



Agenda Date: 4/27/09

Agenda Item: 7D

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

LEE WATKINS,
Petitioner,

v.

NEW JERSEY AMERICAN WATER COMPANY,
SUCCESSOR TO ELIZABETHTOWN WATER COMPANY)
Respondent)

ORDER ADOPTING INITIAL
DECISION

BPU DOCKET NO. WC08030179
OAL DOCKET NO. PUC07237-08

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

By petition filed with the Board of Public Utilities (Board) on March 25, 2008, Lee Watkins (Petitioner) challenged a bill for water services rendered by New Jersey American Water Company, successor of Elizabethtown Water Company (Respondent). After receipt of Respondent's answer, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested matter on June 2, 2008.

On March 30, 2009, Administrative Law Judge (ALJ) Gail M. Cookson submitted her Initial Decision in this matter to the Board. A copy of the Initial Decision is attached and made a part of this Order. No Exceptions to the Initial Decision have been filed with the Board by either party.

According to the Initial Decision, a settlement conference was held on August 22, 2008, where progress was made towards an amicable settlement. ALJ Cookson provided an opportunity for both parties to submit a fully executed settlement agreement to the OAL. After no settlement was received, the matter was scheduled for hearing on November 5, 2008. On November 3,

Commissioner Frederick Butler did not participate in this matter.

2008, it was reported to ALJ Cookson that the matter was settled and a draft settlement agreement was circulate to the OAL and to the Petitioner for execution. ALJ Cookson cancelled the hearing in anticipation of an executed settlement agreement, but none was received. Respondent informed the OAL that it was awaiting cooperation of Petitioner in memorializing the settlement agreement on February 20, 2009. On February 25, 2009, Respondent filed papers in lieu of a formal motion (Motion) to enforce the settlement agreement granting Petitioner a credit of \$125.05, which has already been provided by the Respondent, and dismissing the matter. The Board notes that the Certification of Respondent's counsel, Daniel J. Bitonti, submitted in this uncontested Motion, contains an e-mail communication from Petitioner showing acceptance of the terms of the settlement agreement. ALJ Cookson advised the Petitioner by letter to either respond to the Motion or submit an executed settlement agreement by March 20, 2009, but Petitioner failed to act. Thereafter, ALJ Cookson granted the unopposed motion of the Respondent to enforce the settlement agreement.

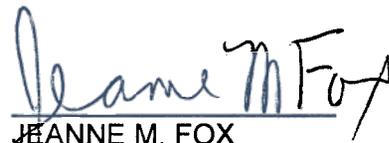
New Jersey courts strongly favor the settlement of litigation and the honoring of the agreements reached in these settlements. Ocean County Chapter Inc. of Izaak Walton League of Am. v. Dep't of Env'tl. Protection, 303 N.J. Super. 1, 10 (App. Div. 1997); Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974). Consistent with this policy, New Jersey "courts will strain to give effect to the terms of a settlement wherever possible." Dep't of Pub. Advocate, Div. of Rate Counsel v. N.J. Bd. of Pub. Util., 206 N.J. Super. 523, 528 (App. Div. 1985). Actions that would have the effect of voiding the terms of a settlement are not encouraged. Id. at 528. New Jersey's policy includes honoring settlements reached in contested cases before the OAL. Ocean County, supra, 303 N.J. Super. at 10.

The Board notes that ALJ Cookson reached out to the Petitioner in an effort to resolve this matter, without success. Respondent's Motion was unopposed, and no communications have been received at the OAL or at the Board by Petitioner. Additionally, the Board has received no exceptions to the Initial Decision. The Board also notes that Respondent has already fulfilled its obligation under the settlement agreement by giving Petitioner a credit of \$125.05, and that Petitioner has both accepted the credit and failed to further pursue this matter. Therefore, in accordance with the strong public policy in this State favoring settlements over litigation, and because Petitioner has failed to prosecute his claim, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them.

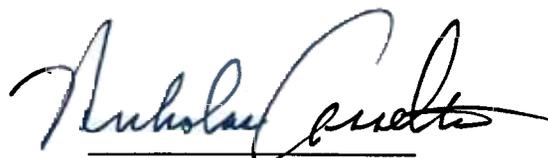
Therefore, based on the foregoing, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition of Lee Watkins be HEREBY DISMISSED with prejudice.

