



STATE OF NEW JERSEY
Board of Public Utilities
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CUSTOMER ASSISTANCE

JUSTIN EGEOLU, Petitioner,)	ORDER DENYING
)	PETITIONER'S MOTION
)	
V.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	BPU DKT. NO. GC11060357U
Respondent.)	OAL DKT. NO. PUC08977-11

BY THE BOARD:

On May 1, 2012, Justin Egeolu (Petitioner) filed an application with the Board of Public Utilities (Board) seeking a stay of the Board's April 12, 2012 Final Decision and seeking a stay of any service disconnection by Public Service Electric & Gas Company ("PSE&G").¹ On that same day, Petitioner filed a Notice of Appeal with the Appellate Court seeking review of the Final Decision. Petitioner's application for a stay also requests that the Board grant him a new hearing on the billing dispute; compel PSE&G to honor a settlement offer which Petitioner rejected prior to the evidentiary hearing; and order PSE&G to comply with sections 9.8 and 8.9 of the Company's Tariff.² For the reasons that follow, Petitioner's application is denied.

On June 14, 2011, Petitioner filed a petition with the Board requesting a formal hearing concerning a billing dispute with PSE&G. After PSE&G filed an Answer, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. where it was assigned to Administrative Law Judge ("ALJ") Moss.

¹ Although PSE&G was notified through its counsel of the stay application on May 9, 2012, and provided with a copy by the Agency, the Company has not provided a response to the application as of the date this Order was drafted.

² The relevant Tariff sections 9.8 (electric) and 8.9 (gas) are exhibits that were admitted into evidence at the evidentiary hearing as R5 and R6, respectively. The relevant portion of each section allows PSE&G to estimate the amount of utility service (electric or gas) supplied to a utility customer when PSE&G is unable to read the customer's meter. Petitioner's application fails to explain how PSE&G is violating that section which gives rights to the utility, not the customer.

Following the November 18, 2011 evidentiary hearing, ALJ Moss issued her December 8, 2011 Initial Decision dismissing the petition. ALJ Moss made several factual and legal findings which led to her dismissing the Petition. Specifically, ALJ Moss concluded that the Petitioner had failed to satisfy his burden of showing that his electric and gas meters were not accurately registering his utility usage pursuant to N.J.A.C. 14:3-4.6; that he had requested and been denied a Board witnessed meter test pursuant to N.J.A.C. 14:3-4.5(e); and that PSE&G violated N.J.A.C. 14:3-4.8 (c) when it removed his meters during the pendency of his Board complaint. Finally, ALJ Moss concluded that PSE&G had a legal right to require Petitioner to furnish an increase to his security deposit in accordance with N.J.A.C. 14:3-3.4(d).

Following review of the record of the evidentiary hearing and the decision of ALJ Moss, the Board issued an April 12, 2012 Final Decision adopting the decision of ALJ Moss. The Board found the decision of ALJ Moss to be reasonable and based upon sufficient, competent and credible evidence.

DISCUSSION AND FINDINGS

Petitioner seeks injunctive relief in the form of a stay of the Board's decision and from any service disconnection by PSE&G. The criteria for reviewing an application for emergency relief pursuant to N.J.A.C. 1:1-12.6 are the same as those which apply to injunctive relief and are well settled. The moving party must show that:

- (1) the movant will suffer immediate and irreparable harm if the emergency relief is not granted;
- (2) the legal right underlying the movant's claim is well-settled;
- (3) there is a reasonable probability that the moving party will succeed on the merits; and
- (4) the balance of the equities in granting or denying relief weighs in the movant's favor.

Crowe v. DeGioia, 90 N.J. 126, 133-35 (1982).

Applying these standards, Petitioner fails to demonstrate his entitlement to relief and this application is denied.

"It is entirely settled that a preliminary injunction will never be ordered unless from the pressure of an urgent necessity. The damage threatened to be done, and which it is legitimate to prevent, during the pendency of the suit, must be, in an equitable point of view, of an irreparable character." Citizens Coach Co. v. Camden H. R. Co., 29 N.J. Eq. 299, 303 (1878). Injury that can be remedied through monetary compensation has not been held to meet those criteria. McNeil v. Legislative Apportionment Comm'n of New Jersey, 176 N.J. 484, 486 (2003), citing, Crowe v. DeGioia, *supra*, 90 N.J. at 132-33.

Petitioner's claim of immediate and irreparable harm based on his belief that PSE&G will disconnect his gas and electric service resulting in the absence of heat, air conditioning, hot water, cooking gas, food spoilage and lead to emotional distress, is speculative at best and lacks the immediacy necessary to a determination of irreparable harm. Id. at 4, citing, Continental Group v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The lack of air conditioning and heat during the mild spring season do not qualify as irreparable in character. Furthermore, harm is not considered irreparable if it can be remedied with monetary relief. Crowe v. DeGioia, supra, 90 N.J. at 132-33. Spoiled food and the purchase of prepared food are monetarily remediable.

For Petitioner to show that he has a reasonable likelihood of success on the merits and to show the well settled legal rights underlying his claims, would require a showing that the Board has committed some irregularity or informality in this billing dispute proceeding that tends to defeat or impair a substantial right or interest that he holds. N.J.S.A. 48:2-46. Absent Petitioner's meeting that standard, which he fails to do, the Appellate Court is without jurisdiction to set aside the Board's Final Decision in whole or in part.

Petitioner presents no basis for disturbing the Final Decision under the statute. The application presents nothing more than a regurgitation of the claims he made in his petition and at the evidentiary hearing as well as some that were not. Those claims which were properly before ALJ Moss were addressed in factual findings, legal analysis and conclusions in her Initial Decision which was adopted by the Board upon its review of the record. Petitioner provides no basis to overturn the Initial Decision of ALJ Moss or the adoption of that decision by the Board.

The balance of the equities does not lie in Petitioner's favor. Petitioner has provided no basis during the billing dispute proceeding or now as to why he should be relieved, temporarily or otherwise, from his outstanding utility balance of least \$14,790.23. (Tr. 33:22)³

Finally, Petitioner's request for a new hearing and for an order compelling PSE&G to honor a rejected settlement offer are denied. By operation of R. 2:9-1, jurisdiction of this dispute vested with the Appellate Decision once Petitioner filed his May 1, 2012 Notice of Appeal.⁴ Likewise, while the transcript of the evidentiary hearing confirms that prehearing settlement discussions did occur,⁵ an offer of settlement shall not constitute an admission and shall not be admissible. N.J.A.C. 1:1-15.10. ALJ Moss properly omitted those discussions from her factual findings, analysis, and Initial Decision.

³ Tr. Refers to the transcript of the November 18, 2011 evidentiary hearing in this matter.


⁴ However, this request for a stay of the Final Decision is properly before the Board pursuant to Rule 2:9-7.

⁵ Tr. 32:22-23.


For the foregoing reasons, the Board HEREBY DENIES Petitioner's application as previously set forth herein.


DATED: 5/23/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
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



JUSTIN EGEOLU

V.

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