

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jamal Brown	:	
	:	
v.	:	F-2018-2641046
	:	
Philadelphia Gas Works	:	
(Complaint/Appellant)	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision dismisses Philadelphia Gas Works' appeal of the Pennsylvania Public Utility Commission's Bureau of Consumer Services' decision at BCS Case # 3578023 with prejudice because Jamal Brown failed to appear and prosecute the case. The Initial Decision vacates the BCS' decision at BCS Case # 3578023.

HISTORY OF THE PROCEEDING

Jamal Brown (Mr. Brown) filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), BCS Case # 3578023, against Philadelphia Gas Works (PGW or the Company). On December 5, 2017, BCS issued a decision granting Jamal Brown's informal complaint upon finding that PGW improperly denied service to Mr. Brown because he did not have a lease for the service address. BCS also ordered PGW to establish service in Mr. Brown's name holding him responsible for the total outstanding balance of \$2,758.64, plus a reconnection fee and security deposit, conditional upon the outcome of Mr. Brown's enrollment in PGW's Customer Responsibility Program (CRP).

On January 2, 2018, PGW filed the present formal Complaint appealing the BCS' decision. Specifically, PGW alleged that BCS was not provided with a full explanation of the facts leading to PGW's conclusion that Mr. Brown was not properly authorized to have service at the Service Address pursuant to PGW Gas Service Tariff – PA. P.U.C. No. 2, § 2.1B. As relief, PGW requested that the Commission overturn the decision issued by BCS on December 5, 2017, at BCS Case # 3578023, and find that Mr. Brown must show proof that he is the only occupant at the Service Address and that he is legally entitled to have the Service Address as his residence.¹

Mr. Brown did not file an Answer.

A Hearing Notice dated June 12, 2018, notified the parties that an initial hearing was scheduled in this matter for Tuesday, July 31, 2018, at 10:00 a.m.

A Prehearing Order was issued on June 25, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled. Neither Jamal Brown nor counsel for him appeared at the hearing. The hearing convened at approximately 10:15 a.m. after I confirmed that Jamal Brown had not called, or otherwise shown good cause not to appear at the scheduled hearing. Laureto Farinas, Esq., appeared representing Philadelphia Gas Works and presented the testimony of Jessica Glace, who is a senior customer review officer with PGW in charge of reviewing and investigating formal complaints filed with the Commission. PGW sponsored three exhibits, which were admitted into the record in this matter.

The record closed on September 4, 2018, upon receipt of a copy of the hearing transcript.

¹ The Complaint-Appeal was re-served on Mr. Brown on March 1, 2018.

FINDINGS OF FACT

1. The Complainant is Jamal Brown, whose mailing address is 5229 Pennsgrove Street, Philadelphia, PA 19131 (Service Address).
2. The Respondent and Complaint-Appellant is Philadelphia Gas Works, a jurisdictional public utility.
3. On or before December 5, 2017, Jamal Brown filed an informal complaint at BCS Case # 3578023 alleging that PGW improperly denied service to him because he did not have a lease for the service address. See Tr. 16, PGW Exhibit 3.
4. As relief, Mr. Brown requested that the Commission instruct PGW to place gas service at the Service Address in his name. *Id.*
5. On December 5, 2017, BCS issued a decision at BCS Case # 3578023 granting Jamal Brown's informal complaint upon finding that PGW improperly denied service to Mr. Brown because he did not have a lease for the service address. Tr. 16, PGW Exhibit 3.
6. BCS also ordered PGW to establish service in Mr. Brown's name holding him responsible for the total outstanding balance of \$2,758.64, plus a reconnection fee and security deposit, conditional upon the outcome of Mr. Brown's enrollment in PGW's CRP. *Id.*
7. On January 2, 2018, PGW filed an appeal to the BCS' decision alleging that BCS was not provided with a full explanation of the facts leading to PGW's conclusion that Mr. Brown was not properly authorized to have service at the Service Address pursuant to PGW Gas Service Tariff – PA. P.U.C. No. 2, § 2.1B.
8. PGW requested that the Commission overturn the decision issued by BCS on December 5, 2017, at BCS Case # 3578023, and find that Mr. Brown must show proof that he

is the only occupant at the Service Address and that he is legally entitled to have the Service Address as his residence.

9. Mr. Brown did not file an Answer.

10. A Hearing Notice dated June 12, 2018, notified the parties that an initial hearing was scheduled in this matter for Tuesday, July 31, 2018, at 10:00 a.m.

11. A Prehearing Order was issued on June 25, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

12. Neither the Hearing Notice nor the Prehearing Order mailed to Jamal Brown were returned to the Commission by the United States Postal Service as undeliverable.

13. Mr. Brown failed to appear at the scheduled hearing.

14. This Complaint was not settled or withdrawn prior to the scheduled hearing date; nor did Mr. Brown obtain a continuance.

