

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

INTERNATIONAL LAND	:	
ACQUISITIONS, INC.,	:	
Petitioner	:	
	:	
v.	:	NO. 1075 C.D. 1999
	:	ARGUED: September 13, 1999
PENNSYLVANIA PUBLIC	:	
UTILITY COMMISSION,	:	
Respondent	:	

BEFORE: **HONORABLE DORIS A. SMITH, Judge**
 HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
 HONORABLE JESS S. JIULIANTE, Senior Judge

OPINION BY
JUDGE LEADBETTER

FILED: December 10, 1999

On December 16, 1998, the Pennsylvania Public Utilities Commission held that Pennsylvania American Water Company did not violate its tariff by requiring International Land Acquisitions, Inc. (ILA) to pay the cost of installing an additional water line to serve ILA's proposed development. ILA appealed to this court, and the PUC moved to quash the appeal. For the reasons stated below, we will grant the motion to quash.

On April 27, 1999, Appellants filed a notice of appeal with the Commonwealth Court. Under Pa. R.A.P. 1502, the exclusive procedure for judicial review of a determination of a government agency is a petition for review, not a notice of appeal. On May 19, 1999, during an argument on ILA's request for supersedeas before then President Judge Colins, this error was brought to the

attention of counsel for ILA. In response, ILA did not move to amend, nor did it attempt to file a petition for review. Rather, ILA faxed a copy of the docket sheet prepared by the court's administrator which incorrectly stated that a "petition for review" had been filed.

When no further action was taken, respondent moved to quash ILA's appeal on June 11, 1999. In response, ILA claimed that all of the contents of a petition for review were present in its notice of appeal,¹ and that under *Rocco v. Worker's Compensation Appeal Board (Parkside Realty Construction)*, 725 A.2d 239 (Pa. Cmwlth. 1999), its appeal should not be quashed. In its wherefore clause, petitioner requested that the motion should be denied or in the alternative, it should be permitted to amend its pleading. Again, no motion to amend was made, nor was any proposed petition for review submitted.

ILA's reliance on *Rocco* is misplaced. Although James Rocco also filed a notice of appeal rather than a petition for review, when respondent moved to quash the appeal appellant promptly (within 3 days) "filed a request to clarify and amend the improvidently filed notice of appeal." *Rocco*, 725 A.2d at 241. "In his request, claimant set forth the essential elements of a petition for review which were missing from the document filed." *Id.* at 243. Therefore, in *Rocco*, we held that "a clarification of claimant's appeal is not only permissible, but appropriate in order to secure a just, speedy and inexpensive determination of this matter." *Id.*

Leniency, however, is not absolution. While the court is loath to dismiss substantive issues due to technical violations, *Rocco* does not excuse

¹ We note that this is not correct. Most significantly missing from petitioner's notice of appeal was "a general statement of the objections to the order or other determination." Pa. R.A.P. 1513(a).

parties from even *attempting* to cure the violation. As of September 13, 1999, the date of oral argument and almost four months after actual notice was given to counsel that the ILA's notice of appeal was improvidently filed, ILA still had neither moved to amend nor presented the court with a proposed petition for review, but has persistently insisted that its notice of appeal was adequate. "The confusion created by Chapter 15's use of a petition for review" has been noted. *Id.* at 245 (Pellegrini, J., concurring). Nevertheless, the rule exists and is binding upon this court as well as the parties before it. Were we to simply overlook ILA's obdurate noncompliance, we would be, in effect, abrogating Pa. R.A.P. 1502, an action beyond the authority of this court.

Accordingly, respondent's motion to quash is granted.

BONNIE BRIGANCE LEADBETTER, Judge

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ORDER

AND NOW, this 10th day of December, 1999, respondent's motion to quash petitioner's appeal in the above captioned matter is GRANTED.

BONNIE BRIGANCE LEADBETTER, Judge

Gierschick v. State Employes' Retirement Board, 551 Pa. 585, 712 A.2d 280 (1998), reversed this Court's decision in *Gierschick v. State Employes' Retirement Board* (Pa. Cmwlth., No. 1799 C.D. 1997, filed August 18, 1997) and remanded the appeal to this Court for a determination on the merits. Further, in this Court's recent decision in *Rocco v. Workers' Compensation Appeal Board (Parkside Realty Constr.)*, 725 A.2d 239 (Pa. Cmwlth. 1999), the Court followed the Supreme Court's instruction in *Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Board*, 547 Pa. 210, 689 A.2d 910 (1997), that courts are to apply a liberal construction of the Rules of Appellate Procedure to achieve a just, speedy and inexpensive determination of all matters governed by the Rules.

In *Rocco* the petitioner similarly filed a notice of appeal rather than the requisite petition for review containing a statement of objections to the order appealed, but the Court denied the respondent's motion to quash. Instead the Court permitted the petitioner's clarification of his improvidently filed notice of appeal. Petitioner in the case *sub judice* acknowledged that it failed to amend its notice of appeal, but it nevertheless relied on *Rocco* and on the contention that it narrowly complied with the rules because the Court docketed its filing as a petition for review. I would follow the liberal construction rule and deny Respondent's motion to quash and proceed to decide the merits of Petitioner's appeal.

DORIS A. SMITH, Judge