

Date Board mailed Order to OAL:

cc: Service List Attached

DATED:

LAURA SANDERS, DIRECTOR &
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board:

Date Board mailed executed Order to Parties: _____

**NICHOLAS GEORGE
V.
ATLANTIC CITY ELECTRIC COMPANY AND SOUTH JERSEY GAS COMPANY**

BPU DOCKET NO. EC07060408U & EC07060409U

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FORD-WILLIAMS
(6)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

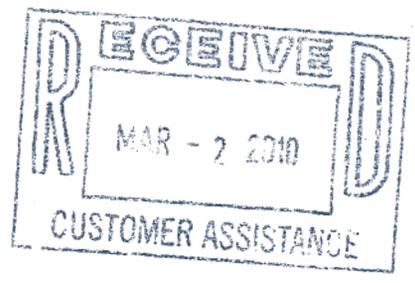
OAL DKT. NO. PUC 8038-07
AGENCY DKT. NO. EC07060408U/
GC0706040908U

3/1/10

NICHOLAS GEORGE,
Petitioner,

v.

ATLANTIC CITY ELECTRIC
COMPANY AND SOUTH JERSEY
GAS COMPANY,
Respondents.



Jeffrey DiLazzero, Esq., for petitioner (Kavanagh, Kavanagh & DiLazzero, attorneys)

Renee Suglia, Esq., for respondent, Atlantic City Electric Company

Gina Merritt-Epps, Esq., for respondent, South Jersey Gas Company

Record Closed: January 21, 2010

Decided: March 1, 2010

BEFORE EDGAR R. HOLMES, ALJ, T/A:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

This billing dispute between Nicholas George, petitioner, and Atlantic City Electric (ACE) and South Jersey Gas Company (SJG), respondents, was transmitted to the Office of Administrative Law (OAL) on September 13, 2007, to be heard as a contested case pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 to 15, and the Act creating the OAL, N.J.S.A. 52:14F-1 to 13. A plenary hearing convened in Atlantic City on May 18, 2009, August 10, 2009, and December 11, 2009. Prior to and during the hearing, the parties executed a Case Management Order and a Stipulation of Facts which partially settled the matter. As a result, the petitioner paid to South Jersey (SJG) the sum of \$1,783.49, with the understanding that if he prevailed on the stipulated credibility issue, he would be reimbursed from that sum up to the full amount. The petitioner also paid to Atlantic City Electric Company (ACE) the sum of \$3,458.38, of which \$1,530.10 remains in dispute. He will be reimbursed up to that amount if he prevails on the credibility issues. The parties identified the following issues.

1. Did the ACE and SJG violate N.J.A.C. 14:3-7.2(b)??
2. Did petitioner notify ACE and SJG (jointly referred to as utility or utilities) when to shut off service in his name?
3. Did the petitioner dispute the bill in a timely fashion so that the utilities were obligated to follow N.J.A.C. 14:3-7.6(b) and (c)? If so, did the utilities comply? If not, what is petitioner's remedy?

SUMMARY OF THE RELEVANT TESTIMONY

The parties agree that the issues in this case are primarily credibility issues.

In 1998, the petitioner, who was incorporated as NGC Developers, Inc., began to construct 116 condominium units in Egg Harbor Township, New Jersey. Petitioner

opened an account with the utilities for each and every condominium. He began selling the properties in 2002. Petitioner also testified that this was entirely a one-man operation: that he was the prime contractor and sole employee of the corporation; that he sold and managed the units, prepared the properties for inspection for a Certificate of Occupancy, turned on and turned off the utilities and serviced the lines. He attended the settlements of the properties and that at each and every settlement, he called ACE and advised them there was a new owner at the property being settled. He also testified that he told the buyers to reconnect with the SJG Company.

When petitioner was asked about damaged or malfunctioning gas meters, he replied that he had never broken the law, but that some of his buyers had "done illegal things." After settlement, petitioner would receive gas and electric bills for the sold units. He said that he either gave the bills to the new owners, or disregarded them. He said he could not get anyone to pay them. When the bills remained unpaid, the utilities transferred the balance to another one of the condominium accounts with the simple notation "transferred balance." After a time, this became extremely unwieldy and it became difficult for petitioner to trace the balances back to their original source. Eventually the utilities sought out accounts in the petitioner's name which were not connected to the condominiums and transferred the balances there. Some of the petitioner's units had their utility services shut off as a result. The petitioner claims that in 2003 he called the utilities and asked if there were any unpaid balances and that he never received any notices. He dissolved the corporation known as NGC Developers, Inc. in 2004.

