

modifications. A review of the evidentiary record shows that this matter primarily involved a billing dispute for directory advertising services, which had already been decided by a Superior Court judgment entered for Verizon Directories Corporation in 2008 against Petitioner. Accordingly, the Board is precluded from exercising jurisdiction over Petitioner's claim and thus dismisses it with prejudice.

BACKGROUND AND PROCEDURAL HISTORY

1. Petition

In his Petition, Dr. Leach alleges that in 2005, Verizon sued him in Superior Court for \$15,622 of unpaid bills from 2001 to 2002 for directory advertising services, although he had already settled this Verizon debt with a collection agency in 2003 for \$15,302 (Petition at 1). According to Dr. Leach, the case was submitted for arbitration, and the arbitrator "shockingly ruled" in Verizon's favor, although Verizon did not provide actual invoices but only a spreadsheet that Verizon modified to try to support its position. Dr. Leach states that he has been "attempting to have [his case] reopened through the court system, however, there is now a judgment entered against [him]." Id. In addition, Dr. Leach contends that "[t]he judgment against [him] needs to be stricken so that [he] can try to reestablish his credit rating," and he therefore seeks a declaration from the Board that he no longer owes any debt to Verizon and that his legal fees at this point should be restituted (Id. at 2; Initial Decision at 1).

2. Answer

Verizon, in its Answer and Counterclaim ("Answer") dated March 26, 2009, denies that Petitioner was improperly billed for directory services. Verizon raises various affirmative defenses, including unclean hands, statutes of limitation, res judicata and collateral estoppel, lack of Board jurisdiction, and failure to state a cause of action. Verizon also states that because the subject of the petition has previously been adjudicated in its favor, Petitioner should be required to pay Verizon's costs and expenses for defending this Board action (Answer at 1-3).

3. Motion for Summary Decision

On October 30, 2009, Respondent moved for summary decision, contending that there were no material facts in dispute since (i) Petitioner's billing dispute was with Verizon Directories Corporation (now Idearc Media Corporation), not Verizon; (ii) Idearc Media is a directory publishing company not subject to the jurisdiction of the Board; and (iii) the claim asserted had already been litigated before the Superior Court of New Jersey and judgment was entered in favor of Verizon Directories Corporation (Petition for Summary Decision at 1).

Petitioner opposed Verizon's petition for summary decision by letter dated November 12, 2009. Petitioner claimed that his petition contained genuine issues of disputed material facts. He argued that his dispute is not with Idearc Media but with Verizon Directories, which was related to Verizon at the genesis of his dispute. He also denied Verizon's claim that this dispute was the very same as previously litigated before the Superior Court of New Jersey, claiming that Verizon never provided an adequate explanation as to why this debt was owed. In addition, he claimed that the arbitrator in the Superior Court case gave no rationale or explanation for his decision. Petitioner further explained that his reason for pursuing a formal hearing concerning this matter stemmed from the fact that a Verizon employee had informed him that he had a zero

balance on his Verizon accounts (Opposition to Verizon New Jersey Inc.'s Petition for Summary Decision at 1-5)..

On November 18, 2009, Verizon filed a reply to Petitioner's opposition to summary decision by reiterating its arguments for summary decision. Verizon argued that Petitioner offered no proof of material facts that were in dispute, and he offered no legal reasons to withstand summary decision (Reply at 1-2). Also, Verizon argued that the basis of the Petition's case, *i.e.*, directory advertising services, is not subject to regulation by the Board, relying on Donnelley Directory, a Division of the Reuben H. Donnelley Corporation v. New Jersey Bell Telephone Company, I/M/O the Board's Inquiry into Yellow Pages Advertising, BPU Docket No. TC87080798, Order of Dismissal, dated December 15, 1988 (where the Board referred to companies like Donnelley Directory, a directory advertising service company, as "unregulated competitors.") (Reply at 2). In addition, Verizon argued that Petitioner was precluded from re-litigating at the Board the same claim on which he had received an adverse judgment from the Superior Court, citing In re Estate of Dawson, 136 N.J. 1, 9-21 (1994); Pivnick v. Beck, 326 N.J. Super. 474 (App. Div. 1999), aff'd, 165 N.J. 670 (2000).

