



Agenda Date: 1/22/14

Agenda Item: 7C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OLANDER PETERS,
Petitioner

V.

AT&T CORPORATION,
Respondent

) CUSTOMER ASSISTANCE
)
) ORDER AFFIRMING THE
) DISMISSAL OF THE PETITION
)
) BPU DKT. NO. TC13010013U
) OAL DKT. NO. PUC 0742-13

Parties of Record:

Olander Peters, Petitioner, pro se

William K. Mosca, Jr., Esq., appearing on behalf of Respondent, AT&T Corporation

BY THE BOARD:

On January 8, 2013, Olander Peters ("Petitioner"), filed a petition with the Board of Public Utilities ("Board") concerning allegedly inferior telephone service provided by AT&T Corporation ("Respondent" or "AT&T"), the competitive local exchange service telephone carrier, on behalf of his mother, an AT&T customer with two lines of record which are owned, maintained, and serviced by Verizon New Jersey ("Verizon"), the incumbent local exchange provider. Petitioner claims two telephone lines have been experiencing inferior or interrupted service since 2005. Petitioner states AT&T technicians found nothing wrong with the inside wiring, but Verizon technicians resolved one line but concluded the other line to be "virtually hopeless until FIOS replaces the worn cable wiring." Petitioner requests that AT&T compensate his mother for inferior service and stress. Petitioner also seeks a credit of \$35 per month on the account until FIOS is installed.

On February 14, 2013, Respondent answered. Respondent acknowledged Verizon performs maintenance and repair services on the lines owned and operated by Verizon, whereas it leases those facilities. Respondent answered that it had contacted Verizon numerous times in 2012 regarding the alleged problem lines and that Verizon, at AT&T's request, had made several attempts to identify problems but none were identified. However, Respondent stated on at least one occasion, Petitioner and/or his mother had refused a technician entry to access the Network Interface Device ("NID") in the home, which was necessary to test or repair the lines. Respondent stated the wires servicing the home from the street were changed at least once.

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") on May 15, 2013, 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") James A. Geraghty.

On or about July 22, 2013, Respondent moved for summary decision pursuant to N.J.A.C. 1:1-12.5. Respondent explains that Petitioner's mother, Lois Peters, is the customer of AT&T's local service offering in New Jersey and has two lines of record that for that service. (Motion for Summary Decision at ¶ 2). Respondent argues that AT&T does not own the lines that provide Ms. Peters' local service; rather, it is Verizon that owns those lines. Ibid. Respondent further explains that the Verizon lines connect to Ms. Peters' home at the NID, the small box located on the side of Ms. Peters' home that connects the Verizon network (her local lines) to her home's inside telephone wiring, which in turn is connected to jacks into which Ms. Peters' may plug in her phones. Ibid. Respondent further details that Ms. Peters owns all of her inside wiring from the point of the NID into her home and that Verizon owns all of the network wiring from the point of the NID to the rest of its network, including both lines at issue here. Ibid. Respondent explains that Ms. Peters' service does not involve Respondent's network and that what Respondent provides to Ms. Peters' is "resold" or "rebranded" service. Id. at ¶ 4(a). Moreover, Respondent argues all reasonable and prudent steps to provide adequate service were taken. Id. at ¶ 4(b). A certification with supporting documentation outlined numerous attempts to resolve the problems by dispatching inside wire maintenance technicians on four occasions, by issuing a trouble ticket to Verizon, and by arranging to have problems assessed for possible repairs consistent with the requirement that no public utility shall provide or maintain service that is unsafe, improper or inadequate pursuant to N.J.S.A. 48:3-3(a). Id. at Exhibit A. In addition, Respondent stated there was no proof shown of any network or inside wire problems. Id. at ¶ 4(c). Respondent further argued that the remedies requested, of an apology and/or monetary compensation, were not compensable by law under the "Filed Rate Doctrine," requiring all customers to pay the tariffed rates for service without preference and barring claims for monetary damages arising from contract, consumer fraud and other bases, e.g., service issues. Id. at ¶ 4(d). Specifically, Respondent argues that under the "Filed Rate Doctrine," "AT&T must charge, and all of its customers must pay, the rates tariffed for the service, without preference." Ibid. Therefore, Respondent concludes that since AT&T's liability is limited by tariff to credits for the actual time when the service was affected and not free service as requested by the Petitioner and because AT&T cannot be held liable for the failings of the Verizon network or Ms. Peter's inside wiring, neither of which AT&T own or maintains, Respondent requests its motion for summary decision to be granted.

