

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andre Williams	:	
	:	
v.	:	F-2021-3027675
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses a Formal Complaint due to the Complainant’s failure to appear at the hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On June 16, 2021, Andre Williams (Mr. Williams or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) seeking a payment arrangement and alleging that there were incorrect charges on his bill. The Complaint is a timely appeal of a determination made by the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3781349. The Complaint was served on PGW on August 5, 2021.

On September 10, 2021, PGW filed an Answer to the Complaint, denying Mr. Williams’ allegations of incorrect billing and asserting that Mr. Williams entered into a sixty-month payment arrangement on August 2, 2021. PGW requested that the Commission deny the Complaint.

On September 15, 2021, a Hearing Notice was served to the parties, scheduling this matter for a telephonic hearing on November 9, 2021 at 10:00 a.m. and assigning the case to me as presiding officer. A Prehearing Order containing the hearing date and procedural guidelines for the hearing was served to the parties on October 27, 2021. Both the Notice and Order warned the parties that they may lose their case if they failed to appear for the hearing. Both the Notice and Order were served to Mr. Williams by postal mail to the mailing address that Mr. Williams listed on his Formal Complaint, and neither document was returned to the Commission as being undeliverable by the postal authorities.

The hearing was held as scheduled on November 9, 2021. Mr. Williams was not present on the hearing line at 10:00 a.m. PGW was present, represented by Graciela Christlieb, Esquire. The start of the hearing was delayed to give Mr. Williams additional time to call in. The hearing began at 10:15 a.m. without Mr. Williams.

On the hearing record, Attorney Christlieb noted that she spoke with Mr. Williams shortly before the scheduled hearing date to discuss settlement options, but that the parties were unable to come to a settlement. Attorney Christlieb additionally noted that Mr. Williams informed her that he was in the hospital. Neither Mr. Williams, nor anyone on his behalf, contacted the Commission prior to the November 9, 2021, hearing to inform the presiding officer that Mr. Williams would be unable to participate in the hearing.

At the conclusion of the hearing, PGW made an oral Motion to Dismiss the Complaint for failure to prosecute. The hearing was adjourned without Mr. Williams having ever called in to participate. The record was not closed at the conclusion of the hearing.

On November 9, 2021, Interim Order # 1 was served to the parties. The Order gave Mr. Williams until November 23, 2021, to contact the Commission to explain why he missed the November 9, 2021, hearing and to request a further hearing, if desired.

On November 10, 2021, I received a phone call from an individual purporting to be Mr. Williams' mother who informed me that Mr. Williams did not call in to the hearing due to being in the

hospital and that he requests another hearing.¹ Ms. Williams indicated that her son would be out of the hospital shortly and would not be opposed to the further hearing being scheduled for late November. PGW did not object to scheduling this matter for a further hearing. Thereafter, Interim Order # 2 was served to the parties on November 12, 2021, informing the parties that a further hearing would be scheduled in this matter.²

On November 15, 2021, a Further Hearing Notice was served to the parties, scheduling this matter for a further telephonic hearing on November 30, 2021, at 10:00 a.m. The Notice warned the parties that they may lose their case if they failed to appear for the further hearing. The Notice was served to Mr. Williams by postal mail to the mailing address that Mr. Williams listed on his Formal Complaint and was not returned to the Commission as being undeliverable by the postal authorities.

The further hearing was held as scheduled on November 30, 2021. Mr. Williams was not present on the hearing line at 10:00 a.m. PGW was present, again represented by Attorney Christlieb. The hearing was delayed to 10:15 a.m. to give Mr. Williams additional time to call in. Mr. Williams did not call in to the hearing to participate; therefore, the hearing began at 10:15 a.m. without him. No witnesses were presented, and no evidence was introduced into the record.

At the conclusion of the further hearing, PGW made an oral Motion to Dismiss the Complaint with prejudice for failure to prosecute. PGW noted that dismissal of the Complaint with prejudice was requested due to concern on PGW's behalf that Mr. Williams was abusing the Commission's process to avoid payment on his gas bills. PGW was informed that the Motion would be taken under advisement. The hearing adjourned without Mr. Williams having ever called in to participate.