On January 13, 2010, ALJ James-Beavers denied Verizon's request for summary decision, because she determined that there were material facts in dispute. She found that Verizon's customer service department handled complaints about telephone service and directory advertising; customers doing business with Verizon for directory and phone service wrote one check for both services; and, there was the lack of clear demarcation (Initial Decision at 9).

4. Settlement Agreement

On November 3, 2009, counsel for Verizon sent Petitioner's counsel a letter transmitting an unsigned Stipulation of Settlement in Verizon Directories Corporation v. Thomas A. Leach, MDPA, Docket No. MID-L-6684-05, Superior Court of New Jersey, Law Division ("Collections Action"). Although Petitioner did not sign the Stipulation of Settlement to resolve the Collections Action with Verizon, he later began paying to Verizon monthly installments in the amount of \$2,862.24 (Initial Decision at 3-4; Stipulation of Facts and Witness List at 3, attached to Initial Decision as J-6).

5. Stipulation of Facts and Witness List

On April 22, 2010, Petitioner and Verizon filed with the ALJ a Stipulation of Facts and Witness List wherein the following facts were deemed undisputed:

(i) Dr. Leach' owned two businesses, the Princeton Center for Plastic Surgery and Spa Therapia, which purchased directory advertising services from Verizon Directories Corporation ("Verizon Directories") in 2001 and 2002; (ii) because the accounts for these directory advertising services were in arrears, the Collections Action was commenced and was later submitted to binding arbitration; (iii) the arbitrator rendered a decision in favor of Verizon Directories in the amount of \$15,612.18, and the court subsequently enforced the arbitrator's decision and entered a judgment in favor of Verizon Directories and against Dr. Leach in the amount of \$15,612.18; and, (iv) although Dr. Leach has not signed the November 3, 2009 Stipulation of Settlement, he has been paying to Verizon Directories monthly installments in the amount of \$2,862.24 (Initial Decision at 2-4).

6. Evidentiary Hearing and Initial Decision

ALJ James-Beavers conducted an evidentiary hearing on May 3, 2010, after which Petitioner was asked to submit the canceled checks that he supposedly had written to Verizon. Judge James-Beavers closed the record on August 27, 2010 after she had received the checks on that date (Initial Decision at 2). Also, the Stipulation of Facts and Witness List was marked for identification and moved in evidence as J-6 (Id. at 11).

Petitioner testified that before filing a complaint with the Board, Verizon employee Ms. Linda Rose Napoli had investigated the matter at Petitioner's request and advised him on December 3, 2008 that no outstanding balance was due Verizon. Petitioner asked Ms. Napoli to generate paper work to that effect, but Ms. Napoli said that she could not do so and conveyed to Petitioner that he should have his attorney contact Verizon's legal department (Initial Decision at 4). Petitioner testified that he paid the bill in question when he paid the credit clearing house the amount of \$15,000. He saw no distinction between this bill and some other bill that Verizon Directories was claiming that he owed. Petitioner stated that he received only one bill for both services and he would always write one check to Verizon to cover both services. It was only when he had encountered some difficulties with his business that everything became in arrears.

Verizon placed him into collection with a credit clearing house, and he settled the debt with the credit clearinghouse and thought that the matter had been resolved. When he heard from another collection agency, he ignored it, assuming that it was a mistake, because he had already paid the bill, and Ms. Napoli had informed him that no balance was due (Id. at 4-5).

Verizon presented the testimony of Mr. Jaffrey Lahn, a Verizon consultant, regarding Petitioner's assertion that Ms. Napoli had advised him that no balance was due on his account with Verizon Directories. Mr. Lahn testified that Dr. Leach had two accounts in 2001 and 2002 for advertising in Verizon's directories. He became delinquent in those accounts and, in 2003, Verizon sought collection. Dr. Leach paid one bill and was allowed to advertise in 2004. In 2005, Verizon began a second collection action to collect \$15,000 (Initial Decision at 5). Mr. Lahn testified that from 2001 to 2003 when Dr. Leach had accounts, Verizon Directories was a subsidiary under Verizon Communications and, therefore, he had an account with both Verizon and Verizon Directories (Id. at 6-7).

