



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**FAILURE TO APPEAR**

OAL DKT. NO. ECE 3239-14

AGENCY DKT. PEA 130004-  
014918

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION/  
BUREAU OF HAZARDOUS WASTE  
ENFORCEMENT,**

Petitioner,

v.

**BRIDGE AVENUE GAS LLC AND  
JAMES GAMBACORTO,**

Respondents.

---

**Andrew Reese**, Deputy Attorney General, appearing for petitioner (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

**James Gambacorto**, respondent, appearing pro se<sup>1</sup>

Record Closed: February 20, 2019

Decided: February 21, 2019

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

---

<sup>1</sup> Respondent's attorney, Michael Hastry, Esq., was relieved at his request as of May 19, 2015. The respondent then represented himself and the corporation, while being assisted by Bradford Batcha, Esq., his real estate attorney who did not enter a notice of appearance on respondent's behalf.

## **STATEMENT OF THE CASE**

Respondents, James Gambacorto and Bridge Avenue Gas, LLC (LLC) (collectively, respondents), appeal an Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”) imposing penalties for violations of the Department of Environmental Protection, Bureau of Hazardous Waste Enforcement’s (Department) underground storage tank (“UST”) regulations during Department inspections between June 2008 and October 2012. The AONOCAPA also orders the Respondents to remedy continued violations by removing the facility’s out of service USTs. Respondents contest the allegations.

## **PROCEDURAL HISTORY**

On April 9, 2013, the Department issued the AONOCAPA to respondents who made a timely request for a hearing. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on March 18, 2014. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The matter was scheduled for hearing on October 19 2015, and April 25, 2016, but was adjourned at the respondents’ request (they claimed that they needed additional time to enter into a business agreement with a third party that would fund the USTs’ removal and payment of some or all of the penalties) with the consent of the Department to allow for the additional time in order to achieve compliance.

The matter was rescheduled to May 19, 2017. On May 4, 2017, the Department provided its final offer for settlement, and advised that if the respondents did not accept this offer, the Department would move forward with the May 19, 2017 hearing. The respondents requested an additional adjournment, which the Department opposed. A brief adjournment was granted, and the matter rescheduled for hearing on July 21, 2017.

On July 19, 2017, the respondents and Bradford Batcha, Esq., the respondents’ real estate attorney, were advised that the Department would not agree to adjourn the

July 21, 2017, scheduled hearing unless the respondents agreed to the terms of the proposed settlement. The respondents objected to the settlement on the basis of an unanswered question concerning whether the facility would still be eligible for funding from the Economic Development Authority (“EDA”) for site remediation if they transferred a portion of the ownership in the facility. Because of the unanswered question, the Department agreed to a short adjournment to provide an answer.

On the eve of the September 21, 2017, hearing, Mr. Batcha requested an adjournment on behalf of the respondents, but the Department was not aware of this. As a result, the DAG appeared in Court with his witnesses and exhibits, prepared to conduct the hearing. Although Mr. Batcha appeared in Court (but not as the respondents’ representative), no one appeared in Court on behalf of the respondents. Mr. Gambacorto did appear by phone and agreed to the settlement previously discussed. All of the essential terms of the settlement, which were previously provided to Mr. Gambacorto and Mr. Batcha in the email of July 19, 2017, were read into the record.<sup>2</sup> The Division of Law approved the settlement and a final settlement agreement was provided to Mr. Gambacorto to sign.

Despite reaching that settlement on September 21, 2017, the respondents’ delays continued, and the settlement agreement was never signed.

On February 22, 2018, for the first time, Mr. Gambacorto advised that he did not have authority to act on behalf of the respondent, Bridge Avenue Gas, LLC, even though Mr. Gambacorto had made numerous representations on behalf of himself and the LLC in this litigation, including requesting adjournments in this litigation, negotiating the terms of a settlement, and agreeing to detailed settlement provisions.

Mr. Gambacorto’s original attorney in this case had stated in a letter dated July 10, 2014, that he represented both Mr. Gambacorto and the LLC. When the attorney withdrew from the case, the LLC was ordered on June 29, 2015, to either retain new

---

<sup>2</sup> The settlement reached on September 21, 2017, also included an additional paragraph 21 and a change to paragraph 22 to allow the facility to remain eligible for EDA funds.

counsel or appear pro se by an officer of the corporation. It was not until February 22, 2018, that Mr. Gambacorto advised for the first time that he was not authorized to act on behalf of the LLC.