DATED: 4/27/09

BOARD OF PUBLIC UTILITIES
BY:

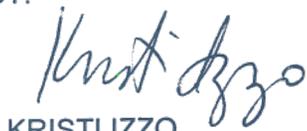

JEANNE M. FOX
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

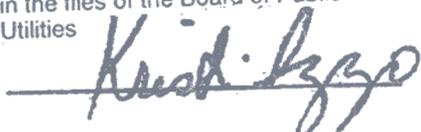

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
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



LEE WATKINS

v.

**NEW JERSEY AMERICAN WATER COMPANY
(successor to Elizabethtown Water Company)**

**BPU DOCKET NO. WC08030179U
OAL DOCKET NO. PUC07237-08**

SERVICE LIST

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 07237-08

AGENCY DKT. NO. WC08030179U

LEE WATKINS,

Petitioner,

v.

NEW JERSEY AMERICAN WATER COMPANY, INC.,

Respondent.

Lee Watkins, petitioner pro se

Daniel J. Bitonti, Esq., for respondent New Jersey American Water Company, Inc.
(Cozen O'Connor, attorneys)

Record Closed: March 20, 2009

Decided: March 30, 2009

BEFORE GAIL M. COOKSON, ALJ:

On June 6, 2008, this matter was transmitted to the Office of Administrative Law (OAL) by the Board of Public Utilities for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to- 13. A settlement conference was scheduled for August 22, 2008, at which time some progress toward an amicable resolution was reached. I provided the parties the opportunity to submit a fully executed settlement document to the OAL. When one was not forthcoming a month later, I scheduled a plenary hearing for November 5, 2008. On November 3, 2008, the matter was reported as settled and a draft settlement agreement was circulated to the petitioner for execution by him and presentation to the undersigned. On that representation, I cancelled the hearing

date. Once again, I waited for the submittal of an executed Stipulation but did not receive it. Accordingly, I noticed the parties that this matter would be heard on March 9, 2009.

On February 20, 2009, counsel for NJ American Water, successor to Elizabethtown Water Company, advised me that it was still awaiting the cooperation of Mr. Watkins in memorializing the settlement. On February 25, 2009, the company submitted papers in lieu of a more formal motion to enforce the settlement of the parties and dismiss the contested matter or for such other relief as deemed appropriate. Therein, it was presented by way of Certification that the terms of the settlement had been for petitioner's water utility account to be credited \$125.05 within thirty days of entry of the settlement agreement in consideration of which petitioner would dismiss his petition with prejudice and release any and all claims he might have had on past water utility bills.

On the basis of the company's application, I adjourned the hearing for March 9, 2009, but also advised petitioner by letter dated March 5, 2009, that he must respond to the motion by Friday, March 20, 2009, by either acknowledging the terms of the settlement or detailing his points of disagreement. I also set forth that the consequence of his failure to respond would leave respondent's motion as unopposed. Petitioner did not communicate in any form with this office before March 20, by March 20 or since.

I **CONCLUDE** that petitioner has determined not to oppose the motion of respondent to enforce the settlement. I also **CONCLUDE** that petitioner has failed to prosecute his complaint against New Jersey American Water Company, successor to Elizabethtown Water Company. From his silence on all fronts, I can only **CONCLUDE** that he is satisfied with the relief he has received but does not want to cooperate with the utility, the OAL or the Board of Public Utilities to properly close this case file.

Accordingly, it is **ORDERED** that the motion of NJ American Water Company to enforce the settlement is **GRANTED**. It is further **ORDERED** that the terms of the settlement are that petitioner is entitled to a credit of \$125.05 which has already been provided and that petitioner is to be deemed by accepting the credit of \$125.05 as releasing any and all billing claims he had or might have had against NJ American Water Company or its predecessor Elizabethtown Water Company through the date set

forth below. And it is further **ORDERED** that the matter be deemed dismissed with prejudice and that these proceedings be and are hereby concluded.

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, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Gail M. Cookson

3/30/09

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

id