Mr. Lahn conceded that it is possible that if Ms. Napoli was investigating a matter from 2001 to 2003, she would have had access to records from both Verizon and Verizon Directories. It was possible that outstanding debt would have been treated as a receivable on the books of Verizon Directories. Also, an outstanding balance would not have shown and therefore Ms. Napoli had no basis for knowing that Petitioner had an outstanding balance with Verizon Directories. Therefore, one account was paid and the other was not paid, and Ms. Napoli did not know that the unpaid account was a Verizon Directories' account. Therefore, Mr. Lahn opined that Ms Napoli indicated to Petitioner that he had a zero balance because she did not have access to Verizon Directories billing records, and her investigation was based on her access to current Verizon billing records and not previous directory advertising bills (Initial Decision at 6-7).

The ALJ found that the evidence did not shed much light on the issue of the debt owed. She found that Ms. Napoli had indicated to Petitioner that he had a zero balance because she did not have access to Verizon Directories billing records; namely, Ms. Napoli only had access to current Verizon billing records and not previous directory advertising bills at the time of her investigation. While there were checks written that show payments to Verizon, there were no

corresponding invoices to indicate whether the checks applied to the bill that was resolved or the bill that is at issue in this case, and there was no evidence of an accounting of bills rendered and bills paid (Id. at 7-8). The ALJ concluded that Petitioner had the burden of proving his entitlement to the declaration that he owes no debt to Verizon and that he failed to meet his burden of proof. She noted that if it were Verizon's burden to show that Petitioner owes a debt, then perhaps the lack of bills showing the debt that was or is owed would have worked in Petitioner's favor. However, based solely on the representation of Ms. Napoli and the testimony of Petitioner that he owed nothing to Verizon, it was impossible to conclude that Petitioner had satisfied his debt ((Id. at 8). Moreover, the ALJ found, ruling that Dr. Leach had satisfied his debt "would be to overturn the decision of an arbitrator, which was affirmed by the Superior Court." (Ibid.).

Thus, based on the evidentiary record, Judge James-Beavers concluded that Petitioner had failed to meet his burden of proving that he is entitled to a declaration that he owes no debt to Verizon and deserves payment for his legal fees (Id. at 9).

DISCUSSION

At the outset, the Board notes that the Initial Decision very thoroughly sets forth the factual record, and the Board agrees that Petitioner's case should be dismissed. ALJ James-Beavers rejected Verizon's request for summary decision because at that time there were material facts in dispute. She found that Verizon's customer service department handled complaints about telephone service and directory advertising; customers doing business with Verizon for directory and phone service wrote one check for both services; and, there was the lack of clear demarcation (Initial Decision at 9). Based on the factual record adduced at the evidentiary hearing, it became clearer that the debt in issue pertained to services for directory advertising, not for telephone utility services, and was the exact claim on which a Superior Court judgment had been entered against Petitioner in favor of Verizon Directories. Nevertheless, the Board notes that N.J.S.A. 48:2-13 limits its jurisdiction to public utilities, and the debt at issue here does not involve a debt owed to a public utility. See also N.J.S.A. 48:2-21.34 (definition of "utility service").

Accordingly, we agree with the ALJ's determination that that Dr. Leach failed to prove his case, but modify it to state that Dr. Leach's case should have been dismissed also because the Superior Court had entered a judgment against him on the same issue and, therefore, his claim should have been declared res judicata, because the Board cannot hear the same claim that the Superior Court had already decided against Dr. Leach. As the ALJ noted, Dr. Leach could not prove that "the debt was paid in full. Further, to rule in such a way would be to overturn the decision of an arbitrator, which was affirmed by the Superior Court." (Initial Decision at 8).

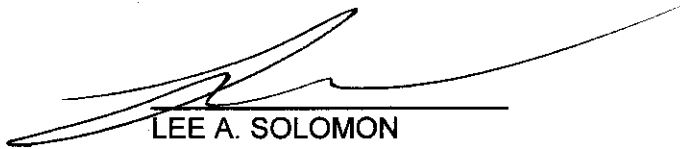
Also, the Initial Decision does not address Verizon's counterclaim for costs and expenses for defending this action, and Verizon did not file any exceptions to the Initial Decision. It is therefore presumed that Verizon had opted not to pursue its counterclaim for costs and expenses. Nevertheless, the Board is denying Verizon's relief regarding its request for costs and expenses of this action, because nothing in the record supports the request, and parties typically bear their own costs in this forum.

