

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Patora	:	
	:	
v.	:	C-2023-3039542
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision dismisses a Formal Complaint as a prior Commission order precluded Complainant Jennifer Patora from filing any further complaints against Respondent Pennsylvania-American Water Company. The Commission previously found that Complainant had abused Commission’s administrative processes through the repeated filing of Complaints about the same dispute, resulting in Complainant being barred from filing any further complaints for water service provided by Respondent until all arrearages were paid in full.

HISTORY OF THE PROCEEDINGS

On April 4, 2023, Jennifer Patora (“Complainant” or “Ms. Patora”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania-American Water Company (“Respondent” or “PAWC”) at Docket No. C-2023-3039542. The complaint: (1) alleged that Respondent was threatening to shut off Complainant’s water service, (2) requested a payment arrangement and (3) alleged that Respondent billed her incorrectly based on erroneous water meter readings dating back to before

the COVID pandemic. (Complaint ¶¶ 4-5). The Complainant included an attached shut-off notice from Respondent showing an outstanding amount owed of \$3,504.09 due by April 3, 2023. (Complaint attachment).

On April 24, 2023, Respondent filed its answer and new matter along with preliminary objections (“POs”) with both filings accompanied by a notice to plead. In its answer, Respondent admitted or denied various averments in the complaint. Specifically, Respondent admitted to issuing a termination notice to Complainant. (Answer and new matter ¶ 4). Respondent states that Complainant alleged that her bills were too high due to a malfunctioning water meter. (Answer and new matter ¶ 13). Respondent denied that Complainant’s meter was inaccurate and denied that Complainant’s bill was incorrect. (Complaint ¶ 4).

In its new matter, Respondent asserted that the allegations in the instant complaint were the same allegations Complainant previously raised in *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Opinion and Order entered August 8, 2019) (“*Potora 2017*”). (Complaint ¶ 13). Respondent further averred that Complainant had repeatedly abused the Commission’s processes to avoid payment of utility bills in the past resulting in Complainant being barred from filing any further Complaints against PAWC, concerning the arrearages on her account for water service rendered by Pennsylvania-American Water Company until all of the arrearages were paid in full in accordance with the Commission order in *Potora 2017*. (Answer and new matter ¶¶ 12, 14). Finally, Respondent averred that Complainant has not paid the arrearages on her PAWC account in full in accordance with the Commission’s prior order. (Answer and new matter ¶ 15). Complainant did not file an answer to the new matter.

In its POs, Respondent asserted that the current Complaint raised identical allegations related to inaccurate billing for her water service that were previously addressed in *Potora 2017*. (POs ¶ 5). Respondent also averred that the Commission dismissed the Complaint in *Potora 2017* and barred Complainant from filing any further Complaints against PAWC, concerning the arrearages on her account for water service rendered by Pennsylvania-American Water Company until all of the arrearages are paid in full. (POs ¶ 10). As a result, Respondent

argued that the current Complaint should be dismissed for lack of capacity to sue pursuant to 52 Pa. Code § 5.101(a)(5). (POs ¶ 13). Complainant did not file a response to the POs.

For the reasons discussed herein, Respondent's POs will be treated as a motion for judgment on the pleadings and the complaint will be dismissed, based on 66 Pa.C.S. § 316, as precluded by prior Commission order.

FINDINGS OF FACT

1. Complainant is Jennifer Potora, who resides at 53 Academy Street, Plymouth, PA 18651 in Luzerne County, Pennsylvania. (Complaint ¶ 1).
2. Respondent is Pennsylvania-American Water Company who provides water service to Ms. Potora at her residence. (Complaint ¶¶ 2-3).
3. The instant complaint alleged that Respondent improperly billed Complainant for water service based on erroneous water meter readings and Respondent was threatening to terminate her water service. (Complaint ¶¶ 4-5).
4. Complainant owed an outstanding balance of \$3,504.09 that was due to Respondent for water service by April 3, 2023 as of the date the complaint was filed. (Complaint attachment).
5. On or about March 22, 2023, Respondent issued a written ten-day shut off notice for Complainant's water service based on the unpaid balance. (Complaint attachment).
6. Complainant has filed multiple complaints with the Commission regarding utility services. (Answer and new matter ¶ 12).
7. In 2017, Ms. Potora filed a complaint against PAWC at *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Order entered Aug. 8, 2019) alleging that PAWC was

threatening to terminate her water service and was billing her incorrectly based on water meter readings. (Answer and new matter ¶ 13).

