

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

April Jackson	:	
	:	
v.	:	C-2018-2644080
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against a public utility alleging that there are unspecified incorrect charges on her bill. This decision dismisses the complaint because the customer failed to comply with an order directing her to provide more specific information regarding the alleged incorrect charges on her bill.

HISTORY OF THE PROCEEDING

On January 12, 2018, April Jackson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent). At paragraph 4 of the complaint form, the Complainant checked the box indicating “Incorrect charges are on my bill”.

Attached to the complaint is a document. The document states that the Complainant’s daughter was arrested and as a result of that arrest, the Complainant was asked to vacate the premises. According to the complaint, the Complainant contacted the Respondent to terminate service.

The document also asserts that the Complainant submitted to the Respondent an application for enrollment into the Respondent's customer assistance program (CAP).

At paragraph 5 of the complaint form, requesting the relief sought, the Complainant requests that the Commission order the Respondent to recalculate the Complainant's bill for the "address in question".

On February 12, 2018, the Respondent filed preliminary objections to the Complainant's complaint. The Respondent's preliminary objections allege that the Complainant's complaint is insufficiently specific, pursuant to 52 Pa. Code § 5.101(a)(3). Since the Respondent filed a preliminary objection alleging insufficient specificity, pursuant to 52 Pa. Code § 5.101(a)(3), it was not required to file an answer to the Complainant's complaint until further direction of the presiding officer or Commission, pursuant to 52 Pa. Code § 5.101(e)(1).

The Respondent's preliminary objections assert that the Complainant's complaint is insufficiently specific because it fails to attach copies of any bills she is disputing and fails to provide the dates of the billing periods that are incorrect. In addition, the complaint fails to assert any actions or omissions by the Respondent.

The preliminary objections assert that, since the complaint does not provide any information as to what bills or charges the Complainant is disputing or when the incorrect billing occurred, the complaint is ambiguous and does not provide sufficient specificity for the Respondent to file an answer and provide a response.

The preliminary objections also point out that the complaint does not provide a clear and concise statement of the relief requested. The request for relief does not identify how the Respondent should recalculate the Complainant's bill. According to the preliminary objections, the Respondent has reviewed the records of the Complainant's account but cannot determine what charges the Complainant is disputing.

Concerning the document attached to the complaint, the preliminary objections point out that the document fails to state what charges the Complainant is disputing or when she called the Respondent to terminate service. According to the preliminary objections, the Respondent's records contain no evidence that the Complainant contacted it to terminate service. The Respondent's preliminary objections request that the Commission dismiss the Complainant's complaint.

By notice dated March 16, 2018, the Commission notified the parties that it had assigned the case to me as motion judge. I issued an order dated March 22, 2018, sustaining the Respondent's preliminary objections and directing the Complainant to file and serve an amended complaint within twenty days of the date of the order. I also warned the Complainant that failure to file an amended complaint in compliance with the order would result in dismissal of the complaint.

The March 22, 2018 order was returned to the Commission's Office of Administrative Law Judge (OALJ) on April 5, 2018, stating that the order was undeliverable as addressed and that the order could not be forwarded.

I reissued the same order with a date of April 5, 2018 to the same address but with the correct zip code. Again, the order sustained the Respondent's preliminary objections and directed the Complainant to file and serve an amended complaint within twenty days of the date of the order. The order warned the Complainant that failure to file an amended complaint in compliance with the order would result in dismissal of the complaint. As of the date of this decision, the April 5, 2018 order has not been returned.

As of the date of this initial decision, the Complainant has not filed an amended complaint in this proceeding. This matter is ripe for decision. For the reasons set forth below, I will dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is April Jackson.
2. The Respondent in this case is Duquesne Light Company.
3. On January 12, 2018, the Complainant filed a complaint with the Commission against the Respondent.
4. On February 12, 2018, the Respondent filed preliminary objections to the complaint alleging that the complaint lacked specificity.
5. The Complainant did not file an answer to the preliminary objections.
6. By order dated April 5, 2018, ALJ Salapa sustained the Respondent's preliminary objections and directed the Complainant to file and serve an amended complaint within twenty days of the date of the order.
7. The April 5, 2018 order also warned the Complainant that failure to file an amended complaint in compliance with the order would result in dismissal of the complaint.
8. The Complainant has not filed an amended complaint.

DISCUSSION

In the present case, the Complainant has failed to comply with my April 5, 2018 order granting the Respondent's preliminary objections. That order directed the Complainant to file an amended complaint within 20 days of the date of the order. The order warned the Complainant that failure to file an amended complaint would result in dismissal of the complaint.

As of the date of this decision, the Complainant has neither filed an amended complaint nor communicated with the Commission regarding her failure to comply with the April 5, 2018 order. The sole issue in this proceeding is whether the Complainant's failure to comply with a Commission order warrants dismissal of the complaint. I conclude that it does.

Failure to comply with a presiding officer's order directing an action to be taken can warrant the dismissal of a formal complaint. Snyderville Community Development Corp. v. Philadelphia Gas Works, Docket No. C-20055032 (Order entered July 31, 2006). "An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing." Id., citing, Treffinger v. PPL Electric Utilities Corp., C-2027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003), see also, Application of Black Diamond Cab Co., Docket No. A-00122566 (Order entered December 1, 1966).

Here the Complainant has failed to file an amended complaint as directed by the April 5, 2018 order. The Complainant's failure to file an amended complaint as directed by the April 5, 2018 order should result in the consequences set forth in the order. The order clearly states that failure to comply with the order will result in dismissal. The Commission has previously discussed dismissal of a complaint in similar circumstances.

In Elliott v PECO Energy Company, Docket No. C-2010-2156422 (Order entered May 11, 2011) (Elliott), the ALJ sustained a preliminary objection alleging that the complaint lacked specificity and directed a complainant to file an amended complaint. The complainant failed to file an amended complaint and the ALJ issued an initial decision dismissing the complaint for failure to comply with a Commission order. The Commission reversed the initial decision of the ALJ and remanded the matter for further hearing.

In Elliott, the Commission stated that the complainant had indicated in her complaint that there were incorrect charges on her bill and requested help with her bill. The Commission observed that the complaint form mailed to a complainant at the conclusion of the informal complaint process contains check boxes to help the complainant state the nature of his or her complaint. The Commission found that in Elliott, the complainant had checked the boxes regarding

incorrect charges and requesting a payment arrangement. The Commission concluded that this was sufficient to allow the utility to prepare an answer and prepare for a hearing.

In reaching its determination in Elliott, the Commission cited Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock), for the proposition that it would not dismiss *pro se* complaints without providing a hearing because *pro se* complainants may find it difficult to address prehearing motions and should be given the opportunity to orally describe their issue and supporting facts. Since the complainant in Elliott was *pro se*, the Commission concluded that dismissing the complaint at the pleadings stage was in error.

In Elliott, the Commission found that where a customer indicated in his or her complaint that there were incorrect charges, the utility could access its account records for the customer and review the records for inaccuracies and determine the nature of the customer's complaint. In addition, the complainant requested a payment arrangement and the Commission concluded that when a customer requests a payment arrangement, no other facts need to be averred. Here, the Complainant has not requested a payment arrangement.

In addition, the Commission in Elliott indicated that a complaint form was sent to the complainant at the conclusion of the Commission's informal complaint process thus providing the utility with additional information regarding the billing dispute. The Commission reached a similar conclusion in Richmond v. PECO Energy Company, Docket No. F-2010-2187305 (Order entered December 7, 2011) (Richmond), where the Commission noted that the billing dispute complaint was an appeal from a BCS decision which provided the utility with information regarding the billing dispute.

Subsequently, in Belmonte-Gates v. PECO Energy Company, Docket No. F-2012-2332583 and Belmonte-Gates v Pennsylvania-American Water Company, Docket No. F-2012-2332589 (Order entered August 15, 2013) (Belmonte-Gates), the Commission distinguished that case from Carlock. In Belmonte-Gates the Commission characterized the complaint as incomprehensible and held that the complainant's failure to set forth a clear and

concise statement of the facts alleged and relief being sought would deprive the respondents of the opportunity to prepare adequate defenses. The Commission dismissed the complaint.

After its decision in Belmonte-Gates, the Commission, in Piller v. Philadelphia Gas Works, Docket No. C-2013-2365623 (Final Order entered August 28, 2013) (Piller), held that a complaint where the complainant had only checked the box on the complaint form asserting that there were incorrect charges contained insufficient detail to satisfy the requirement that it contain a clear and concise statement of the act or omission being complained of, including the result of any informal complaint or informal investigation regarding incorrect charges. The Commission dismissed the complaint.

In Randall v. Metropolitan Edison Company, Docket No. C-2013-2367046 (Final Order entered October 7, 2013) (Randall), the Commission followed its decision in Belmonte-Gates and determined that the complaint was incomprehensible where the complaint alleged an unlawful price increase. The Commission dismissed the complaint.

In Jones v. Philadelphia Gas Works, Docket No. C-2013-2364858 (Final Order entered September 12, 2013) (Jones), the Commission held that a complaint where the complainant had only checked the box on the complaint form asserting that there were incorrect charges contained insufficient detail to satisfy the requirement that it contain a clear and concise statement of the act or omission being complained of, including the result of any informal complaint or informal investigation regarding incorrect charges. The Commission dismissed the complaint.

More recently, in Zaslav v. Philadelphia Gas Works, Docket No. F-2016-2549869 (Final Order entered December 20, 2016) (Zaslav), the Commission held that a complaint where the complainant had only checked the box on the complaint form marked “Other” and the word “appeal” written on the complaint contained insufficient detail to satisfy the requirement that it contain a clear and concise statement of the act or omission being complained of, including the result of any informal complaint or informal investigation regarding incorrect charges. The Commission dismissed the complaint.

The precedential value of Piller, Randall, Jones and Zaslav as Initial Decisions that were made final without Commission action, pursuant to 66 Pa.C.S. § 332(h), is the same as an Opinion and Order issued by the Commission at a public meeting. The Commission makes no distinction between the two. Crawford v. National Fuel Gas Distribution Co., Docket No. C-20066348 (Opinion and Order entered December 6, 2007). Therefore, the Commission's decisions in Piller, Randall, Jones and Zaslav need to be harmonized with its decisions in Elliot and Richmond.

From the decisions set forth above, it appears that the Commission has moved away from its pronouncements in Elliot and Richmond indicating that simply checking a box on the complaint form is sufficiently specific to allow a respondent to prepare an answer and defense. In its more recent decisions in Piller, Randall, Jones and Zaslav, the Commission has determined that merely checking a box on the complaint form is not sufficiently specific to satisfy the requirement that the complaint contain a clear and concise statement of the subject of the matter being complained of. The boxes serve only as a starting point to provide a further description of the subject of the complaint.

In addition, the Commission has determined that in providing a further description of the subject of the complaint, any written allegations in the complaint must set forth further facts in a comprehensible manner. If the allegations in the complaint are incomprehensible, it deprives the respondent of the opportunity to prepare adequate defenses.

Elliot and Richmond rely on Carlock for the proposition that a complainant who files an insufficiently specific complaint should be given an opportunity to orally describe their issue and supporting facts at a hearing. However, in Carlock, the issue before the Commission was whether it was appropriate to grant a motion for summary judgment, not whether it was appropriate to dismiss a complaint where the complainant failed to comply with an order directing her to file an amended complaint. Carlock does not address preliminary objections raising insufficient specificity of a pleading.

The purpose of 52 Pa.Code §5.101(a)(3), authorizing a party to file preliminary objections on the grounds of insufficient specificity, is to ensure that an adverse party's right and ability to answer and defend will not be unduly impaired by a pleader's vagueness in stating the grounds of the complaint. Local No. 163, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins, 207 A.2d 776 (Pa. 1965); Foster v. Peat Marwick Main & Co., 587 A.2d 382 (Pa.Cmwlth. 1991); Paz v. Commonwealth, Dep't. Of Corrections, 580 A.2d 452 (Pa.Cmwlth. 1990); Green Cab Company v. Hajducho, 50 Pa. PUC 745 (1977). Carlock does not address this impairment at all.

A pro se complainant's opportunity to orally describe the issues set forth in his or her complaint needs to be balanced against his or her obligation to provide sufficiently specific information to a respondent to ensure that the respondent can answer and defend against the issues alleged in the complaint. If the complainant cannot provide sufficiently specific information to the respondent to allow it to answer and defend, the complainant should not be permitted to further prosecute his or her complaint.

It appears that the Commission has moved away from its pronouncements in Elliot and Richmond and their reliance on Carlock. This is appropriate since Carlock does not address preliminary objections raising insufficient specificity of a pleading or address the impairment of the respondent's right and ability to answer and defend where the pleading is insufficiently specific.

The more recent rulings in Belmonte-Gates, Piller, Randall, Jones and Zaslav address preliminary objections, whether a complaint is sufficiently specific and the complainant's failure to comply with an order to file an amended complaint. While an administrative agency is not bound by the rule of stare decisis, it must render consistent opinions and should either follow, distinguish or overrule its own precedent. Bell Atl. Tel. Co. v. Pa. Pub. Util. Comm'n, 672 A.2d 352 (Pa.Cmwlth. 1995); Pennsylvania Trout v. Pa. Dep't of Env'tl. Prot., 863 A.2d 93 (Pa.Cmwlth. 2004); Crawford v National Fuel Gas Distribution Co., Docket No. C-20066348 (Opinion and Order entered December 6, 2007). To be consistent with the more recent and, in my view, more correct prior Commission decisions, I will follow the more recent rulings in Belmonte-Gates, Piller, Randall, Jones and Zaslav.

I conclude that in this case, the complaint is incomprehensible and would deprive the Respondent of the opportunity to prepare an adequate defense. The Respondent should not have to speculate as to the nature of the Complainant's billing complaint. The Complainant could have removed any doubt as to the nature of the incorrect charges or when these charges occurred by filing an amended complaint. The Complainant failed to file such an amended complaint as directed by the April 5, 2018 order.

The Commission's regulations provide that the content of a formal complaint must include "A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation," and "A clear and concise statement of the relief sought." 52 Pa. Code §§ 5.22(1), (5) and (6).

The Commission's rule is based on Pennsylvania's Rule of Civil Procedure 1019, which requires a plaintiff to plead all the facts that she must prove in order to achieve recovery on the alleged cause of action. The pleading must be sufficiently specific so that the defending party will know how to prepare its defense. Department of Transportation v. Shipley Humble Oil Co., 370 A.2d 438 (Pa.Cmwlt. 1977). Pennsylvania is a fact pleading, rather than a notice pleading state. Therefore, the pleadings should conform to the elements necessary to state a cause of action. Pappert v. Tapp Pharmaceuticals, 868 A.2d 624 (Pa.Cmwlt. 2005).

This is why the appropriate remedy for a complaint which is insufficient on its face is to permit the complainant an opportunity to remedy the deficiency by filing an amended complaint with the necessary facts properly pleaded. I explained this in the April 5, 2018 order directing the Complainant to file an amended complaint. The April 5, 2018 order directed the Complainant to file an amended complaint and she failed to do so. As a result, the Respondent is still unable to form a meaningful response and the Commission is unable to determine the nature of the complaint.

The Complainant has failed to comply with the April 5, 2018 order. The Complainant has not provided any reason for her failure to comply with the order. The

Complainant's failure to comply with the April 5, 2018 order constitutes a sufficient basis to dismiss her complaint without a hearing.

CONCLUSIONS OF LAW

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

2. The averments in the Complainant's complaint are insufficient to enable the Respondent to formulate a meaningful response. 52 Pa. Code § 5.101(a)(3).

3. The Complainant had sufficient notice that her failure to file an amended complaint would result in dismissal of her complaint.

4. A presiding officer's orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss a complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by April Jackson against Duquesne Light Company at Docket No. C-2018-2644080 is dismissed for failure to comply with the April 5, 2018 order issued in this proceeding and file an amended complaint.

2. That the docket at Docket No. C-2018-2644080 is marked closed.

Date: May 8, 2018

/s/
David A. Salapa
Administrative Law Judge