



Agenda Date: 8/24/16
Agenda Item: 7C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

NICHOLAS LAMICELLA,
Petitioner,

v.

MIDDLESEX WATER COMPANY,
Respondent.

) ORDER ADOPTING THE
) INITIAL DECISION, IN PART,
) AND REJECTING THE INITIAL
) DECISION, IN PART
)
) BPU DOCKET NO. WC16020171U
) OAL DOCKET NO. PUC 05555-16

Parties of Record:

Nicholas Lamicella, Petitioner, pro se
Jay L. Kooper, Esq., Respondent, Middlesex Water Company

BY THE BOARD:

On February 26, 2016, Nicholas Lamicella ("Petitioner") filed a petition with the Board of Public Utilities ("Board") disputing the accuracy of an estimated bill from Middlesex Water Company ("Respondent") for water service at a residence. Petitioner alleged the algorithm used for estimated readings was unrealistic and requested to be provided with either the utility meter reading schedule or a customer yellow card to telephone actual usage.

Respondent filed its answer on March 17, 2016, denying the allegation. Seeking to dismiss the petition, Respondent argued that Petitioner lacked standing, that the estimated bill was moot, and that the Respondent may issue estimated bills when a customer meter cannot be read under N.J.A.C. 14:3-7.2(c).

After receipt of the answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge ("ALJ") Evelyn J. Marose.

Respondent filed a motion for summary decision on May 18, 2016. By the motion, Respondent sought to dismiss the petition, contending Petitioner lacked standing as he was not the customer of record, the estimated bill was moot because it was cancelled and an actual bill

issued in its place was paid in full, and the request to alter Board meter reading and billing procedure regulations at N.J.A.C. 14:3-7.2 was not within OAL jurisdiction.

Petitioner submitted a response to the motion for summary decision dated May 26, 2016. Petitioner stated he had requested the account holder name be changed from Norma Lamicella to himself on May 19, 2016. Petitioner also complained of receiving a second estimated bill on March 8, 2016 rather than the requested in-person meter reading or yellow card. Petitioner insinuated Respondent intended not to read the meter, indicated he would be contacting a lawyer, and stated he would file another petition with video proof after the customer name change takes effect.¹

The ALJ issued an Initial Decision granting summary decision in Respondent's favor on June 3, 2016. The ALJ reviewed N.J.A.C. 1:1-12.5(b), stating that if the papers and discovery which had been filed, together with the affidavits, if any, showed that there was no genuine issue as to any material fact challenged and that the moving party was entitled to prevail as a matter of law, a summary decision may be rendered. The ALJ determined that Respondent provided water service on a residential account to Norma Lamicella, who was not the Petitioner. The ALJ found that Respondent was unable to read the meter and thereafter issued an estimated bill for the period beginning September 8, 2015 to December 4, 2015 in the amount of \$153.75. The ALJ further found that Respondent had obtained an actual meter reading on December 16, 2015. The ALJ found that the estimated bill had been cancelled on December 17, 2015, and the actual bill in the amount of \$107.87 had been issued and paid in full on January 4, 2016, prior to the filing of the petition.

The ALJ considered whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, were sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor the non-moving party consistent with Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 533 (1995). The ALJ noted the customer of record was the person identified in utility account records as the person responsible for bill payment under N.J.A.C. 14:3-1.1 and N.J.A.C. 14:3-7.1(a). But, the ALJ found Petitioner was not the customer of record and, as the spouse, lacked standing to file a billing dispute under Robinson v. Public Serv. Elec. & Gas Co., OAL Dkt No. PUC 6991-13, BPU Dkt No. EC13030263U (October 16, 2013). The ALJ therefore concluded Petitioner lacked standing to pursue the billing dispute claim.

Further, the ALJ determined the estimated bill was cancelled and the actual bill of \$107.87 issued on December 17, 2015 was paid in full on January 4, 2016. The ALJ further found that as of February 26, 2016, no disputed charges existed from September 8, 2015 to December 4, 2015. The ALJ therefore concluded that, given all favorable inferences on Petitioner's evidence, no disputed billing charge existed.

Additionally, the ALJ determined the OAL did not have jurisdiction to tailor a remedy that unilaterally imposed a different rule or procedure from one approved and adopted by a state agency under N.J.A.C. 1:1-3.2(a). The ALJ noted estimated billings could be used if a customer's meter could not be read and those estimates may be based upon actual billings from the same time period in the previous year under Gaspere Campisi of Gaspere's Gourmet v. Atlantic City Elec. Co., OAL Dkt No. PUC 05301-13, BPU Dkt No. EC13020175U (April 24, 2014) referencing N.J.A.C. 14:3-7.2. The ALJ concluded that, after giving all favorable

¹ The Board notes that Petitioner's response does not reflect that Respondent was served.

inferences to Petitioner's evidence, a different method for estimated bill reading could not be ordered.

By the Initial Decision, the ALJ determined there was no genuine issue of material fact with respect to the lack of standing, the resolved estimated billing charge, and the unavailability of a different method for estimated bill readings, concluding Respondent was entitled to prevail as a matter of law under N.J.A.C. 1:1-12.5(b). Accordingly, the ALJ granted Respondent's motion for summary decision.

Pursuant to N.J.S.A. 52:14B-10(c), the Board issued an order on June 29, 2016, extending its time to issue a final agency decision by September 1, 2016.

Both parties were noticed of the Initial Decision, and exceptions were not filed.

DISCUSSION

For the reasons that follow, the Board **ADOPTS** the Initial Decision, in part, **REJECTS** the Initial Decision, in part, and **DISMISSES** the petition.

Petitioner bears the burden of proof by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). A motion for summary decision may be made upon all or any of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). Summary decision may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). Determining whether a genuine issue with respect to a material fact exists requires consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill, supra, 142 N.J. at 540. Where a motion for summary decision not decided by an agency head fully disposes of the case, it is treated as an initial decision under N.J.A.C. 1:1-18 et seq. N.J.A.C. 1:1-12.5(c).

Standing requires that a party have a sufficient stake and real adverseness with respect to the subject matter of the litigation, and a substantial likelihood that some harm will fall upon the party in the event of an unfavorable decision. In re New Jersey Board of Public Utilities, 200 N.J. Super. 544, 556 (App. Div. 1985), citing N.J. Chamber Commerce v. N.J. Elec. Law Enforce. Comm., 82 N.J. 57 (1980). Standing is a threshold issue that must be addressed before considering the substantive merits of a case and that neither depends on nor determines the merits of a party's claim. N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 410 (App. Div. 1997), certif. granted, 152 N.J. 13, appeal dismissed as moot, 152 N.J. 361 (1998).

In billing disputes, a customer of record is the person identified in utility account records as the person responsible for bill payment under N.J.A.C. 14:3-1.1 and N.J.A.C. 14:3-7.1(a). The record reflects Respondent provided water service on a residential account to Norma Lamicella, who was not the Petitioner. The record further reflects Petitioner did not show he was the person identified as the customer in utility account records at the time of the complaint. The Board, therefore, **ACCEPTS** the ALJ findings that Petitioner was not the customer of record and, as the spouse, lacked standing to file a billing dispute under Robinson v. Public Serv. Elec. & Gas Co., OAL Dkt No. PUC 6991-13, BPU Dkt No. EC13030263U (October 16, 2013). The Board further **FINDS** that the ALJ correctly determined that Petitioner failed to present a

genuine issue with respect to a material fact and Respondent is entitled to relief as a matter of law when viewed in the light most favorable to Petitioner consistent with N.J.A.C. 1:1-12.5(b). The Board therefore **AFFIRMS** the ALJ conclusion that Petitioner lacks standing to pursue the billing dispute claim and **DISMISSES** the petition.

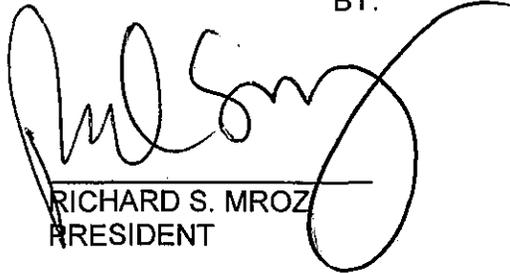
Because Petitioner was not the customer of record and therefore lacked standing to pursue a dispute concerning the utility account, the Board **FINDS** that it is not necessary to reach the merits of this case and therefore **REJECTS** the ALJ's other findings on the merits. Specifically, the Board **REJECTS** the findings that the estimated bill was cancelled, that the actual bill of \$107.87 issued on December 17, 2015 was paid in full on January 4, 2016, and that a dispute as to bills did not exist. The Board similarly **REJECTS** the finding that a different method for estimated bill reading could not be ordered.

Upon careful review and consideration of the record, the Board **FINDS** the ALJ grant of summary decision based on standing to be reasonable and supported by sufficient, competent, and credible evidence. Accordingly, the Board **ADOPTS** that part of the Initial Decision, which dismissed the petition based on Petitioner's lack of standing, but **REJECTS** the remainder of the Initial Decision, which addressed the merits of the case.

This Order shall be effective on September 1, 2016.

