



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

CUSTOMER ASSISTANCE

JEFFREY LICHTENSTEIN,)	ORDER ADOPTING INITIAL
)	DECISION
Petitioner,)	
v.)	BPU DOCKET NO. GC07080600U
NEW JERSEY NATURAL GAS COMPANY,)	OAL DOCKET NO. PUC 2383-08
Respondent.)	

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition dated August 7, 2007, Jeffrey Lichtenstein ("Petitioner") claimed that New Jersey Natural Gas Company ("Respondent") extorted \$4,000.00 from Petitioner in order to restore gas service to his residence that had been previously disconnected without notice. Petitioner further asserted that Respondent added his social security number to accounts which he had no personal liability to pay and that Respondent attempted to make Petitioner liable for accounts where he was employed as the contact person for bill payment. Petitioner also claimed that Respondent was in violation of federal statutes for alleged misuse of his social security number.

Respondent, in its answer to the petition, dated October 9, 2007, denied the allegations in Petitioner's petition, except to admit that gas service to his property was discontinued on July 31, 2007, for non-payment of current usage. Respondent answered that Petitioner was responsible for previous accounts under at the same service location under two other names: Jeff Stein and Kinda Trust Corp. Respondent stated that this position was based on the fact that Petitioner's social security number was the same as that recorded in the NJNG accounts for Jeff Stein and Kinda Trust Corp. The outstanding amounts were: Jeff Stein, \$2,813.19; and Kinda Trust Corp., \$3,234.48, for a total amount owed of \$6,047.67.

Respondent's answer provides a detailed procedural history of Petitioner's complaint. Respondent states that on November 27, 2006, Petitioner filed a complaint commencing a civil action against Respondent in the Superior Court of New Jersey, Monmouth County, Law Division, Special Civil Part, alleging that Respondent improperly discontinued natural gas service to his residence and forced Petitioner to pay \$4,000.00 to have service restored.

Respondent further stated that eight days later, on December 6, 2006, Petitioner filed a complaint with the Board regarding the same billing dispute. In this complaint, Petitioner alleged that Respondent claimed he owed \$6,000.00 for gas service to his service address, that Respondent subjected his family to four days of no heat or hot water, and forced him to pay \$4,000.00 to have service reinstated at the service address without justification.

Respondent then asserts that, because it did not want this matter heard in two separate jurisdictions, it filed a Motion to transfer the Superior Court Complaint to the Board. By letter dated February 6, 2007, Petitioner opposed the Motion to transfer the complaint, and stated that the Board did not have power to make determinations that involve arbitrary billing actions, and could not award or enforce monetary rewards. Petitioner filed a Motion to Strike Respondent's Answer in the Superior Court on January 29, 2007. Respondent opposed this motion, and Petitioner filed a reply to Respondent's opposition. On February 13, 2007, a non-jury trial was held before the Honorable Mark Sullivan, Jr. At this trial, Judge Sullivan denied Respondent's Motion to transfer the civil litigation to the Board, and allowed Petitioner to proceed with his case on the merits. Petitioner did not prevail at trial, and his Superior Court Complaint was dismissed with prejudice on February 13, 2007. Petitioner then filed the present August 7, 2007 complaint with the Board.

Respondent stated that at all times Petitioner was billed in accordance with the terms and conditions of its tariff approved by and filed with the Board. Respondent further stated that because Petitioner chose to pursue the billing dispute in the Superior Court, he was stopped from continuing before the Board. Therefore, Respondent requested that this Board complaint be dismissed with prejudice.

After receipt 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") Dennis P. Blake. The matter was originally scheduled for hearing on February 26, 2008, and because Petitioner failed to appear, the matter was dismissed. On March 29, 2008, after Petitioner advised the Board that he did not receive notice of the February 26, 2008 hearing, the Board requested that the matter be rescheduled for hearing at the OAL. A hearing was thereafter held on November 3, 2008.

ALJ Blake's Initial Decision reiterates the procedural history of this matter in both the Superior Court and before the Board. The Initial Decision's Statement of Facts states that Petitioner sought the repayment of \$6,000.00 that was paid to Respondent for the supply of natural gas to his residence. And that he made two separate filings: one with the Board and the other with the Special Civil Part, Superior Court, Monmouth County. The relief sought in both filings was the dismissal of the claim for \$6,000.00, which represented payment by Petitioner for past supply of natural gas. ALJ Blake further stated that, at the February 13, 2007 hearing in the Superior Court, Petitioner was asked to supply information on the issue of the receipt by him of utility service from Respondent. ALJ Blake notes Judge Sullivan's ruling that:

You presented your case, you haven't even come close to making out a prima facie case. You seem to be trying to hide behind the fact that I don't know who this Trust was that was paying the bill before I took over, and trying to not acknowledge that you're the trustee of that Trust.

And you can't just wipe out debt by transferring it from one entity you control into your own name. And you claim not to know what bills they paid and what they didn't pay. You chose not to bring the checkbook here from that entity, that Trust, to show what they did and did not pay.

