



PHILADELPHIA GAS WORKS

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September 30, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Rahman Bush v. Philadelphia Gas Works; Docket No. C-2024-3046078

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Exceptions to the Initial Decision issued in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

Enclosure

cc: Cert. of Service [w/enc.]

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA ELECTRONIC MAIL

Rahman Bush

rahmanbush2@gmail.com

Date: September 30, 2024

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rahman Bush,	:	
Complainant,	:	
v.	:	Docket No. C-2024-3046078
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**PHILADELPHIA GAS WORKS’
EXCEPTIONS TO INITIAL DECISION**

Pursuant to 52 Pa. Code §5.533, the Philadelphia Gas Works (“PGW”) hereby submits the following Exceptions to the Initial Decision in this matter issued on September 9, 2024 (“I.D.”).

I. BACKGROUND

On January 12, 2024, the Complainant filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PGW, wherein he argued *inter alia*:

(1) BCS Decision States 66 Pa.C.S. § 1407(b) [a]llows a public utility can establish that an applicant previously resided at a property through credit reporting service, lease, [d]eed, or mortgage. (2) [sic] Philadelphia Gas Works (PGW) concluded that Rahman Bush had been linked to the property but not able to undoubtedly prove Rahman Bush resided at the property in which he provided security application for.

On February 26, 2024, PGW filed its Answer to the Complaint, wherein it admitted or denied various material allegations of the Complaint. The Answer stated that the Complainant was linked to the property since November 2021 via an Experian credit report (“Report”).

By Hearing Notice dated March 1, 2024, an Initial Call-In Telephonic Hearing was scheduled for April 1, 2024, and the matter was assigned to Special Agent Michael J. Mroczka (“S.A. Mroczka”).

On April 1, 2024, the hearing convened as scheduled. The hearing was continued to permit the Complainant to address issues regarding his representation.

On April 4, 2024, a Hearing Notice was issued scheduling the hearing for May 14, 2024 at 1:30 p.m.

On May 14, 2024, the hearing convened as scheduled. The Complainant appeared, pro se. PGW appeared, presented the testimony of one witness, and sponsored nine exhibits, which were admitted into the record without objection.

By Secretarial Letter dated September 9, 2024, the Commission served PGW with the I.D. PGW's Exceptions follow.

II. EXCEPTIONS

1. The Special Agent Erred in Holding that the Experian Credit Report was Hearsay Evidence.

In the I.D., S.A. Mroczka utilizes what he refers to as the *Walker* rule to determine that the Report is not sufficient to find that Complainant resided at the property prior to August 2023. See I.D. at 10-13. However, the application of the rule and the determination derived from it is based on the erroneous premise that the Report is hearsay.

The *Walker/Chapman* rule provides that simple hearsay evidence may support an agency's finding of fact so long as the hearsay is admitted into the record without objection and is corroborated by competent evidence in the record. See *Walker v. Unemployment Compensation Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (*Walker*) (citations omitted); see also *Chapman v. Unemployment Compensation Bd. of Review*, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. 2011) (*Chapman*).

Under Pennsylvania's *Walker/Chapman* Rule, it is well-established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." Even if hearsay evidence is "admitted without objection," the ALJ must give the evidence "its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record," as "a finding of fact based solely on hearsay will not stand." *Walker* at 370 (citations omitted).

The *Chapman* portion of the rule clarifies that to be "properly objected to" in an administrative proceeding, the hearsay evidence must not fall within one of the recognized exceptions to the rule against hearsay. Hearsay that falls within one of the recognized exceptions to the hearsay rule is competent evidence that may be relied upon by the agency. See *Chapman*, supra, (finding that the Board properly relied upon a party's admission as competent evidence as a recognized exception to the hearsay rule); see also, *Sanchez v. PPL Electric Utilities Corp.*, Docket No. C-2015- 2472600 (Order entered July 21, 2016) (*Sanchez*) (finding that testimony related to the issuance of a termination letter fell within the business records exception to the

hearsay rule, and, therefore, was not simple hearsay, and was competent evidence to be relied upon in the proceeding to determine whether the complainant satisfied her burden of proof); see also, Pa.R.E. 802, 803, 803.1 and 804.

The evidence presented by PGW, like the evidence presented by PPL in *Sanchez*, is a business record, which is a recognized exception to the rule against hearsay and as such, is competent evidence that may be relied upon by an agency. The nature of the Report being a business record is exemplified in its the Commission's regulation at 52 Pa. Code § 56.35, which provides, in relevant part, as follows:

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, except as provided for in paragraphs (1) and (2).

(1) A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. . . .

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, *a commercially-available consumer credit reporting service* or other methods approved as valid by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in 11 this paragraph, used to determine the applicant's liability for any outstanding balance.

52 Pa. Code § 56.35(a), (b)(1)-(2) (emphasis added).

The Report, as presented in this case, is the product of PGW using a commercially available consumer credit reporting service to establish whether an applicant previously resided at a

property for which residential service is requested.

Even without the language in 52 Pa. Code § 56.35, which PGW submits is enough, the Report meets the criteria for a business record. Pa.R.E., Rule 803 states, in relevant part, as follows:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(6) Records of a Regularly Conducted Activity. A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

(A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a “business”, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Pa.R.E., Rule 803(6). The record in this case not only clearly demonstrates that the Report created through PGW’s use of commercially available consumer credit reporting service is a business record, it demonstrates that the Complainant failed to show that the source of information or other circumstances indicate a lack of trustworthiness. The Complainant presented no evidence to contradict the information in the report or to indicate that it was in any way not trustworthy.¹ Despite having ample opportunity during the pendency of his informal and formal complaints, the Complainant did not reach out to Experian to discuss the information contained in the report.² Similarly, the Complainant did not produce any evidence to support his mere assertions regarding

¹ At most, Complainant seemed to allege that Experian somehow confused him with his 5-year-old son. Tr. 15, 25, 53. Complainant’s allegation, however, is not competent evidence to show the Experian report was inaccurate or in fact created a record for a 5-year old by mistake.

² Tr. at 33.

where he was living between 2021 and 2023. Complainant simply repeating his assertions that he did not reside at the address until August 2023, corroborated by no other evidence whatsoever, is not competent evidence to support his claim that he did not reside at the property. Simply put, his mere bald assertions are not and cannot be a substitute for competent evidence to support a Commission finding against PGW. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). Conversely, the record is rife of indications that the Complainant lived at the property prior to 2023 aside from the Report: the Complainant’s girlfriend and children have resided at the property since 2021;³ the Complainant is aware of who the landlord was prior to his current landlord and that the property was passed from mother to son;⁴ and, when asked by the court about when he moved into the property, he slipped up and testified that 2023 is when he *moved back* there rather than to there.⁵

Moreover, the mere act of the Complainant stating his opinion that the terms “linked” and “resided” are two different things⁶ does not create an “important distinction;”⁷ the Complainant is doing nothing more than capitalizing on the existence of industry jargon to create a difference that does not exist in the plain language of § 56.35. PGW staff use the common parlance of “linked” because it is easier to say “we ran the credit report and saw that the applicant was linked to the property” than to say “we used a commercially available consumer credit reporting service to establish that the applicant previously resided at the property for which he is requesting residential service” not because there is a difference between the two. The Complainant’s opinion that they are two different things is not competent evidence for a ruling in his favor. Furthermore, the I.D. erred by styling a credit report as “a starting point for a utility to determine a proper billing party”. I.D. at 12. This interpretation completely ignores 52 Pa. Code § 56.35(b)(2), which makes it clear that a credit report is a Commission approved method to establish that an applicant previously resided at a property. It is not, as reasoned in the I.D., a jumping off point for some further investigation required by PGW.

Taken to its natural conclusion, the reasoning used in the I.D. would effectively eliminate a utility’s ability to rely on any of the methods listed in 52 Pa. Code § 56.35(b)(2). To illustrate, there are reasons other than residence to own a property, so what good is a deed/mortgage to prove residence? Leases are broken all the time and after the term of the lease expires, many go month-

³ Tr. at 25.

⁴ Tr. at 26.

⁵ Tr. at 26-27.

⁶ Tr. at 16, 23.

⁷ I.D. at 12.

to-month, so who is to say someone was living in a property during a specific period of time even when there is a written lease? Given the nature of residency, it is difficult to conceive of any evidence that could be presented that would not fall prey to the logic used in the I.D.

The reasoning exhibited in the I.D. simultaneously creates an effective way for applicants to circumvent 52 Pa. Code § 56.35 by simply objecting to whatever is being used to establish they previously resided at a property and imposes a burden and cost on utilities to conduct some sort of potentially unending investigation into an applicant's housing history – the cost of which is ultimately borne by PGW's ratepayers. Beyond the burden on the utility, it would foist the Commission into a role of adjudicating the validity of public records including mortgages, deeds, leases, and (as applicable to this case) commercially-available consumer credit reports. The Commission has no jurisdiction or authority to review, let alone discount, any of these public records to confirm an applicant's prior residency. The validity of these public records for purposes of 52 Pa. Code § 56.35 should not be overruled, and the Commission must reverse the I.D.

III. CONCLUSION

WHEREFORE, PGW respectfully requests that the Commission grant these Exceptions and reject the conclusions of the Initial Decision consistent with the foregoing discussion and deny the Complaint in its entirety.

Respectfully submitted,

/s/ Graciela Christlieb

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