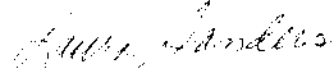


Date Board mailed Order to OAL: 12/2/13

cc: Service List Attached

DATED: 12/2/13



LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 12/2/13 emailed

Date Board mailed executed Order to Parties: 12/2/13

VISHINDAS HARJANI

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC13040348U
OAL DOCKET NO. PUC9396-13

SERVICE LIST

Vishindas Harjani
130 S. Vermont Avenue
Apartment 314
Atlantic City, NJ 08401

Renee E. Suglia, Esq.
Atlantic City Electric Company
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Newark, DE 19702

Mark E. Critchley, DAG
State of New Jersey
Department of Law & Public Safety
Division of Law
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Eric Hartsfield, Director
State of New Jersey
Board of Public Utilities
Division of Customer Assistance
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Post Office Box 350
Trenton, NJ 08625-0350

Julie Ford-Williams, Chief
State of New Jersey
Board of Public Utilities
Division of Customer Assistance
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

PROCEDURAL HISTORY

The petitioner requested a hearing and the matter was filed at the OAL on July 2, 2013, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on September 6, 2013, and the record closed.

FACTUAL DISCUSSION

The facts presented by this matter are straightforward. Petitioner was a customer of the respondent, receiving electric services. On December 9, 2010, respondent notified petitioner in a written correspondence that they had received notice that petitioner desired to change his electric supplier to a third party provider known as Public Power Company. (R-3). Petitioner was advised that respondent would continue to be the electric distributor, and that future billings would reflect one bill with two billers, respondent as the distributor and Public Power Company as the supplier. Notably, respondent is a utility which is regulated by the State of New Jersey Board of Public Utilities (BPU), whereas the BPU does not maintain jurisdiction over the practices of Public Power Company, a private entity.

In this matter, petitioner initially alleges that Public Power Company fraudulently changed his service without his permission. Whether or not this in fact did occur, petitioner does not challenge that his dispute, billing or fraudulently changing his service is with Public Power Company. He acknowledges such on the record. Additionally, petitioner also seemingly settled his dispute with Public Power Company when he negotiated a settlement, with the assistance of the BPU, and cashed a check in the amount of \$413.50, as demonstrated by a letter dated August 15, 2012. (R-1).

Further, in paragraph 3 of petitioner's counterclaim, dated June 10, 2013, he states:

THE ONLY BIT OF TRUTH SPOKEN BY THE
RESPONDENT'S ATTORNEY IS WHERE IN PARA NO. 8
OF HER ANSWER SHE STATES THAT "ANY AND ALL

DAMAGES ALLEGED TO HAVE BEEN SUSTAINED BY THE PETITIONER WERE CAUSED SOLELY BY THE NEGLIGENCE OF AN INDEPENDENT AND/OR INTERVENING PARTIES OR INSTRUMENTALITIES OVER WHICH ACE HAS NO CONTROL OR NO DUTY TO CONTROL WHICH IS WORTH TO BE NOTED.

On September 3, 2012, petitioner received a letter confirming that his account with Public Power Company had been closed. Petitioner then entered into a new agreement with another third party supplier, Discount Energy Group, to be his electric supplier. This agreement was ended within the month and petitioner returned to respondent for all of his services.

On more than one occasion during the proceeding, petitioner affirmatively indicated that his dispute was with the unregulated, third party provider, Public Power Company. However, he stated that he was seeking damages for pain and suffering from respondent for not assisting him with his dispute against Public Power Company.

Accordingly, respondent made a Motion to Dismiss for failure to state a claim at the conclusion of the petitioner's case.

Based on the foregoing, I **FIND** that petitioner has failed to state a claim against respondent.

I further **FIND** that petitioner accepted a cash settlement in the amount of \$413.50 from the third party provider.

Lastly, I **FIND** that this tribunal has no jurisdiction over the third party provider, Public Power Company.

CONCLUSION

Based on the foregoing, I **CONCLUDE** that petitioner has failed to state a claim, upon which he can recover damages, against the respondent. I further **CONCLUDE** that even if petitioner had a colorable claim against the respondent, petitioner would be

barred from seeking damage due to the principles of accord and satisfaction and estoppels, since petitioner entered into a settlement with another entity for the same or similar damages.

ORDER

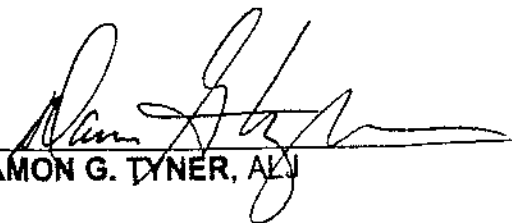
I **ORDER** that the respondent's Motion to Dismiss be **GRANTED** and that this matter be **DISMISSED**.

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, 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.

10-17-13
DATE


DAMON G. TYNER, ALJ

Date Received at Agency:

10-17-13

Date Mailed to Parties:

10/23/13

/sjd

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

Vishindas Harjani

For Respondent:

Agnes Carpenter, Senior Analyst

EXHIBITS

For Petitioner:

P-1 Letter, Public Power to Harjani, 9/3/12

For Respondent:

R-1 Letter, Board of Public Utilities to Harjani, 8/15/12

R-2 Harjani Letter to the Editor, 8/28/13

R-3 Letter verifying change of service to Public Power Co., 12/9/10

R-4 Letter verifying change of service to Discount Energy Group, 9.28/11