

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Benjamin Lindenbaum	:	
	:	
v.	:	C-2019-3010203
	:	
Verizon Pennsylvania LLC	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision finds that the Commission has no jurisdiction over the collection agency debt collection effort at issue and that liability for the bills at issue arose beyond the three-year statute of limitations. Therefore, Verizon Pennsylvania LLC's Motion for Summary Judgment or Judgment on the Pleadings will be granted.

HISTORY OF THE PROCEEDING

On May 20, 2019, Benjamin J. Lindenbaum (Mr. Lindenbaum or the Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Verizon Pennsylvania LLC (Verizon or Company). On the Complaint form, Mr. Lindenbaum checked the statement that there are incorrect charges on his bill and added that his account is now in collections, that National Recovery Agency holds the debt and that he has asked Verizon for an itemized bill "several times" and they have failed to provide one.

On June 19, 2019, Verizon filed an Answer denying all material facts in the Complaint; further, Verizon averred that the Complainant's debt of \$960 is not owed to Verizon as this debt was sold and now owned by National Recovery Agency. Verizon also asked that this matter be sent to mediation. An Order dated June 25, 2019 transferred this matter to mediation, which was not successful.

An Initial In-Person Hearing Notice was issued on November 22, 2019, setting a hearing for January 21, 2020, at 10:00 a.m. before the undersigned. A pre-hearing order advising the parties of various applicable procedures was issued on November 27, 2019.

On January 9, 2020, Verizon filed a Motion for Summary Judgment or Judgment on the Pleadings and to postpone the January 21, 2020 hearing. A Notice to plead attached to the Motion advised the Complainant that any response must be filed within 20 days. Also attached to the Motion are two exhibits: a Declaration of A.R. Tibbs, Jr., who is the Senior Analyst in Executive Relations for Verizon (Exhibit A) and copies of the final bills to the Complainant (Exhibit B).

On January 10, 2020, an Order was issued granting Verizon's request for postponement of the hearing. The Order again advised the Complainant that a response to the Motion for Summary Judgment or Judgment on the Pleadings must be filed within 20 days.

By Hearing Notice dated January 21, 2020, the hearing was rescheduled to April 7, 2020 and a Pre-hearing Order with the April 7, 2020 date was issued on January 27, 2020.

To date, the Complainant has not filed a response to the Motion for Summary Judgment or Judgment on the Pleadings.

The record closed on February 19, 2020.

FINDINGS OF FACT

1. The Complainant in this matter is Benjamin Lindenbaum, who was a customer of Respondent in Abington, Pennsylvania. (Complaint, Exhibit A, Exhibit B).
2. The Respondent in this matter is Verizon Pennsylvania LLC.
3. The Complainant filed this Complaint on May 20, 2019. (Complaint).
4. On October 15, 2014, the Complainant's account with Verizon was closed and a final bill of \$962.15 was issued to the Complainant. (Exhibit A, Exhibit B).
5. All Verizon services provided to the Complainant were disconnected on October 15, 2014. (Exhibit A).
6. On November 5, 2016, Verizon sold the debt of Mr. Lindenbaum to the collection agency Debt Recovery Solutions. (Exhibit A, Complaint).
7. Verizon is not seeking to collect a debt from the Complainant.
8. National Recovery Agency is seeking to collect the amount at issue from Mr. Lindenbaum. (Complaint).

DISCUSSION

Motions for summary judgment and judgment on the pleadings are governed by Section 5.102 of the Commission's regulations, 52 Pa. Code § 5.102. Judgment on the pleadings is available when the pleadings show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should only be granted when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must take the view of the evidence most

favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Starling v. Lake Meade Prop. Owners Ass'n*, 640 Pa. 126, 162 A.3d 327 (2017); *See, Patora v. UGI Penn Natural Gas, Inc.* Docket Number C-2018-3003458 (Order entered August 8, 2019) (*Patora*) citing *Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Super. 225, 231, 464 A.2d 1313, 1316 (1983).

Verizon bears the burden of demonstrating clearly that there is no genuine issue of material fact. *See Patora, supra.; Pass v. Palmiero Auto. of Butler, Inc.*, 2020 Pa. Super. LEXIS 110, 2020 PA Super 32 (2020). The provisions at 52 Pa.Code § 5.102 serve judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989). The Complainant did not respond to Verizon's motion; therefore, the facts presented by Verizon are not disputed.

This matter will be treated as a Motion for Summary Judgment, given the Declaration filed by Verizon along with its Motion.¹ The Commission does not have jurisdiction over this matter for two reasons, discussed below.

First, the amount at issue is based on bills issued and services rendered more than three years prior to the filing of the Complainant. The Code provides:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314. The debt at issue is based on a bill issued on October 15, 2014 and for services rendered prior to that date. (FOF 2 and FOF 3). As the Complaint was filed on May 20,

¹ 52 Pa. Code § 5.102 (c) provides: *Motion for summary judgment*. A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

2019, for the Commission to have jurisdiction over the underlying debt it would have had to have arisen on or after May 23, 2016. Therefore, any recovery is precluded by § 3314.

Second, the Commission also does not have jurisdiction over this matter because, as a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (Code). 66 Pa.C.S. § 101 *et seq.* The Commission's jurisdiction arises from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1967). Nothing in 66 Pa.C.S. § 101 *et seq.* suggests that the Commission has jurisdiction over this matter.

Verizon is not seeking to collect any amount from the Complainant. Mr. Lindenbaum states in the Complaint that National Recovery Agency is seeking to collect on the debt. (FOF 6). The Complainant does not owe the amount at issue to Verizon. The final bill issued to the Complainant by Verizon was \$962.15. (FOF 2). This outstanding debt was sold to Debt Recovery Solutions on November 5, 2016. (FOF 4). The Commission does not have jurisdiction over the controversy between the collection agency and the Complainant. *Evan Richards v. PECO Energy Company*, Docket Number C-20077724 (Order and Opinion April 16, 2009). The debt at issue is a matter between the Complainant and a debt collection agency.²

The Motion for Summary Judgment will be granted and the Complaint will be dismissed.

² Although the Commission retains authority to determine whether a utility's action to finalize a customer's bill and refer it for collection is reasonable, that is not the issue presented in this matter. *See Davis v. Columbia Gas of Pa.*, Docket No. F-00165721 (Order entered September 17, 1993). Additionally, as discussed *supra.*, the bills at issue are beyond the statute of limitation for consideration.

CONCLUSIONS OF LAW

1. Summary Judgment is available in this matter because it is clear from doubt that the pleadings show that there is no genuine issue of material fact and that Verizon is entitled to judgment as a matter of law. 52 Pa. Code § 5.102.

2. The Complainant, the non-moving party, has not alleged facts showing that an issue for hearing exists. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

3. Relief is not available to the Complainant because the claim arose more than three years prior to the date the Complaint was filed; therefore, it is beyond the statute of limitations. 66 Pa.C.S. § 3314.

4. The Commission does not have jurisdiction over debt collection efforts by a debt collection agency. *Evan Richards v. PECO Energy Company*, Docket Number C-20077724 (Order and Opinion April 16, 2009).

5. Verizon has met its burden of demonstrating clearly that there is no genuine issue of material fact. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Verizon Pennsylvania LLC's Motion for Summary Judgment is granted.

