

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Winston J. Banks

v.

Philadelphia Gas Works

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F-2022-3036911

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Winston J. Banks against Philadelphia Gas Works with prejudice because the Complainant: (1) failed to appear for the hearing and prosecute the Complaint; and (2) failed to comply with the presiding officer's Order to have an attorney, licensed to practice in the Commonwealth of Pennsylvania, enter an appearance on his behalf.

HISTORY OF THE PROCEEDING

On November 21, 2022, Winston J. Banks (Complainant or Mr. Banks) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company, or Respondent). In the Complaint, the Complainant placed checkmarks in the boxes indicating: "I would like a payment agreement" and "Incorrect charges are on my bill." The Complainant also alleged that he does not use the amount of gas he is being billed for using.

On December 13, 2022, PGW filed an Answer admitting in part and denying in part various material allegations of the Complaint. PGW admitted that the Complainant seeks a payment agreement for the gas service to 2001 Kinsey Street, Philadelphia, PA (“Service Address”). PGW denied that there are incorrect charges on the bill for the service at the Service Address. PGW asserted that the Complainant most recently established gas service at the Service Address on October 13, 2012; the Service Address is listed as residential gas heat and other domestic usage, equipped with an automatic meter reading device, and the bills are based on actual meter readings. PGW further asserted that the Complainant has had at least two broken PGW-issued payment agreements and one broken Commission-issued payment arrangement. PGW requested that the Complaint be dismissed.

By Hearing Notice dated December 20, 2022, an Initial Call-In Telephonic Hearing was scheduled for February 7, 2023, and the matter was assigned to Deputy Chief Administrative Law Judge Christopher Pell.

A Prehearing Order was issued on January 3, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On February 6, 2023, Judge Pell issued an order granting a continuance to the Complainant.

By Hearing Notice dated February 7, 2023, an Initial Call-In Telephonic Hearing was rescheduled for March 21, 2023, at 1:30 p.m.

On March 7, 2023, a Judge Change Notice was issued assigning the case to me and changing the telephonic hearing call-in information. The date and time of the hearing did not change.

On March 21, 2023, the hearing convened as scheduled. Counsel for the Respondent called-in with a witness available to testify. The Complainant failed to call-in to the

hearing and the hearing was adjourned. At approximately 2:00 p.m. that same day, the Complainant called the Harrisburg Office of the Administrative Law Judge (OALJ) stating that he never received the Judge Change Notice and therefore used the wrong call-in number. I gave the Complainant the benefit of the doubt and rescheduled the hearing.

By Hearing Notice dated March 24, 2023, an Initial Call-In Telephonic Hearing was rescheduled for May 9, 2023.

A Prehearing Order was issued on April 20, 2023. The Prehearing Order reminded the parties of the date and time of the hearing, directed the parties to comply with various procedural requirements, and advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

On May 9, 2023, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. Graciela Christlieb, Esquire, appeared on behalf of PGW.

At the outset of the hearing, while establishing the underlying facts of the case, Mr. Banks testified that he was not the owner of the Service Address. Tr. 11-13. Attorney Christlieb disputed Mr. Banks' contention that he was not the owner. *Id.* As a result, Mr. Banks requested a continuance in order to retain legal counsel. Tr. 13. I granted Mr. Banks' request and adjourned the hearing. Tr. 22.

On May 10, 2023, I issued an Order granting the Complainant's request for a continuance in order to retain legal counsel. Furthermore, I ordered that the Complainant shall have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance on his behalf by the close of business on May 26, 2023, and specifying that the hearing in this matter shall continue on June 6, 2023, at 1:30 p.m.

Also on May 10, 2023, by Telephonic Hearing Cancellation/Reschedule Notice, a further call-in telephonic hearing was scheduled for June 6, 2023, at 1:30 pm. The Notice advised

that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

On June 6, 2023, the hearing reconvened as scheduled. Counsel for the Respondent called in with a witness available to testify. The Complainant failed to call-in to the hearing. The Complainant was given additional time to call and participate in the hearing but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, counsel for PGW moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245.

As of the date of this decision, no attorney licensed to practice in the Commonwealth of Pennsylvania has entered an appearance on behalf of the Complainant.

The record closed on July 3, 2023, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Winston J. Banks.
2. The Respondent is Philadelphia Gas Works.
3. On November 21, 2022, the Complainant filed a Complaint with the Commission against the Respondent.
4. On December 13, 2022, the Respondent filed an Answer to the Complaint.

5. By Initial Call-In Telephonic Hearing Notice dated December 20, 2022, a telephonic hearing was scheduled for February 7, 2023, and the matter was assigned to Deputy Chief Administrative Law Judge Christopher Pell.

6. On January 3, 2023, a Prehearing Order was issued reminding the parties of the date and time of the scheduled hearing.

7. On February 6, 2023, Judge Pell issued an order granting a continuance to the Complainant.

8. By Hearing Notice dated February 7, 2023, an Initial Call-In Telephonic Hearing was rescheduled for March 21, 2023, at 1:30 p.m.

