



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: June 4, 2004

A-00087455C0301

LESLYE AND DWIGHT HERRMAN
849 KIEHL DRIVE
LEMOYNE PA 17043

Leslye and Dwight Herrman
V.
M.F. Rockey Moving Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Susan D. Colwell. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

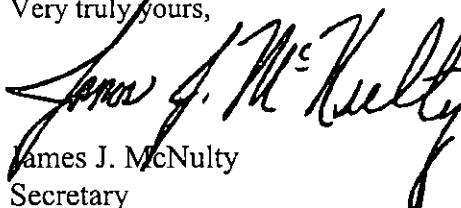
Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Encls.
Certified Mail
Receipt Requested
MK

JAMES D CAMPBELL JR ESQUIRE
CALDWELL & KEARNS
3631 NORTH FRONT STREET
HARRISBURG PA 17110-1533

Very truly yours,


James J. McNulty
Secretary

**DOCUMENT
FOLDER**

GARY L HENLINE GENERAL MANAGER
M F ROCKEY MOVING COMPANY
10 LONG LANE SUITE 100
MECHANICSBURG PA 17050

A-00087455C0301 Leslye and Dwight Herrman v. M. F. Rocky Moving
Company

LESLYE AND DWIGHT HERRMAN
849 KIEHL DRIVE
LEMOYNE PA 17043

GARY L HENLINE GENERAL MANAGER
M F ROCKEY MOVING COMPANY
10 LONG LANE
SUITE 100
MECHANICSBURG PA 17050

JAMES D CAMPBELL JR ESQUIRE
CALDWELL & KEARNS
3631 NORTH FRONT STREET
HARRISBURG PA 17110-1533

J.D. 20/10

JUN 01 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
JUN 8 2004

Leslye and Dwight Herrman :

v. :

M.F. Rockey Moving Company :

A-00087455C0301

INITIAL DECISION

By
Susan D. Colwell
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On January 3, 2003, Leslye and Dwight Herrman (Complainants) filed a formal Complaint with the Commission against M.F. Rockey Moving Company (Respondent or Company) alleging that the respondent had damaged some items during moving and has refused to reimburse the Complainants. Complainants sought \$780.00 in damages from Respondent.

Respondent neglected to file a formal answer, but did file a letter dated February 11, 2003, addressed to the Commission Secretary stating that the Company wished to settle the claim as soon as possible. The letter was signed by Gary L. Henline, General Manager, and stated that the Company disputed only one item in Complainants list of damaged items and that the company wished to have its own furniture service view the subject item.

A hearing notice was issued on October 29, 2003 setting the hearing for January 8, 2004, before Administrative Law Judge Debra Paist. Judge Paist issued a prehearing order dated November 7, 2003 which set forth the procedural requirements of the case. Pursuant to a request by newly-hired counsel for Respondent, the hearing was rescheduled to May 4, 2004. By notice issued April 2, 2004, the parties were informed that the matter had been reassigned to me.

A hearing was held on the matter as scheduled on May 4, 2004. Complainants failed to appear. Respondent appeared and was represented by counsel. Complainants did not contact the Office of Administrative Law Judge, and therefore, the absence was unexplained and unexcused. The transcript of 12 pages was generated, and Respondent submitted two exhibits. The record closed when the hearing ended, and the matter is now ready for decision.

FINDINGS OF FACT

1. Complainants are Leslye and Dwight Herrman, 849 Kiehl Drive, Lemoyne PA 17043.

2. Respondent is M.F. Rockey Moving Company, 10 Long Lane, Suite 100, Mechanicsburg PA 17050, a certificated common carrier.

3. The Complaint alleged that Respondent Company had damaged certain items while providing certificated service, specifically:

1.	White 5-shelf bookcase	\$117.00
2.	Glass light Globe	\$ 40.00
3.	Misting fan	\$161.94
4.	3 glass flowers	\$ 12.00
5.	Wooden dresser	\$450.00
	total	\$780.94

4. Respondent company filed a letter dated February 11, 2003, which stated that it wanted to resolve the claim as soon as possible and that “[T]he only item we have an issue with, is the dresser listed as Item #5 in the enclosed letter. . . . We want to have our own furniture service look at this piece of furniture.” Letter, paragraph 2.

5. Respondent presented the testimony of Gary L. Henline, General Manager of M.F. Rockey Moving Company, who sponsored both exhibits.

6. Respondent sent a representative to see the dresser in question but the representative was turned away. Tr. 7.

7. Respondent Exhibit 1 is a copy of the February 11, 2003 letter with a hand-written notation on the bottom, which reads: "Carl – She will accept \$580.00 for settlement per PUC. Thanks Gary." Respondent Exhibit 1.

8. "Carl" is Carl Smith, the treasurer of M.F. Rockey/George Weaver Moving Companies, and the note was directed from Mr. Henline to the treasurer. It was meant as direction to the treasurer to issue a check for \$580.00 to settle the matter. Tr. 9-10.

9. Respondent company sent check number 1586, as shown in Respondent Exhibit 2, in the amount of \$580.00, to the Complainants. Tr. 10.

10. Exhibit 2 shows that the check had been endorsed by Dwight Herrman, one of the named Complainants. Respondent Exhibit 2.

11. Mr. Henline understood that the matter would be concluded upon the acceptance and deposit of the check. Tr. 11.

DISCUSSION

The party filing the complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa. C.S. § 332(a). "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Selling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa. C.S. § 701.

