

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stanley Jennings	:	
	:	C-2022-3032057
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This decision grants the Preliminary Objection of Philadelphia Gas Works and dismisses the Complaint because it was filed beyond the statute of limitations, divesting the Commission of jurisdiction over the matter.

HISTORY OF THE PROCEEDINGS

On April 21, 2022, Stanley Jennings, Complainant, filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works (“PGW”). The Complainant alleged that there are incorrect charges on his bill and that PGW is threatening to shut off his service. He disputed the outstanding balance, stating that it is not his bill.

Mr. Jennings further stated that the contested bill from Woodcrest Avenue, Philadelphia, Pennsylvania pertains to an address where he had rented a room for \$45 per month and that he never had gas service placed in his name. He also stated that he filed a police report

regarding a stolen ID. He also asserted that he accepted the past bill because he was forced to have the charges from Woodcrest Avenue placed on his balance when he began service at his new address on 61st Street in Philadelphia, Pennsylvania. As relief, Mr. Jennings would like the charges from Woodcrest removed from his bill.

On May 11, 2022, PGW filed an Answer and New Matter, denying all material allegations of the Complaint. PGW admitted that a shut-off notice was issued to the Complainant for the 61st Street address. PGW denied that the bills issued to the Complainant are incorrect and avers that the contested charges are for services provided to the Complainant on Woodcrest Avenue.

In New Matter, PGW stated that the Complainant established service on the Woodcrest Avenue address from December 30, 2011, to April 22, 2014 and that the Woodcrest Avenue service was terminated on April 22, 2014 for non-payment. PGW further averred that the Complainant had previously filed Complaints with the Commission regarding the Woodcrest Avenue charges. PGW stated that the Complainant filed an Informal Complaint with the Commission's Bureau of Consumer Services ("BCS") at Docket No. 3489274, wherein he disputed the balance from Woodcrest Avenue and that on March 13, 2017, BCS dismissed the Informal Complaint holding Complainant responsible for the balance. Additionally, PGW asserts, on June 5, 2017, Complainant filed a Formal Complaint at Docket No. C-2017- 2608025, wherein he disputed the charges from Woodcrest Avenue and that on December 6, 2017, Administrative Law Judge Christopher Pell issued an Initial Decision granting PGW's motion for a dismissal of the matter with prejudice for failure to prosecute. On February 8, 2018, the Commission entered a Final Order at Docket No. C-2017- 2608025, where the complaint was dismissed with prejudice and the matter was marked closed.

A Notice to Plead was attached to the Answer and New Matter, which advised Mr. Jennings that any answer to the New Matter must be filed within twenty days of service. The Complainant did not file a response to the New Matter.

Also on May 11, 2022, PGW filed a Preliminary Objection. In the Preliminary Objection, PGW asserts that the Complaint should be dismissed because the Commission lacks jurisdiction. Specifically, PGW contends that the Commission lacks jurisdiction to address any claims pertaining to charges between 2011 and 2014 because they are beyond the three-year statute of limitations set forth in 66 Pa.C.S. § 3314.

A Notice to Plead was attached to the Preliminary Objection, which advised Mr. Jennings that any answer to the Preliminary Objection must be filed within ten days of service. To date, the Complainant has not filed an answer.

On July 27, 2022, a hearing notice was issued scheduling a telephonic hearing for August 11, 2022. A Prehearing Order was also issued on July 27, 2022. On August 3, 2022, the hearing was cancelled pending consideration of the instant Preliminary Objection.

FINDINGS OF FACT

1. The Complainant is Stanley Jennings.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant filed a Complaint on April 21, 2022, seeking relief from PGW charges accrued while he resided on Woodcrest Avenue in Philadelphia, Pennsylvania. Complaint ¶¶ 4-5.
4. The charges that the Complainant contests in the April 21, 2022, Complaint were accrued December 30, 2011 to April 22, 2014, when he lived on Woodcrest Avenue. Complaint ¶¶ 4-5; Credit Denial Letter Attachment; New Matter ¶¶ 8-10, 12-13, 18.

