

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Olivet Baptist Church	:	
	:	
v.	:	C-2019-3013681
	:	
Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision grants Respondent’s Motion to Dismiss and dismisses the Complaint filed in this matter due to Complainant’s failure to cause counsel to enter his or her appearance, as ordered by the undersigned.

HISTORY OF THE PROCEEDING

On October 18, 2019, Olivet Baptist Church (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Pittsburgh Water and Sewer Authority (Respondent, PWSA or Company) regarding its water service at 2312 Center Avenue, Pittsburgh, PA (service location). The Complaint was signed by Rev. Tyrone Munson, who identified himself as “Pastor” on the Complaint. Complainant alleged the Company was threatening to terminate its service and, as relief, it requested a payment arrangement (PAR).

On November 12, 2019, Respondent filed an Answer and New Matter. Respondent admitted it provides non-residential utility service to Complainant and that it

threatened to terminate its service due to nonpayment. It denied the remaining material averments in the Complaint. In its New Matter, Respondent averred that Complainant was a non-profit organization and was required to be represented by counsel pursuant to the Commission's rules. Complainant did not respond to the New Matter.

By Notice issued July 6, 2020, the Commission scheduled this matter for a telephonic hearing on August 19, 2020, at 10:00 a.m. The Notice advised the Parties they were responsible for calling into the conference at the scheduled date and time. The Notice reads, "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Presiding Officer.**" (emphasis in original). The Notice also provides, "*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original). The Notice included the toll-free bridge number, the PIN number, and instructions on how to call into the conference bridge.

A Prehearing Order was also issued on July 6, 2020, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation, and the Commission's policy encouraging settlements. The Prehearing Order provides, "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). The Prehearing Order also included the toll-free bridge number, the PIN number, and instructions on how to call into the conference bridge.

The Notice and Prehearing Order were sent via email to Complainant at the email address listed on the Complaint.¹

The undersigned called into the conference bridge for the hearing on August 19, 2020, at approximately 10:00 a.m. Respondent's counsel, Carl Shultz, Esq., and a witness were on the conference bridge. Complainant was not on the conference bridge. In order to give

¹ See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order Entered March 20, 2020), which provides that service of all documents during the COVID-19 pandemic shall be made electronically.

Complainant an opportunity to participate in the hearing, the undersigned waited until approximately 10:05 a.m. to convene the hearing. The undersigned convened the hearing in Complainant's absence. Respondent's counsel advised his co-counsel had spoken to Rev. Munson a week or two prior to the hearing and Rev. Munson indicated to her that he was aware of the date and time of the hearing.

Respondent did not offer any testimony or evidence, but rather made a Motion to Dismiss the Complaint (Motion to Dismiss). The undersigned informed counsel that the Motion to Dismiss would be taken under advisement and adjourned the hearing at approximately 10:10 a.m.

At approximately 12:18 p.m., on August 19, 2020, Rev. Munson called the undersigned's office and left a voicemail message. Despite the instructions on the Notice and Prehearing Order indicating that he was responsible for calling into the hearing and no one would call him for the hearing, he advised that he was expecting someone to call him for the hearing and he never received a call. He requested that the hearing be rescheduled.

On August 19, 2020, an Interim Order was entered holding Respondent's Motion to Dismiss in abeyance and ordering Complainant to cause counsel to enter his or her appearance by September 2, 2020. The Order explained, "**If Complainant fails to cause its counsel to enter his or her appearance in accordance with the Commission's rules by September 2, 2020, the Complaint will be dismissed and Complaint's request to reschedule the hearing will be denied.**" (emphasis in original). The Order advised that any notice of appearance must be e-filed with the Commission's Secretary's Bureau.

No notice of appearance was entered on Complainant's behalf, and the record was closed by Interim Order entered September 9, 2020.

FINDINGS OF FACT

1. Complainant in this case is Olivet Baptist Church.

2. Respondent in this case is Pittsburgh Water and Sewer Authority, a jurisdictional public utility.

3. The service address is 2312 Center Avenue, Pittsburgh, PA.

4. On October 18, 2020, Complainant filed a Complaint with the Commission against Respondent.

5. The Complaint was signed by Rev. Tyrone Munson, who identified himself as “Pastor” on the Complaint.

6. By Notice dated July 6, 2020, the Commission scheduled this matter for an initial telephonic hearing on August 19, 2020, at 10:00 a.m.

7. On July 6, 2020, a Prehearing Order was issued.

8. The Notice and Prehearing Order were sent by email to Complainant at the email address listed on the Complaint.

9. The July 6, 2020 Notice and Prehearing Order advised the parties they must call into the hearing on the scheduled date and time using the toll-free bridge number and PIN number; the Administrative Law Judge would not call them for the August 19, 2020 hearing; and they may lose their case if they did not call into the August 19, 2020 hearing.

10. Complainant did not call into the conference bridge to participate in the hearing on August 19, 2020.

11. At approximately 12:18 p.m. on August 19, 2020, Rev. Munson called the undersigned’s office and left a voicemail message, advising he had been waiting for a call for the hearing and requesting that the hearing be rescheduled.

12. On August 19, 2020, an Interim Order was entered holding Respondent's Motion to Dismiss in abeyance and ordering Complainant to cause counsel to enter his or her appearance by September 2, 2020.