9. On March 7, 2023, a Judge Change Notice was issued assigning the case to the undersigned ALJ and changing the telephonic hearing call-in information. The date and time of the hearing did not change.

10. The telephonic hearing began on March 21, 2023, at 1:41 p.m., to allow the Complainant additional time to call-in. Tr. 3.

11. The Complainant did not call-in to the March 21, 2023, hearing. Tr. 3.

12. Counsel for PGW was present and prepared to proceed at the March 21, 2023, hearing. Tr. 3-4.

13. At approximately 2:00 p.m., on March 21, 2023, the Complainant called the Harrisburg OALJ and stated that he never received the Judge Change Notice and therefore used the wrong call-in number.

14. By Hearing Notice dated March 24, 2023, an Initial Call-In Telephonic Hearing was rescheduled for May 9, 2023, at 10:00 a.m.

15. On May 9, 2023, the hearing convened as scheduled. Tr. 9.

16. At the outset of the May 9, 2023, hearing, there was a dispute between Mr. Banks and Counsel for PGW about whether Mr. Banks was the owner of the Service Address. Tr. 11-13.

17. Mr. Banks requested a continuance in order to retain legal counsel. Tr. 13.

18. On May 10, 2023, I issued an Order that: (1) granted the Complainant's request for a continuance in order to retain legal counsel; (2) ordered that the Complainant shall have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance on his behalf by the close of business on May 26, 2023; and (3) specified that the hearing in this matter shall continue on June 6, 2023 at 1:30 p.m.

19. Also on May 10, 2023, by Telephonic Hearing Cancellation/Reschedule Notice, a further call-in telephonic hearing was scheduled for June 6, 2023, at 1:30 pm.

20. All Notices and Orders were emailed to the Complainant to the email address provided in the Formal Complaint.

21. Both the Order and the Hearing Notice sent on May 10, 2023, were also served by U.S. First Class Mail to the postal address provided in the Formal Complaint.

22. None of the Notices, nor Orders, were returned as undeliverable to the Complainant.

23. All Hearing Notices and Prehearing Orders advised the Complainant that the Complaint may be dismissed if the Complainant did not call-in to the hearing.

24. The further call-in telephonic hearing began on June 6, 2023, at 1:40 p.m., to allow the Complainant additional time to call-in. Tr. 27.

25. The Complainant did not call-in to the June 6, 2023, hearing.

26. Counsel for PGW was present and prepared to proceed at the June 6, 2023, hearing. Tr. 28.

27. The Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

28. An attorney licensed to practice in the Commonwealth of Pennsylvania has not entered an appearance on behalf of the Complainant.

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

Both the Hearing Notice for the June 6, 2023 hearing and my Order granting the Complainant's request for a continuance to obtain legal counsel were served on the Complainant by U.S. First Class Mail and email at the addresses that the Complainant provided. It should be noted that this is the same manner the Complainant was served for the May 9, 2023 hearing, in which the Complainant called in. Furthermore, neither was returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *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).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is

the responsibility of the parties to appear and participate in the hearing." *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). Additionally, all Hearing Notices and Prehearing Orders advised the Complainant that the case could be dismissed if the Complainant did not call-in and participate in the hearing. The Complainant was notified of the scheduled telephonic hearing and did not appear.

In this case, the Complainant did not call-in for the scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, 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 Oct. 25, 1993). By failing to call in to the scheduled hearing, the Complainant has waived the opportunity to participate in the hearing. 52 Pa. Code § 5.245(a)(1); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Additionally, failure to comply with an order issued by a presiding officer provides justification for the Commission to act against the non-complying party and dismiss a complaint. *Application of And Ex Cor*, Docket No. A-2012-2337848 (Final Order entered June 19, 2013); *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. PECO Energy Co.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered March 3, 2003).

Here, the Complainant requested, and was granted, a continuance specifically to retain an attorney. However, the Complainant failed to comply with my May 10, 2023, Order directing him, *inter alia*, to have an attorney licensed to practice in the

Commonwealth of Pennsylvania enter an appearance on his behalf by the close of business on May 26, 2023. Therefore, the Complaint shall be dismissed on these grounds as well.

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. The Complainant was advised in the Hearing Notice and the Prehearing Order that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Because the Complainant failed to appear, the Complainant is not permitted to reopen the disposition of this matter. 52 Pa. Code § 5.245(a)(2). Further, Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable. Consequently, the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

CONCLUSIONS OF LAW

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

2. The Complainant received notice of the hearing. *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).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

4. If there are no facts in the record that the party's failure to appear at a hearing was unavoidable, the complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

6. The Complainant did not appear and participate in the hearing, did not present any evidence, and, therefore, has failed to meet the burden of proving that the Complainant is eligible for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

7. Failure to comply with an order issued by a presiding officer provides justification for the Commission to act against the non-complying party and dismiss a complaint. *Application of And Ex Cor*, Docket No. A-2012-2337848 (Final Order entered June 19, 2013); *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. PECO Energy Co.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006); *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered March 3, 2003).