On December , 2003, petitioner went in the hospital for a procedure to be done on his knee. While on the operating table, petitioner's heart stopped. As a result, he apparently had a coronary artery bypass graft. He was not released from the hospital until December 24, 2003. He said that he "was incapacitated for a long time," during which his brother picked up his mail. He was, of course, medicated after his operation and remains on blood pressure medications.

Petitioner claims that his next contact with the utilities was in 2005 when someone he described as a collection agent (but who probably was someone from the electric company) called him. This put him in touch with the utilities. Thereafter, there were sporadic negotiations. The petitioner claimed then, as he claims now, that the bills were no longer his responsibility since the bills for service cover times after he sold the property. He has never asserted that he was billed for services the properties did not receive. At some point in the negotiations, petitioner says that there was a telephone hearing conducted with ACE representatives, the attorney for the Board of Public Utilities (BPU), and a judge. He says that the judge told everyone that "it was illegal for the company to shut off his service." He never received an Order or a letter from the judge and the utilities say that no judge was present during the informal settlement conference conducted with a BPU staff person, not the BPU attorney. This is not the first mistake of fact the petitioner made in his testimony. Elizabeth Boccelli, a gas company employee, testified that in January and February of 2004 she discussed petitioner's accounts with him and they exchanged exhibits. He acknowledged this in other portions of his testimony. Boccelli also said petitioner was often slow to get back to her with settlement sheets and other indicia of when he had sold the disputed properties.

Employees of both utilities testified at the hearing at length. They discussed most, if not all, of the accounts. There are records of utility services going back to 2000. They testified that it is not necessary to request the utility to turn on service at a designated property; it can be done by telephone and, in fact, that is the most common way to open a residential account. However, to open the account, one needs to divulge not only one's name, but employment status and social security number, among other things. This information is entered to a computer screen. When petitioner asked if he gave this information, he said he did not. He could not, therefore, have opened accounts for his customers at settlement as he claimed. Moreover, neither utility has a record of his calling in anything at the properties in dispute. It is his word against the staff of both utilities. Unfortunately, he never confirmed in writing any call or discussion he alleges he made at settlements.

RELEVANT REGULATIONS

Unless a utility has been specifically relieved of so doing by order of the Board, a bill for metered service shall show the following:

A distinctive marking to indicate the method used to calculate the bill; for example, electronic readings, estimated billing, budget billing, or the index of a remote reading device. In addition, the utility may also provide a web address and telephone number where the customer can obtain a description of the method used.

N.J.A.C. 14:3-7.2(b)7.

The relevant administrative code provision for managing disputes with an electric utility reads, in pertinent part, as follows:

(a) A customer that disputes a charge shall so notify the utility, and shall pay all undisputed charges.

(b) If the utility and the customer do not resolve the dispute, the utility shall notify the customer that:

1. The customer may make a request to the Board for an investigation of the disputed charge;

2. The request for investigation shall be made within five business days after the customer contacts the utility to dispute the charges; and

(c) Once a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease until Board staff notify the utility and the customer that the dispute has been resolved in accordance with (e) below.

N.J.A.C. 14:3-7.6(b) and (c).

DISCUSSION

Petitioner, Nicholas George, is polite, friendly and earnest. He did not argue with opposing witnesses, their counsel, or his own.

On the issue of credibility, however, he cannot prevail. By his own admission, he either gave bills he felt should have been changed to the new buyers or disregarded them. He was sick, hospitalized and incapacitated during a time when these disputes were taking shape. He was and remains confused about when he met with various employees of the utilities regarding the bills. He was slow in providing the utilities with details of when and to whom he sold properties. He was confused about who was present when he had a telephonic discussion about the bills with a BPU staff person and a staff member of the ACE. He believes a judge issued an Order in his favor regarding the shut-off of service to his property. He cannot produce either an Order, or as much as a letter, from a judge. The employee of the ACE who was also on the telephonic conference says no judge was involved.

The regulations relied upon by petitioner require vigilance on his part as well as on the part of the utility. The transactions upon which these proceedings are based occurred in 2000, 2001, 2002 and 2003. Petitioner is unsure of when he first began to take notice of these long overdue billings. He recalled meeting with Staff in 2005, but staff dates those meetings to January and February of 2004. He obviously did not pay all undisputed charges when he notified the utility that he disputed charges as required by N.J.A.C. 14:3-7.6(a).