DATED: 8/25/16

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



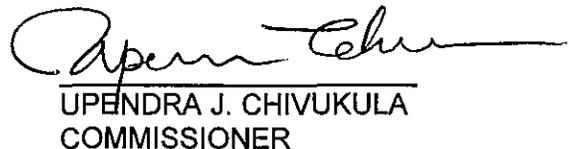
JOSEPH L. FIORDALISO
COMMISSIONER



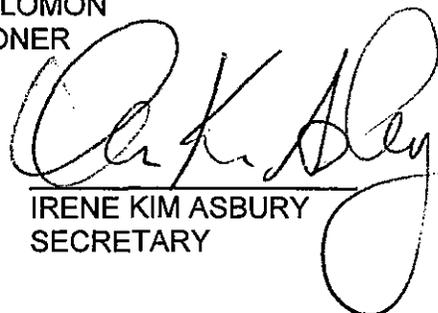
MARY-ANNA HOLDEN
COMMISSIONER



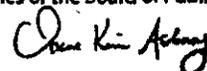
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**IN THE MATTER OF NICHOLAS LAMICELLA, PETITIONER V. MIDDLESEX WATER
COMPANY, RESPONDENT – BILLING DISPUTE**

DOCKET NOS. BPU WC16020171U AND OAL PUC 05555-16

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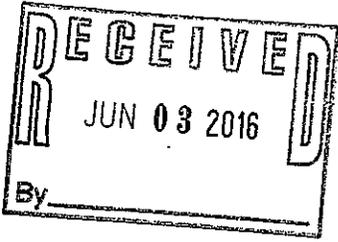
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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BOARD OF PUBLIC UTILITIES
MAIL ROOM

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. PUC 05555-16

AGENCY DKT. NO. WC16020171U

NICHOLAS LAMICELLA,

Petitioner,

v.

MIDDLESEX WATER COMPANY,

Respondent.

Nicholas Lamicella, petitioner, pro se

**Jay L. Cooper, Esq., Vice President, General Counsel and Secretary for
respondent (Middlesex Water Company, general counsel)**

Record Closed: May 27, 2016

Decided: June 3, 2016

BEFORE EVELYN J. MAROSE, ALJ:

cms
V. Haynes
D. Lee Thom
E. Hartsfield
J. Ford
C. Jordan
R. Lambert
J. Gertsma
B. Agee
C. Vachier

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On February 26, 2016, petitioner, Nicholas Lamicella, filed a Request for Formal Hearing with the Board Utilities of Public asserting a billing dispute. The matter was transmitted to the Office of Administrative Law (OAL) on April 12, 2016, for hearing and determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held and a Prehearing Order was issued on May 11, 2016. Respondent, Middlesex Water Company (Water Company), filed a Motion for Summary Decision on May 18, 2016. Petitioner filed opposition on May 26, 2016.

STANDARD FOR SUMMARY DECISION

Summary Decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b).

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electrical Industrial Company v. Zenith Radio Corporation, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), and Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), wherein the Supreme Court adopted a standard that “requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Brill, supra, 142 N.J. at 533 (quoting Liberty Lobby, supra, 477 U.S. at 251-52, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214). The Court stated that under the new standard,

a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Brill, supra, 142 N.J. at 540 (quoting Liberty Lobby, supra, 477 U.S. at 249, 106 S. Ct. at 2511, 91 L. Ed. 2d at 212).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Brill, supra, 142 N.J. at 541.

In addressing whether the Brill standard has been met in this case, further guidance is found in R. 4:46-2(c):

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

STATEMENT OF FACTS

The following pertinent **FACTS** in this matter are not in dispute.

The Water Company provides services to Norma Lamicella at her residence located at XX New York Avenue, Metuchen, New Jersey. The account number for the water services is 8820300000. Norma Lamicella is not the petitioner in this matter.

A Water Company employee was unable to read the meter located in the residence in December 2015. On December 8, 2015, the Water Company issued an estimated bill for services for the period from September 8, 2015, to December 4, 2015, in the amount of \$153.75.

On December 14, 2015, petitioner complained via telephone about receiving an estimated bill and a date for an actual reading was agreed upon. On December 16, 2015, a Water Company employee obtained an actual meter reading.

On December 17, 2015, the estimated bill was cancelled and a bill in the amount of \$107.87 was issued. On January 4, 2016, payment in the amount of \$107.87 was received for the only outstanding bill.

On February 5, 2016, the Water Company issued a letter to Norma Lamicella advising her that the remote service meter in her residence was not registering and requesting that she contact the Water Company to schedule installation of a replacement meter in the residence as soon as possible to stop estimated billing. Both parties acknowledge that this letter was issued in error since there had not been a remote reading device at the residence since 2012, when the remote service meter was removed at the request of the customer.