And here, when you're suing to get the money back, the burden of proof is on you. And I have to find that you failed to make out a prima facie case, and I'm dismissing the complaint with prejudice.

In the Initial Decision, ALJ Blake stated that Respondent argued that Judge Sullivan's decision is res judicata in this matter. ALJ Blake further clarified that, to assert the bar of res judicata, the party asserting the bar must show that:

- 1) The issue to be precluded is identical to the issue decided in the prior proceeding;
- 2) The issue was actually litigated in the prior proceeding;
- 3) The court in the prior proceeding issued a final judgment on the merits;
- 4) The determination of the issue was essential to the prior judgment; and
- 5) The party against whom the doctrine is asserted was a party to or in privity with a party to that earlier hearing.

ALJ Blake concluded that, in this matter, the issues presented in Petitioner's Superior Court action were identical to those presented in the Petitioner's petition to the Board; that is, the propriety of the \$6,000.00 payment to Respondent. ALJ Blake further concluded that the repayment of this amount to Petitioner was litigated before Judge Sullivan, as evidenced by the filings that initiated both proceedings, and Judge Sullivan issued a final judgment. The propriety of the \$6,000.00 repayment was essential to this proceeding and to the Superior Court action before Judge Sullivan. Lastly, ALJ Blake concluded that the Petitioner in this matter was the plaintiff in the Superior Court proceeding.

Based on the above analysis, ALJ Blake concluded that Judge Sullivan's decision dismissing Petitioner's complaint in the Superior Court matter is res judicata in this matter. Therefore, ALJ Blake further concluded that Petitioner's claim for repayment of the \$6,000.00, previously paid to Respondent, be dismissed.

After review and consideration of the record, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them. Therefore, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition of Jeffrey Lichtenstein be HEREBY DISMISSED.


DATED: 5/15/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

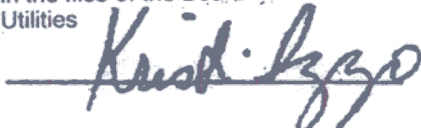

JOSEPH L. FIORDALISO
COMMISSIONER


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



JEFFREY LICHTENSTEIN

v.

NEW JERSEY NATURAL GAS COMPANY

BPU DOCKET NO. GC07080600U

OAL DOCKET NO. PUC 2383-08

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CMS
BESLOW
RIPA

PASKO-A
MILLER, C
KIRSCHBAUM, K
FORD WILLIAMS, C



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 2383-08

AGENCY DKT. NO. GC07080600U

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BOARD OF PUBLIC UTILITIES
NEWARK, NJ

JEFFREY LICHTENSTEIN,

Petitioner,

v.

NEW JERSEY NATURAL GAS

COMPANY,

Respondent.

Jeffrey Lichtenstein, petitioner, pro se

Eileen F. Quinn, Esq., Senior Litigation Counsel, for respondent

Record Closed: November 3, 2008

Decided: November 14, 2008

BEFORE DENNIS P. BLAKE, ALJ:

STATEMENT OF THE CASE

Petitioner seeks the repayment of approximately \$6,000 that he has paid to petitioner for utility services, natural gas, supplied to a home at 18 Judy Resnick Drive, Randolph, New Jersey. Petitioner disputed the amount of the aforementioned payment. He argues that he is not personally responsible for the repayment since it should have been billed to Kinda Trust. Kinda Trust is a trust for which he acts as trustee.

PROCEDURAL HISTORY

Petitioner filed a complaint in the Superior Court, Monmouth County, Special Civil Part, Dkt. No. 016383-06, on November 27, 2006, alleging that respondent, New Jersey Natural Gas (NJNG), improperly discontinued utility services at 18 Judy Resnick Drive. He also alleged that a purported bill for natural gas was "ridiculous" and argued that a turn-off of utility services was improper. He also alleged that he was "improperly forced" to make a \$4,000 payment for prior natural gas supplies before service would be reinstituted.

On December 6, 2006, petitioner filed a complaint with the Board of Public Utilities (BPU), Dkt. No. CA06-2229, for a hearing on the same three issues noted in the Superior Court, Special Civil Part, complaint.

On December 27, 2006, petitioner moved for an Order to Show Cause in the Superior Court matter seeking a refund of the \$4,000 already paid to respondent. On December 28, 2006, oral argument on this motion was heard. The Superior Court dismissed the motion for the Order to Show Cause based on a settlement which required the continuation of natural gas service if petitioner continued to pay current bills. On January 11, 2007, NJNG responded to the BPU complaint. On February 5, 2007, it moved in the Superior Court matter to transfer jurisdiction to the BPU. On February 6, 2007, petitioner opposed the transfer motion arguing that the BPU did not have jurisdiction. This response referred to the \$6,000 amount due and owing from petitioner. On February 8, 2007, petitioner's motion to strike NJNG's answer for failure to provide discovery was heard in the Superior Court, Monmouth County. All motions returnable before the Monmouth County Special Civil Part were consolidated and heard on February 13, 2008. In an oral decision, Judge Sullivan dismissed petitioner's complaint with prejudice, finding that he had failed to make out a prima facie case on the issue of the \$6,000 repayment to respondent. Petitioner did not file an appeal to the Appellate Division from Judge Sullivan's order.