On or about August 10, 2013, Petitioner filed opposition to Respondent's motion for summary disposition. Petitioner argues that the matter of static and interrupted phone lines date back to 2005 or earlier and attaches a complaint logged with the Division of Customer Assistance in 2005. (Petitioner's August 10, 2013 Opposition at ¶ 1, Exhibit B). The Petitioner disputes Respondent's statement that there has been a NID affixed to the side of the home. Petitioner also refutes claims that Verizon technicians were denied access to the property. Id. at ¶ 4. Petitioner acknowledging that his mother is a paying customer of AT&T which would preclude the filing of a complaint regarding Verizon. Id. at ¶ 4. Responding to Respondent's claims that it has already provided credits, Petitioner, among other things, states that AT&T has applied credits for interruption of service for the days the trouble is reported until the problem is allegedly repaired. Therefore, if "AT&T has credited her account for static line before, why can't they continue to do so as it has not yet been repaired?" Id. at ¶ 6. Lastly, Petitioner attached electronic correspondence from two frequent callers who have experienced static when calling the lines at issue in the Petition as well as a letter from a neighbor who has experienced static

on his landline. Id., Exhibit D.

On or about August 26, 2013, Respondent filed a reply brief. Respondent argues that Petitioner has failed to address its argument regarding the "Filed Rate Doctrine." Respondent reiterated its request for dismissal as Respondent argues that there is no proof of any impairment in the lines and that the lines involved are owned by Verizon, not Respondent. Respondent further argues that Petitioner had acknowledged that these were Verizon lines and not Respondent's lines because Petitioner attempted to contact Verizon repeatedly regarding the lines in question. Therefore, Respondent reiterates its request for the ALJ to enter summary dismissal in its favor.

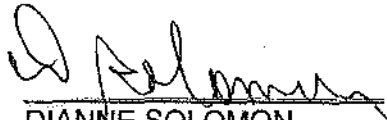
On or around September 4, 2013, Petitioner files a supplemental response. Petitioner continues to claim that Respondent is making untrue statements and misrepresentations. Specifically, Petitioner states that he did not contact Verizon and alleges that he did not know that the services his mother pays AT&T for are "resold/rebranded." In conclusion, Petitioner requests the ALJ to not dismiss the case. On September 11, 2013, Petitioner sends another supplemental response. In this filing, Petitioner requests to submit additional information for consideration in the ALJ's decision regarding the motion for summary decision. Petitioner states that he has three messages left on the answering service of the telephone line in question that purportedly demonstrates the static and interference that Petitioner alleges. Petitioner explains that he has recorded them and is preserving them for review by the ALJ. Petitioner again implores the ALJ to not dismiss the case.