Upon careful review and consideration of the record, and based on the foregoing, the Board **CONCLUDES AND HEREBY ORDERS** that:

- (i) The Initial Decision be and is hereby adopted with modifications as indicated herein;
- (ii) The Petition be and is hereby dismissed with prejudice; and
- (iii) Respondent's request for costs and expenses for defending this action be and is hereby denied.

DATED: 3/30/11

BOARD OF PUBLIC UTILITIES
BY:



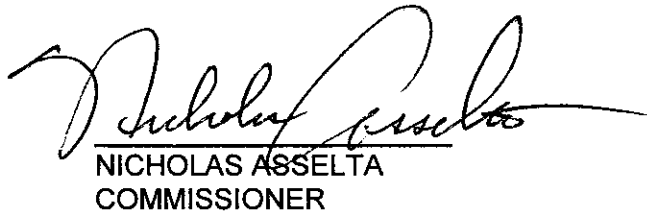
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



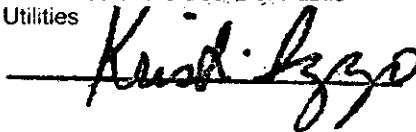
NICHOLAS ASSELTA
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

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



THOMAS A. LEACH, M.D.
V.
VERIZON NEW JERSEY, INC.

BPU DOCKET NO. TC09010038U
OAL DOCKET NO. PUC2790-09

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 2790-09

AGENCY DKT. NO. TC09010038U

THOMAS A. LEACH, M.D.,

Petitioner,

v.

VERIZON NEW JERSEY, INC.,

Respondent.

Thomas E. Ryan, Esq. for petitioner (Lutz, Shafranski, Gorman and Mahoney,
PA, attorneys)

Richard A. Chapkis, Esq. and William D. Smith, Esq. for respondent

Record Closed: August 27, 2010

Decided: October 8, 2010

BEFORE **LISA JAMES-BEAVERS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about January 13, 2009, Thomas A. Leach, M.D. filed a Petition with the Board of Public Utilities (BPU) for a Formal Hearing pursuant to N.J.A.C. 14:1-1 et seq. Petitioner contends that respondent Verizon New Jersey, Inc. engaged in fraudulent billing and harassment with his business accounts. He seeks a declaration that he no longer owes Verizon and attorney's fees for having to pursue this action.

The Board transmitted the matter for a formal hearing to the Office of Administrative Law, where it was filed on May 12, 2009. Respondent moved for summary decision, based on the fact that there were no material facts in dispute and 1) petitioner's billing dispute is with Idearc Media Corporation, formerly known as Verizon Directories Corporation, not Verizon NJ; 2) Idearc Media is a directory publishing company not subject to the jurisdiction of the BPU; and 3) the claim asserted has already been litigated before the Superior Court of New Jersey and judgment has been entered in favor of Verizon Directories Corporation. On January 13, 2010, I denied summary decision on the basis that there were material facts in dispute. A hearing was held on May 3, 2010, after which petitioner was asked to submit the canceled checks he had written to Verizon. The record closed after I received them on August 27, 2010.

STIPULATED FACTS

1. The Princeton Center for Plastic Surgery and Spa Therapia, two businesses owned by Dr. Leach, purchased directory advertising services from Verizon Directories Corp. ("Verizon Directories") in 2001 and 2002.

2. Because the accounts for these directory advertising services were in arrears, in September 2005, Verizon Directories filed a collections action against Dr. Leach, entitled Verizon Directories Corp. v. Thomas A. Leach, MDPA, Docket No. MID-L-6684-05, in the Superior Court of New Jersey, Law Division/Middlesex County (the "Collections Action").

3. The Collections Action was submitted to binding arbitration. The arbitrator rendered a decision in favor of Verizon Directories in the amount of \$15,612.18. A copy of the arbitrator's decision is attached hereto as Exhibit A [J-1].

