

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Xena’s Beauty Bar	:	
	:	
v.	:	C-2023-3042298
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This decision dismisses the Formal Complaint, without prejudice, for the failure of Complainant to have an attorney to represent it at the hearing.

HISTORY OF THE PROCEEDING

On August 17, 2023, Xena’s Beauty Bar (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). Complainant checked the boxes on the Complaint form stating that the utility is threatening to shut off Complainant’s service or has already shut off Complainant’s service and that Complainant would like a payment arrangement.

On September 6, 2023, the Respondent filed an answer in which it denied the material allegations of fact and conclusions of law in the Complaint. Respondent requested that the Complaint be dismissed.

On September 12, 2023, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on November 16, 2023 at 10:00 a.m. and the case was assigned to me. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

REPRESENTATION. If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

On October 10, 2023 a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances. The Prehearing Order reiterated the representation requirement.

On November 13, 2023, I received an email from PGW's attorney stating that Complainant contacted them and requested a continuance. PGW further stated that it did not oppose the request. The continuance request was granted.

On November 14, 2023, a Telephonic Hearing Cancellation/Reschedule Notice was served on the parties, rescheduling the hearing to February 7, 2024 at 10:00 a.m. and again provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing and advised the parties of the representation requirement.

On January 16, 2024, a second Prehearing Order was served on the parties, reminding the parties of the date and time of the hearing. The Prehearing Order, once again, included the representation requirement.

On February 7, 2024, the hearing convened as scheduled. Mekala Lewis appeared on behalf of the Complainant but she is not an attorney. Complainant was not

represented by an attorney licensed to practice law in Pennsylvania. Anita Murray, Esquire, appeared on behalf of Respondent along with one witness. At the hearing, Respondent moved to dismiss the Complaint without prejudice for Complainant's failure to retain counsel. I advised that I would be granting PGW's motion to dismiss and explained that the dismissal does not preclude Complainant from filing again if it retains counsel.

The record closed on February 16, 2024, when a copy of the eight-page transcript was filed with the Commission. This decision grants the Respondent's motion to dismiss the Complaint without prejudice.

FINDINGS OF FACT

1. The Complainant is Xena's Beauty Bar, a Limited Liability Company.
2. The Respondent is Philadelphia Gas Works.
3. On August 17, 2023, Complainant filed a Formal Complaint against Respondent.
4. On September 6, 2023, Respondent filed an answer to the complaint.
5. On September 12, 2023, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on November 16, 2023, at 10:00 a.m. The hearing notice provided that businesses must be represented by an attorney.
6. On October 10, 2023, a Prehearing Order was entered in this proceeding that explained that partnerships, corporations, trusts, associations, and governmental agencies and subdivisions must be represented by an attorney licensed to practice law in Pennsylvania.
7. Complainant requested a continuance of the November 16, 2023 hearing, which was granted.

8. On November 14, 2023, a Telephonic Hearing Cancellation/Reschedule Notice was served on the parties, rescheduling the hearing to February 7, 2024 at 10:00 a.m. and again advising the parties of the representation requirement.

9. On January 16, 2024, a second Prehearing Order was served on the parties that again, included the representation requirement.

10. No attorney licensed to practice in Pennsylvania has filed a notice of appearance on behalf of Complainant or appeared for Complainant at the February 7, 2024, hearing.

11. PGW made a Motion to Dismiss the Complaint at the February 7, 2024 hearing for failure to retain counsel.

DISCUSSION

Complainant, a limited liability company, filed the Complaint requesting a Commission-issued payment arrangement. A hearing was scheduled in this matter. The Hearing Notices and the Prehearing Orders issued in this matter informed the Complainant that, as a limited liability company, it is required to have an attorney licensed to practice law in the Commonwealth of Pennsylvania represent it at the hearing.

According to Sections 1.21 through 1.23 of the Commission's regulations, if a party is an individual, he or she may represent himself or herself, or the individual may be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *pro hac vice*. However, if a party is not an individual, such as a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, the party must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *pro hac vice* to represent the party at the hearing. If a party is not an individual, and the party is not represented by an attorney, the party is not permitted to participate in the hearing.

See 52 Pa. Code §§ 1.21-23. While corporate officers are permitted to file formal complaints or applications on a corporation's behalf, the Commission's Regulations clearly state that corporations must be represented by licensed attorneys in adversarial proceedings. *Id*; *In re: Checker Cab*, 49 Pa.P.U.C. 159 (1975). A complaint proceeding becomes "adversarial" upon the filing of an Answer. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *see also* 52 Pa. Code § 1.8.

If an organization chooses to incorporate to reap the benefits of incorporation, it must also accept the burdens of incorporation such as retaining legal counsel in adversarial proceedings. *See Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984). The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. *See McCain v. Curione, Pa. Bd. of Prob. and Parole*, 527 A.2d 591 (Pa. Cmwlth. 1987) (Commonwealth Court was without jurisdiction to consider arguments and motions made on behalf of parolee in a civil action that was filed by another prisoner who was not licensed to practice law).

Mekala Lewis appeared on behalf of the Complainant at the February 7, 2024 hearing. However, Ms. Lewis is not an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *pro hac vice* to represent the party at the hearing. Therefore, as I am not permitted to adjudicate the matter, the merits of the Complaint cannot be addressed at this time.

Respondent's motion to dismiss will be granted without prejudice to refile if Complainant secures legal representation.

CONCLUSIONS OF LAW

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

2. As a corporate entity such as a Limited Liability Company, Complainant must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania in an adversarial proceeding, such as a formal proceeding before the Commission. *In re: Checker Cab*, 49 Pa.P.U.C. 159 (1975).

3. A complaint proceeding becomes “adversarial” upon the filing of an Answer. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *see also* 52 Pa. Code § 1.8.

4. If an organization chooses to incorporate to reap the benefits of incorporation, it must also accept the burdens of incorporation such as retaining legal counsel in adversarial proceedings. *See Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

5. The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter. *See McCain v. Curione, Pa. Bd. of Prob. and Parole*, 527 A.2d 591 (Pa. Cmwlt. 1987).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works’ motion to dismiss the Formal Complaint of Xena’s Beauty Bar at Docket Number C-2023-3042298 is granted.

2. That the Formal Complaint filed by Xena’s Beauty Bar in *Xena’s Beauty Bar v. Philadelphia Gas Works*, Docket Number C-2023-3042298, is hereby dismissed without prejudice.

