



Agenda Date: 11/9/11
Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
44 S. Clinton Avenue – P.O. Box 350
Trenton, NJ 08625
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

PIONEER AP II, LLC & ASBURY BLU CONDOMINIUM)
ASSOCIATION, INC.,)
Petitioners,)
V.)
NEW JERSEY AMERICAN WATER COMPANY ET AL,)
Respondent.)

ORDER ADOPTING INITIAL
DECISION

BPU Docket No. WC08100896
OAL Docket No. PUC12697-08

Martin N Crevina, Esq., for Petitioner, The Asbury blu Condominium Association, Inc.

Daniel J. Bitonti, Esq., for Respondent, New Jersey American Water Company

BY THE BOARD:

On October 6, 2008, Pioneer AP II, LLC and The Asbury blu Condominium Association, Inc. ("Asbury") ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a billing dispute with New Jersey American Water Company ("Respondent") for utility services rendered by Respondent.

After the filing of Respondent's 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") Richard McGill.

ALJ McGill issued his Initial Decision in this matter on August 25, 2011. Copies were forwarded to the Board and to the parties. No exceptions to the Initial Decision were received by the Board.

In the Initial Decision, ALJ McGill indicated that he held a pre-hearing conference on March 31, 2009 and issued a pre-hearing Order on April 30, 2009 which scheduled a hearing for January 15, 2010. Said hearing was adjourned based on the representation of Asbury's attorney that

the matter had been settled and that the parties would finalize a written agreement. When settlement papers were not forthcoming, ALJ McGill scheduled a telephone status conference on December 23, 2010 which was rescheduled to January 10, 2011. At that time, no one had signed the agreement papers for the Petitioners but counsel continued to express their belief that a settlement would be executed. Additional telephone status conferences were held on February 2, 2011, March 3, 2011 and March 24, 2011, but the situation remained unchanged. As a result, ALJ McGill scheduled a hearing on July 15, 2011. As no progress had been made over an extended period of time, the ALJ denied a request at hearing by Asbury's counsel for a 30-day adjournment. The parties then made opening statements but neither the Petitioners nor the Respondent called any witnesses. The parties were then allowed 30-days to submit signed settlement papers but none were forthcoming. The ALJ closed the record in this matter on August 15, 2011.

At page 3 of the Initial Decision, ALJ McGill noted that the Petitioner relied solely on the filed petition, which, in fact, had not been verified as required. He further noted that while hearsay evidence is admissible pursuant to N.J.A.C. 1:1-15.5(a), some legally competent evidence must exist to support each ultimate finding of fact to assure reliability pursuant to N.J.A.C. 1:1-15.5(b). As there was no legally competent evidence to support the claims in the petition, ALJ McGill concluded that Petitioners had failed to carry the burden of proof which was their obligation.

After review of the record, the Board HEREBY FINDS that the findings of fact and conclusions of law set out by ALJ McGill in the Initial Decision are reasonable and that the Initial Decision should be adopted in its entirety as if attached hereto.

Accordingly, the Board CONCLUDES that the petition in this matter be and is HEREBY DISMISSED.

DATED: 11/9/11

BOARD OF PUBLIC UTILITIES
BY:




LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER




JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER

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



ATTEST: 
KRISTI IZZO
SECRETARY

PIONEER AP II, LLC AND THE ASBURY BLU CONDOMINIUM ASSOCIATION, INC

V.

NEW JERSEY AMERICAN WATER COMPANY

BPU DOCKET NO. WC08100896U

OAL DOCKET NO. PUC12697-08

SERVICE LIST

Martin N. Crevina, Esq.
Buckalew, Frizzell & Crevina
55 Harristown Road
Glen rock, New Jersey 07452

Daniel J. Bitonti, Esq.
Cozen O'Connor
457 Haddonfield Road – Suite 300
Cherry Hill, New Jersey 08002

Eric Hartsfield, Director
Julie Ford-Williams
Division of Customer Assistance
Board of Public Utilities
P.O. Box 350
Trenton, New Jersey 08625

Veronica Beke, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Trenton, New Jersey 07101

CMS
E. Beslow
DAG
C. Vachier

RPA

Lee-Thomae

M. Mpan

J. Ford-Williams

R. Lambert



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BPU MA LROOM

AUG 26 2011

RECEIVED

25 P

10

INITIAL DECISION

OAL DKT. NO. PUC 12697-08

AGENCY DKT. NO. WC08100896U

PIONEER AP II, LLC AND
ASBURY BLU CONDOMINIUM
ASSOCIATION, INC.,

Petitioners,

v.

