



Agenda Date: 11/21/17
Agenda Item: 4A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

Larry S. Loigman, Esq.
Petitioner

v.

Verizon New Jersey, Inc.
Respondent

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ORDER ADOPTING INITIAL
DECISION

BPU Docket No. TC14050490
OAL Docket No. PUC 13695-14

Parties of Record:

Larry S. Loigman, Esq., Petitioner pro se
Richard C. Fipphen, Esq., on behalf of Respondent, Verizon New Jersey, Inc.

BY THE BOARD:

PROCEDURAL HISTORY AND BACKGROUND

On May 19, 2014, Larry S. Loigman ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a dispute with Verizon New Jersey, Inc. ("Respondent") regarding utility service rendered by Respondent.

After the filing of the 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 originally assigned to Administrative Law Judge ("ALJ") Elia A. Pelios.

While the contested case was pending, Respondent filed a Motion to Dismiss, or in the alternative, for Summary Decision on November 5, 2015, with supporting affidavit and memorandum of law. Respondent argued that all of Petitioner's open services issues have been resolved, and that the policy issues raised by Petitioner, which involve service quality and Board rules, are not the appropriate subject on an evidentiary hearing at the OAL. Therefore, Verizon argued that the petition should be dismissed for failure to state a claim upon which relief can be granted. In the alternative, Respondent also argued that Summary Decision is an

appropriate remedy as Respondent does not dispute the errors it made related to Petitioner's service, as Respondent provided Petitioner with the appropriate bill credit, and as there are no longer any outstanding service issues related to Petitioner's account, requiring an evidentiary hearing. Verizon further argued that it is entitled to prevail on the petition as a matter of law.

By letter memorandum dated December 14, 2015, Petitioner opposed Respondent's motion. Petitioner argued that the affidavit submitted by Respondent was fictitious, that Respondent demonstrated a complete disregard for its obligations to its customers, that Respondent only provided a mere pittance of a bill credit, and refused to consider any additional remedies. Petitioner also argued that because Respondent failed to produce requested discovery, which had been served on November 23, 2014, summary decision should be denied as discovery is not complete.

By letter dated August 31, 2017, ALJ Solomon A. Metzger advised the parties that Respondent's pending motion was reassigned to his chambers. The ALJ advised that he would review the motion and would issue an opinion in short order. According to the Initial Decision, the record was closed on September 1, 2017. On September 18, 2017, ALJ Metzger issued an Initial Decision, in favor of Respondent.

In dismissing the petition, ALJ Metzger found that the record was undisputed. Specifically, the ALJ found that the Petitioner contacted Respondent in March 2014 to discontinue service at his Ocean Township home and to reconnect service at his new home in Lakewood, New Jersey. This transition was initially scheduled to occur on April 10, 2014, but was changed by Petitioner to April 28, 2014. Unfortunately, this switch did not go smoothly and Petitioner lost about four (4) days of service. Respondent admitted that there were errors in effecting this change of service. In the end, Petitioner's service was restored and Respondent provided Petitioner with a bill credit for lost service in the amount of \$18.98 consistent with the out-of-service rule. In considering these facts, the ALJ found that Petitioner's attempt to overhaul Respondent's customer service practice is an "ill fit for the OAL's discreet adjudicatory function," and found that such an inquiry would be more appropriate to the agency's investigatory, supervisory or rule-making function. The ALJ also found that Petitioner provided no support for his demand for costs, fees and financial sanctions.

ALJ Metzger further found that summary decision was also appropriate as there are no facts in dispute and as the remedies sought by Petitioner are unavailable as a matter of law. While the Petitioner makes some reference to outstanding discovery, the ALJ noted that this matter has been at the OAL since October 2014, and there was sufficient time to formalize outstanding discovery issues. Accordingly, ALJ Metzger granted the Respondent's Motion and ordered that the petition be dismissed.

On September 28, 2017, the Petitioner submitted exceptions seeking that the Board reject the Initial Decision and conduct a plenary hearing. The Petitioner stated that the utility gave false information, overcharged and ignored its service commitments in violation of the governing regulations, specifically, N.J.A.C. 14:10-1A.6. The Petitioner argues that the Initial Decision contains no findings of fact or conclusions of law, and thus, should be rejected by the Board.

On October 5, 2017, the Board received Verizon's response to the Petitioner's exceptions, stating that the service outage that the Petitioner experienced prompting his complaint was addressed and that the situation no longer exists. A credit was issued in the amount of \$18.98 to resolve the service and billing dispute. The Respondent disagrees with the exceptions filed

by the Petitioner wherein additional action of the Board is sought, and requests that the Initial Decision be adopted.

By Order dated October 20, 2017, the Board was given until December 17, 2017, to render a final agency decision.