The ALJ's Initial Decision was received by the Board on November 14, 2013. The Board sought an extension to issue its Final Decision until February 13, 2014. In the Initial Decision, the ALJ granted Respondent's motion for summary decision and dismissed the matter. (Initial Decision at 5). As a threshold matter, the ALJ found that Petitioner had no standing because he is not authorized to represent his mother, Lois Peters, who is the customer of record, pursuant to N.J.A.C. 1:1-5.1. Id. at 2. Even assuming arguendo that Petitioner has standing, the ALJ concluded that the material facts do not appear to be in dispute and that the petitioner has not alleged sufficient contested facts that would permit the OAL to grant relief at a hearing. Id. at 4. Specifically, assuming arguendo that Petitioner had standing, the ALJ relied on Smith v. SBC Communications, Inc., 178 N.J. 265 (2004), Weinberg v. Sprint Corp., 173 N.J. 233, 243 (2002), and Richardson v. Standard Guar. Ins. Co., 371 N.J. Super. 449 (App. Div. 2004) to support the ALJ's finding that the application of the "Filed Rate Doctrine" bars monetary relief based on principles of non-discrimination and nonjusticiability. Id. at 3. The ALJ further explained that Respondent was entitled to prevail as a matter of law under N.J.A.C. 1:1-12.5 because the "Filed Rate Doctrine" barred monetary relief as damages, and any relief then would, in effect, provide Petitioner with a lower rate than the tariff rate. Id. at 3-4. The ALJ additionally noted the utility obligation to exercise reasonable diligence to avoid interruptions, curtailment or deficiencies in service consistent with N.J.A.C. 14:3-3.7, but found Petitioner had cited no authority for the proposition that the OAL may offer specific performance as a remedy. Id. at 4. Based on the above, the ALJ, therefore, granted Respondent's summary decision motion and dismissed the complaint. Id. at 5. A copy of the Initial Decision is attached hereto. No exceptions to the Initial Decision have been filed.

Following a review of the record, the Board **HEREBY AFFIRMS** the finding of fact and conclusion of law that Petitioner is not qualified to represent Mrs. Peters pursuant to N.J.A.C. 1:1-5.1. Accordingly, the Board **DISMISSES** the petition.

DATED: 1/29/14

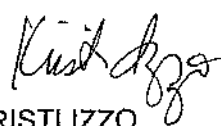
BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

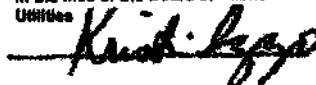

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
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



OLANDER PETERS

V.

AT&T

BPU DOCKET NO. TC13010013U
OAL DOCKET NO. PUC 07042-13

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State of New Jersey
CASE MANAGEMENT OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION

OAL DKT. NO. PUC 07042-13
AGENCY DKT. NO. TC13010013U

OLANDER PETERS,
Petitioner,
v.
AT&T,
Respondent.

Olander Peters, pro se

William K. Mosca, Jr., Esq., for respondent (Bevan, Mosca, Giuditta & Zarillo, P.C., attorneys)

Decided: November 7, 2013

BEFORE **JAMES A. GERAGHTY, ALJ:**

STATEMENT OF THE CASE

By petition dated January 31, 2013, Olander Peters petitioned the Board of Public Utilities (Board) on behalf of his 83 year old handicapped mother Lois Peters concerning the allegedly inferior telephone service provided her by AT&T. Mrs. Peters is the real party in interest. The matter was transmitted to and filed with the Office of Administrative Law May 20, 2013. AT&T filed a Motion for summary decision (SD) received at the OAL July 22, 2013. Petitioner filed an answer August 16, 2013

supplemented by additional filings on September 5, 2013 and September 13, 2013. As petitioner's last filing was September 13, 2013, respondent had ten days to respond, that is, up to and including September 23, 2013. A decision on the motion was due within 45 days, that is, by November 7, 2013. There was no oral argument. The Board disavowed involvement in the matter. (J-1.) Somehow, AT&T became the respondent.

STATEMENT OF THE ISSUE

The issue is whether petitioner's complaints about the quality of his mother's telephone service, allegedly inferior due to chronic static and interruptions on her two phone lines may be remedied at the OAL. Respondent claims that any relief is barred under the "fixed rate doctrine."

STATEMENT OF FACTS

Based on the documents of record, I **FIND**:

As a threshold matter, Olander Peters is not authorized to represent his mother Lois Peters in this matter. N.J.A.C. 1:1-5.1.

Assuming arguendo that the matter is properly before the OAL as a contested matter, the uncontested facts appear to be that Mrs. Peters has been experiencing inferior telephone service for upwards of seven years. She is billed for service by AT&T and is not in arrears. She has complained numerous times to AT&T for technicians to inspect her phone lines. Verizon technicians also were sent to inspect inasmuch as the outside lines are owned by Verizon. AT&T technicians could not identify a problem. Verizon technicians suggested informally that the problem, such as it is, was due to the outside cable wiring being old, worn, subject to the elements, and at the mercy of vermin. Petitioner submitted copies of phone bills, and correspondence with the Board and with AT&T representatives. To date, the matter is unresolved.

