on July 25, 2014 was (215) XXX-3484. PGW Exh. 5.

24. The Complainant has had the same cellular telephone number since the robbery took place in 2007. Tr. 27-28.

25. The telephone numbers on the Complainant's formal Complaint filed on May 15, 2015 are (215) XXX-2369 and (215) XXX-2100. Tr. 36-37; Formal Complaint Form 1.

DISCUSSION

In her formal Complaint, Complainant alleges that she is a victim of identity theft after three robberies. The Complainant further contends that she is not responsible for the balances accrued at 5409 Mulberry Street and 1528 East Mayland Street because she did not

open those accounts and did not reside at those addresses. Complainant indicates that she was residing with a friend and her mother for the timeframe at issue.

In its Answer, PGW averred that Complainant did not provide proof of identity theft, has benefitted from the utility service at the prior addresses, and must therefore assume responsibility for the balances of the two prior service addresses.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

At the hearings in this matter, Complainant testified that she was the victim of identity theft and never resided at 5409 Mulberry Street or 1528 East Mayland Street. Tr. 8-9, 14, 21, 81-84. The Complainant indicated that she lived with a friend and then with her mother from 2008 until September 2013. Tr. 9-11. Complainant asserts that she did not open accounts for utility service with PGW for 5409 Mulberry Street or 1528 East Mayland Street. Tr. 21. The Complainant presented a police report from 2007 for a robbery, her current identification and social security card, and credit reports from credit reporting agencies to support her allegations. *See* Complainant Exhs. 1, 3, 4-7.

In her testimony, PGW's witness, Ms. Glace, reiterated PGW's position that there is no support for the Complainant's claim of identity theft. PGW had prior accounts for the Complainant at the addresses of 5409 Mulberry Street and 1528 East Mayland Street, respectively. Tr. 34; PGW Exhs. 1, 2. The Complainant had an account in her name for 5409 Mulberry Street was established on May 21, 2008 and closed on November 1, 2009. Tr. 34; PGW Exhs. 1, 2. The final balance on the 5409 Mulberry Street service address was \$224.03. Tr. 34; PGW Exhs. 1, 2. The Complainant also had an account in her name for 1528 East Mayland Street was established on November 1, 2009 and closed on September 30, 2013. Tr. 34; PGW Exhs. 1, 2. The final balance on 1528 East Mayland Street service address was \$2,728.71 which also included the \$224.03 from the Mulberry Street service address. Tr. 34-35; PGW Exhs. 1, 2.

Further, PGW indicated that the Complainant made an application for CRP on or about February 1, 2011 at the service address of 1528 East Mayland Street. Tr. 44; PGW Exh. 6. For the CRP application, Complainant provided a Pennsylvania Driver's License for Ronika Davida Johnson-Brooks which listed an address of 1528 East Mayland Street. Tr. 92; PGW Exh. 6. The social security number the Complainant provided at the hearing was the same as the social security number indicated on the CRP application for Zion Jhabree Deas. Tr. 85, 96; PGW Exh. 6; Complainant Exh. 3. The CRP application for 1528 East Mayland Street also indicates that Devin Mitchell Howard was a household member. Tr.89; PGW Exh. 6. Devin Mitchell Howard is the Complainant's estranged husband. Tr. 85. The Complainant's picture and signature on the driver's license for 1528 East Mayland Street, which the Complainant provided for her CRP application, is similar to the picture and signature that appears on the driver's license that the Complainant provided at the hearing. *See* PGW Exh. 6 and Complainant Exh. 3.

Moreover, records indicate that the Complainant filed prior informal complaints with BCS on March 24, 2009, September 3, 2009, September 30, 2010 and July 25, 2014. PGW Exh. 5. The Complainant's telephone numbers provided to BCS for the informal complaint filed on March 24, 2009 were (215) XXX-2369 and (215) XXX-3484. Tr. 36-37; PGW Exh. 5. The Complainant's telephone numbers provided to BCS for the informal complaint filed September

3, 2009 were (215) XXX-2369 and (215) XXX-3484. Tr. 42; PGW Exh. 5. The Complainant's telephone number provided to BCS for the informal complaint filed September 30, 2010 was (215) XXX-3484. Tr. 42; PGW Exh. 5. The Complainant's telephone number provided to BCS for the informal complaint filed on July 25, 2014 was (215) XXX-3484. PGW Exh. 5. The telephone numbers on the Complainant's formal complaint filed on May 15, 2015 are (215) XXX-2369 and (215) XXX-2100. Tr. 36-37; Formal Complaint Form ¶ 1. The Complainant acknowledged that she has had the same cellular telephone number since the robbery took place in 2007. Tr. 27-28.

“Mere bald assertions ... do not constitute evidence.” *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). Complainant was unable to support her oral testimony with additional evidence. She did not have a lease, which would indicate that she lived at other addresses during this time period. She did not produce mail or bills that indicated she was living at other locations during the timeframe. Nor did the Complainant produce any evidence that would properly establish that she was the victim of identity theft.

While there does appear to be an issue with the social security number that PGW had on file for the Complainant, I do not believe that was a result of identity theft. For the CRP application, Complainant provided a Pennsylvania Driver's License for Ronika Davida Johnson-Brooks which listed an address of 1528 East Mayland Street. PGW Exh. 6. The Complainant's picture and signature on the driver's license for 1528 East Mayland Street is similar to the picture and signature that appears on the driver's license that the Complainant provided at the hearing. See PGW Exh. 6 and Complainant Exh. 3. The social security number the Complainant provided at the hearing was the same as the social security number indicated on the February 2011 CRP application for Zion Jhabree Deas who was listed as her son. Tr. 85; PGW Exh. 6; Complainant Exh. 3. The CRP application for 1528 East Mayland Street also indicates that Devin Mitchell Howard was a household member and Complainant acknowledged that Mr. Howard is her estranged husband. PGW Exh. 6.; Tr. 85.

Section 1403 of the Public Utility Code defines a “customer” as:

A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

66 Pa.C.S. § 1403. Further, the Commission’s regulations indicate that a public utility may require the payment of any outstanding balance or portion of an outstanding balance if the customer resided at the property for which service is requested during the time the outstanding balance accrued and the customer resided at the service address. 52 Pa.Code § 56.191(d). Lastly, in the event of termination of service at a residence, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa.Code § 56.16(b).

The Respondent submitted evidence showing that the Complainant provided information to PGW at various times linking her to the accounts in question, including her driver’s license, CRP application, and telephone number. Ms. Brooks has failed to produce evidence to support her claim that she did not reside at and benefit from the utility services at the Service Addresses in question. While she did provide a police report regarding a robbery that took place in 2007, there is nothing in the record to indicate that her identity was stolen due to the theft. Further, although the Complainant presented documents from credit reporting agencies that indicate there were certain transactions deleted from her credit reports, she did not present anything to demonstrate why the credit agency deleted those transactions on the reports themselves. Instead, she only offered her own testimony that these transactions were removed due to identity theft. Lastly, the Complainant did not produce any evidence to establish that she lived with a friend or her mother at other locations during the timeframe at issue. On the contrary, there is substantial evidence to support that the Complainant was associated with and responsible for utility service on these accounts for service since May 2008.

Complainant has failed to carry her burden of proving that Respondent has violated a Commission statute, regulation or order by requesting that she pay for the total outstanding balance of \$2,728.71 from the 5409 Mulberry Street and 1528 East Mayland Street addresses. Accordingly, I will dismiss Ms. Brooks' Complaint for failure to carry her burden of proof. As a customer of utility service at the Service Addresses at issue, PGW is properly holding Ms. Brooks liable for the balances accrued at 5409 Mulberry Street and 1528 East Mayland Street service addresses in the total amount of \$2,728.71.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Complainant had the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay.

4. Mere bald assertions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

5. A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the customer resided at the property for which service is requested during the time the outstanding balance accrued and the customer resided at the service address. 52 Pa.Code § 56.191(d).

6. In the event of termination of service at a residence, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa.Code § 56.16(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Ronika Brooks against Philadelphia Gas Works at Docket No. F-2015-2483477 is dismissed.

2. That Ronika Brooks is liable for the balances accrued at 5409 Mulberry Street and 1528 East Mayland Street service addresses in the total amount of \$2,728.71.

3. That the record of this proceeding at Docket No. F-2015-2483477 be marked closed.

Dated: October 4, 2017

/s/
Marta Guhl
Administrative Law Judge