

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Evelyn Rhoads	:	
	:	
v.	:	C-2019-3014863
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision sustains the Philadelphia Gas Works' Preliminary Objections and dismisses the Complaint for lack of jurisdiction over damages claims.

HISTORY OF THE PROCEEDINGS

Complainant Evelyn Rhoads filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW) on December 6, 2019. In the Complaint, Ms. Rhoads is seeking reimbursement for loses and damages that she alleges occurred when a Philadelphia contractor installed a gas main for PGW.

PGW filed an Answer and New Matter on December 31, 2019, denying all material allegations. The company also stated that PGW's Risk Management referred Complainant's claim to Danella Companies, Inc., the contractor that replaced the gas main. As New Matter, PGW averred that the Commission does not have jurisdiction over damages claims.

Also on December 31, 2019, PGW filed Preliminary Objections seeking to dismiss this matter for lack of jurisdiction of the Commission and lack of standing of the Complainant. The Preliminary Objections were referred to the undersigned on February 4, 2020. To date the Complainant has not responded to the New Mater or Preliminary Objections.

This matter is ready for a decision.

FINDINGS OF FACT.

1. The Complainant, Evelyn Rhoads, is a PGW customer at 1517 East Montgomery Avenue in Philadelphia, Pennsylvania.
2. PGW is a Commission jurisdictional public utility.
3. Danella Companies, Inc., under a PGW contract, installed a gas main in the 1500 block of East Montgomery Avenue in Philadelphia, Pennsylvania.
4. The Complainant is seeking reimbursement for damages she alleges were caused by the work of Danella Companies, Inc.

DISCUSSION

Section 5.101 of Commission regulations, 52 Pa.Code § 5.101, sets forth the grounds for granting preliminary objections. That section provides as follows:

§ 5.101. Preliminary objections.

- (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa.Code § 5.101(a). Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979).

The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pa.*, 507 Pa. 360, 490 A.2d 402 (1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa.Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't. of Auditor General v. State Employees' Retirement System*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

PGW asserts that the Commission does not have jurisdiction over damages claims pursuant to 52 Pa. Code § 5.101(a)(1). The law supports the position of PGW.

It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978). The Commission cannot award the reimbursement sought by the Complainant here. *See Morrow v. Bell Telephone Co. of Pa.*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991). This is not a determination of the merits. A request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas. Therefore, the Complaint will be dismissed for lack of jurisdiction. *See Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A. 2d 744 (Pa. Cmwlth. 1995).

The relief sought by PGW is dismissal. Given that the Commission does not have jurisdiction over damages claims, granting dismissal is free from doubt and the PGW Preliminary Objections will be sustained.

CONCLUSIONS OF LAW

1. The Commission's Regulations permit the filing of preliminary objections. 52 Pa. Code § 5.101.
2. Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979).
3. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth*, 507 Pa. 360, 490 A.2d 402 (1985).

4. The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa.Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't. of Auditor General v. State Employees' Retirement System*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

5. The Commission must act within and cannot exceed its jurisdiction. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

6. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

7. The Commission does not have jurisdiction over damages claims, thus granting dismissal of the Complaint is free from doubt and the PGW Preliminary Objections will be sustained.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of Philadelphia Gas Works at Docket Number C-2019-3014863 are sustained.

2. That the formal complaint filed by Evelyn Rhoads against Philadelphia Gas Works at Docket Number C-2019-3014863 is dismissed.

