

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILL L. MCGINNIS	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 99-495
	)	
GTE SOUTH INCORPORATED	)	
	)	
DEFENDANT	)	

ORDER

Will L. McGinnis has brought a formal complaint before the Commission against GTE South Incorporated (“GTE”). Mr. McGinnis alleges that GTE’s actions have caused financial damages to Kentucky R.I.T.E., Inc. (“KRI”), a Kentucky corporation of which Mr. McGinnis is the sole shareholder. Mr. McGinnis also claims that he has suffered emotional damages as a direct result of GTE’s actions. Mr. McGinnis has brought this complaint against GTE in his capacity as the sole shareholder of KRI.

Mr. McGinnis lacks standing to bring this complaint against GTE. The alleged losses are to KRI and not to Mr. McGinnis. Since the losses are to KRI and not to Mr. McGinnis, any action must be brought in the name of KRI. “Every action shall be prosecuted in the name of the real party in interest...” CR.17.01. Mr. McGinnis brings this action in his own name and does not name KRI as a party to the complaint.

Mr. McGinnis’s status as the sole shareholder has no effect on his standing to bring a complaint for KRI’s alleged losses. Any losses are those of the corporation for which a shareholder may not institute an action to recover. A corporation is a separate

entity, created by statute with the power to sue and to be sued, and is recognized as being separate from its shareholders. Holsclaw v. Kenilworth Ins. Co., Ky.App., 644 S.W.2d 353 (1982); White v. Winchester Land Development Corporation, Ky.App., 584 S.W.2d 56. Accordingly, Mr. McGinnis can legally claim no losses due to GTE's alleged action. The only party that has the proper standing and right to file a complaint with this Commission is KRI.

If KRI seeks to file a complaint against GTE with the Commission, KRI must be represented by counsel. Kentucky's highest court held in Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967), that a corporation must be represented by counsel before a state administrative agency.

In a previous case, this Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission, must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.

Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (June 15, 1981) at 2.

Commission regulations concerning formal complaints incorporate, at least in part, these sentiments. Administrative Regulation 807 KAR 5:001, Section 12(2), states in part:

Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address.

The regulation requires that a corporation or other organization, from the outset of a complaint proceeding, be represented by an attorney.

Based on the above, the Commission finds that Mr. McGinnis's complaint fails to comply with Kentucky law and may not be accepted for filing.

IT IS THEREFORE ORDERED that the complaint filed by Will. L. McGinnis is dismissed.

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of February, 2000.

By the Commission

ATTEST:

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Executive Director