8. The current and *Potora 2017* Complaints made the same allegations against PAWC. (Answer and new matter ¶ 13).

9. In the Commission's August 8, 2019 Order at *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Order entered Aug. 8, 2019), the Commission found that Ms. Potora had repeatedly abused the Commission's processes in order to avoid payment of utility bills and barred Complainant from filing any further complaints against PAWC concerning the arrearages on her account for water service rendered by Pennsylvania-American Water Company until all of the arrearages were paid in full. (Answer and new matter ¶ 12).

10. Ms. Potora has not paid the arrearages to PAWC in full in accordance with the Commission's August 8, 2019 Order. (Answer and new matter ¶ 15).

11. Complainant failed to file an answer or otherwise reply to Respondent's answer and new matter or the preliminary objections, both of which included a notice to plead.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections for, *inter alia*, lack of capacity to sue. 52 Pa. Code § 5.101(a)(5). Commission preliminary objections practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa.P.U.C. LEXIS 69 (July 18, 1994). A complaint is properly dismissed when no relief or recovery is possible. *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). When considering preliminary objections, the Commission may not rely upon the factual assertions of the moving party, but must accept as true, for purposes of disposing of the motion, all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988).

In this case, Ms. Potora alleged that PAWC was threatening to shut off her water service and incorrectly billed her for water use based on a faulty meter. The complaint makes no mention of prior Commission orders nor anything about prior arrearages owed to PAWC beyond indicating the total amount owed in her attachment. In response, PAWC filed an answer and new matter along with POs averring that the complaint must be dismissed because Ms. Potora is barred from filing any complaints against PAWC by prior Commission order until all arrearages are paid in full. The new matter further states that Ms. Potora failed to pay these arrearages in full. Despite the Notice to Plead attached to the new matter, Ms. Potora did not file a reply to the new matter denying any of PAWC's averments. Because Ms. Potora failed to file a timely answer or otherwise reply, the relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b).

Since PAWC is seeking dismissal of the complaint based upon assertions in its new matter, the appropriate filing is a motion for judgment on the pleadings rather than preliminary objections. *Haddad v. Duquesne Light Co.*, Docket No. C-2019-3008472 (Final Order entered Aug. 23, 2019) ("*Haddad*"). The regulation at 52 Pa. Code § 1.2(a) provides that the presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Thus, I may disregard PAWC's error in procedure if it does not affect a party's substantive rights.

In this case, PAWC raised the issue of whether the complaint is barred by prior Commission order and its supporting factual averments in a timely manner as an affirmative defense in its new matter. Ms. Potora had notice of the issue and the relevant facts with ample opportunity to respond. Accordingly, there is no basis to find that either party's substantive rights would be prejudiced by disregarding the procedural defect in this case and I find that liberally construing the matter at issue will secure a just, speedy and inexpensive determination of the action. 52 Pa. Code § 1.2(a). Therefore, I will treat PAWC's POs as a motion for judgment on the pleadings, filed pursuant to 52 Pa. Code § 5.102, and deem the averments made in the new matter as admitted. 52 Pa. Code § 5.63(b).

The Commission's regulations at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings. The regulation provides, in pertinent part, that the Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Haddad*. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against them only those facts they admit. *Haddad*. Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985).

In this case, the complaint alleges that PAWC was threatening to shut off Ms. Potora's water service based on incorrect charge on her bill. (Complaint ¶ 4). Ms. Potora elaborated that the billing problems started prior to COVID and PAWC failed to check and replace her water meter at that time thereby causing the erroneous billing. (Complaint ¶ 4). Attached to the complaint was a ten-day shut off notice from PAWC dated March 22, 2023, which reflected a total amount owed of \$3,504.09 payable by April 3, 2023. (Complaint attachment).