4. Thereafter, in the Collections Action, the matter proceeded before the court on cross motions to enforce/vacate the arbitrator's decision. On November 21, 2008, the court enforced the arbitrator's decision and entered a judgment in favor of Verizon Directories and against Dr. Leach in the amount of \$15,612.18. A copy of the judgment is attached hereto as Exhibit B [J-2].

5. On November 26, 2008, Dr. Leach filed an informal complaint with the New Jersey Board of Public Utilities ("Board") alleging that he does not owe the amount the court awarded to Verizon Directories, and that the arbitrator's decision failed to explain why the amount awarded is owing to Verizon Directories. Thereafter, on January 9, 2009, Dr. Leach commenced the instant action by filing a formal complaint with the Board against Verizon NJ containing essentially the same allegations as the informal complaint.

6. In response to a subpoena filed in the Collections Action, Verizon NJ produced to Dr. Leach documents containing, among other things, an entry that reads: "I contacted the customer on 12/5 to advise that we show no balanc [sic] due on the account." A copy of these documents is attached hereto as Exhibit C [J-3].

7. On October 3, 2009, in the Collections Action, Dr. Leach's attorney deposed Ms. Linda Rose Napoli, a contractor employed by Verizon NJ, whose name appears in the several of the "comment" sections in the above-referenced documents produced in response to the subpoena in the Collections Action. A transcript of that deposition is attached hereto as Exhibit D [J-4].

8. On November 3, 2009, in the Collections Action, counsel for Verizon Directories sent counsel for Dr. Leach a letter transmitting a settlement agreement. A copy of the transmittal letter and the attached agreement are attached hereto as Exhibit E [J-5]. The transmittal letter says, among other things:

This letter is pursuant to our recent telephone conversation. I am enclosing a stipulation of settlement. The settlement amount is calculated in the following fashion. The judgment amount is \$15,612.18. The sheriff's commissions are \$1,561.22. The total due is \$17,172. This amount is to be paid in six monthly installments. The monthly installments are in the amount of \$2,862.24.

The settlement document provides, among other things, "The defendant hereby waives any rights that it might have to file a motion to vacate the judgment in this matter. The defendant hereby confesses judgment on behalf of plaintiff." Although Dr. Leach has

not signed the settlement agreement, he has been paying to Verizon Directories monthly installments in the amount of \$2,862.24.

FACTUAL DISCUSSION

Thomas Leach, M.D., testified that this matter began in approximately April of 2006 when he fell behind in his practice and became delinquent in an account for advertising services in the yellow pages. Verizon got a judgment against him and treated him so badly that he wanted to pursue the present action. Since that time he has undergone great frustration in the form of lost days from work and lost work time. He has put a lot of time and effort into this matter. Once a judgment was rendered against him, the Somerset County Sheriff's Office was in his office taking inventory of his office supplies and equipment to see how they could get their \$15,000 that was owed. He filed a complaint against Verizon at the end of 2008. He received a phone call from a staff member at Verizon New Jersey, Linda Rose Napoli, who said that the bill that he was questioning had been paid years ago. He asked her to generate paperwork to that effect and she said she could not. She told him that he must have his attorney contact the legal department at Verizon. Up until then, he thought he could handle the matter on his own, but he realized he could not.

At that point, Leach retained an attorney, then asked the attorney to contact Verizon's legal department. The judgment against him was not stayed or stopped after he was told that the bill had actually been paid. When he tried to get answers, Sharon Herzberg was one of the people that he contacted. She told him that he should ask for a formal hearing with the Board of Public Utilities (BPU). His position is that he paid the bill in question when he paid the credit clearing house the amount of \$15,000. He has no distinction between this bill and some other bill that Verizon now says that he owed. There was only one bill in which the phone services and directory services were combined. He would always write one check to Verizon to cover both. The various checks that he had written, and which had been produced in the underlying litigation before the arbitrator, were marked as P-2. There was no distinction with Verizon Directories. From 2000 to 2003, his office manager paid the bills to Verizon, not

Verizon Directories. The bill would be broken down into the phone part and the yellow pages, but it was all one bill. It was only when he had difficulties with his business that everything became in arrears. Verizon put him into collection with Credit Clearinghouse. Verizon would not talk to him after they turned it over to a collection agency. He felt he resolved the matter with Credit Clearinghouse. He wrote one big check to Credit Clearinghouse and thought the matter was resolved. When he heard from another collection agency, he ignored it thinking that they just didn't know what they were doing because he had already paid. When Ms. Napoli from Verizon said that he didn't owe any money, he thought that the letter he got from the new collection agency would be proven to be a clerical error and it would all go away.

