

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Event Transportation Associates, LLC	:	
	:	
	:	
v.	:	C-2024-3052429
	:	
	:	
Wertz Motor Coaches, Inc.	:	

**FIRST INTERIM ORDER
DIRECTING EACH PARTY TO CAUSE
ENTRY OF NOTICE OF APPEARANCE BY LEGAL COUNSEL**

Procedural Background

On December 4, 2024, Complainant Event Transportation Associates, LLC (ETAL) through its Chief Financial Officer, Brian Lott (Mr. Lott) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Respondent Wertz Motor Coaches, Inc. (Wertz or Respondent). ETAL alleges the following:

Wertz confirmed services were paid in full for service then they failed to deliver all services. We are due a refund for the services they failed to provide. Wertz refuses to respond to calls. The refund due is in excess of \$130,000.

Complaint ¶ 4. For relief, ETAL requested that the Commission “facilitate a resolution, order a billing refund.” Complaint ¶ 5.

On December 9, 2024, by Formal Complaint Notice to Respondent to Answer or Satisfy (Secretarial Letter), the Commission’s Secretary’s Bureau, served Respondent with notice of the Complaint. The Secretarial Letter informed the Respondent that it had twenty (20) days

from the date of service to satisfy the Complaint or to file a written Answer to the Complaint. The Secretarial Letter specifically cautioned Respondent in pertinent part, as follows:

2.) In accordance with 52 Pa. Code Section 5.61, if you fail to either satisfy or settle this complaint, or to file an answer or other responsive pleading within twenty (20) days of the above date served, you will be deemed to have admitted all the allegations in this complaint. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or may impose a fine or other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.

Secretarial Letter ¶ 2. Wertz has not filed an Answer or other responsive pleading to the Complaint.

Here official notice¹ is taken that on March 19, 2024, the Commission issued to Wertz a Cancellation of Certificate of Public Convenience at Docket No. A-00100583. *Also see*, Docket Nos. M-2024-3045178 and A-648050, which lists the cancellation of Wertz's Certificate of Public Convenience. Additionally, official notice is taken that the respective names of the Complainant and the Respondent indicate that each one is a corporate entity.

By Call-In Telephone Prehearing Conference Notice date January 28, 2025, the Parties were informed that a telephonic prehearing conference was scheduled before me on February 24, 2025, at 10:00 a.m. The scheduled telephonic prehearing conference is a formal proceeding and will be conducted in accordance with the Commission's regulations.

Commission Regulations on Legal Representation

The Commission's Regulations on a litigant's representation before it in a formal proceeding provide as follows:

(a) Individuals may represent themselves.

¹ Section 332(e) of the Public Utility Code, 66 Pa.C.S. § 222(3) and Section 5.408 of the Commission's regulations, 52 Pa. Code § 5.408 permit a presiding officer to take judicial or official notice of facts not appearing in the evidence of record of a particular case.

(b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern).

See 52 Pa. Code §§ 1.21-1.23.

Pennsylvania courts have ruled that a corporation can only act through its agents and an agent representing it in court must be an attorney admitted to practice. *Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super 1984).

Analysis

The Commission’s regulations permit pleadings (*i.e.*, complaints),² submittals, or other documentary filings to be signed by “an officer if it is a corporation, trust, association or other organized group.” 52 Pa. Code § 1.35(b)(ii). In the instant case, ETAL is a corporate entity. The Formal Complaint was signed and submitted by Brian Lott, ETAL’s Chief Financial Officer. Complaint ¶ 11. However, the Commission’s regulations require a corporation to be represented by an attorney once the proceedings become adversarial.

The simple filing of a formal complaint does not automatically trigger an adversarial proceeding because, until the answer is filed, it is not known whether the formal complaint will be contested. Furthermore, formal complaints may be and often are satisfied by the respondent, under the procedures outlined in 52 Pa. Code § 5.24, or via a mediation process.

“An adversarial proceeding is defined as, “[a] proceeding initiated by a person in order to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons, and which will be decided on the basis of a formal record.” 52 Pa. Code § 1.8.” *New Fizon Catering, Inc. v. PECO Energy Company*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009)

² A formal complaint is a pleading. 52 Pa. Code § 5.1(a)(2).

(*New Fizon*). The proceeding becomes adversarial upon the filing of an answer or other responsive pleading to the formal complaint. *New Fizon* at 8.

It is when a proceeding is adversarial that attorney representation may be an issue. In her concurring statement to a 1995 Commission Order, Commissioner Crutchfield explained the Commission's obligation to require attorneys in adversarial proceedings for parties other than individuals proceeding *pro se*:

In Pennsylvania, the Supreme Court is responsible for regulating the practice of law, and this Commission is bound by the Supreme Court's rules. The only persons authorized to practice law in Pennsylvania are as follows: (1) persons fully admitted to the Pennsylvania bar; (2) persons admitted *pro hac vice* under Rule 301; and (3) persons qualified as certified legal interns under Rule 321. The Pennsylvania Supreme Court in *Shorz v. Farrell*, 327 Pa. 81, 193 A.20 (1937), held that if the nature of an administrative hearing is to determine questions of fact or interpretation of administrative law, then the hearing is of a judicial character. Any participation in such a hearing constitutes the practice of law. Accordingly, it would be unlawful to allow non-attorney representation in adversarial proceedings before the Commission.

James and Judith Simon v. Franklin Water Company, Docket No. C-00956589 (Order entered January 29, 1996).

New Fizon at 7.

The Commission rules require that all non-individuals be represented by counsel in adversarial proceedings.³ This rule is consistent with the Pennsylvania Bar Rules promulgated

³ 52 Pa. Code § 1.21(b). *See also Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered Feb. 2, 2010).

by the Supreme Court.⁴ The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.⁵

In the instant proceeding, while Wertz has not filed an Answer or other responsive pleading to the Formal Complaint, the burden of proof remains with ETAL. As the proponent of a rule or order, ETAL in this proceeding bears the burden of proof pursuant to Section 332(a) of Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

ETAL, a corporate entity, cannot proceed to meet or establish its burden of proof with testimony and evidence without being represented by an attorney licensed to practice law in Pennsylvania. The requirement of attorney representation applies to Respondent Wertz, which is also a corporate entity, to participate in an evidentiary hearing.

This case is scheduled for a prehearing conference on February 24, 2025, to discuss among other things the litigation and hearing schedule. However, considering the above analysis, a hearing on this matter may not be necessary unless each party has attorney representation.⁶ Accordingly, in the ordering paragraphs below, the parties will be ordered to

⁴ See *New Fizon*.

⁵ *Adventure Alley CLC, LLC v. PECO Energy Co.*, Docket No. C-2014-2430850 (Final Order entered Nov. 25, 2014) (*citing McCain v. Curione, Pa. Bd. of Probation 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).

⁶ Notice of hearing.—The commission shall fix the time and place of hearing, within or without this Commonwealth, if any is required, and shall serve notice thereof upon parties in interest. The commission may dismiss any

have an attorney enter a notice of appearance on their respective behaves, pursuant to the Commission's regulations at 52 Pa.Code § 1.24(b)(2), on or before February 24, 2025. A party's failure to have an attorney enter an appearance on their behalf may result in the dismissal or loss of their case without the convening of a hearing.

ORDER

THEREFORE

IT IS ORDERED:

1. That Complainant Event Transportation Associates, LLC shall cause an attorney licensed to practice law in the Commonwealth of Pennsylvania to enter an appearance on behalf of Event Transportation Associates, LLC in the matter of Event Transportation Associates, LLC v. Wertz Motor Coaches, Inc. at Docket No. C-2024-3052429, in accordance with 52 Pa.Code §§ 1.21-1.25, on or before **February 24, 2025**.

2. That in the event that no attorney enters an appearance on behalf of Event Transportation Associates, LLC at Docket No. C-2024-3052429 on or before **February 24, 2025**, the Formal Complaint at Docket No. C-2024-3052429 will be dismissed without the convening of a hearing.

3. That Respondent Wertz Motor Coaches, Inc. shall cause an attorney licensed to practice law in the Commonwealth of Pennsylvania to enter an appearance on behalf of Wertz Motor Coaches, Inc. in the matter of Event Transportation Associates, LLC v. Wertz Motor Coaches, Inc. at Docket No. C-2024-3052429, in accordance with 52 Pa.Code §§ 1.21-1.25, on or before **February 24, 2025**,

complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

66 Pa.C.S. § 703(b).

4. That in the event that no attorney enters an appearance on behalf of Wertz Motor Coaches, Inc. at Docket No. C-2024-3052429 on or before **February 24, 2025**, Wertz Motor Coaches, Inc. will be barred from submitting a case against or defense to the Formal Complaint at Docket No. C-2024-3052429.

Date: February 14, 2025

_____/s/
Conrad A. Johnson
Administrative Law Judge

C-2024-3052429 - EVENT TRANSPORTATION ASSOCIATES LLC v. WERTZ MOTOR COACHES, INC.

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