NEW JERSEY AMERICAN
WATER COMPANY,

Respondent.



Martin N. Crevina, Esq., for petitioner Asbury blu Condominium Association, Inc.
(Buckalew, Frizzell & Crevina, attorneys)

Daniel J. Bitonti, Esq., for respondent (Cozen O'Connor, attorneys)

Record Closed: August 15, 2011

Decided: August 25, 2011

BEFORE RICHARD MCGILL, ALJ:

This matter is a bill dispute concerning water service to a condominium apartment building. The petition was filed by Somerset Management Group, LLC (Somerset), which was the managing agent for the property. In the petition, Somerset

named the developer, Pioneer AP II, LLC, and the condominium association, Asbury blu Condominium Association, Inc. (Asbury) as the petitioners. New Jersey American Water Company is the respondent.

A prehearing conference was held on March 31, 2009, and a prehearing order was issued on April 30, 2009. A hearing was scheduled for January 15, 2010, and petitioners were to proceed first with the presentation of their proofs.

The hearing was adjourned based upon a letter from the attorney for Asbury stating that the matter had been settled and that the parties would finalize a written agreement. The settlement papers were not forthcoming, and the matter was scheduled for a telephone status conference on December 23, 2010, which was rescheduled for January 10, 2011. At that point, no one had signed the settlement agreement for petitioners, but counsel continued to express their belief that there would be a settlement. The matter was rescheduled for telephone status conferences on February 2, 2011; March 3, 2011; and March 24, 2011; but the situation remained the same. As there was no progress with respect to settlement, the matter was scheduled for a hearing on July 15, 2011.

At the hearing on July 15, 2011, counsel advised that they had agreed to a settlement, but Asbury's attorney stated that he could not get a response from his client. Asbury's request for a thirty-day adjournment was denied, because the situation with respect to the purported settlement had remained the same for approximately six months.

Thereafter, the attorneys made opening statements. Petitioner did not call any witnesses. Likewise, respondent did not call any witnesses.

The parties were allowed thirty days to submit signed settlement papers. No settlement papers were forthcoming, and the record closed on August 15, 2011.

Generally, the plaintiff has the burden of proof in a civil matter. In most causes of action, whether judicial or administrative, the party asserting a claim has the burden to prove it. Exceptions to the general rule may arise based upon public policy concerns and considerations related to access to relevant facts. See, generally, Biunno, New Jersey Rules of Evidence, 2011 Edition, Rule 101(b)(1), Comment 1. With respect to these considerations, petitioners are asserting a claim, and they have access to all pertinent information including meter readings and billing records. Under the circumstances, the burden of proof should be assigned to petitioners.

Petitioners did not call any witnesses or present any exhibits. Instead, petitioners relied on the petition itself.

The petition in this matter is entirely hearsay and in fact is not verified as required by N.J.A.C. 14:1-4.6. Hearsay evidence is admissible in this proceeding. N.J.A.C. 1:1-15.5(a). Nonetheless, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b).

Here, petitioners have presented no legally competent evidence to support their case. Under the circumstances, I **CONCLUDE** that petitioners have failed to carry the burden of proof and that therefore the petition in this matter should be dismissed.

Accordingly, it is **ORDERED** that the petition in 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, 2 Gateway Center, Suite 801, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 25, 2011
DATE

Richard McGill
RICHARD MCGILL, ALJ

Date Received at Agency:

Date Mailed to Parties:

jb

APPENDIX

WITNESS LIST

None

EXHIBIT LIST

None