In response, PAWC contended in its new matter that Ms. Potora filed an identical claim against PAWC in the *Potora 2017* case where the Commission: (1) dismissed the complaint, (2) found that Ms. Potora had repeatedly abused the Commission's processes to avoid payment of utility bills and (3) barred Ms. Potora from filing any further complaints until the arrearages on her account for water service from PAWC were paid in full. (Answer and new matter ¶¶ 12-14). The new matter also averred that Ms. Potora had not paid the arrearages on her PAWC account. (Answer and new matter ¶ 15). Accepting the facts alleged in the complaint as true for purposes of disposing of the motion for judgment on the pleadings as well as the facts alleged, and deemed admitted, in the Respondent's new matter, supports that Ms. Potora is currently barred from filing any complaints with the Commission against PAWC at this time in accordance with 66 Pa.C.S. § 316.

Section 316 states in relevant part:

Whenever the [C]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316.

In the *Potora 2017* case, the Commission addressed a prior complaint from Ms. Potora against PAWC wherein she alleged that PAWC was threatening to shut off her water and that she was being billed erroneously due to a malfunctioning meter. *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Opinion and Order entered Aug. 8, 2019). The Commission dismissed the complaint with prejudice finding that she had abused the Commission's administrative processes to avoid paying for her utility service and barred her from filing any further Complaints against PAWC until she paid her outstanding arrearages in full. *Id.* This order remains controlling upon the parties. 66 Pa.C.S. § 316.

In the instant case, Ms. Potora raises the same claims against PAWC and the deemed to be admitted facts from PAWC's new matter reflect that she has still not paid her outstanding arrearages. Thus, there are no issues of material fact to address regarding the motion for judgment on the pleadings. Ms. Potora is barred from filing the current complaint based on 66 Pa.C.S. § 316.

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. §703(b); 52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n*, 817 A.2d 593 (Pa. Cmwlth. 2003); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993). As there is no issue of material fact to address in the current matter, holding a hearing in this case would be a fruitless exercise. Accordingly, the motion for judgment on the pleadings is granted and the complaint will be dismissed.

CONCLUSIONS OF LAW

1. Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby unless set aside, annulled or modified on judicial review. 66 Pa.C.S. § 316.
2. Commission regulations provide for filing preliminary objections based on allegations that a party lacks capacity to sue. 52 Pa. Code § 5.101(a)(5).
3. Matters before the Commission shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable and the Commission or presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2.
4. Preliminary objections may be treated as a motion for judgement on the pleadings where the claim is based on assertions in new matter. 52 Pa. Code § 1.2.
5. To grant a motion for judgment on the pleadings, the record must show that no material facts are at issue and that the law is so clear that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).
6. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against them only those facts they admit. *Haddad v. Duquesne Light Company*, Docket No. C-2019-3008472 (Final Order entered Aug. 23, 2019).
7. The Commission previously barred Jennifer Potora from filing any complaints against Pennsylvania-American Water Company regarding water service until her outstanding arrearages were paid in full. *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Order entered Aug. 8, 2019).

8. The instant complaint is barred by 66 Pa. Code § 316.

9. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Pennsylvania-American Water Company at Docket No. C-2023-3039542 will be treated as a motion for judgment on the pleadings filed pursuant to 52 Pa. Code § 5.102.

2. That the motion for judgment on the pleadings filed at Docket No. C-2023-3039542 is granted.

3. That the Formal Complaint filed by Jennifer Potora in Jennifer Potora v. Pennsylvania-American Water Company at Docket No. C-2023-3039542 is dismissed.

4. That the Commission's order at *Potora v. Pa.-Am. Water Co.*, Docket No. C-2017-2627873 (Order entered Aug. 8, 2019) remains conclusive against the parties thereby barring Jennifer Potora from filing any further complaints against Pennsylvania-American Water Company pertaining to water service until outstanding arrearages are paid in full.

5. That within ten days of the outstanding arrearages being paid in full, Pennsylvania-American Water Company shall file a letter indicating the same with the Commission's Secretary's Bureau.