DISCUSSION

The grounds for granting Preliminary Objections are found in Section 52 Pa. Code § 5.101(a). It states in pertinent part:

§ 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).

A preliminary objection will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 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. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 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. *Pa. Dep't of Auditor General v. State Emps.' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

The Commission must view the Complaint in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); *see also, Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps.' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlt. 1997).

Therefore, a preliminary objection can be granted only if recovery or relief is not possible after the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted. *Id.* Commission Regulations provide that failure to file a timely reply to New Matter may be deemed in default, and relevant facts stated in the New Matter may be deemed to be admitted. 52 Pa. Code § 5.63(b); *Jones v. Phila. Gas Works*, Docket Number C-2019-3007984 (Order and Opinion entered July 16, 2020).

Mr. Jennings is challenging the charges that he accrued when he lived on Woodcrest Avenue and is seeking as relief that PGW remove these charges from his bill. PGW avers that the claims should be dismissed as beyond the jurisdiction of the Commission due to the statute of limitations.

PGW seeks to dismiss this matter under 52 Pa. Code § 5.101(a)(1), asserting that the Commission lacks jurisdiction to hear the Complaint because the Complaint was filed after the statute of limitations had passed. The statute of limitations at 66 Pa.C.S. § 3314 is a jurisdictional issue, PGW asserts, and the statute requires that any complaint seeking relief under the Public Utility Code be brought within three years from the date at which the liability therefor arose. In the Complaint, PGW notes, the Complainant seeks relief from a balance accrued at Woodcrest Avenue. *See* Complaint at ¶ 5. Because the Complainant had service in his name at

Woodcrest Avenue from December 30, 2011 to April 22, 2014, PGW argues, any cause of action regarding these charges is outside the three-year statute of limitations.

In ruling on a preliminary objection, the Commission may rely on all well-pleaded, material facts of the nonmoving party, as well as every inference fairly deducible from those facts. *Cnty. of Allegheny*. Additionally, only those facts specifically admitted may be considered against the non-moving party. *Ridge*.

The Complainant did not file an answer to the New Matter and therefore facts asserted therein by PGW - that the Woodcrest Avenue charges were incurred from December 30, 2011 to April 22, 2014 - are deemed admitted. Additionally, Complainant states in the instant Complaint that he is contesting charges that accrued when he resided on Woodcrest Avenue and he attached to the Complaint a PGW Credit Denial Letter showing that the Woodcrest Avenue charges were accrued December 30, 2011 to April 22, 2014.

The liability for the Woodcrest Avenue charges arose more than three years before he filed the instant complaint and therefore any claims pertaining to those charges are barred by the three-year statute of limitations of 66 Pa.C.S. § 3314. Consequently, the claims are no longer within the jurisdiction of the Commission. *See Collins v Pa.-Am. Water Co.*, Docket No. F-2017-2628770 (Opinion and Order entered Aug. 29, 2019) at 17-18; *Pearson v. Duquesne Light Co.*, Docket No. C-2015-2465168 (Initial Decision and Order entered May 28, 2015, Final Order entered July 7, 2015) at 10-12.

The Complainant would not be able to overcome the statute of limitations bar to his claims should the matter go to hearing, Therefore, the PGW Preliminary Objection will be sustained, and the Complaint dismissed.

ORDER

THEREFORE

IT IS ORDERED

1. That the Preliminary Objection of Philadelphia Gas Works filed in Stanley Jennings v. Philadelphia Gas Works, Docket Number C-2022-3032057, is sustained.
2. That the Complaint filed in Stanley Jennings v. Philadelphia Gas Works, Docket Number C-2022-3032057 is dismissed.
3. That this matter be marked closed.

Date: October 24, 2022

_____/s/
Darlene D. Heep
Administrative Law Judge