

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Key Recycling, LLC	:	
	:	
v.	:	C-2020-3021125
	:	
Recleim, LLC	:	

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

Conservation Service Provider (CSP) Recleim, LLC (Recleim) failed to file an Answer to the Complaint of CSP Key Recycling, LLC (Key Recycling) which seeks an investigation and audit of Recleim. Key Recycling has filed a Motion for Default Judgment pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103.

This decision grants the Motion, in part, and denies it, in part. Key Recycling’s breach of contract claims are dismissed. Recleim did not file an Answer and therefore the allegations that raise questions regarding Recleim’s fitness to retain its registration as a CSP are deemed admitted. The registration of Recleim as a CSP is revoked. Recleim may submit a new application to seek reinstatement as a CSP.

**HISTORY OF THE PROCEEDING**

On July 31, 2020, Key Recycling, LLC (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Recleim, LLC. The allegations

arise pertaining to Chapter 28 of the Public Utility Code, Restructuring of Electric Utility Industry, Energy Efficiency and Conservation program, 66 Pa. Code §§ 2806.1 and 2806.2. The Complaint alleges improprieties under the Act 129 Phase III appliance recycling programs of two Electric Distribution Companies (EDCs), without the consent of the EDCs, and seeks a Commission audit and investigation of payments and correction of improprieties. The Complaint also suggests that there has been breach of contract.

This action is brought pursuant to 66 Pa. Code § 701. The Complainant avers that it has standing because it has been harmed by the improprieties alleged and, as an incidental third-party beneficiary of contracts between EDCs and their CSPs, will benefit from the Commission's corrective actions. Key Recycling is a CSP whose registration was renewed by the Commission on June 8, 2020, at Docket Number A-2016-2539561.

On August 3, 2020, the Secretary of the Commission eServed the Complaint on Recleim, along with a Notice advising that it must file an Answer within twenty (20) days of service of the Complaint. The Notice also advised Recleim that if it failed to answer the Complaint, "the claims against you may be deemed admitted, the case may go forward, and a penalty may be entered against you by the Commission without further notice." Service on Recleim was made on Jon Stephen Bush, an officer of Recleim.<sup>1</sup>

Recleim's answer to the Complaint was due on August 24, 2020. Recleim did not file an Answer to the Complaint by the August 24, 2020 due date.

On October 5, 2020, the Legal Division Supervisor of the Commission's Office of Administrative Law Judge (OALJ) emailed Mr. Bush, copying counsel for Complainant, "to inquire about the status of Recleim, LLC's answer to [Key Recycling's] Complaint," noting that, according to the PUC's case docketing system, Mr. Bush, on behalf of Recleim, was successfully

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<sup>1</sup> Mr. Bush was identified by Complainant as the Chief Executive Officer of Recleim and a principal of Peachtree Investment Solutions, LLC, a principal of Recleim and its related companies. See, Motion for Default Judgment ¶ 6.

eServed a copy of the Complaint and neither an answer nor a request for an extension to file an answer had been filed.<sup>2</sup>

On October 8, 2020, Mr. Bush responded to OALJ's email by stating, *inter alia*, "Recleim LLC needed to engage PA counsel. We have done so and will have them respond as quickly as possible."<sup>3</sup>

On January 21, 2021, a Hearing Notice was issued setting a hearing in this matter for March 25, 2021.

A Prehearing Order was issued on January 25, 2021, again notifying Recleim of the hearing date and that it must be represented by counsel.

On January 25, 2021, the Complainant filed a Motion for Default Judgment (Motion). A response was due within twenty (20) days of service. 52 Pa. Code § 5.61(a)(1).

The record closed on February 15, 2021, the date the Respondent's answer to the Motion was due.<sup>4</sup> To date, the Respondent has not filed an answer to either the Complaint or the Motion. Further, the Commission's case docketing system shows no entry of appearance by legal counsel representing Recleim or any responsive correspondence or pleading to Key Recycling's Complaint. For the reasons stated below, the Respondent's Motion will be granted, in part.

#### FINDINGS OF FACT

1. The Complainant in this case is Key Recycling, LLC.

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<sup>2</sup> Motion for Default Judgment, ¶ 9.

<sup>3</sup> Motion for Default Judgment, ¶ 9.

<sup>4</sup> The March 25, 2021 hearing date was cancelled.

2. The Respondent is Recleim, LLC.
3. Key Recycling, LLC is a Conservation Service Provider (CSP) whose Commission registration was renewed by the Commission at Docket No. A-2016-2539561.
4. Recleim, LLC is a CSP whose registration was most recently renewed by the Commission at Docket No. A-2016-2525783 on March 2, 2020.
5. CLEAResult Consulting, Inc. is a registered CSP at Docket No. A-2009-2091497.
6. Since June of 2016, the Complainant has performed the used appliance collection, data entry, and transportation functions as a subcontractor for Recleim which contracted with CLEAResult Consulting, Inc.
7. On July 31, 2020, Key Recycling filed a Complaint against Recleim, LLC.
8. On August 3, 2020, the Commission's Secretary eServed Recleim a copy of the Complaint and a Notice that an Answer must be filed within 20 days of service of the Complaint.
9. The August 3, 2020, Notice stated that if Recleim failed to answer the Complaint, "the claims against you may be deemed admitted, the case may go forward, and a penalty may be entered against you by the Commission without further notice."
10. Recleim never filed an Answer to the Complaint.
11. On October 5, 2020, Recleim was contacted as a courtesy via email by OALJ staff, copying Complainant, regarding the status of Recleim's Answer.

12. On October 8, 2020, Recleim responded to OALJ staff stating that the company was seeking counsel.

13. On January 21, 2021, a Hearing Notice was issued setting a hearing in this matter for March 25, 2021.

14. A Prehearing Order was issued on January 25, 2021, again notifying Recleim of the hearing date and that it must be represented by counsel.

15. On January 25, 2021, a Motion for Default Judgment was filed by the Complainant.

16. No counsel has entered an appearance on behalf of Recleim.

17. Recleim has not filed a response to the Motion for Default Judgment.

18. The facts set forth in the Complaint are deemed admitted.

19. Recleim no longer meets the financial or technical fitness requirements of certification as a CSP. Complaint ¶¶ 18, 28, 30.

### DISCUSSION

The Complainant in this case has filed a Motion for Default Judgment, pursuant to 52 Pa.Code § 5.103. The Complainant is seeking as relief that the Commission:

- a. Begins an investigation and audit of Recleim's receipt and disposition of payments for its services under its contracts with CLEAResult and UGI Electric, including Recleim's obligations under its subcontract with Key Recycling, to ensure that Act 129 Phase III is functioning as intended and that no fraud or abuse has occurred or is occurring.

- b. If appropriate, suspends Recleim's CSP registration and orders Recleim to take such actions as are required to ensure that Act 129 Phase III is functioning as intended and that no fraud or abuse has occurred or is occurring, including requiring Recleim to make full and prompt payment of amounts due and owing to all of Recleim's subcontractors and vendors for their work performed in furtherance of PPL's and UGI Electric's EE&C Plans;
- c. Revokes Recleim's CSP registration if Recleim fails to comply with the Commission's order(s).
- d. Grants such other relief it deems appropriate.

Motion for Default Judgment at 4-5; *also see* Complaint at 10.

Recleim has not filed an Answer. Pursuant to 52 Pa.Code § 5.61(c), a respondent who fails to file an answer to a complaint within twenty days may be deemed to be in default and the facts set forth in the complaint may be deemed admitted. The authority of the Commission to sustain complaints not answered within twenty days has been upheld by the Commonwealth Court of Pennsylvania. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

The record shows that Recleim was served a copy of the Complaint with a Notice to Plead, that the Secretary served Recleim a Notice to file an Answer which advised that absent an Answer, the matter could proceed, and the claims against it may be deemed admitted without further notice. The record also shows that Recleim is aware of this action. This is evidenced by an email from the Chief Executive Office of Recleim responding to a courtesy email from OALJ staff inquiring about the status of its overdue response to the Complaint. Also, Recleim was sent a Hearing Notice and a Prehearing Order. Neither was returned as undeliverable.

All documents were eServed on Recleim. Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

The Motion for Default indicates that on January 25, 2021, Recleim was sent a copy of the Motion with a Notice to Plead, which stated that a written response to the motion must be filed within twenty days of the service of the motion. To date, Recleim has not filed a response to the Motion or an Answer to the Complaint. Therefore, the pleadings of the Complainant are deemed admitted pursuant to Section 5.61(c) of the Commission's regulations. 52 Pa.Code § 5.61(c).

This matter arises under Act 129 of 2008, P.L. 1592 (Act 129), which requires an EDC to include one or more CSPs in its Energy Efficiency and Conservation Plan (EE&C Plan) for implementation purposes. 66 Pa.C.S. § 2806.1(b)(1)(i)(E). Section 2806.2 of Act 129 requires the Commission to establish a CSP registry of persons and entities that meet experience and other qualifications determined by the Commission. 66 Pa.C.S. § 2806.2. Act 129 establishes a requirement for the participation of CSPs in all or part of an EDC EE&C Plan. 66 Pa.C.S.A. § 2806.1(a)(10). The Act requires the Commission to establish a registry of approved CSPs, and develop an application to determine whether minimum requirements set by the Commission are met. 66 Pa.C.S.A. § 2806.2.

The Commission requires that adequate provisions and procedures be in place for monitoring quality assurance, auditing, and verification relating to interactions by CSPs with customers. The Act also requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC EE&C Plan and the program as a whole. *See* 66 Pa. C.S. § 2806.1(a)(2). *See A Phase IV Final Implementation Order*, Docket No. M-2020-3015228 (Final Order entered June 18, 2020) at 99, 116.

Only registered CSPs may advise an EDC and/or provide consultation, design, or administration or management services to an EDC related to the implementation of the EDC's EE&C Plan. Key Recycling, LLC is a CSP whose Commission registration was renewed by the Commission at Docket No. A-2016-2539561 on June 8, 2020.

Recleim is a CSP whose registration was renewed by the Commission at Docket No. A-2016-2525783 on March 2, 2020. The CSP renewal application dated February 4, 2020, states that Recleim will “perform[s] appliance haul away and destruction services as part of [UGI and Ecova “for PPL”] Energy Efficiency Program.” According to the Complainant, “Recleim performs the “destruction” of the used appliances that Recleim (as Recleim’s subcontractor) collects, records, and transports to Recleim’s de-manufacturing and recycling facility in Philadelphia which, like Recleim’s similar facilities in Graniteville, SC, and Lima, OH, has multi-million-dollar self-contained recycling machinery.” Complaint at ¶ 11.

Since June of 2016, the Complainant has performed the used appliance collection, data entry, and transportation functions as a subcontractor for Recleim, which contracted with CLEAResult Consulting, Inc. (CLEAResult), a registered CSP at Docket No. A-2009-2091497, and acted as a program manager for the appliance recycling programs in the EE&C Plan of PPL Electric Utilities Corporation (PPL), and which also contracted directly with UGI Utilities, Inc. – Electric Division (UGI Electric) to perform appliance recycling for its voluntary Phase III EE&C Plan. Complaint at ¶7.

On June 8, 2020, the Recleim Application to Renew Registration as a Conservation Service Provider was approved and renewed with an expiration date of April 27, 2022. (June 8, 2020, Secretarial letter, A-2016-253561). The registration was renewed because “[u]pon review, it appears that the applicant continues to meet the Pennsylvania Public Utility Commission’s minimum qualifications to provide consultation, design, administration, management or advisory services to an EDC regarding energy efficiency and conservation plans required under Act 129 of 2008, P.L. 1592.” “A CSP must have the requisite ‘technical fitness and financial responsibility.’” *See Implementation of Act 129 of 2008 -- Registry of Conservation Service Providers*, Final Order (2013 and 2015 CSP Registry Orders) at Docket No. M-2008-2074154, entered on July 16, 2013 and May 8, 2015.

Whether Recleim maintains the financial fitness for registration as a CSP is raised in the Complaint. The Complainant states that in early 2018, Reclaim began missing payments in response to Key’s invoices and Recleim has not responded to inquiries or telephone calls. On

June 30, 2020, after a 30-day notice from the Complainant, the agreement with Key Recycling was terminated. Complaint ¶¶ 18, 28.

Also at issue in the Complaint is whether Recleim maintains the technical fitness for a CSP. As stated in the Complaint, “Recleim has hired truck drivers without adequate training to perform the unit collection, data gathering, and transportation functions formerly performed by Key Recycling. To the extent that unit data is being collected at all, it is inaccurate or purely fictional. Rather than being de-manufactured and their contents properly recycled, the units are being re-sold as is.” Complaint ¶ 30. Recleim has not filed an Answer denying these allegations and therefore they are deemed admitted.

These deemed admitted allegations support a finding that Recleim no longer maintains the fitness to serve as a CSP.

The Commission does not have jurisdiction over what are essentially breach of contract claims between private parties. *Pettko v. Pennsylvania-American Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012) (“[T]here can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims such as conversion and breach of contract involving private individuals and businesses. . . .”); *Adams v. Pa. Pub. Util. Comm’n*, 819 A.2d 631, 635 (Pa.Cmwlth. 2003) (“[T]he PUC lacks jurisdiction over private contractual disputes.”). Therefore, this decision does not address issues of reimbursement, outlays, and breach of contract. However, the Commission has regulatory authority over those entities granted authority to operate by the Commission, such as registered CSPs.

Recleim has had several opportunities to respond to the allegations in the Complaint and has chosen not to do so. Therefore, the allegations in the Complaint are deemed admitted. Given that the uncontested allegations in the Complaint raise serious questions regarding the financial and technical fitness of Recleim, the registration of Recleim as a CSP will be revoked. Reclaim may submit a new Application if its operators wish to be placed on the CSP registry. The breach of contract claims raised in the Complaint will be dismissed for lack of jurisdiction.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Recleim, LLC has failed to file an answer to the complaint within twenty days, is in default and the facts set forth in the complaint are deemed admitted. 52 Pa.Code § 5.61(c).

3. The Commission lacks jurisdiction over contract disputes. *Adams v. Pa. Pub. Util. Comm'n*, 819 A.2d 631, 635 (Pa.Cmwlth. 2003).

4. Act 129 of 2008, P.L. 1592 (Act 129), requires an EDC to include one or more CSPs in its Energy Efficiency and Conservation Plan (EE&C Plan) for implementation purposes and establishes a requirement for the participation of CSPs in all or part of an EDC EE&C Plan. 66 Pa.C.S. § 2806.1(b)(1)(i)(E); 66 Pa.C.S.A. § 2806.1(a)(10).

5. Section 2806.2 of Act 129 requires the Commission to establish a CSP registry of persons and entities that meet experience and other qualifications determined by the Commission. 66 Pa.C.S. § 2806.2.

6. A CSP must have the requisite ‘technical fitness and financial responsibility.’ *See Implementation of Act 129 of 2008 -- Registry of Conservation Service Providers*, Final Order (2013 and 2015 CSP Registry Orders) at Docket No. M-2008-2074154, entered on July 16, 2013 and May 8, 2015.

7. Given the allegations deemed admitted in this action, Recleim, LLC no longer has the requisite ‘technical fitness and financial responsibility’ required for registration as a CSP. *See Implementation of Act 129 of 2008 -- Registry of Conservation Service Providers*, Final Order (2013 and 2015 CSP Registry Orders) at Docket No. M-2008-2074154, entered on July 16, 2013 and May 8, 2015.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for default judgment filed by Key Recycling Services, LLC is granted, in part, and denied, in part.
2. That claims of breach of contract are denied and dismissed.
3. That the remaining claims are sustained.
4. That registration of Reclim, LLC as a Conservation Service Provider by the Commission is revoked.
5. That a copy of this Initial Decision be sent to the Bureau of Technical Utility Services.
6. That Reclim may submit a new Registration Application.
7. That upon final Order of the Commission, this matter be marked closed.

Date: May 10, 2021

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/s/  
Darlene Heep  
Administrative Law Judge