DISCUSSION

In his informal complaint at BCS Case # 3578023, Mr. Brown alleged that PGW improperly denied service to him because he did not have a lease for the Service Address. See Tr. 16, PGW Exhibit 3. As relief, Mr. Brown requested that the Commission instruct PGW to place gas service at the Service Address in his name: *Id.*

On December 5, 2017, BCS issued a decision granting Mr. Brown's informal complaint and ordering PGW to establish service in Mr. Brown's name, holding him responsible for the total outstanding balance of \$2,758.64, plus a reconnection fee and security deposit, conditional upon the outcome of Mr. Brown's enrollment in PGW's CRP. *Id.*

On January 2, 2018, PGW filed the present Complaint appealing the BCS' decision and alleging that BCS was not provided with a full explanation of the facts leading to PGW's conclusion that Mr. Brown was not properly authorized to have service at the Service Address pursuant to PGW Gas Service Tariff – PA. P.U.C. No. 2, § 2.1B.

A timely appeal from an informal decision of the BCS is reviewed *de novo*. 52 Pa. Code §§ 56.173(a), 56.403(a). *De novo* means that there is no part of the record in the informal proceeding that can be relied upon in the formal proceeding. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint, except for legal or policy issues raised by the utility on appeal. See 52 Pa. Code § 56.173(f);² see also *Patrick Rafferty v. Verizon Pennsylvania, Inc.*, Docket No. F-02211831 (Order entered December 22, 2008); *Claypool v. T.W. Phillips Gas & Oil Company*, 1995 Pa. PUC LEXIS 160 (Order entered December 22, 1995) (In formal complaint proceedings, the burden of proof lies with the customer/complainant. “This remains true whether the case is being litigated as an informal complaint filed by the customer or as a formal complaint on appeal filed by the utility.” However, for legal or policy issues raised by the utility, “it would be absurd to impose the burden of proof concerning a legal and policy issue upon a customer who did not raise the issue and who probably has little knowledge of the issue itself.”); *Zapp v. Equitable Gas Company*, Docket No. Z-8188326, 1982 Pa. PUC LEXIS 127, 55 Pa. PUC 701 (Order entered April 2, 1982)(“The filing of such an appeal does not shift the burden of proof to the party taking the appeal, the burden of proof remains with the original complainant.”); *Corinne Hackett v. Columbia Gas of Pennsylvania, Inc., Complaint Appellant*, Docket No. C-2012-2308429, 2013 Pa. PUC LEXIS 527 (citing a change in the 2011 Chapter 56 rulemaking that erroneously states that the burden of proof remains with the party who filed the *formal* complaint, instead of *informal* complaint. The burden of proof in the BCS decision is with the complainant, and therefore, it would “remain” with the original complainant. It could not “remain” with the

² 52 Pa. Code §56.173(f) is part of the ongoing rulemaking at Docket No. L-2015-2508421, *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14* which explains that the language will be revised to clarify that the burden of proof remains with the party who filed the informal complaint in order to be consistent with Commission practice. Order of July 21, 2016 at p. 9. As Commission jurisdiction covers utilities and licensees, but only extends to those consumers who voluntarily submit to it, the only way to provide a meaningful appeal from a BCS determination is to start over, with the complainant in the informal BCS investigation as the complainant in the formal case arising from it.

utility, which did not have the burden of proof at all). See also *Thomas v Philadelphia Gas Works*, Docket Nos. F-2017-2611788, C-2017-2621275 (Opinion and Order entered August 31, 2018).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Notice dated June 12, 2018, notified the parties that an initial hearing was scheduled in this matter for Tuesday, July 31, 2018, at 10:00 a.m. A Prehearing Order was issued on June 25, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing. None of these documents was returned to the Commission as undeliverable by the post office. Therefore, Mr. Brown was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither Mr. Brown nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his behalf. To date, there is no further information about Mr. Brown regarding this hearing. His failure to appear is unexcused.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). Mr. Brown waived the opportunity to participate in the hearing by failing to appear. PGW's Complaint appealing BCS' decision at BCS Case # 3578023 will be dismissed with prejudice due to Mr. Brown's failure to prosecute. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(c); *Thomas v Philadelphia Gas Works*, Docket Nos. F-2017-2611788, C-2017-2621275 (Opinion and Order entered August 31, 2018).

When an informal decision of the BCS is timely appealed and not prosecuted, such decision does not stand. *Thomas v Philadelphia Gas Works*, Docket Nos. F-2017-2611788, C-2017-2621275 (Opinion and Order entered August 31, 2018). Accordingly, a dismissal of PGW's appeal vacates the BCS' informal decision at BCS Case # 3578023.

CONCLUSIONS OF LAW

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

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

3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

5. Jamal Brown has failed to meet his burden of proving that he is entitled to the relief sought from the Commission.

6. When an informal decision of the BCS is timely appealed and not prosecuted, such decision does not stand. *Thomas v Philadelphia Gas Works*, Docket Nos. F-2017-2611788, C-2017-2621275 (Opinion and Order entered August 31, 2018).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Philadelphia Gas Works at Docket No. F-2018-2641046 is dismissed with prejudice due to Jamal Brown's failure to prosecute.
2. That the decision of the Bureau of Consumer Services at BCS Case # 3578023 sustaining Jamal Brown's informal complaint is vacated.
3. That the Secretary's Bureau should mark this matter closed.

Date: November 26, 2018

_____/s/
Eranda Vero
Administrative Law Judge

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