13. The August 19, 2020 Order explained, "**If Complainant fails to cause its counsel to enter his or her appearance in accordance with the Commission's rules by September 2, 2020, the Complaint will be dismissed and Complainant's request to reschedule the hearing will be denied.**" (emphasis in original).

14. No entry of appearance has been entered on Complainant's behalf.

DISCUSSION

The Commission rules require that all non-individuals be represented by counsel in adversarial proceedings.² Once the answer is filed, the proceeding becomes adversarial.³ This rule is consistent with the Pennsylvania Bar Rules promulgated by the Supreme Court.⁴ The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.⁵

The Complaint clearly identifies Olivet Baptist Church as the Complainant and Mr. Munson as its Pastor. In its New Matter, Respondent averred it provides non-residential service to the service location and the account holder is Olivet Baptist Church, which is

² 52 Pa.Code § 1.21. *See also, Cars R Us v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered February 4, 2010); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered February 2, 2010).

³ *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009) (*New Fizon Catering*); *see also*, 52 Pa.Code § 1.8.

⁴ *See New Fizon Catering*, at 7-8.

⁵ *Adventure Alley CLC, LLC v. PECO Energy Co. and Great American Power*, Docket No. C-2014-2430850 (Final Order entered November 25, 2014)(*citing McCain v. Curione, Pa. Board of Probation and Parole*, 527 A.2d 591 (Pa.Cmwlth.1987)) (Commonwealth Court was without jurisdiction to consider arguments and motions made on behalf of parolee in a civil action that was filed by another prisoner who was not licensed to practice law).

registered as a non-profit corporation. Under the Commission's rules, Complainant must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *pro hac vice*.

When Complainant failed to appear at the hearing, Respondent's counsel made a motion to dismiss. When Complainant subsequently contacted the undersigned's office and requested that the hearing be rescheduled, the undersigned issued an Interim Order advising that Respondent's Motion to Dismiss would be held in abeyance and that the hearing would be rescheduled as long as Complainant caused counsel to enter his or her appearance, as required by the Commission's rules. The Order cautioned, "**If Complainant fails to cause its counsel to enter his or her appearance in accordance with the Commission's rules by September 2, 2020, the Complaint will be dismissed and Complaint's request to reschedule the hearing will be denied.**" (emphasis in original).

The August 19, 2020 Order was sent to the email address listed for Complainant on the Complaint. As noted above, this Order was emailed to Complainant pursuant to the Commission's *Emergency Order re Suspension of Regulatory Deadlines, Modification to Filing and Service Requirements* which provides that service of all documents during the COVID-19 pandemic shall be made electronically.⁶ Therefore, it must be presumed that Complainant received the August 19, 2020 Order.⁷

Complainant was ordered to cause counsel to enter his or her appearance by September 2, 2020. No appearance has been entered on Complainant's behalf, and Complainant did not respond to the August 19, 2020 Order or otherwise dispute that it is required to obtain counsel pursuant to the Commission's rules.

⁶ *Supra*. The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. Although the Commission has limited access to U.S. postal mail, the Commission has continued working remotely and has access to voicemail.

⁷ *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

In *New Fizon Catering* the Commission denied exceptions to an initial decision where a complaint was dismissed because the corporate complainant failed to secure the representation of an attorney. The complainant in *New Fizon Catering* had been provided an opportunity to secure appropriate representation. In dismissing the complaint in *New Fizon Catering*, the Commission held that the failure to secure representation in an adversarial proceeding was not merely a technical error.

In this case, Complainant was given an opportunity to obtain counsel and was ordered to do so by the undersigned. The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter.⁸

Like the complaint in *New Fizon Catering*, the Formal Complaint in the instant matter must be dismissed. Therefore, consistent with the August 19, 2020 Order, Complainant's request to reschedule the hearing is denied. Although Respondent's Motion to Dismiss was based on Complainant's lack of prosecution, it is appropriate to dismiss the Complaint for Complainant's failure to obtain counsel as directed by the August 20, 2020 Interim Order. Therefore, Respondent's Motion to Dismiss is granted, albeit on different grounds, and the Complaint is dismissed.

CONCLUSIONS OF LAW

1. A business entity must have counsel in order to proceed in any legal action because such an entity may not represent itself. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Cars R Us v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered February 4, 2010); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered February 2, 2010).

⁸ *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

2. The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. *Adventure Alley CLC, LLC v. PECO Energy Co. and Great American Power*, Docket No. C-2014-2430850 (Final Order entered November 25, 2014)(citing *McCain v. Curione, Pa. Board of Probation and Parole*, 527 A.2d 591 (Pa.Cmwlt. 1987)).

3. Parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pittsburgh Water and Sewer Authority to dismiss the Complaint of Olivet Baptist Church at Docket No. C-2019-3013681 is granted.

2. That the Complaint of Olivet Baptist Church against Pittsburgh Water and Sewer Authority at Docket No. C-2019-3013681 is dismissed without prejudice.

3. That the Secretary's Bureau shall mark Docket No C-2019-3013681 as closed.

Date: September 22, 2020

_____/s/
Emily I. DeVoe
Administrative Law Judge