The Department then requested the LLC's signed tax returns to corroborate Mr. Gambacorto's assertion. After additional delay, the IRS authorization form was provided on November 1, 2018, which showed that Mr. Gambacorto signed the LLC's tax returns for the 2012 tax year as its member manager. Mr. Gambacorto failed to explain why he was authorized to bind the LLC for purposes of filing the LLC's tax return but not for purposes of signing the settlement. He also asserted for the first time that other family members, including his wife, had an interest in the property.

Because of Mr. Gambacorto's newly created assertion that he could not sign the settlement on behalf of the LLC, and because of the delay in providing the IRS authorization form, an in-person conference was scheduled for November 21, 2018 to allow the Department to subpoena Mr. Gambacorto and his family members to ascertain who owns the property and who could sign a settlement agreement on behalf of the LLC. Notice was given to Mr. Gambacorto.

On November 21, 2018, neither Mr. Gambacorto nor his family members appeared for the in-person conference. He also failed to provide advance notice that he did not intend to appear. At noon on November 21, 2018, a fax was received from Mr. Gambacorto which indicated:

James Gambacorto was seen and evaluated in our office on 11/17/2018. Please take this into consideration when reviewing the time away from work-meeting 11/21/18.<sup>3</sup>

The note neither indicates that Mr. Gambacorto was sick on November 17th, nor does it indicate any impediment to his or his wife's ability to attend the conference on November 21, 2018.

---

<sup>3</sup> An identical note was provided for his wife, Luz Maria Gambacorto.

## **FACTS**

The procedural history is accepted as fact.

## **LEGAL ANALYSIS AND CONCLUSION**

**N.J.A.C. 1:1-14.4 provides for sanctions for failure to appear:**

- (a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).
- (b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.
- (c) If the judge receives an explanation:
  - 1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
  - 2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:
    - i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;
    - ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

(d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

The November 21, 2018 in-person conference was meant to move this matter forward to a resolution. Instead, the respondents' failed to appear at the conference and failed to provide sufficient evidence of good cause for the failure to appear. The Department requests an Initial Decision finding no good cause for failing to appear and returning this matter back to the agency under N.J.A.C. 1:1-14.4(c).

Here, the respondents have succeeded in delaying the final resolution of an AONOCAPA from April 2013, first by Mr. Gambacorto requesting adjournments of scheduled hearing dates stating that the property would be sold and a third-party would assume the costs of remediation; then by Mr. Gambacorto entering into a settlement with the Department with him and the LLC; then by Mr. Gambacorto failing to execute the settlement; then by Mr. Gambacorto stating that he had no authority to enter into a settlement on behalf of the LLC and that he was not the owner; then by delaying to obtain his tax returns; then by stating the property was owned by family members; and then by failing to appear at an in-person conference designed to move this matter forward to a conclusion. It is quite clear at this point that Mr. Gambacorto, acting on behalf of himself and the LLC has and has had no intention of resolving this matter, either by settlement or by hearing. These delays have caused the regulations to be continued to be violated and the property to continue to create a risk of harm to the environment.

The proffered medical excuses for the failure of Mr. Gambacorto and his wife to appear on November 21, 2018, are woefully inadequate. They reference an office evaluation four days prior to the hearing; they do not indicate that either he or his wife were ill or suffered from any condition preventing their appearance at the OAL; and they

reference time away from work, rather than an appearance at the OAL. The notes do not constitute good cause for their failure to appear.

Accordingly, the matter will be returned to the Department, and the appeal will be dismissed.

### **ORDER**

It is hereby **ORDERED** that the appeal filed by James Gambacorto and Bridge Avenue Gas, LLC, against the Department of Environmental Protection, Bureau of Hazardous Waste Enforcement, be **DISMISSED**, and the file returned to the Department.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Environmental Protection does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF LEGAL AFFAIRS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State Street, 4th Floor, West Wing, PO Box 402, Trenton, New Jersey 08625-0402**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 21, 2019

DATE

A handwritten signature in blue ink that reads "Susan Scarola". The signature is written in a cursive, flowing style.

**SUSAN M. SCAROLA**, ALJ (Ret., on recall)

Date Received at Agency:

---

Date Mailed to Parties:

---

SMS/cb

**APPENDIX**

**WITNESSES**

**For petitioner:**

None

**For respondent:**

None

**EXHIBITS**

**For petitioner:**

Note from Hackensack Meridien Health Medical Group

**For respondent:**

Brief with attachments