In the BPU filing, respondent filed a response to petitioner's petition on January 11, 2007. On November 8, 2007, the BPU transmitted petitioner's claim to the Office of Administrative Law (OAL) as a contested matter in accordance with N.J.S.A. 52:14B-1 through 15 and N.J.S.A. 52:14F-1 through 13. The matter was scheduled for a hearing on February 26, 2008. Based on petitioner's failure to appear at that hearing, the matter was dismissed. On March 4, 2008, petitioner advised the BPU that he had not received notice of the hearing on February 26, 2008. On March 29, 2008, the BPU requested that the matter be rescheduled. The matter was scheduled for a hearing on November 3, 2008. The matter was heard on that date and the record closed.

STATEMENT OF FACTS

Petitioner sought the repayment of \$6,000 paid to respondent for the supply of natural gas to the residence at 18 Judy Resnick Drive, Randolph, New Jersey. He made two separate filings; one with the BPU and the other with the Special Civil Part, Superior Court, Monmouth County. The relief sought in both filings was the dismissal of respondent's claim for \$6,000 representing payment for past supply of natural gas to that residence. The complaint to the Special Civil Part, dated February 6, 2007, indicates that the basis of the filing is "an arbitrary \$6,000 charge on bill without any usage by plaintiff." (R-1, Exhibit E). The filing with the BPU, dated December 6, 2006, also seeks the repayment of the same \$6,000 amount. At the hearing before the Honorable Mark Sullivan, J.S.C., petitioner was asked to supply information on the issue of the receipt by him of utility services from NJNG. Although dealing with jurisdictional issues as well, Judge Sullivan ultimately ruled that:

"You presented your case, you haven't even come close to making out a prima facie case. You seem to be trying to hide behind the fact that I don't know who this Trust was that was paying the bill before I took it over, and trying to not acknowledge that you're the trustee of that Trust.

And you can't just wipe out the debt by transferring it from one entity you control into your own name. And you claim not to know what bills they paid and what they didn't

pay. You chose not to bring the checkbook here from that entity, that Trust, to show what they did and did not pay.

And here, when you're suing to get the money back, the burden of proof is on you. And I have to find that you failed to make out a prima facie case, and I'm dismissing the complaint with prejudice."

(R-1, Exhibit I)

Petitioner argued, at the hearing in this matter, that Judge Sullivan's ruling should not be relevant in this matter since it was made on a motion date and not a trial date. He also argues that Judge Sullivan did not have the appropriate documentation before him. However, he acknowledges that Judge Sullivan did ask him why he didn't bring his own checks to prove his case. Respondent's representative argued that, on the return date of the motion in question, all matters, including the trial of the matter, were scheduled.

CONCLUSIONS OF LAW

Respondent argues that Judge Sullivan's decision is res judicata on the matter before me. To assert the bar of res judicata, the party asserting the bar must show that:

- (1) The issue to be precluded is identical to the issue decided in the prior proceeding;

The issue was actually litigated in the prior proceeding;

The court in the prior proceeding issued a final judgment on the merits;

- (4) The determination of the issue was essential to the prior judgment; and
- (5) The party against whom the doctrine is asserted was a party to or in privity with a party to that earlier hearing.

[Hennessey v. Winslow Tp., 183 N.J. 593 (2005)]

In this matter, the issue presented to Judge Sullivan and to me is identical; that is, the propriety of the \$6,000 payment to the respondent. The repayment to petitioner was litigated before Judge Sullivan, as evidenced by the filings that initiated both proceedings. Judge Sullivan clearly issued a final judgment. (R-1, Exhibit I). The propriety of the \$6,000 repayment was essential to this proceeding and that before Judge Sullivan. Lastly, petitioner in this matter was the plaintiff in the Superior Court proceeding.

Based on the foregoing, I **CONCLUDE** that Judge Sullivan's decision dismissing petitioner's complaint in the Superior Court matter is res judicata in this matter. Thus, I further **CONCLUDE** that petitioner's claim for the repayment of the \$6,000 amount is **DISMISSED**.

ORDER

I hereby **ORDER** that petitioner's claim for the repayment of \$6,000 previously paid to the respondent is hereby **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, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 14, 2008

DATE



DENNIS P. BLAKE, ALJ

Date Received at Agency:

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

/cs, mamf

APPENDIX

WITNESSES

For petitioner:

Jeffrey Lichtenstein

For respondent:

Eileen F. Quinn, Esq.

EXHIBITS

For petitioner:

None

For respondent:

R-1 Hearing packet