



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

GERTRUDE HOLMES,)	ORDER ADOPTING
Petitioner)	AND MODIFYING
)	INITIAL DECISION
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	Docket No. EC18030267U
Respondent)	OAL Docket No. PUC 07972-2018

Parties of Record:

Gertrude Holmes, Petitioner, *pro se*
Adrian D. Newall, Esq., for Respondent, Public Service Electric and Gas Company

BY THE BOARD:

This matter is a billing dispute between Gertrude Holmes (“Petitioner”) and Public Service Electric and Gas Company (“PSE&G” or “Respondent”). This Order sets forth the procedural history and factual background of Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-10(c). Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** as **MODIFIED** the Initial Decision rendered on March 11, 2020, as follows.

PROCEDURAL HISTORY

Petitioner filed the within matter with the Board of Public Utilities on March 13, 2018 seeking to contest and review a large bill she received from PSE&G. The matter was designated as a contested case, pursuant N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13, and forwarded to the OAL on May 30, 2018. The matter was assigned to Judge Andrew M. Baron (“Judge Baron”). Due to Petitioner’s age and health related issues, multiple adjournments of hearing dates during the course of the matter were requested and granted with the consent of PSE&G’s counsel.

On November 27, 2018, the parties entered into an oral settlement on the record, wherein Petitioner would pay PSE&G \$70 per month, in addition to regular monthly bills, for a period of forty-eight (48) months until the settlement amount of \$3,361.83 was paid off (“the Settlement”).

[1T¹.4:1-12:10]. On August 20, 2019, after several months of waiting to close out the matter, Petitioner represented to Judge Baron that she would not sign the settlement papers proposed by PSE&G. [2T.6:6-19:23]. Petitioner, Respondent and Judge Baron were in agreement about the existence and terms of the Settlement, but the hearing was adjourned due to Petitioner's reports of illness and unpreparedness. [2T.36:3-37:24]. Judge Baron explained that PSE&G could file a motion to enforce the settlement and/or for summary decision if PSE&G wished to do so. Ibid.

On or about November 13, 2019, when a written settlement agreement still was not signed, PSE&G moved for summary decision seeking an award of \$7,565.12. Petitioner filed opposition to the motion and a cross-motion seeking relief similar to that sought in the opposition.

On January 30, 2020, oral argument was held on the motion for summary decision. The parties' again acknowledged the Settlement and additionally agreed on the record that settlement payments would begin in June 2020 along with a 10-day cure period for late payments ("the Modification"). [3T.15:20-15:25; 34:4-36:9; 49:18-52:25]. Judge Baron found that the Settlement and the Modification, were a "fair conclusion to the case" and "enter[ed] summary disposition in favor of PSE&G" consistent with the Settlement and the Modification. [3T.48:6-49:21].

On March 11, 2020, Judge Baron issued his Initial Decision, granting summary decision in favor of Respondent in a form identical to the terms of the Settlement reached on the record on November 27, 2018 and the Modification made on January 30, 2020. Judge Baron denied the relief sought by Petitioner and dismissed the Petition. No exceptions to the Initial Decision were filed. By Order dated March 27, 2020, the Board obtained a forty-five-day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

THE INITIAL DECISION

Petitioner owned two properties located at 268-270 High St. Orange, New Jersey, and 13 Ellis Avenue, Orange, New Jersey. [ID at 2²; R³-Exhibit A]. PSE&G provided written documentation of its contention that Petitioner had a large outstanding balance. [ID at 2; R-Exhibit C]. At the time the motion was filed, PSE&G contended that the total amount outstanding for the properties was \$7,565.12. [ID at 2-3; R-Exhibit D].

The Petitioner provided no legal basis or documentation to support her claim that none of the outstanding bill was owed. [ID at 3]. Furthermore, although Petitioner did present a copy of a Chapter 13 bankruptcy dating to 2013, PSE&G was not included on the list of creditors and Petitioner's debt to PSE&G was not affected by the bankruptcy. [ID at 4].

Judge Baron articulated the standard for entering summary decision as "when a party seeking such an order is able to demonstrate that there are no outstanding material facts, and the moving party is entitled to prevail as a matter of law." [ID (citing Brill v. Guardian Life Ins. Co. of Am., 142

¹ 1T refers to the transcript of the November 27, 2018 proceedings held in the OAL on the record in this matter.