The record in this matter was closed at the conclusion of the further telephonic hearing. As of the date of this Initial Decision, I have not received any communication from Mr. Williams or anyone on his behalf explaining his absence from the further hearing. For the reasons discussed below,

¹ PGW was informed of this conversation through email to Attorney Christlieb.

² Interim Order # 2 additionally denied PGW's Motion to Dismiss the Complaint, orally made at the November 9, 2021 hearing.

PGW's Motion will be granted, and Mr. Williams' Complaint will be dismissed. However, dismissal of the Complaint will be without prejudice.

FINDINGS OF FACT

1. The Complainant is Andre Williams.
2. The Respondent is Philadelphia Gas Works.
3. By Further Hearing Notice served to the parties on November 15, 2021, this matter was scheduled for a further telephonic hearing on November 30, 2021, at 10:00 a.m.
4. The Further Hearing Notice warned the parties that they may lose their case if they failed to appear for the further hearing.
5. The Further Hearing Notice was served to Mr. Williams by postal mail to the mailing address that Mr. Williams listed on his Formal Complaint and was not returned to the Commission as being undeliverable by the postal authorities.
6. Mr. Williams did not appear for the November 30, 2021, further hearing.
7. The presiding officer has not received any communication from Mr. Williams, or anyone on his behalf, explaining why he did not participate in the November 30, 2021, further hearing.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. Id.

An initial telephonic hearing was held in this matter on November 9, 2021. Two documents, a Hearing Notice and a Prehearing Order, were mailed to the Complainant to his mailing address on listed on his Formal Complaint. Both documents contained the date and time of the hearing, as well as the method by which one could participate in the hearing. The November 9, 2021, hearing was held as scheduled, but the Complainant did not appear to prosecute his Complaint.

Following the hearing, I received a phone call from an individual purporting to be the Complainant's mother informing me that the Complainant missed the hearing because he was in the hospital, and that he requests another hearing. PGW did not object to holding a further hearing in this matter; therefore, this matter was scheduled for a further telephonic hearing on November 30, 2021, at 10:00 a.m. The date and time of the November 30, 2021, hearing was provided in a Further Hearing Notice served to the parties on November 15, 2021. The Further Hearing Notice was served to the Complainant by first-class mail, to the mailing address that the Complainant listed on his Formal Complaint form. The Further Hearing Notice was not returned to the Commission as being undeliverable by the postal authorities. Therefore, it is presumed that the Notice that was sent to the Complainant in the ordinary course of business was received by him. Berkowitz v. Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982). The Complainant had notice of the date and time of the scheduled further hearing, and did not contact the Commission to request a continuance of the further hearing date or to otherwise indicate that he could not appear at the further hearing.

Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984). In this matter, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. As notice and an opportunity to be heard were provided to the Complainant, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the

Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Phila. Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). By choosing not to participate in the hearing and proffer any evidence to support his Complaint, the Complainant failed to meet his burden of proof.

The due process rights of the Complainant have been protected. The Complainant had notice and opportunity to be heard. Therefore, the Respondent's Motion to Dismiss the Complaint will be granted. However, due to the unverified condition of the Complainant, dismissal of the Complaint will be without prejudice.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

4. Notice served to a party through postal mail in the ordinary course of business and not returned by the postal authorities is presumed to be received by that party. Berkowitz v. Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982).

5. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. The Complainant's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

7. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Motion to Dismiss the Complaint in the matter of Andre Williams v. Philadelphia Gas Works, Docket No. F-2021-3027675, is granted.

2. That Andre Williams' Complaint against Philadelphia Gas Works at Docket No. F-2021-3027675 is dismissed without prejudice.

3. That the docket at Docket No. F-2021-3027675 is marked closed.

Date: December 16, 2021

_____/s/
Alphonso Arnold III
Special Agent