



Agenda Date: 6/21/13
 Agenda Item: 7A

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/

CUSTOMER ASSISTANCE

GERARD FELIX, Petitioner)	ORDER ADOPTING
)	INITIAL DECISION
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Respondent)	BPU DOCKET NO. EC12100929U
)	OAL DOCKET NO. PUC 01332-13

Parties of Record:

Gerard Felix, pro se
Sheree L. Kelly, Esq., for Respondent, Public Service Electric and Gas Company

BY THE BOARD:

STATEMENT OF THE CASE

The issue before the New Jersey Board of Public Utilities ("Board") is whether the Petitioner, Gerard Felix, had the right to bring claims against Respondent, Public Service Electric and Gas Company, based on alleged overcharges in the bills the Petitioner sent his grandmother. The Initial Decision by Administrative Law Judge Kimberly A. Moss (ALJ Moss) determined that Petitioner did not have the right to bring those claims and dismissed Petitioner's petition without prejudice. The Board adopts ALJ Moss's decision based on the reasons stated in her decision.

PRECEDURAL HISTORY

On October 12, 2012, Petitioner filed a petition with the Board requesting a formal hearing related to a billing dispute with Respondent for utility services Respondent provided to Petitioner's grandmother.

After Respondent filed its 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 ALJ Moss.

On March 22, 2013, Respondent moved to dismiss the Petition on the ground that Petitioner lacked standing to maintain his action against Petitioner and was prohibited from representing his grandmother in the action. On March 22, 2013, ALJ Moss sent Petitioner a letter stating that

the Petitioner had to respond to the motion to dismiss by April 6, 2013. Petitioner did not respond to the motion.

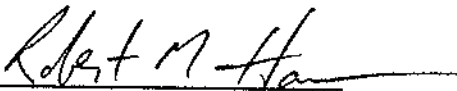
The Initial Decision, which was decided on April 10, 2013 and received by the Board on April 12, 2013, granted the Respondent's motion to dismiss the Petition on the grounds that: (a) Petitioner did not have standing to bring the claims against Respondent because, insofar as he was not the customer of record and was not responsible to pay the bills that were sent to his grandmother, he did not have a sufficient stake in the outcome of the litigation; and (b) Petitioner did not present evidence to demonstrate that he satisfied the criteria set forth in N.J.A.C. 14:3-7.1(a), which ALJ Moss inadvertently referred to as N.J.A.C. 14:3-7(a), to act as a non-lawyer representative for his grandmother.

The Initial Decision also noted that on April 3, 2013, Petitioner's grandmother died and that Petitioner is not the executor or administrator of his grandmother's estate. Therefore, regardless of whether Petitioner had standing to represent his grandmother prior to her death, Petitioner did not have standing to represent her upon her death, when the claim became the claim of her estate. The Board affirms the dismissal of Petitioner's claim without prejudice to any rights Petitioner's grandmother's estate may have in that claim on the ground that Petitioner failed to present any evidence that he was authorized to represent the estate's claim against Respondent.

After review of the record and the Initial Decision by ALJ Moss, the Board **HEREBY ADOPTS** the Initial Decision and dismisses the Petition without prejudice.

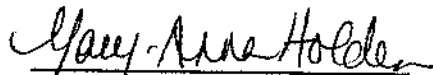
DATED: 6/21/13


BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

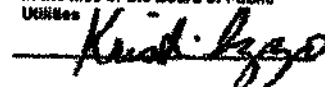

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA 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



GERARD FELIX

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC12100929U
OAL DOCKET NO. PUC 01332-13

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Orange, N.J. 07050

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RECD

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. PUC 01332-13

AGENCY DKT. NO. EC12100929U

GERARD FELIX,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC

AND GAS COMPANY,

Respondent.

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APR 12 2013

BOARD OF PUBLIC UTILITIES
MAIL ROOM

Gerard Felix, pro se

Sheree Kelly, Esq., for respondent Public Service Electric and Gas

Record Closed: April 10, 2013

Decided: April 10, 2013

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Gerard Felix (Felix) filed a complaint before the Board of Public Utilities (BPU) disputing the billing of Public Service Electric and Gas Company (PSE&G). The matter was transmitted to the Office of Administrative Law (OAL) and filed on February

4, 2013. A prehearing telephone conference was scheduled for March 4, 2013. Felix could not be reached by phone at that time. An in-person prehearing conference was scheduled for April 10, 2013. On March 22, 2013, PSE&G filed a motion to dismiss petitioner's complaint for lack of standing. On March 22, 2013, I sent petitioner a letter stating that he had to respond to PSE&G's motion by April 6, 2013. Felix did not respond to the motion. Felix appeared at the in person pre-hearing on April 10, 2013.

FACTUAL DISCUSSION

PSE&G provides electric and gas service to 299 N. Day Street, Orange, New Jersey. In his petition Felix lists charges made by PSE&G on his grandmother, Marie Kinsta Pierre's account. The customer of record for that account is not Felix. The customer of record is Felix's grandmother, Marie Kinsta Pierre. Petitioner's grandmother is not named as a party in this matter. Petitioner does not have a power of attorney for his grandmother. Petitioner has provided no evidence that he fits the criteria for non-lawyer representation before the OAL. On or about April 3, 2013, Marie Kinsta Pierre died. Felix is not the executor or administrator of his grandmother's estate.

LEGAL ANALYSIS AND DISCUSSION

Summary decision is available in the administrative court pursuant to N.J.A.C. 1:1-12.5. The regulation provides that summary decision is appropriate when:

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. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue, which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

[N.J.A.C. 1:1-12.5(b).]

The summary decision rule is substantially the same as that of the summary judgment rule under R. 4:46-2. See Contini v. Bd. of Ed. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995), which recognized that the summary decision standard in administrative proceedings is substantially similar to that of New Jersey Court Rule 4:46-2).

The New Jersey Supreme Court in Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995) in a motion for summary judgment, stated that a motion judge is required to consider "whether the competent evidential material 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 dispute in favor of the non-moving party." Id. at 540. Therefore, where a moving party demonstrates, by competent evidential material, that no genuine and material issue of fact exists, the Court must grant the motion for summary judgment. Similarly, the rules governing administrative proceedings provide that summary decision may be granted if there is "no genuine issue of material fact and the moving party is entitled to prevail as a matter of law." Borough of Lincoln Park Bd. of Ed. V. Bd. of Ed. of the Town of Boonton, EDU 5944-02, Initial Decision, (April 2, 2003) <<http://lawlibrary.rutgers.edu/oal/search.html>>, modified, Comm'r. (May 15, 2003) <<http://www.state.nj.us/njded/news/info.htm>>. Under N.J.A.C. 1:1-12.5(b). The determination to grant summary decision should be based on the papers presented as well as any affidavits filed with the application. Ibid.

N.J.A.C. 14:3-1.1 provides:

"Customer of record" means the person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. A customer may or may not be an end user, as defined herein.

N.J.A.C. 14:3-7(a) provides:

The customer(s) of record, as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered.

The standard for determining whether petitioner has standing to assert a cause of action is whether there is "sufficient stake in the outcome of the litigation"; (2) genuine **adverseness** regarding the **subject matter** of the action; and (3) "a **substantial likelihood** that the plaintiff will suffer harm in the event of an **unfavorable** decision." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409-10 (App. Div. 1997), appeal dismissed, 152 N.J. 361 (1998) (emphasis added).

In the petition, Felix stated that the bills he is disputing are for his grandmother's account. Therefore he is not responsible for payment of the utility service. The customer of record is his grandmother. In other words, petitioner does not have a contractual relationship with PSE&G. I **CONCLUDE** that petitioner does not have standing in this matter.

N.J.A.C. 1:1-5.4(a) provides:

Representation by non-lawyers; authorized situations, applications, approval procedures

In conformity with New Jersey Court Rule R. 1:21-1(f), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal service paralegals or assistants;
5. Close corporation principals;
6. Union representatives in Civil Service and Public Employment Relations Commission cases;
7. Individuals representing parents or children in special education proceedings;

8. County or local government employees in Civil Service cases; and

9. Individuals representing claimants or employers before the Appeal Tribunal or Board of Review of the Department of Labor and Workforce Development.

Petitioner has not provided any evidence that he fits the above criteria for non-lawyer representation. I therefore **CONCLUDE** that petitioner does not meet the criteria for non-attorney representation.

ORDER

Based on the foregoing, respondent's motion for summary decision is **GRANTED**. It is hereby **ORDERED** that petitioner's formal petition be **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.

4-10-13

DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Date Mailed to Parties:

ljb

APR 11 2013



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE