

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Paula Ponte	:	
	:	
v.	:	C-2016-2559745
	:	
Verizon Pennsylvania LLC	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of the Complainant, a trust, for failure to comply with my Order directing it to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent it prior to May 30, 2018.

HISTORY OF THE PROCEEDING

On July 15, 2016, Paula Ponte filed a formal Complaint (Complaint) against Verizon Pennsylvania LLC (Verizon or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Ponte placed a checkmark in the box marked “[o]ther” and wrote in that the “utility lines are too close to the building.” Ms. Ponte further alleged that lines situated on the pole prohibit safe building maintenance, and that the location of the utility pole prevents her from installing a fire escape on the side of the building where the utility pole is located. As relief, Ms. Ponte has requested that the utility pole be relocated.

On August 23, 2016, Respondent filed an Answer and New Matter to the Complaint. In its Answer, Verizon indicated that the utility pole situated near the service address has been in its current location since 1987 and is within a public right-of-way that dates back to February 19, 1967. Verizon further responded that Ms. Ponte would be responsible to pay all charges associated with relocation of the pole. Verizon denied that its facilities prevent safe building maintenance. In its New Matter, Verizon maintained that the Commission should dismiss the Complaint because it has no subject matter jurisdiction over Ms. Ponte's demand that the utility pole, which is located in a public right-of-way, be relocated for the purpose of installing a fire escape on the side of the service address. Verizon endorsed its New Matter with a Notice to Plead, advising Ms. Ponte that she had twenty days to respond to its New Matter. Ms. Ponte's response was due on or before September 12, 2016.

Also, on August 23, 2016, Verizon filed a Preliminary Objection to the Complaint. Similar to its New Matter, Verizon maintained that the Complaint should be dismissed in its entirety because the Commission does not have subject matter jurisdiction to adjudicate public right-of-way issues. Verizon endorsed its Preliminary Objection with a Notice to Plead, advising Ms. Ponte that she had ten days to respond to its New Matter. Ms. Ponte's response was due on or before September 2, 2016.

Ms. Ponte did not file a response to either Verizon's New Matter or its Preliminary Objections.

By Motion Judge Assignment Notice dated December 29, 2016, Verizon's Preliminary Objection was assigned to Administrative Law Judge (ALJ) Benjamin J. Myers for disposition.

By Order dated January 11, 2017, ALJ Myers denied Verizon's Preliminary Objection and referred the Complaint to the Commission's Mediation Unit. ALJ Myers concluded that, while Verizon was correct that the Commission does not have subject matter jurisdiction to

adjudicate public right-of-way issues, the Commission does have jurisdiction to address Ms. Ponte's claims of unsafe conditions regarding Verizon's facilities within that right-of-way.

By Hearing Notice dated March 28, 2017, a call-in telephonic hearing was scheduled for May 3, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on March 30, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that the Complainant is entitled to the relief requested in the Complaint.

By email dated May 2, 2017, Suzan Paiva, Esq., counsel for Verizon, informed me that the parties had reached an agreement on the formal Complaint, pursuant to which Verizon would perform some work on the pole at issue which would result in additional clearance for Verizon's wires. Ms. Paiva further indicated that she would file a certificate of satisfaction once she confirmed that the additional work resolved Ms. Ponte's issues. Ms. Paiva requested that the hearing scheduled for May 3, 2017, be cancelled, and that she be permitted to provide a status report in one month's time. Based on Ms. Paiva's representations, I granted the request and cancelled the hearing.

By email dated June 5, 2017, Ms. Paiva informed me that Verizon had completed the work on the pole at issue, but that Ms. Ponte was not yet ready to settle the Complaint.

By Hearing Cancellation/ Reschedule Notice dated June 9, 2017, the call-in telephonic hearing was rescheduled for Thursday, August 3, 2017, at 10:00 a.m.

By Order dated July 24, 2017, I granted Verizon's Motion for Continuance.

By Hearing Cancellation/ Reschedule Notice dated September 6, 2017, the call-in telephonic hearing was rescheduled for Wednesday, October 25, 2017, at 10:00 a.m.