2T refers to the transcript of the August 20, 2019 proceedings held in the OAL on the record in this matter.
3T refers to the transcript of the January 30, 2020 oral argument held in the OAL on the record in this matter.

² "ID" refers to the Initial Decision rendered by Judge Baron on March 11, 2020 in this matter.

³ "R" refers to Exhibits filed by Respondent in connection with its Motion for Summary Decision.

N.J. 520 (1995)]. Judge Baron further noted that a court must dismiss a complaint if there is no legal basis for entering the requested relief or the factual allegations are palpably insufficient to support a claim upon which relief can be granted. [ID at 3 (citing Holmin v. TRW Inc. 330 N.J. Super 30, (App. Div 2000) aff'd 167 N.J. 2005 (2001); Rieder v. State 221 N.J. Super 547 (App. Div. 1987))].

Judge Baron then ruled that "given all of the circumstances" PSE&G's Motion for Summary Decision was granted as modified. [ID at 3-4]. The modification by Judge Baron was Summary Decision in a form identical to the Settlement and the Modification. [ID at 3]. No findings were explicitly made as to the absence of disputed material facts or the propriety of entering summary disposition as a matter of law based upon the absence of disputed material facts.

DISCUSSION AND FINDINGS

The record in the OAL was well-developed by Judge Baron and unmistakably captures the oral settlement reached by the parties on November 27, 2018, and later modified on January 30, 2020. The transcripts also reflect Judge Baron's diligent, though ultimately unsuccessful, effort to obtain a written confirmation of the Settlement. The terms of the Settlement and the Modification are identical to the ultimate determination of Judge Baron in the Initial Decision, and therefore, the Board agrees that Petitioner owes Respondent, \$3,361.83, less any payments made, payable at the rate of \$70 a month for forty-eight months, with a ten-day cure period, beginning in June 2020. However, the Board modifies Judge Baron's Initial Decision to state that the legal basis for the decision is an enforceable settlement reached by the parties, not the granting of summary decision based upon undisputed material facts.

N.J.A.C. 1:1-19.1 provides:

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys;
or
2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

N.J.A.C. 1:1-19.1.

With respect to settlements in general, the Supreme Court has repeatedly explained that "[t]he settlement of litigation ranks high in our public policy," we "strain to give effect to the terms of a settlement wherever possible." Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008). "An agreement to settle a lawsuit is a contract, which like all contracts, may be freely entered into and which a court, absent a demonstration of 'fraud or other compelling circumstances,' should honor and enforce as it does other contracts." Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div.), certif. denied, 94 N.J. 600 (1983)(internal citation omitted).

Particularly relevant here is the principle, consistent with N.J.A.C. 1:19-1, that "parties may orally, by informal memorandum, or by both agree upon all the essential terms of a contract and effectively bind themselves thereon, if that is their intention, even though they contemplate the execution later of a formal document to memorialize their undertaking." Pascarella, 190 N.J. Super. at 126 (quoting Comerata v. Chaumont, Inc., 52 N.J. Super. 299, 305 (App.Div.1958)). Execution of a release is a mere formality, not essential to formation of the contract of settlement "[s]o long as the basic essentials are sufficiently definite, any gap left by the parties should not frustrate their intention to be bound." Hagrish v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992)(quoting Berg Agency v. Sleepworld-Willingboro, Inc., 136 N.J. Super. 369, 377 (App.Div.1975)). This proposition has previously been applied to customer billing disputes before the Board. See e.g., Nance v. Public Service Electric & Gas, BPU Docket No. EC 1020099U (Decided August 8, 2002)(citing Hagrish, 254 N.J. Super. at 138).

On November 27, 2018, consistent with N.J.A.C. 1:1-19.1(a), Judge Baron required the parties to disclose the full settlement terms "[o]rally, by the parties or their representatives." N.J.A.C. 1:1-19.1(a)(2). Judge Baron engaged in a thorough colloquy with the parties that established the existence of a settlement with clear terms, reached voluntarily. Petitioner would be required to make forty-eight (48) consecutive payments of \$70, in addition to her current monthly bill, to pay off the \$3,361.83 settlement amount, which reflected a credit of \$4,646.36 off of the bill. [1T.4:1-5:17]. Judge Baron, having sworn Petitioner in, then engaged in the follow exchange:

THE COURT: Is anybody forcing you into this settlement, Ms. Holmes?

MS. HOLMES: No, sir.

THE COURT: And are you entering into the settlement freely and voluntarily?

MS. HOLMES: Yes, sir.

THE COURT: And do you understand the terms that PSE&G has respected your position on the large amount of the bill, they've taken \$4,646.36 off the bill, leaving a balance of \$3,361.83, and they're going to divide that over four years of payments of \$70 a month. Do you understand that?

MS. HOLMES: I do, your Honor.

THE COURT: Now, you will also, in addition to that, have to continue to maintain and make your monthly PSE&G bill, whatever that may be. So the \$70 is going to be added on to whatever you pay. Do you understand that?

MS. HOLMES: Yes, sir.

[1T.6:4-6:24]. Judge Baron continued his examination of Petitioner and concluded by asking PSE&G to send him something "informally by letter that will help us close the file", after which point, "I sign an order, it goes to Trenton" for approval. [1T. 6:25-12:6].

After no written confirmation of the Settlement was filed, the parties returned to Court on August 20, 2019. Judge Baron stated, "when we were last here, I thought we had a settlement, and we did have a settlement, and the settlement was placed on the record." [2T.6:11-6:15]. The Petitioner did not deny that the Settlement existed or that it had not been reached voluntarily. To the contrary, it was undisputed that Petitioner made five (5) payments of \$70 each, from January 2019 through May 2019, consistent with the Settlement and "in spite of my not signing [the writing proposed by PSE&G] because of the loophole that was in this written settlement from the stipulation of settlement for me to sign..." [2T.16:7-16:12 and 22:1-25:25].

PSE&G also “believed this matter had been settled under agreeable terms by Ms. Holmes, on the record...” [2T.20:17-21:8]. PSE&G asked “the Court to enforce the settlement as agreed to on the record at our last proceeding.” [2T.20:17-21:8]. Judge Baron did not rule on the oral motion or explicitly determine that the Settlement was “consistent with the law and fully dispositive of all issues in controversy”, which would have required the issuance of an initial decision approving the Settlement pursuant to N.J.A.C. 1:1-19.1(b). In consideration of Petitioner’s reports of illness, Judge Baron instead opted to adjourn the matter, which would allow further time for either a written agreement or the filing of a formal motion. [2T.36:3-37:24]. PSE&G’s Motion for Summary Decision ultimately followed, in which PSE&G sought an amount far greater than that agreed upon in the Settlement.

The Board finds that the Settlement made on November 27, 2018 is valid and binding, as is the Modification made on January 30, 2020. The record satisfies the requirements of N.J.A.C. 1:1-19.1(a), evidencing voluntarily agreed upon, complete settlement terms disclosed orally by the parties or their representatives that fully disposed of all issues in controversy. Though reduction to writing may be preferable, neither N.J.A.C. 1:1-19.1 nor the relevant case law governing settlements precludes a settlement from being consummated orally or voids an oral settlement if the parties do not complete the formality of reducing the settlement to writing. See Pascarella, 190 N.J. Super. at 126; Hagrish, 254 N.J. Super. at 138; Nance v. Public Service Electric & Gas, BPU Docket No. EC 1020099U (Decided August 8, 2002)(citing Hagrish, 254 N.J. Super. at 138).

Moreover, it is immaterial that no informal letter was filed with the OAL confirming the Settlement and that PSE&G filed a Motion for Summary Decision seeking an award of an amount larger than that in the Settlement. Indeed, Judge Baron, Petitioner and Respondent all recognized the existence of the Settlement on the record on November 27, 2018 and August 20, 2019, and the parties agreed to the Modification on January 30, 2020. In addition, despite granting summary decision and referencing the standard for summary decision, the Initial Decision relies upon the Settlement and the Modification, and omits any findings of undisputed material fact. [ID at 3].

Accordingly, after careful review and consideration of the Initial Decision and record, the Board **HEREBY FINDS** that the parties have voluntarily agreed to the Settlement, which fully resolved all outstanding contested issues in this matter, as evidenced by the above-quoted portions of the November 27, 2018 transcript, as confirmed in the August 20, 2019 transcript, and as augmented by the Modification in the January 30, 2020 transcript. Petitioner is obligated to pay PSE&G \$3,361.83, less any payments made, in installments of \$70 a month (in addition to regular monthly bills) for a period of forty-eight months, with a ten-day cure period, beginning in June 2020. Accordingly, the Board **HEREBY ADOPTS** the Initial Decision, as **MODIFIED** herein, and **ORDERS** that the Petition in this matter be **DISMISSED**.

