

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Brister

v.

Philadelphia Gas Works

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C-2018-3005474

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Philadelphia Gas Works' Motion to Dismiss the formal Complaint (Complaint) of Kenneth Brister with prejudice because he failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On October 17, 2018, Kenneth Brister (Mr. Brister or Complainant) filed a Complaint against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility had shut off his gas service, that he is unable to pay his gas bills to PGW, and that there are incorrect charges on his gas bills from PGW. As relief, Mr. Brister requested that the Commission establish a payment arrangement on his behalf.

On November 6, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated November 9, 2018, notified the parties that an initial hearing was scheduled in this matter for Friday, January 4, 2019, at 10:00 a.m.

A Prehearing Order was issued on November 21, 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.

Due to a conflict in my schedule, the January 4, 2019, hearing was rescheduled for February 8, 2019.

A new Hearing Notice dated January 7, 2019, notified the parties that the initial hearing was rescheduled in this matter for Friday, February 8, 2019, at 10:00 a.m.

The hearing convened as scheduled on February 8, 2019. Laureto Farinas, Esq., appeared representing PGW. Neither Complainant nor a counsel for the Complainant appeared at the hearing. The hearing reconvened after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

Counsel for PGW moved to dismiss the Complaint with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed on February 8, 2019.

FINDINGS OF FACT

1. The Complainant is Kenneth Brister, whose mailing address is 6300 Tabor Avenue, Philadelphia, PA 19111.

2. The Respondent is Philadelphia Gas Works.
3. On October 17, 2018, Mr. Brister filed a formal Complaint against PGW alleging that the utility had shut off his gas service, that he is unable to pay his gas bills to PGW, and that there are incorrect charges on his gas bills from PGW.
4. As relief, Mr. Brister requested that the Commission establish a payment arrangement on his behalf.
5. On November 6, 2018, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated November 9, 2018, notified the parties that an initial hearing was scheduled in this matter for Friday, January 4, 2019, at 10:00 a.m.
7. A Prehearing Order issued on November 21, 2018, advised the parties of the proper procedure to obtain a continuance to reschedule the hearing date.
8. A Hearing Notice dated January 7, 2019, notified the parties that the initial hearing was rescheduled in this matter for Friday, February 8, 2019, at 10:00 a.m.
9. None of the documents mailed to Complainant at the address provided in his Complaint were returned to the Commission by the United States Postal Service as undeliverable.
10. The Complainant failed to appear at the scheduled hearing.
11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In this formal Complaint, Mr. Brister alleged that PGW had shut off his gas service, that he is unable to pay his gas bills to PGW, and that there are incorrect charges on his gas bills from PGW. As relief, Mr. Brister requested that the Commission establish a payment arrangement on his behalf. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S.A. § 332(a).

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).

Two Hearing Notices and a Prehearing Order were mailed to Mr. Brister at the address listed on his formal Complaint form. None of these documents was returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his behalf. To date, there has been no further communication from the Complainant 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. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. Mr. Brister's Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

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, Kenneth Brister 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); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the formal Complaint of Kenneth Brister at Docket No. C-2018-3005474 is granted.

2. That the formal Complaint filed by Kenneth Brister against Philadelphia Gas Works at Docket No. C-2018-3005474 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: March 5, 2019

/s/
Eranda Vero
Administrative Law Judge