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Leach admitted that in arbitration, the arbitrator ruled in favor of Verizon New Jersey and the court upheld the award. He stated that he did not review his bills personally but did spot-check them, just not every bill. Regarding the settlement attempt with Verizon, he refuses to sign it because he is not agreeing to anything. He only started to make payments because the collection company was going to start taking things from his office if he did not.

Jeffrey Lahn testified that he is employed by Verizon New Jersey as a consultant and reports to the president. He assists with customer inquiries, among many other things. He served thirty-six years with Verizon in different areas. He was doing regulatory matters when he retired in 2006. He explained that Leach had two accounts in 2001 and 2002 for advertising in Verizon's directories. He became delinquent in those accounts and, in 2003, Verizon sought collection. Leach paid one bill and was allowed to advertise in 2004. In 2005, Verizon began a second collection action to collect \$15,600. This was pursued by Verizon Directories. The court ruled in favor of Verizon Directories. Leach filed this action with the Board of Public Utilities and in November 2009 a settlement was reached that he would pay back the outstanding amounts. He has made the payments, but never signed the settlement agreement.

Lahn continued testifying that, regarding Leach's conversation with Napoli, Napoli's representation that there was no balance in the account does not mean that he

does not owe anything. He believes the reason that the records indicate no balance was that all she had in front of her was Verizon Communications files. Verizon Communications spun off as an independent company initially called IDEARC. This is now called Super Media. She did not have access in 2008 to any of those account records. He explained that Verizon used to be a subsidiary of AT&T, so Leach calling Verizon was as if he had called AT&T and asked a question about Verizon. Verizon New Jersey and Verizon Directories are now separate companies. The connection was severed in 2006 when Verizon Directories was spun off as a separate company. After the court order, Leach's payments were to be sent to counsel for Verizon Directories, Mr. Eckstein.

Lahn agreed that he read the report of Napoli and he acknowledged that she prepared at least some of the report. He does not believe she prepared all of it. She was the head investigator. He admitted he had never prepared such a report and never worked in the consumer complaint department. He does not know personally anyone named in the report. As a consultant, he does whatever the president asks him to do, including any customer issues, questions about Verizon FIOS and other complaints. He has a lot of expertise, knowledge of the network and its support systems, as well as mergers, acquisitions and financial planning. This is why he was brought back as a consultant. Back when Leach's accounts were begun in 2001 to 2003, Verizon Directories was a subsidiary under Verizon Communications. Therefore, Leach did have an account with Verizon and Verizon Directories. He conceded that it is possible that if Ms. Napoli was investigating a matter from 2001 to 2003, she would have access to records from both Verizon and Verizon Directories. It depends on the situation. Outstanding debt would have been treated as a receivable on the books of Verizon Directories. An outstanding balance would not have shown. Therefore, Napoli had no basis for knowing that Leach had an outstanding balance with Verizon Directories. In short, one account was paid and the other was not paid. Napoli did not know that the unpaid account was a Verizon Directories' account. When it was pointed out to him that page four of six of the report indicates that it was called to Napoli's attention that this was a Verizon Directories' dispute, he still insisted that Napoli had no basis for her

information that no money was owed. He insists that Napoli could not have looked at Verizon Directories' information because she did not have access to it.

FINDINGS OF FACT

Based on the testimony presented, the exhibits admitted into evidence and the arguments of the parties, I make the following additional **FINDINGS OF FACT**:

Petitioner became delinquent on his accounts, which included phone service and directory advertising. Verizon placed the debt with a collection company. He settled the debt in the amount of \$15,302 through the collection agency. However, in September 2005, Verizon sued him for unpaid bills from 2001-2002 for \$15,662 – the balance from a second account that he owed. Despite petitioner producing cancelled checks and invoices to document his payment of the debt, Verizon pursued its lawsuit. Verizon's case against petitioner was submitted to arbitration. The arbitrator ruled in favor of Verizon without explanation. Verizon employee Napoli investigated the matter at Leach's request and advised Leach on December 5, 2008, that, according to their records, there is no money due. The only written record indicating that petitioner does not owe Verizon is a notation in Napoli's report, which she barely remembered. She could not explain her conclusion.