The hearing convened as scheduled on October 25, 2017. Ms. Ponte appeared and testified on behalf of the Complaint. Respondent appeared and was represented by Suzan Paiva, Esq., who presented the testimony of Edward Boudman, a Verizon Engineer Specialist 3.

On December 14, 2017, I received a copy of the transcript in this case. Upon review of the record, I discovered that a trust, not Ms. Ponte, owned the service address. Since Commission regulations require trusts to be represented by an attorney in an adversarial proceeding, I determined that it was necessary to reopen the record in this proceeding and afford Ms. Ponte the opportunity to secure an attorney to pursue this Complaint.

By Order dated March 16, 2018, I reopened the record in this matter and ordered Ms. Ponte to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust in this proceeding on or before the close of business on April 16, 2018. I further ordered that if Ms. Ponte failed to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust in this proceeding on or before the close of business on April 16, 2018, the Complaint would be subject to dismissal.

On May 10, 2018, my office received a request from Ms. Ponte for an extension of time to comply with my March 16, 2018 Order. In support of her request, Ms. Ponte indicated that she was away from home for the winter and her mail was sporadically forwarded. Ms. Ponte indicated that she did not see the March 16, 2018 Order until she returned home.

On May 11, 2018, Ms. Paiva informed me that Verizon objected to Ms. Ponte's request for an extension. Ms. Paiva noted that Ms. Ponte made her request nearly one month after the expiration of the deadline I imposed in my March 16, 2018 Order, that Ms. Ponte should have anticipated communications from the Commission, and that she should have made

reasonable provisions to monitor the case, such as having her mail forwarded, having someone check her mail, or monitoring the case docket on the Commission's website, where my March 16, 2018 Order was publicly available.

By Order dated May 16, 2018, I granted Ms. Ponte's request for an extension of time to secure legal representation. I ordered Ms. Ponte to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust in this proceeding on or before the close of business on May 30, 2018. I further ordered that if Ms. Ponte failed to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust in this proceeding on or before the close of business on May 30, 2018, the Complaint would be subject to dismissal.

To date there is no record of an attorney filing a notice of appearance on behalf of Ms. Ponte and the trust that owns the service address. As Ms. Ponte did not comply with my May 16, 2018 Order, the Complaint will be dismissed as discussed below.

The record in this matter closed on May 30, 2018.

FINDINGS OF FACT

1. Paula Ponte filed a formal Complaint against Verizon Pennsylvania LLC with the Pennsylvania Public Utility Commission.
2. On August 23, 2016, Respondent filed an Answer and New Matter to the Complaint.
3. By Hearing Cancellation/ Reschedule Notice dated September 6, 2017, a call-in telephonic hearing was scheduled for Wednesday, October 25, 2017, at 10:00 a.m.

4. Ms. Ponte's Complaint concerns service to 1840 Perkiomenville Road (service address). Tr. 7-8.

5. Ms. Ponte does not own the service address. Tr. 8.

6. The service address is owned by a trust. Tr. 8.

7. Ms. Ponte is not an attorney. Tr. 71.

8. By Order dated March 16, 2018, I directed Ms. Ponte, as the trustee of the trust that owns the service address, to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust by April 16, 2018.

9. By Order dated May 16, 2018, I granted Ms. Ponte's request for an extension of time to secure legal representation and directed her to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust by May 30, 2018.

10. No attorney has filed a notice of appearance on behalf of Ms. Ponte or the trust that owns the service address.

DISCUSSION

By Order dated March 16, 2018, I instructed Ms. Ponte, a non-attorney, to have counsel enter an appearance to represent her and the trust in this matter on or before April 16, 2018. By Order dated May 16, 2018, I granted Ms. Ponte's request for an extension of time to secure legal representation and directed her to have counsel enter an appearance to represent her and the trust on or before May 30, 2018. To date, no notice of appearance has been filed.

The Complainant in this case is a trust that is not represented by counsel. The Commission's regulations concerning representation and notice of appearance are set forth in 52 Pa.Code §§ 1.21-1.24. The Commission's regulations require partnerships, corporations, other business organizations, trusts, associations, agencies, political subdivisions and government entities to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa.Code §§ 1.21-1.23.

The Commission regulations at 52 Pa.Code §§ 1.21-1.24 provide in pertinent part:

§ 1.21. Appearance

(a) Individuals may represent themselves.