Petitioner's responses to the motion include quibbles over details in respondent's motion. The upshot of the responses is that Mrs. Peters is a paying customer and is not receiving the service that she is paying for.

In its motion, AT&T argued that it is entitled to have the matter dismissed because: (1) AT&T does not own the lines in question, (2) AT&T has taken all reasonable steps to provide adequate service, (3) There is no proof of any network or inside wire problems, and (4) petitioner's requested relief is not compensable. To the point, the "filed rate doctrine" bars money damages. In other words, petitioner has failed to make a claim upon which relief can be granted.

LEGAL AUTHORITY AND ANALYSIS

Summary Decision, the administrative analogue to summary judgment, may be rendered if the filings show there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5. An adverse party, must by a responding affidavit, set forth specific facts showing that there is a genuine issue that can only be determined at an evidentiary proceeding. If the adverse party does not so respond, S.D. is appropriate and shall be entered. Ibid.

No public utility shall provide a service that is unsafe, improper or inadequate....N.J.A.C. 14:3-3.1. Also, the utility shall exercise reasonable diligence to avoid interruptions, curtailment or deficiencies in service. N.J.A.C. 14:3-3.7. The pivotal issue is the application of the "filed rate doctrine" which bars monetary relief based on principles of non-discrimination and nonjusticiability. Smith v. SBC Communications, Inc., 178 N.J. 265 (2004). The former is based on the notion that damages, would, in effect, provide a petitioner with a lower rate, that is, a rate lower than the rate filed. Weinberg v. Sprint Corp., 173 N.J. 233 (2002). The latter line of precedent is based on the notion that consumers are deemed to have constructive knowledge of the rate. Ibid. In a case involving insurance fraud, the court explained:

While the doctrine precludes a claim for damages which would indirectly cause the application of rates different from

the filed rates, and would also preclude plaintiff from seeking relief, whether equitable or legal, or having been misled by unconscionable sales practices which caused plaintiff to enter into a contract consistent with a filed rate, the filed rate doctrine does not preclude a consumer who is suing for damages by having been deprived of benefits which were promised, and were consistent with the filed rate, but were not delivered.

Richardson v. Standard Guar. Ins. Co., 371 N.J. Super. 449 (App. Div. 2004).

Regardless, petitioner has averred no authority for the proposition that the OAL may offer specific performance as a remedy. Respondent has correctly contended that the OAL cannot award monetary relief for any alleged damages.

DISCUSSION

Assuming arguendo that the respondent and Verizon have not provided petitioner with the service she has paid for, the OAL cannot provide relief. However, as suggested in Richardson, supra., damages may be available in Superior Court. Presumably, specific performance as a remedy might also be available. Nevertheless, the OAL cannot grant relief. Moreover, although the material facts do not appear to be in dispute, others might be in contention and can only be resolved in a forum that can grant relief. Accordingly, respondent's motion must be granted although petitioner is free to retain an attorney to pursue the matter in an appropriate forum.

CONCLUSION

Based upon the following facts and legal authority, I **CONCLUDE** that respondent has established grounds for summary decision and that petitioner has not adduced sufficient contested material facts which would permit the OAL to grant relief after a hearing.

DECISION AND ORDER

Based on the foregoing facts and conclusion, respondents motion for S.D. is granted and the matter is **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.

Nov 7, 2013

DATE

James A Geraghty
JAMES A. GERAGHTY, ALJ

Date Received at Agency:

November 7, 2013 (db)

Date Mailed to Parties:

NOV 12 2013

Leora Sanders

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

db

APPENDIX

LIST OF WITNESSES

For Petitioner:

Olander Peters, Petitioner

For Respondent:

None

LIST OF EXHIBITS

Joint:

J-1 Board Letter