

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sarah Cotellessee	:	
	:	
v.	:	F-2024-3050038
	:	
Clearview Electric, Inc.	:	

**ORDER**  
**DENYING MOTION TO DISMISS**

On June 18, 2024, Sarah Cotellessee (Complainant or Ms. Cotellessee) filed a Formal Complaint (Complaint) against Clearview Electric, Inc. (Clearview or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleged, *inter alia*, that she never agreed to service from Clearview.

By Initial Call-In Telephonic Hearing Notice dated August 22, 2024, a telephonic hearing was scheduled for November 5, 2024, and the matter was assigned to me.

On September 11, 2024, Clearview filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, Clearview admitted in part, and denied in part, various material allegations of the Complaint. In particular, Clearview averred that it received the Complainant's enrollment on January 17, 2012, through a direct phone solicitation.

In its New Matter, Clearview averred that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction in this matter because it was brought more than three years from the date the liability arose.

Also on September 11, 2024, Clearview filed a Motion to Dismiss along with a Notice to Plead. In its Motion to Dismiss, Clearview reiterated its argument that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction in this matter because the alleged liability, *i.e.* enrollment with Clearview, occurred more than three years ago. Thus, Clearview requests the case be dismissed.

On October 8, 2024, Clearview served its Answer and New Matter and Motion to Dismiss on the Complainant again in order to correct a typographical error in the Complainant's email address. Clearview included updated Notices to Plead.

The Complainant's Answers to Clearview's New Matter and Motion to Dismiss were due within twenty days of the date of service. 52 Pa. Code §§ 5.63(a), 103. The Complainant did not file Answers to Clearview's New Matter or Motion to Dismiss.

Clearview's Motion to Dismiss is now ready to be ruled upon. For the reasons discussed below, the Motion to Dismiss will be denied and the case will proceed to a hearing.

### DISCUSSION

When deciding preliminary pleadings such as a motion to dismiss, the Commission must view the pleadings in the light most favorable to the nonmoving party and should dismiss a pleading only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); see also, *Interstate Traveler Services, Inc. v. Pennsylvania Department of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). "For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] ... admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts." *Marinoff v. Bell Tel. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary pleading, and only those facts *specifically*

admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997)(emphasis added).

In this case, there is at least one clearly disputed question of fact. The Complainant alleges that she never agreed to be enrolled with Clearview. Clearview's Motion to Dismiss is based on the averment that the Complainant enrolled with Clearview on January 17, 2012, and thus, the Complaint is beyond the statute of limitations. However, this is an alleged fact that does not appear anywhere in the Complaint, therefore, it must be proven at a hearing.

Furthermore, the Complainant is *pro se* and should be afforded the opportunity to make her arguments in person rather than through motions. See *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Final Order entered July 14, 1993).

Accordingly, Clearview's Motion to Dismiss will be denied and the hearing in this matter will proceed as scheduled.

THEREFORE,

IT IS ORDERED:

That the Motion to Dismiss of Clearview Electric, Inc. in the matter of *Sarah Cotellesse v. Clearview Electric, Inc.*, Docket No. F-2024-3050038, is denied.

Date: November 19, 2024

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/s/  
F. Joseph Brady  
Administrative Law Judge

**F-2024-3050038 - SARAH COTELLESSE v. CLEARVIEW ELECTRIC INC**

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