

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charita Bush	:	
	:	
v.	:	C-2019-3013323
	:	
Pittsburgh Water and Sewer Authority	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

This initial decision grants the preliminary objections of the Pittsburgh Water and Sewer Authority and dismisses the complaint of the executrix of the estate of a property owner. The complainant inherited the property, but as the executrix does not have standing to lodge a complaint against the utility alleging that the utility is responsible for damage to the property resulting from a burst pipe. The complainant did not reside at the property and was not listed as an account holder with the utility.

**HISTORY OF THE PROCEEDINGS**

On September 28, 2019, Charita Bush (Complainant) filed a formal complaint against the Pittsburgh Water and Sewer Authority (PWSA). The Complainant alleges that PWSA was negligent in failing to shut off water to the property, which resulted in a burst pipe causing damage to the service address. As relief, the Complainant requests reimbursement for the water consumed when the pipe burst and reimbursement for loss and damages caused to the property.

On October 23, 2019, PWSA filed an answer and new matter to the formal complaint. In its answer, PWSA denies that it was “negligent” for failing to shut off water service and avers that the account holder is Beatrice Bush, not Charita Bush. PWSA further avers that it waived the water and sewer conveyance charges for the period of high usage from January 23, 2019 through February 5, 2019. In its new matter, PWSA asserts that the Complainant lacks standing because she does not own the property, and that the estate of the account holder requires representation by an attorney in proceedings before the Commission. PWSA also states in new matter that it has already provided the relief requested, and the current balance on the account is a credit in the amount of \$457.98.

PWSA also filed preliminary objections on October 23, 2019, which included a notice to plead. PWSA takes the position that the complaint should be dismissed because the Commission lacks jurisdiction to determine negligence or award monetary damages; the Complainant lacks standing to pursue the complaint; and the estate of the account holder must be represented by an attorney.

The Complainant filed a thoughtfully drafted response to the preliminary objections and answer to the new matter.<sup>1</sup> The Complainant admits that the account holder, Beatrice Bush, now deceased, was her grandmother. The Complainant’s father, Charles Bush, was the last surviving heir to Beatrice Bush. Upon his death the Complainant inherited the property and was named the executrix of the estate. The Complainant details her contacts with PWSA and contends that PWSA failed to shut off the water service in a timely manner when requested to do so, resulting in damage to the property. The Complainant also states that she sold the property on September 19, 2019. The Complainant admits that the current account balance is a credit in the amount of \$457.98.

This matter was assigned to me as a motion judge on November 15, 2019 and is now ripe for decision. For the reasons discussed below, this complaint must be dismissed.

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<sup>1</sup> The Complainant’s response was filed on November 12, 2019, which is more than ten days after PWSA filed its preliminary objections. 52 Pa.Code § 5.61(a)(2). However, PWSA is not prejudiced by consideration of the Complainant’s late-filed response. Therefore, it will be considered timely pursuant to the Commission’s liberal construction rule. 52 Pa.Code § 1.2.

## FINDINGS OF FACT

1. The Complainant, Charita Bush, resides at 1339 Adams Street, Pittsburgh, Pennsylvania. (Complaint)
2. The service address is 1448 N. Franklin Street, Pittsburgh. (Complaint)
3. The account holder of record is Beatrice Bush. (Complainant Answer to Preliminary Objections and New Matter)
4. The Complainant's father, Charles Bush, was the last surviving heir to Beatrice Bush. (Complainant Answer to Preliminary Objections and New Matter)
5. Upon Charles Bush's death the Complainant inherited the property and was named the executrix of the estate. (Complainant Answer to Preliminary Objections and New Matter)
6. The Complainant does not reside at the service address. (Complainant Answer to Preliminary Objections and New Matter)
7. The Estate of Charles Bush sold the service address property. (Complainant Answer to Preliminary Objections and New Matter)

## DISCUSSION

The grounds for preliminary objection are limited. Section 5.101(a)(1), provides that preliminary objections may be granted where the Commission lacks jurisdiction to resolve a dispute.<sup>2</sup>

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<sup>2</sup> 52 Pa.Code § 5.101(a)(1).

