



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 17, 2018

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Brian Albert Clark t/a Crystal Express
Docket No. C-2017-2638335

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Motion for Default Judgment in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2017-2638335
	:	
Brian Albert Clark t/a Crystal Express,	:	
Respondent	:	

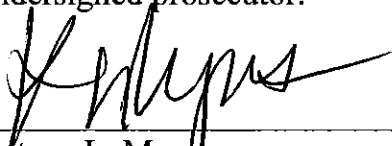
NOTICE TO PLEAD

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion for Default Judgment in the above-captioned matter, pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code § 5.61.

Your Answer must be verified, pursuant to 52 Pa. Code § 1.36, and the original sent to:

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

Additionally, you must serve a copy on the undersigned prosecutor.



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 705-4366
komyers@pa.gov

Dated: July 17, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2017-2638335
	:	
Brian Albert Clark t/a Crystal Express,	:	
Respondent	:	

MOTION FOR DEFAULT JUDGMENT

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, and files this Motion for Default Judgment against Brian Albert Clark t/a Crystal Express (“Respondent”) pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103. In support thereof, I&E respectfully represents as follows:

1. I&E commenced this action on December 14, 2017 by filing a Complaint.
2. On December 15, 2017, the Complaint was served by certified mail to Respondent at 321 Munson Avenue, Mckees Rocks, PA 15136
3. On January 23, 2018, the Complaint was returned to the Commission by the United States Postal Service and was marked as “Return to Sender; Not Deliverable as Addressed; Unable to Forward.”
4. On January 24, 2018, the Complaint was re-served to Respondent by certified mail at 100 Ingram Avenue, Apartment C, Pittsburgh, PA 15205.
5. There is no record that the Complaint was returned to the Commission.

6. Depositing a properly addressed, prepaid letter in the mail raises a presumption that it reached its destination and mailing a letter in such a way is *prima facie* evidence that it was received by the person to whom it was addressed. *See Cameron Estate*, 130 A.2d 173 (Pa. 1957); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); and *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997).

7. Subsequent to the filing of I&E's Complaint, on or about February 26, 2018, the Commission received payment from Respondent in the amount of \$86, which satisfied the civil penalty sought in the Complaint for Respondent's failure to timely pay its assessment for the July 1, 2016 to June 30, 2017 Fiscal Year ("2016-2017 Fiscal Year").

8. On February 26, 2018, Respondent filed an Application for Abandonment of its Certificate of Public Convenience at A-2012-2298948.

9. By Secretarial Letter dated April 30, 2018 at Docket Nos. A-2018-3000553 and A-6414558, the Commission cancelled Respondent's Certificate.¹

10. Since Respondent did not file an Answer to the Complaint, out of an abundance of caution, I&E published the Complaint in the *Pennsylvania Bulletin* on May 26, 2018 pursuant to the Commission's regulation at 52 Pa. Code § 1.53(e) (related to alternative service). *See* 48 Pa. Bull. 3188 (May 26, 2018).

11. Attached to the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days.

¹ I&E notes that its requested relief regarding revocation of Respondent's operating authority, which is set forth in I&E's Complaint, has already been addressed.

12. The Notice also advised Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

13. Respondent did not file an Answer to the Complaint.

14. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

15. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

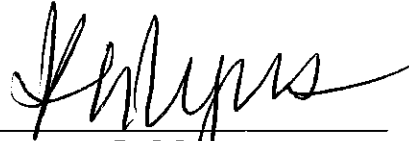
16. Respondent did not pay its outstanding assessment balance of \$575 for the 2016-2017 Fiscal Year.

17. I&E respectfully requests that the Commission enter a Default Order against Respondent that:

- a. Directs Respondent to pay its outstanding assessment of \$575 for the 2016-2017 Fiscal Year within thirty (30) days of the entry date of the Commission's Order;
- b. Notifies Respondent that a copy of this Order will be sent to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under Respondent's operating authority if Respondent fails to pay the amount set forth in subparagraph (a), above, within thirty (30) days of the entry date of the Commission's Order; and
- c. Directs the Bureau of Administrative Services, Assessment Section, to refer the matter to the Pennsylvania Office of Attorney General

for collection of the amount set forth in subparagraph (a), above, if Respondent fails to pay that amount within thirty (30) days of the entry date of the Commission's Order.

Respectfully submitted,



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 705-4366
komyers@pa.gov

Date: July 17, 2018

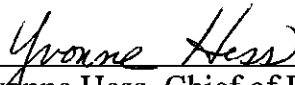
**BEFORE THE
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Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
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	:	
Brian Albert Clark t/a Crystal Express,	:	
Respondent	:	

VERIFICATION

I, Yvonne Hess, Chief of Finance and Assessments, Bureau of Administrative Services, Finance and Assessment Section, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: July 17, 2018



Yvonne Hess, Chief of Finance and Assessments
Finance and Assessment Section
Bureau of Administrative Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Brian Albert Clark t/a Crystal Express,
Respondent

Docket No. C-2017-2638335

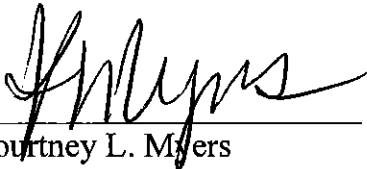
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by First Class Mail:

Brian Albert Clark
t/a Crystal Express
317 Munson Avenue
#3
McKees Rocks, PA 15136

Brian Albert Clark
t/a Crystal Express
101 Ingram Avenue
Apartment C
Pittsburgh, PA 15205


Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

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Bureau of Investigation and Enforcement
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Dated: July 17, 2018