(b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

(c) In nonadversarial proceedings, persons may be represented in the following manner:

(1) A partner may represent the partnership.

(2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(3) An officer or employee of an agency, political subdivision or government entity may represent the agency, political subdivision or government entity.

§ 1.22. Appearance by attorney or certified legal intern.

(a) Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.

(b) An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

(c) A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

§ 1.23. Other representation prohibited at hearings.

(a) Persons may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance; and appearance by attorney or certified legal intern).

§ 1.24. Notice of appearance or withdrawal.

(a) *Individuals.* An individual appearing without legal representation before the Commission or a presiding officer shall file with the Secretary an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Secretary promptly.

(b) *Attorneys.*

(1) *Appearance by initial pleading.* An attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in that proceeding.

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney's name, mailing address and electronic mailing address, if available.

(B) Pennsylvania attorney identification number or, if not licensed in this Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.

(C) Telephone number and telefacsimile number, if applicable.

(D) The name and address of the person represented.

(ii) *Filing.*

(A) *Appearance.* The notice of appearance shall be served on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

52 Pa.Code §§ 1.21-1.24.

In 52 Pa. Code § 1.8, the term “adversarial proceeding” is defined as “[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record.” Additionally, the term “person” is defined as “individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities or other political subdivisions.” *Id.*

Once Verizon filed an answer to the Complaint, this became an adversarial proceeding. Accordingly, the Complainant, a trust, is required to be represented by counsel. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Order entered June 24, 2009) (*New Fizon*). Attorney representation of non-individual complainants in adversarial proceedings controls. Absent exigent circumstances, individuals may not offer testimony on a non-individual’s behalf if that entity, including a trust, is not represented by counsel. *Cars R Us v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Order entered February 4, 2010) (*Cars R*

Us); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Order entered February 2, 2010) (*Torino*).

This requirement is consistent with Pennsylvania law holding that a business entity such as a trust or corporation must have counsel in order to proceed in any legal action because such an entity may not represent itself, and may appear only through an attorney admitted to practice law. See *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994); *Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984). No attorney is listed on the Complaint, nor has one entered an appearance to represent the Complainant.

Additionally, the Complainant failed to comply with either my March 16, 2018, or May 16, 2018, Orders directing it to be represented by counsel since it is a trust. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. See, e.g., *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Commission Opinion and Order entered June 24, 2009); *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Commission Opinion and Order entered July 31, 2006) (citing *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978, 2003 Pa. PUC LEXIS 3 March 3, 2003); *Franconia Mennonite Conference v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2193709 (Commission Final Order entered June 6, 2003).

The Complainant was informed of the requirement that it must have counsel by my March 16, 2018 and May 16, 2018 Orders. Neither of these Orders has been returned to the Commission by the U.S. Postal Service as undeliverable, and they are therefore deemed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A. 2d 584 (1974), *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

I instructed Ms. Ponte to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust in this matter

prior to May 30, 2018. Ms. Ponte has not contacted me regarding such representation, nor has an attorney filed a notice of appearance on her or the trust's behalf. Therefore, the Complainant failed to comply with my Order. Consequently, the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding.

2. Mail sent to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A. 2d 584 (1974), *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

3. The Commission's regulations require partnerships, corporations, other business organizations, trusts, associations, agencies, political subdivisions and government entities to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code §§ 1.21-1.23.

4. This proceeding became an "adversarial proceeding" when Verizon filed an Answer to the Complaint. 52 Pa. Code § 1.8.

5. A business entity such as trust or corporation must have counsel in order to proceed in any legal action because such an entity may not represent itself, and may appear only through an attorney admitted to practice law. *See Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994); *Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

6. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. *See, e.g., New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Commission Opinion and Order entered June 24,

2009); *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Commission Opinion and Order entered July 31, 2006((citing *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978, 2003 Pa. PUC LEXIS 3 March 3, 2003); *Franconia Mennonite Conference v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2193709 (Commission Final Order entered June 6, 2003).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Paula Ponte against Verizon Pennsylvania LLC at Docket No. C-2016-2559745 is dismissed; and
2. That the docket at Docket No. C-2016-2559745 be marked closed.

Date: June 19, 2018

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge