

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jordan Brody	:	
	:	
v.	:	C-2021-3023663
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the complaint of Jordan Brody at Docket No. C-2021-3023663 due to complainant’s failure to comply with the presiding officer’s order to have an attorney enter an appearance in this proceeding since the complaint concerns utility service for a property owned by a limited liability company.

HISTORY OF THE PROCEEDING

On January 11, 2021, Jordan Brody filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW), docket number C-2021-3023663. In his complaint, Mr. Brody averred that PGW damaged the water service line serving the property at 6332-R Cherokee Street, Philadelphia, PA 19144 (Service Address). Although Mr. Brody is the complainant, the complaint states that it is regarding utility service for a property owned by a limited liability company, Germantown Court, LLC and Mr. Brody identified himself as the owner of this company in his complaint.

Mr. Brody provided a detailed timeline of events pertaining to his complaint and requested reimbursement for costs totaling \$14,000 for damages allegedly caused by PGW.

On March 10, 2021, PGW filed an answer to Mr. Brody's complaint.¹ In its answer, PGW admitted or denied the various averments in the complaint. In particular, PGW denied it broke the water line at the Service Address but noted that it made a temporary repair to a gas leak in October 2019, and that the main was serviced and replaced in December 2019. PGW provided additional argument in support of its position and requested that the complaint be dismissed.

Also on March 10, 2021, PGW filed a preliminary objection and motion to strike in response to Mr. Brody's complaint.² In its preliminary objection, which was accompanied by a notice to plead, PGW argued that the Commission does not have authority to award damages and, therefore, Mr. Brody's request for damages is impertinent matter and should be stricken from the complaint.

Mr. Brody's answer to the preliminary objection was due no later than March 20, 2021. On March 12, 2021, a letter was filed to docket number C-2021-3023663 by Germantown Court, LLC, with what appears to be Mr. Brody's signature. The letter reiterated the circumstances outlined in Mr. Brody's complaint, as well as providing additional argument in support of his position.

On April 12, 2021, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for, May 5, 2021, at 10:00 a.m., and assigning me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on April 15, 2021, setting forth various rules that would govern that proceeding. On April 15, 2021, I also issued a separate order granting PGW's preliminary objection, striking the request

¹ Commission records indicate Mr. Brody's complaint was served on January 11, 2021. Although PGW's answer and any preliminary objections to Mr. Brody's complaint were due within 20 days of service of the complaint per 52 Pa. Code §§ 5.61(a), 5.101(d), PGW did not file its answer and preliminary objections until March 10, 2021. Nonetheless, an error or defect or procedure which does not affect the substantive rights of the parties may be disregarded. 52 Pa. Code § 1.2(a).

² See Note 1 *Supra*.

for monetary damages in Mr. Brody's complaint. However, I ordered the remaining issues raised in the complaint proceed to a hearing on May 5, 2021.

On April 28, 2021, one week before the hearing, I sent an e-mail to the parties, inquiring whether Mr. Brody had retained counsel for the hearing. The initial telephone hearing notice, as well as the prehearing order, instructed parties that, among other things, a corporation, i.e., Germantown Court, LLC, must be represented by an attorney. In response to my e-mail, Mr. Brody did not indicate that he had retained an attorney. On the morning of May 5, 2021, I received an e-mail from Anthony Young, an operations manager for Metropolitan Group, asking for a continuance to seek counsel. Mr. Brody and counsel for PGW were copied in the request. PGW did not object to the request for a continuance.³ Without objection, I informally granted the request for continuance via email and canceled the May 5, 2021 hearing. On May 5, 2021, I issued an order finding good cause existed to continue the May 5, 2021 hearing because, as a limited liability company, Germantown Court, LLC must be represented by an attorney. The May 5, 2021 order provided Mr. Brody 30 days from May 5 until June 4, 2021, to obtain counsel for Germantown Court, LLC and have counsel enter a notice of appearance in this proceeding.

To date there is no record of an attorney filing a notice of appearance on behalf of Germantown Court, LLC.

The record closed on June 4, 2021, the due date for an attorney to enter an appearance on behalf of Germantown Court, LLC.

FINDINGS OF FACT

1. The complainant is Jordan Brody.
2. The complaint regards utility service for a property owned by a limited liability company, Germantown Court, LLC.

³ Although not explained anywhere in the pleadings, an internet search shows Mr. Brody is President of Metropolitan Group, a real estate development company.

3. Jordan Brody is the owner of Germantown Court, LLC.

4. On January 11, 2021, Mr. Brody filed a complaint, averring that PGW damaged the water service line serving the property at 6332-R Cherokee Street, Philadelphia, PA 19144, and requesting reimbursement for costs totaling \$14,000 for damages allegedly caused by PGW.

5. On March 10, 2021, PGW filed both an answer to Mr. Brody's complaint and a preliminary objection and motion to strike in response to Mr. Brody's complaint.

6. By hearing notice dated April 12, 2021, an initial telephonic hearing was scheduled for May 5, 2021, at 10:00 a.m.

7. The April 12, 2021 hearing notice informed complainant of the following requirement:

If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

8. By prehearing order dated April 15, 2021, the complainant was informed of the following requirement:

If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented [by] an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Unless you are an attorney, you may not represent someone else.

9. On May 5, 2021, prior to the scheduled hearing, I received notice that Germantown Court, LLC had not yet retained counsel along with a request to continue the hearing so Germantown Court, LLC could retain counsel.

10. By order dated May 5, 2021, good cause was found to continue the May 5, 2021 hearing in this proceeding because the Commission requires Germantown Court, LLC to be represented by counsel.

11. By order dated May 5, 2021, Mr. Brody was provided 30 days from May 5, 2021 until June 4, 2021, to retain counsel and have counsel enter a notice of appearance in this proceeding.

12. To date, no attorney has entered an appearance on behalf of Germantown Court, LLC.

DISCUSSION

Although the complaint was filed by Mr. Brody individually, there is no dispute that the complaint concerns utility service to a property owned by a limited liability company, Germantown Court, LLC. Germantown Court, LLC is not represented by counsel in this proceeding. In an adversarial proceeding, Commission regulations require a limited liability company be represented by counsel. Specifically, the Commission's regulations at 52 Pa. Code §§ 1.21 - 1.24 provide in pertinent part:

§ 1.21. Appearance.

- (a) Individuals may represent themselves.
- (b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern)

§ 1.22. Appearance by attorney or certified legal intern.

- (a) Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.
- (b) An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.
- (c) A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may

appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

§ 1.23. Other representation prohibited at hearings.

(a) Persons may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance; and appearance by attorney or certified legal intern).

§ 1.24. Notice of appearance or withdrawal.

(b) *Attorneys.*

(1) *Appearance by initial pleading.* An attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in that proceeding.

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

- (A) The attorney's name, mailing address and electronic mailing address, if available.
- (B) Pennsylvania attorney identification number or, if not licensed in this Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.
- (C) Telephone number and telefacsimile number, if applicable.
- (D) The name and address of the person represented.

(ii) *Filing.*

(A) *Appearance.* The notice of appearance shall be served on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

The term “person” includes “...individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions.” 52 Pa. Code § 1.8(a). Under Commission regulations, the term “adversarial proceeding” is defined as “[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record.” *Id.*

Once the answer, preliminary objection, and motion to strike were filed, this became an adversarial proceeding. *Id.* Accordingly, Germantown Court, LLC, a limited liability company, is required to be represented by counsel. No attorney is listed on the complaint, nor has one entered an appearance to represent Germantown Court, LLC. Likewise, there is no basis to find that Mr. Brody satisfies Commission requirements to represent a limited liability company.

Additionally, Mr. Brody failed to comply with my May 5, 2021 order directing him to have counsel enter a notice of appearance in this proceeding within 30 days. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. *See, e.g., New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); *Treffinger v. PPL Elec. Utils. Corp.*, 2003 Pa. PUC LEXIS 3 (Pa. P.U.C. 2003).

Mr. Brody was informed of the requirement that Germantown Court, LLC must be represented by counsel by the hearing notice dated April 12, 2021, the prehearing order dated April 15, 2021, and the order dated May 5, 2021. The aforementioned hearing notice, prehearing order, and order were e-served on Mr. Brody. Notification of filings via electronic mail constitutes valid service of e-filed documents. *See, e.g., Messick v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3004260 (Opinion and Order entered June 18, 2020); *Potora v. Pa. Am. Water Co.*, Docket No. C-2017-2627873 (Opinion and Order entered August 8, 2019).

Accordingly, Mr. Brody was adequately notified that Germantown Court, LLC must obtain counsel to proceed with the complaint.

I provided Mr. Brody 30 days to have an attorney enter an appearance on behalf of Germantown Court, LLC in this proceeding. Mr. Brody has not contacted me regarding such representation, nor has an attorney filed a notice of appearance in this proceeding. Therefore, Mr. Brody failed to comply with my order. Consequently, no further hearing will be scheduled, and the complaint is dismissed.

CONCLUSIONS OF LAW

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

2. Notification of filings via electronic mail constitutes valid service of e-filed documents. *See, e.g., Messick v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3004260 (Opinion and Order entered June 18, 2020); *Potora v. Pa. Am. Water Co.*, Docket No. C-2017-2627873 (Opinion and Order entered August 8, 2019).

3. The Commission's regulations require corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa. Code §§ 1.8, 1.21-1.23.

4. This proceeding became an "adversarial proceeding" when the answer, preliminary objection, and motion to strike were filed. 52 Pa. Code § 1.8.

5. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. *See, e.g., New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v.*

