



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

November 9, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
Herbert B Smith & Agee Copart  
Docket No. C-2022-3035603  
**I&E Motion for Default Judgment**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Motion for Default Judgment in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Alphonso Arnold III'.

Alphonso Arnold III  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 318487  
(717) 787-3836  
[alphonarno@pa.gov](mailto:alphonarno@pa.gov)

AA/jfm  
Enclosures

cc: Per Certificate of Service  
DCALJ Joel Cheskis (email only: [jcheskis@pa.gov](mailto:jcheskis@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3035603
	:	
Herbert B Smith & Agee Copart,	:	
Respondent	:	

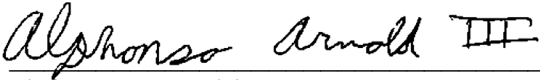
**NOTICE TO PLEAD**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion for Default Judgment in the above-captioned matter, pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code § 5.61.

Your Answer must be verified, pursuant to 52 Pa. Code § 1.36, and the original sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Additionally, you must serve a copy on the undersigned prosecutor, and the assigned Administrative Law Judge.

  
\_\_\_\_\_  
Alphonso Arnold III  
Prosecutor  
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-3836  
[alphonarno@pa.gov](mailto:alphonarno@pa.gov)

Dated: November 9, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
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	:	
Herbert B Smith & Agee Copart,	:	
Respondent	:	

**MOTION FOR DEFAULT JUDGMENT**

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorney, files this Motion for Default Judgment against Herbert B Smith & Agee Copart (“Respondent”) pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103. In support thereof, I&E respectfully represents as follows:

1. I&E commenced this action on September 23, 2022, by filing a Complaint.
2. The September 23, 2022, Formal Complaint alleged two violations against Respondent. The first violation alleged that Respondent violated Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b), by failing to file an assessment report for the 2020 calendar year. The second violation alleged that Respondent violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), by failing satisfy its 2021-2022 Fiscal Year assessment in that it did not pay the amount due within thirty (30) days of receipt of the assessment invoice.
3. On September 23, 2022, the Complaint was served by email to Respondent at [sw\\_smith1@verizon.net](mailto:sw_smith1@verizon.net), which is the last known email address that Respondent provided to the Commission. *See Waiver of Regulations Regarding Service Requirements*, Docket No.

M-2021-3028321 (Order entered September 15, 2022) (service by the Commission on parties will be exclusively electronic).

4. Attached to the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days of service of the Complaint.

5. The Notice also advised Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

6. The twenty (20) days to file an Answer to the Amended Complaint expired on October 13, 2022.

7. Respondent did not file an Answer to the Complaint.

8. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

9. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

10. Respondent did not pay its 2021-2022 Fiscal Year assessment of \$271 or the civil penalty of \$300<sup>1</sup> that was sought in the Complaint for Respondent's failure to pay its

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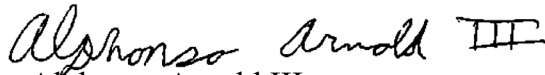
<sup>1</sup> This civil penalty is based on a review of Respondent's history of compliance with the Public Utility Code and Commission regulations and orders for three years prior to the date that I&E filed its Complaint in this matter, the need to deter future violations, the amount of Respondent's outstanding assessment balance for the 2021-2022 Fiscal Year, and prior Commission decisions in similar situations pursuant to 52 Pa. Code §§ 69.1201(c)(6), (8), and (9).

2021-2022 Fiscal Year assessment and its failure to report its gross intrastate operating revenues for the 2020 calendar year.

11. I&E respectfully requests that the Administrative Law Judge and the Commission enter a judgment against Respondent that:

- a. Directs Respondent to pay the total amount requested in the Complaint of \$571 within thirty (30) days of the entry date of the Commission's Final Order in this matter;
- b. Directs the Bureau of Technical Utility Services to cancel Respondent's Certificate of Public Convenience at A-00111095 if Respondent fails to pay the total set forth in subparagraph (a), above, within thirty (30) days of the entry date of the Commission's Final Order;
- c. Notifies Respondent that a copy of the Commission's Final Order will be sent to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under Respondent's operating authority if Respondent fails to pay the total set forth in subparagraph (a), above, within thirty (30) days of the entry date of the Commission's Final Order; and
- d. Directs the Bureau of Administration, Assessment Section, to refer the matter to the Pennsylvania Office of Attorney General for collection of the total set forth in subparagraph (a), above, if Respondent fails to pay that total within thirty (30) days of the entry date of the Commission's Final Order.

Respectfully submitted,

  
Alphonso Arnold III  
Prosecutor  
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-3836  
[alphonarno@pa.gov](mailto:alphonarno@pa.gov)

Date: November 9, 2022

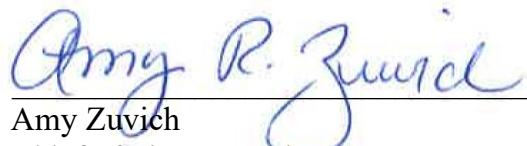
**BEFORE THE  
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Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
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	:	
Herbert B Smith & Agee Copart,	:	
Respondent	:	

**VERIFICATION**

I, Amy Zuvich, Chief of Finance and Assessments, Bureau of Administration, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau of Investigation and Enforcement will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: November 9, 2022

  
\_\_\_\_\_  
Amy Zuvich  
Chief of Finance and Assessments  
Bureau of Administration  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

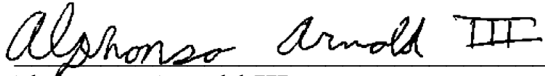
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Complainant	:	
	:	
v.	:	Docket No. C-2022-3035603
	:	
Herbert B Smith & Agee Copart,	:	
Respondent	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Motion for Default Judgment, in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Served via Electronic Mail**

Herbert B. Smith & Agee Copart  
T/A Samuel W. Smith Moving & Storage  
1728 Meadow Street  
Philadelphia, PA 19124  
Email: [sw\\_smith1@verizon.net](mailto:sw_smith1@verizon.net)

  
Alphonso Arnold III  
Prosecutor  
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
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