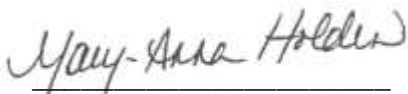
This order shall be effective June 20, 2020.

DATED: June 10, 2020

BOARD OF PUBLIC UTILITIES
BY:



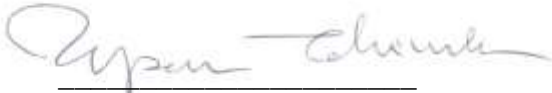
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

GERTRUDE HOLMES, PETITIONER

V.

PUBLIC SERVICE GAS AND ELECTRIC COMPANY, RESPONDENT

**BPU DOCKET NO. EC18030267U
OAL DOCKET NO. PUC 07972-2018**

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FORMER UNITED AIRLINES, INC. EMPLOYEE
8/1974 - 11/1993
3/1989 - 11/1993 WAS E.S.D. OLEA
EXECUTIVE SERVICE DIRECTOR / HANDS ON POSITION
LOYAL TO U.S. & A.
THE ONLY LAND

RECEIVED
MAR 02
C 25
By



PRAISE THE LORD

I AM A

DESCENDANT OF AFRICAN NEGRO SLAVES OF THESE UNITED STATES OF AMERICA

FEBRUARY 26, 2020 11:37A

RECEIVED
MAIL ROOM

Born-Again Christian by the Spirit of Christ - Jesus ONLY
Sister Gertrude Crawford - Holmes 76 YEARS OLD
a.k.a. G. Faye Holmes - Negro Citizen - U.S.A.
P.O. Box 221
Glen Ridge, New Jersey 07028

VIA HAND DELIVERY

MAR 02 2020

TO THE HONORABLE ANDREW BARON, A.K.A.
BOARD OF PUBLIC UTILITIES
LAURENTON, NJ
OFFICE OF ADMINISTRATIVE LAW
33 WASHINGTON STREET, 7TH FLOOR
NEWARK, NEW JERSEY 07102

CELL# [REDACTED]

RE: GERTRUDE C. HOLMES V. PUBLIC SERVICE ELECTRIC & GAS CO. INC.
BPU DOCKET NO: EL 18030267U
GAL DOCKET NO: PUC 07973-2018 N

* RE: THE MOST URGENT NEED FOR YOUR ORDER FOR THE HEARING
DATE JANUARY 30, 2020 9AM. Case mgmt
S. Patroude, Esq
A. Pinner, Esq
J. Ford Williams

DEAR JUDGE BARON:

WILL YOU DO ALL POSSIBLE TO EXPEDITE THE / YOUR ORDER,
AS PROMISED, FOR THE HEARING DATED JANUARY 30, 2020 9AM.
WITHOUT YOUR ORDER I CAN'T SEEK HELP WITH PAYING THE \$3361.83
SETTLEMENT. I AM UNABLE TO PRESENT A FINAL PUBLIC SERVICE ELECTRIC AND
GAS BILL. *** ALL MONTHLY BILL CURRENT TO DATE ***.

YOUR HONOR PLEASE REMEMBER TO ALLOCATE SPECIAL ATTENTION TO THE MOST
EVIL INTERVENTION OF MEYNER AND LAUDIS LLC (THE COLLECTION
LAW FIRM FOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY). FOR THE PURPOSE
EXPLOITING MY FAMILY, AS WELL AS ME, WHO HAVE NOTHING TO DO WITH THIS
MATTER AT ALL. BUT THEY WOULD BE INVOLVED IN MY HOME / PROPERTY.

THANK YOU FOR RECEIVING THE LETTER, AS AM OBEDIENT TO THE
EVIDENCE OF THE LIVING GOD'S SPIRIT AND REMAIN

PRAYFULLY YOURS,

Mrs Gertrude C. Holmes, WIDOWED WOMAN OF THE TRUTH AND LIVING GOD
THRU JESUS THE CHRIST. AMEN

CC: SEE PAGE 2

PAGED

CC: MR. JAMES T. WASH, EXECUTIVE SERVICES
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