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.<sup>3</sup> In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.<sup>4</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>5</sup> All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections.<sup>6</sup> Only those facts specifically admitted may be considered against the non-moving party.<sup>7</sup> A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.<sup>8</sup>

In every case coming before it, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of this dispute. As a creature of legislation, the Commission possesses only the authority that the General Assembly has specifically granted to it in the Public Utility Code. That is, the Commission has only the powers expressly conferred or necessarily implied by its enabling statute.<sup>9</sup> The Commission must act

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<sup>3</sup> *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>4</sup> *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 1996).

<sup>5</sup> *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlt. 2002).

<sup>6</sup> *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlt. 2006), *aff'd per curiam*, 924 A.2d 1203 (Pa. 2007).

<sup>7</sup> *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlt. 1997).

<sup>8</sup> *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, Docket No. A-2008-2020353 (Final Order July 8, 2008).

<sup>9</sup> *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967). See also *Department of Environmental Resources v. Butler County Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982), and *Pequea Township v. Department of Environmental Protection*, 716 A.2d 678, 686 (Pa.Cmwlt. 1998).

within and cannot exceed its jurisdiction.<sup>10</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>11</sup>

An estate requires an attorney to represent it in proceedings before the Commission.<sup>12</sup> This is a representation requirement that cannot be waived by the Commission. In circumstances where representation is required, the Commission has no authority to resolve the dispute:

It is well-settled in Commission practice that participation in a formal adversarial proceeding before this Commission constitutes the practice of law. As such, that participation is limited to those who either file as individuals and represent themselves, or attorneys who are representing others. 52 Pa. Code § 5.21. Just as an attorney cannot empower an individual to engage in the unauthorized practice of law, no agency can confer the power to engage in conduct that is prohibited by Section 2524 of the Judicial Code, 42 Pa. C.S. § 2524. *See, Kohlman v. Western Pennsylvania Hospital*, 652 A.2d 849 (Pa. Super. 1994), *alloc. denied*, 541 Pa. 640, 663 A.2d 692 (1995); and *Westmoreland County v. Rodgers, et al.*, 693 A.2d 996 (Pa. Cmwlth. 1997), *alloc. denied*, 553 Pa. 685, 717 A.2d 536 (1998). Therefore, the daughter of the decedent was unable to prosecute the Complaint on behalf of her deceased father. . . .

It is important to note that the absence of an attorney where one is required actually deprives the forum of jurisdiction to adjudicate the matter. *See, McCain v. Curione, et al.*, 527 A.2d 591 (Pa. Cmwlth. 1987) (Commonwealth Court was without jurisdiction to consider arguments and motions); and *Spirit of the Avenger Ministries v. Com.*, 767 A.2d 1130 (Pa. Cmwlth. 2001) (appeal quashed because the court was without jurisdiction to consider the claims raised by a person not licensed to practice law in Pennsylvania). Accordingly, we are unable to adjudicate this Complaint and have no choice but to dismiss it. The dismissal,

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<sup>10</sup> *City of Pittsburgh v. Pa. P.U.C.*, 43 A.2d 348 (Pa.Cmwlth. 1945).

<sup>11</sup> *Roberts v. Matorano*, 235 A.2d 602 (Pa. 1967).

<sup>12</sup> 52 Pa.Code § 5.21; *Kemmick v. Metropolitan Edison Co.* Docket No. C-2018-3005528 (Final Order entered June 11, 2019); *Sloans v. Philadelphia Gas Works*, Docket No. C-2017-2606254 (Final Order entered August 14, 2018).

which is not on the merits of the Complaint, will be without prejudice so that the appropriate party may refile if desired.<sup>[13]</sup>

The complaint of Charita Bush will be dismissed without prejudice.

#### CONCLUSIONS OF LAW

1. Where the customer of record is deceased, the estate must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania. 52 Pa.Code § 5.21.

2. The absence of an attorney where one is required deprives the Commission of jurisdiction to adjudicate the matter. *Scheaffer v. PPL Electric Utilities Corporation*, Docket No. F-2016-2577647 (Opinion and Order entered April 3, 2018).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Charita Bush against Pittsburgh Water and Sewer Authority at Docket C-2019-3013323 is dismissed without prejudice.

2. That the docket at C-2019-3013323 shall be marked closed.

Date: December 2, 2019

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/s/  
Mary D. Long  
Administrative Law Judge

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<sup>13</sup> *Scheaffer v. PPL Electric Utilities Corporation*, Docket No. F-2016-2577647 (Opinion and Order entered April 3, 2018), at p. 12.