DISCUSSION AND FINDINGS

Petitioner claims that Respondent failed to provide safe, adequate, proper and reliable service pursuant to N.J.A.C. 14:3-3.1(a) while dealing with service issues in 2014. Although the service issues have since been remedied by Respondent, Petitioner seeks financial sanctions, costs and fees, as well as policy changes in customer service relations, including but not limited to the creation of a more effective process for handling incoming calls, better training for staff, and prohibiting Respondent from using certain terms in its advertising to imply an efficient and customer oriented company.

N.J.A.C. 14:10-2.3 provides a remedy to customers should service be interrupted for a period of twenty-four (24) hours or more as long as the outage is not caused by the negligence or willful act of that customer. Here, Respondent admits that it had issues in discontinuing and reconnecting Petitioner's service, which resulted in a multi-day outage. Respondent correctly provided Petitioner with an \$18.98 bill credit for the days that service was interrupted in accordance with N.J.A.C. 14:10-2.3. Petitioner, who bears the burden of proof by a preponderance of the evidence pursuant to Atkinson v. Parsekian, 37 N.J. 143, 149, (1962), provided no evidence that the refund provided by Respondent was insufficient or incorrect.

Additionally, pursuant to N.J.A.C. 1:1-2.1, a contested case is

an adversary proceeding...in which legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity of an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

Here, while Petitioner calls the bill credit a "mere pittance," Petitioner does not make any additional claims as to the service provided by the Respondent. Instead, as noted by the ALJ, Petitioner essentially seeks an overhaul of Respondent's customer service practices. By the plain language of N.J.A.C. 1:1-2.1, contested cases are not intended to provide a forum to deal with broad policy issues that would affect large segments of the service area, such as the ones sought by Petitioner. See High Horizons Dev. Corp. v. Dep't of Transp., 120 N.J. 40 (1990).

Indeed, as noted by the ALJ, there are already rules and requirements in place to deal with customer service issues, as well as other forums for the Board to address concerns with customer service or to adopt or revise rules related to these broader policy issues. See N.J.A.C. 14:10-1A et seq.; N.J.A.C. 14:1-5.16. Therefore, the ALJ was correct in granting Respondent's Motion to Dismiss.

ALJ Metzger's alternative disposition of the matter under the summary decision standard is likewise appropriate. Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that 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(b). N.J.A.C. 1:1-12.5(b) also provides that when a summary decision motion is filed, an adverse party must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Therefore, determining whether a genuine issue with respect to a material fact exists requires consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 533 (1995).

After review of the evidential materials in this matter, the Board agrees with ALJ Metzger that there are no genuine issues of material facts in dispute. As found in ALJ Metzger's Initial Decision, Petitioner contacted Respondent in March 2014 to discontinue service at one address and connect service at a new address. This transaction was originally scheduled to occur on April 10, 2014, but was later changed by Petitioner to April 28, 2014. Due to errors by Respondent, the implementation of the requested changes did not go as planned. Respondent admitted that its errors caused a premature interruption of service at Petitioner's old address, and that implementation of service was delayed at the new address. Service was interrupted for approximately four days. While Petitioner and Respondent do not agree on the specifics as to how Respondent handled Petitioner's case, there is no dispute that service was eventually reinstated and that Petitioner received a refund for the days without service. There is nothing in the record before this Board to indicate that there were any additional open service issues between Petitioner and Respondent that would qualify as a genuine issue of material fact. Indeed, the Board notes that Petitioner did not file an affidavit as required by N.J.A.C. 1:1-12.5(b). Rather, Petitioner's letter memorandum cited various regulations which described Respondent's obligations to provide and ensure safe, adequate and proper service and alleged that Verizon had not provided produced documents in response to a notice to produce documents which was served on Respondent on November 23, 2014. In short, Petitioner failed to sustain his burden to rebut a summary decision motion.

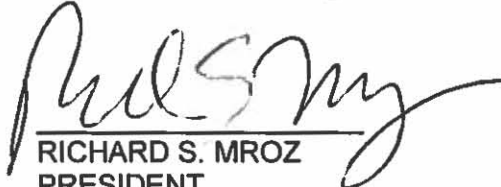
Accordingly, after review of the Initial Decision, and consideration of the entire record, including exceptions and replies, the Board **HEREBY FINDS** that the findings of fact and conclusions of law set out by ALJ Metzger in the Initial Decision are reasonable and supported by law, and **ACCEPTS** those findings.

Therefore, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Petition be **DISMISSED**.

The effective date of this Order is December 1, 2017.

DATED: 11/21/17

BOARD OF PUBLIC UTILITIES
BY:

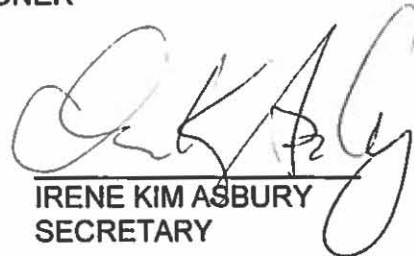

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

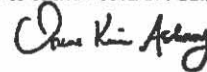

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**LARRY S. LOIGMAN V. VERIZON NEW JERSEY, INC.
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