Although I **FIND** that Verizon and Verizon Directories were separate companies, I also **FIND** that the distinction was unrecognizable both to the employees, as indicated by Napoli's deposition testimony, and to the customers who wrote one check to Verizon for both telephone service and directory advertising.

ANALYSIS

Petitioner seeks a declaration that he no longer owes any debt to Verizon and seeks payment of attorney's fees to pursue this case. His case is based on representations from a Verizon employee, Linda Rose Napoli, who conducted an investigation into his case and advised him that she reviewed the records of Verizon

and did not see where petitioner still owed any money to Verizon. There is no applicable law cited. Napoli's testimony relied heavily on her report and said, "Whatever is in that report is what I did." This testimony, unfortunately, did not shed much light on the issue. In addition, there are checks written that show payments to Verizon, but there is no associated invoice to go with them to indicate whether the checks were applied to the bill that was resolved or the bill that is at issue in the present case. There is no evidence of an accounting of bills rendered and bills paid. Rather, petitioner has submitted a stack of checks with a cover letter from his attorney to them that "[T]his case does not involve \$15,000 in bills that Dr. Leach claims he paid and Verizon claims he owes. Verizon's claim arose from some sort of internal calculation they referred to as "adjustments" in their billing procedures. To this day, we are not able to decipher what they meant or how they calculated same." There was no testimony to this effect. Also, petitioner has noted that he has continued to advertise with Verizon Directories, a relationship that one would think would cease if he owed the debt Verizon submits he does.

Petitioner has the burden of proving his entitlement to the declaration that he owes no debt to Verizon. If it were Verizon's burden to show that petitioner owes a debt, perhaps the lack of bills showing the debt that was or is owed would work in petitioner's favor. In the present case, however, it is impossible to conclude, based solely on the representation of Napoli and the testimony of Leach, that Leach has satisfied his debt. Leach clearly has written many checks to Verizon. However, there is no one cancelled check indicating that the debt was paid as he initially told Napoli. Without the bills or invoices, one cannot draw a conclusion that the checks show the debt was paid in full. Further, to rule in such a way would be to overturn the decision of an arbitrator, which was affirmed by the Superior Court.

Verizon also argued that because the bill was generated from Verizon Directories and involved a dispute over the payment for directory advertising, the BPU does not have jurisdiction, since it only deals with phone service billing disputes. Therefore, it would follow that the OAL does not have jurisdiction. In ruling on Verizon's motion for summary decision, I ruled that this was a factual issue that could not just be

asserted in a brief. Lahn testified that there are two separate companies and I have so **FOUND**. However, I have also **FOUND** that to the customers and employees, there was no practical distinction. Verizon's customer service department handled complaints about telephone service and directory advertising. Customers doing business with Verizon with directory advertising and phone service wrote one check to pay for both. Based on the lack of a clear demarcation, I **CONCLUDE** that this case was properly before the BPU and the OAL did have jurisdiction to hear it.

For the foregoing reasons, I **CONCLUDE** that petitioner has failed to meet his burden of proving that he is entitled to a declaration that he owes no debt to Verizon and deserves payment for his legal fees.

ORDER

Based on the foregoing, I hereby **ORDER** that the petition be **DISMISSED**.

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, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 8, 2010
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

cmo

APPENDIX
WITNESSES

For Petitioner:

Thomas A. Leach, M.D.

For Respondent:

Jeffrey Lahn

EXHIBITS

Joint:

- J-1 Arbitration Transmittal Letter dated September 24, 2008
- J-2 Arbitration Order dated November 21, 2008
- J-3 Documents submitted with VECTR Complaint Report dated December 5, 2008
- J-4 Deposition of Linda Rose Napoli
- J-5 Letter and settlement agreement unsigned dated November 3, 2009
- J-6 Stipulation of Facts

For Petitioner:

- P-1 Letter to Thomas Ryan, Esq. dated April 22, 2006
- P-2 Copies of checks under cover letter dated August 27, 2010

For Respondent:

None