In his request for Formal Hearing, petitioner seeks to compel the Water Company to advise him as to when the quarterly reading will definitely occur. If petitioner is not home so that an actual reading can be made, petitioner asserts that any "yellow card," which would allow a reading by the customer, must be dated stamped when left at the door as proof that an in-person reading was attempted on the noticed day. Petitioner objects to an estimated reading. He asserts that the Water Company's algorithm for an estimated reading does not, within a reasonable margin of error, result in an accurate bill.¹

The Water Company seeks Summary Decision. It asserts that petitioner is not the customer of record for the account in question and thus lacks standing. Further, there was no disputed bill at the time the petition was filed. The estimated bill in question had already been cancelled, an in-person reading provided, and the bill based upon the in-person reading had been paid. As to petitioner's requests regarding meter reading procedures and billing, the Water Company asserts that it is bound by the New Jersey Board of Public Utilities regulations and that the Office of Administrative Law does not have the power to order procedures to the contrary.

¹ The customer will not permit the installation of another remote reading device at the residence.

In his opposition to summary decision, petitioner acknowledged that he was not the customer of record at the time he filed the petition at issue or during the time of the contested billing period detailed in the petition. However, he states that, on May 19, 2016, after the date of Water Company's filed its summary decision papers, he made a request that the account for the residence at issue be changed from the name of Norma Lamicella to Nicholas Lamicella. Petitioner also does not dispute that the bill, for services provided from September 8, 2015, to December 4, 2015, was paid at the time that he filed this petition. Instead, he complains that on March 8, 2016, he received another estimated bill rather than an in-person reading or the ability to read his own meter through use of a "yellow card" left on the premises.

LEGAL ARGUMENT

The Board's regulations define "customer of record" as the person that applied for utility services and is identified in the account records of the public utility as the person responsible for payment of the public utility bill. N.J.A.C. 14:3-1.1; N.J.A.C. 14:3-7.1(a). A spouse who is not the "customer of record" lacks the requisite standing to file a billing dispute petition against the utility. Robinson v. Public Serv. Elec. & Gas Co., 2013 PUC N.J. LEXIS 301 (Final Decision, October 16, 2013). In this matter, the sole petitioner is Nicholas Lamicella. Norma Lamicella, the "customer of record" for the account, is not a petitioner. Following the Brill standard, I **CONCLUDE** that, even after giving all favorable inferences to the evidence presented by the petitioner, the non-moving party, petitioner does not have standing to pursue the claims he asserted in the petition at issue.

Were petitioner the "customer of record" on this account, any disputed utility charges asserted on the account could certainly be the subject of a petition. N.J.A.C. 14:3-7.13. However, no disputed charges for services are detailed in the petition at issue. As noted above, on December 8, 2015, the Water Company issued an estimated bill for services for the period from September 8, 2015, to December 4, 2015, in the amount of \$153.75. On December 14, 2015, petitioner complained via telephone about receiving an estimated bill and a date for an actual reading was agreed upon. On December 16, 2015, a Water Company employee obtained an actual meter reading.

On December 17, 2015, the estimated bill was cancelled and a bill in the amount of \$107.87 was issued. On January 4, 2016, payment in the amount of \$107.87 was received for the only outstanding bill. By February 26, 2016, there was no dispute regarding the charges for services provided from September 8, 2015, to December 4, 2015, nor an outstanding bill of record. Following the Brill standard, I **CONCLUDE** that, even after giving all favorable inferences to the evidence presented by petitioner, the non-moving party, there is no disputed billing charge in the petition.

The OAL does not have jurisdiction to tailor a remedy that unilaterally imposes a different rule or procedure from one approved and adopted by a state agency. N.J.A.C. 1:1-3.2(a). Under the Board's regulations, if for any reason a utility cannot read a customer's meter, the utility may use estimated billing. N.J.A.C. 1:1-3.7.2(c). In calculating an estimated bill, a utility may base the estimation on actual billing from the same time period from the previous year. Gaspare Campisi of Gaspare's Gourmet v. Atlantic City Elec. Co., 2014 N.J. PUC. LEXIS 109 (Final Decision, April 24, 2014). Following the Brill standard, I **CONCLUDE** that, even after giving all favorable inferences to the evidence presented by petitioner, the non-moving party, the OAL cannot order a different method for an estimated bill reading than the use of an actual billing for the same time in a prior year.

In accordance with the foregoing, I **CONCLUDE** that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**, and it is further **ORDERED** that the Petition is **DISMISSED** in its entirety.

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities 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 **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 3, 2016
DATE


EVELYN J. MAROSE, ALJ

Date Received at Agency:

Date Mailed to Parties:

kep