It is difficult to believe that the utility lost, misplaced or destroyed all records of petitioner's calls to disconnect service to properties petitioner sold to third parties. Under the circumstances described by the petitioner himself, it is more probable that his intervening health problems resulted in diminished capacity to deal with these financial problems involving a corporation which he had already closed down in 2004.

The issue of whether or not the utilities “used a distinctive marking to indicate the method used to calculate the bill” pursuant to N.J.A.C. 14:3-7.2(b)7 remains. This section undoubtedly refers to kilowatt hours and therms which are explained on the backs of the bills. If it also includes amounts transferred, then the utilities satisfied that requirement by clearly indicating “account transfer” on the face of the bill identifying the amount transferred

FINDINGS

I **FIND** that the testimony of the utility employees is credible as it is corroborated by utility records, is more probable and in accord with utility practices.

also **FIND** that the utilities clearly indicated the method used to calculate the bill.

CONCLUSIONS

I **CONCLUDE** that petitioner failed to notify the utilities when they were to shut off the service to the disputed properties and that he is not entitled to reimbursement.

CONCLUDE that ACE and SJG did not violate N.J.A.C. 14:3-7.2(b)7.

CONCLUDE that ACE and SJG did not violate N.J.A.C. 14:3-7.6(b) and (c).

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,

recommended decision shall become a final decision in accordance with N.J.S.A.
52:14B-10.

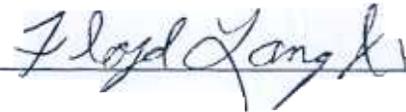
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 1, 2010
DATE



EDGAR R. HOLMES, ALJ, T/A

Date Received at Agency: 3/1/2010



Date Mailed to Parties:

/sd

WITNESSES

For Petitioner:

Nicholas George

For Respondents:

Charlotte Devault (for ACE)

Elizabeth Boccelli (for SJG)

Louisa Flemming (for SJG)

EXHIBITS

Stipulated Exhibits:

Case Management Order

Stipulation of Undisputed Facts

Joint Exhibits:

Electric Bill, September 2005 (3314 Asbury Avenue)

Electric Bill, November 2009 (41 Pino Court)

J-3 Accounts Receivable Screen, ACE (2/20/09)

Disputed amounts indicating settlement date and date service terminated
by ACE

J-5 History of dispute according to ACE

For Petitioner:

- August 1, 2005 list of SJG accounts transferred sent to petitioner by Betty Boccelli
- NG-1 Debit transfer and settlement sheets (807 Jonathan Court)
Debit transfer and settlement sheets (101 Duchess Court)
- NG-3 Debit transfer and settlement sheets (801 Jonathan Court)

For Respondents:

- ACE-1 Account Balance Transfers (4 pages)
- ACE-2 Accounts Receivable History (50 pages)
- SJG-1 Account History (501 Jonathan Court), including settlement sheet (5 pages)
- SJG-2 Account History (702 Jonathan Court) – no settlement sheet (5 pages)
- SJG-3 Account History (703 Jonathan Court), including settlement sheet (8 pages)
- SJG-4 Account History (707 Jonathan Court), including settlement sheet (7 pages)
- SJG-5 Account History (41 Grimes Court), including settlement sheet (6 pages)
- SJG-6 Account History (88 Grimes Court), including settlement sheet (3 pages)
- SJG-7 Account History (205 Maxwell Court), including settlement sheet (4 pages)
- SJG-8 Account History (404 Maxwell Court), including settlement sheet (5 pages)
- SJG-9 Account History (800 Jonathan Court) – no settlement sheet (2 pages)
- SJG-10 Account History (806 Jonathan Court) – no settlement sheet (2 pages)
- SJG-11 Account History (301 Maxwell Court) – no settlement sheet (2 pages)
- SJG-12 Account History (37 Baldwin Court) – no settlement sheet (3 pages)

- SJG-13 Account History (204 Maxwell Court), including settlement sheet (5 pages)
- SJG-14 Account History (37 Baldwin Court) (service resumed) – no settlement sheet) (13 pages)
- SJG-15 Degree day work sheet (4 pages)
- SJG-16 Not in evidence
- SJG-17 Working copy of properties (3 pages)
- SJG-18 List of properties for payment on check #2616 (2 pages)
- SJG-19 Copy of check #2616 (1 page)
- SJG-20 Receipts (16 pages)
- SJG-21 BPUNJ No. 9 GAS (p. 98 to 120)