Complainants failed to appear at the hearing, and therefore, they did not satisfy their burden of proving the facts of their Complaint. Respondent company not only appeared, but it successfully rebutted the allegations of the Complaint by proving that it had satisfied the claim and even settled it prior to hearing¹. Complainant had not notified the Commission that the claim had been settled prior to hearing, thus necessitating the time and attendant costs of conducting a formal absence for no purpose. Accordingly, the Complaint will be dismissed, with prejudice, for failure to prosecute.

CONCLUSIONS OF LAW

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

2. The party filing the complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa. C.S. § 332(a).

3. Complainants failed to appear at the hearing, and therefore, they did not satisfy their burden of proving the facts of their Complaint.

¹ Respondent is warned for future reference that, if Complainants had appeared, the failure to file an answer would have resulted in the default admission of the allegations of the Complaint. 52 Pa. Code § 5.61. A letter signed by the Respondent's general manager cannot be considered a formal answer when the Respondent is a corporation, which must be represented by counsel in formal proceedings. 52 Pa. Code § 1.22. Where the Complainants failed to appear and no admission by default was requested, the administrative law judge considers failure to prosecute to be a greater omission than failure to file an answer. This is especially true where the Complaint had already been satisfied but no formal notice filed with the Commission.

ORDER


THEREFORE,

IT IS ORDERED:

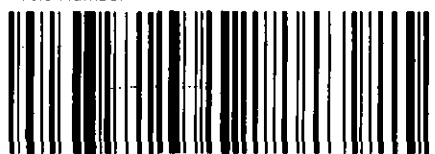
1. That the Complaint filed by Leslye and Dwight Herrman, 849 Kiehl Drive, Lemoine PA 17043 at PUC Docket Number A-00087455C0301 against M.F. Rockey Moving Company is dismissed with prejudice.

2. That the Secretary shall mark this docket closed.

Dated: May 27, 2004


Susan D. Colwell
Administrative Law Judge

2. Article Number



7160 3901 9843 0003 3368

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

A-00087455C0301 ID
 LESLYE AND DWIGHT HERRMAN
 849 KIEHL DRIVE
 LEMOYNE PA 17043
 HARRISBURG PA 17110-1533

COMPLETE THIS SECTION ON DELIVERY


A. Received by (Please Print Clearly) *Leslye Herrman* B. Date of Delivery *5/6/04*

C. Signature *[Signature]* Agent Addressee

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

PS Form 3811, February, 2003 Domestic Return Receipt

2. Article Number



7160 3901 9843 0003 3382

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

A-00087455C0301 ID
 JAMES D CAMPBELL JR ESQUIRE
 CALDWELL & KEARNS
 3631 NORTH FRONT STREET
 HARRISBURG PA 17110-1533

COMPLETE THIS SECTION ON DELIVERY


A. Received by (Please Print Clearly) *M. KREAMER* B. Date of Delivery *6-7-04*

C. Signature *[Signature]* Agent Addressee

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

PS Form 3811, February, 2003 Domestic Return Receipt

2. Article Number



7160 3901 9843 0003 3405

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

A-00087455C0301 ID
 GARY L HENLINE GENERAL MANAGER
 M F ROCKEY MOVING COMPANY
 10 LONG LANE SUITE 100
 MECHANICSBURG PA-17050

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery *6-8-04*

C. Signature *[Signature]* Agent Addressee

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

DOCKETED
JUN 21 2004

Act 294

**DOCUMENT
FOLDER**

Case Identification:

A-00087455C0301; Leslye and
Dwight Herman v. M.F. Rockey
Moving Company

Initial Decision By:

ALJ Susan D. Colwell

Deadline for Return to OSA:

June 18, 2004

This decision has not been reviewed by OSA.

RECEIVED

JUN 15 2004

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

SECRETARY'S BUREAU

04 JUN 21 AM 10:39

I do not want full Commission review of this decision.

Terrance J. Fitzpatrick

Commissioner

6/14/04

Date

RJP

Act 294

Case Identification: A-00087455C0301; Leslye and
Dwight Herman v. M.F. Rockey
Moving Company

Initial Decision By: ALJ Susan D. Colwell

Deadline for Return to OSA: June 18, 2004

This decision has not been reviewed by OSA.

RECEIVED

JUN 15 2004

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Robert K. Bloom/rk

Commissioner

6-14-04

Date

Act 294

Case Identification: A-00087455C0301; Leslye and
Dwight Herman v. M.F. Rockey
Moving Company

Initial Decision By: ALJ Susan D. Colwell

Deadline for Return to OSA: June 18, 2004

This decision has not been reviewed by OSA.

RECEIVED

JUN 17 2004

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

√ Kim Fitzgerald
Commissioner

6/17/04
Date

Act 294

Case Identification: A-00087455C0301; Leslye and
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Moving Company

Initial Decision By: ALJ Susan D. Colwell

Deadline for Return to OSA: June 18, 2004

This decision has not been reviewed by OSA.

RECEIVED

JUN 11 2004

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

✓ I do not want full Commission review of this decision.

Glen Thomas

Commissioner

6/11/04

Date

Act 294

Case Identification: A-00087455C0301; Leslye and
Dwight Herman v. M.F. Rockey
Moving Company

Initial Decision By: ALJ Susan D. Colwell

Deadline for Return to OSA: June 18, 2004

This decision has not been reviewed by OSA.

RECEIVED

JUN 14 2004

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

† I do not want full Commission review of this decision.

Vendell J. Spillard

Commissioner

6/11/04

Date

DATE: July 2, 2004

SUBJECT: A-00087455C0301

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

LESLYE AND DWIGHT HERRMANN

VS

M.F. ROCKEY MOVING COMPANY

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

**DOCUMENT
FOLDED**

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.

DOCKETED
JUL 08 2004