



Agenda Date: 12/19/17
Agenda Item: 7A

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/

CUSTOMER ASSISTANCE

SUPER 8 MOTEL
Petitioner,

V.

SUEZ WATER NEW JERSEY
Respondent.

) ORDER REJECTING
) INITIAL DECISION AND
) ADOPTING SETTLEMENT
)
) BPU DOCKET NO. WC16121151U
) OAL DOCKET NO. PUC 08455-17
)

Parties of Record:

Dan Suratwala, for Petitioner, Super 8 Motel
John P. Wallace, Esq., on behalf of Respondent, Suez Water New Jersey, Inc.

BY THE BOARD:¹

The within matter is a billing dispute between Super 8 Motel ("Petitioner") and Suez Water New Jersey, Inc. ("Respondent" or "Suez"). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-10. Having reviewed the record, the Board of Public Utilities ("Board") now **REJECTS** the Initial Decision rendered on October 13, 2017 and **ADOPTS** the settlement agreement reached by the parties.

STATEMENT OF THE CASE

On October 3, 2016, Petitioner filed a petition with the Board with respect to a billing dispute with Suez. Specifically, Petitioner disputed a "catch up charge" in the amount of \$9,161.21. On January 10, 2017, Suez filed an answer to the petition. Consequently, on June 2, 2017, the Board transferred the matter to the Office of Administrative Law ("OAL") for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23, and it was assigned to an Administrative Law Judge ("ALJ").

On September 5, 2017, two days prior to the scheduled hearing at the OAL, Respondent filed a motion for summary judgment pursuant to N.J.A.C. 1:1-12.5. On September 7, 2017, a hearing was held at the OAL. At the hearing, the parties agreed to settle the matter. The agreement

¹ Commissioner Upendra J. Chivukula did not participate.

was later reduced to writing. Pursuant to the terms of the agreement, Petitioner agreed to pay a settlement amount of \$5,065.55 in full by September 30, 2017. The settlement also stated that Suez reserved the right to collect the entire balance of \$8,345.73 owed by Petitioner "in the event [Petitioner] defaults in making the payment due per the settlement agreement."

On October 13, 2017, the OAL issued an Initial Decision. In the initial decision, the OAL granted Suez's September 5, 2017 summary judgment motion and ordered Petitioner "to pay \$8,345.73 for water service." (ID at 3). The decision was based on the finding that "petitioner failed to abide by the terms of the agreement or more specifically to pay the agreed upon amount."² Ibid.

The Board received the Initial Decision on October 13, 2017. Within the statutory period, the Board requested a 45-day extension pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8. The request was granted and, therefore, the time limit for the Board to render a Final Decision was extended until January 11, 2018.

On November 17, 2017, Dan Suratwala filed exceptions on behalf of Petitioner. He stated that Petitioner paid the amount of \$5,065.55 prior to September 30, 2017. With respect to the written agreement, Mr. Suratwala explained that he was out of the country when the agreement was received on September 14, 2017. Subsequently, he executed the agreement and sent it to counsel for Suez on October 19, 2017. Lastly, Mr. Suratwala noted that he received a call from Suez indicating that it would shut off service if he failed to pay the \$2,597.22 balance.

On November 25, 2017, Suez filed a response to Petitioner's exceptions. Suez argued that Petitioner's exceptions were untimely. Additionally, Suez stated that on September 11, 2017, counsel sent two copies of the Settlement Agreement to Petitioner for execution. On October 23, 2017, counsel received an executed copy of the agreement. Counsel represented that Suez executed the agreement and forwarded it to the ALJ. Lastly, Suez requested the Board deny the Petitioner's exceptions.

DISCUSSION

N.J.A.C. 1:1-18.4(a) requires exceptions to be filed with the agency head and copies mailed to all other parties within thirteen days from the date the judge's Initial Decision was mailed to the parties. The Initial Decision was mailed to the parties on October 13, 2017, therefore, any exceptions should have been filed by October 26, 2017. Petitioner filed untimely exceptions on November 13, 2017; however, the Board will consider these exceptions and Suez's responses thereto.

In addition to the exceptions, Suez Staff forwarded the fully executed settlement agreement to the Board, which is attached hereto and made a part hereof. Additionally, Suez Staff has represented to Board Staff that they received Petitioner's payment in accordance with the terms of the agreement.

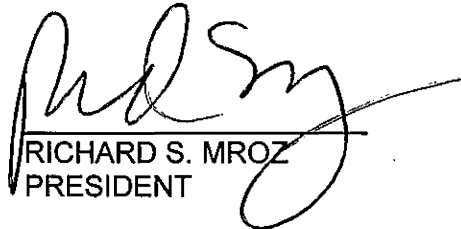
After review of the Initial Decision and the Settlement Agreement, the Board **HEREBY FINDS** that the parties have voluntarily agreed to the settlement as evidenced by their signatures and that, by the terms of the settlement, they have fully resolved all outstanding contested issues in this matter in satisfaction of N.J.A.C. 1:1-19.1. Accordingly, the Board **HEREBY REJECTS** the Initial Decision and **HEREBY ADOPTS** the Settlement Agreement executed by the parties in its entirety.

² Neither party submitted certifications or other documentation to support this finding.

The effective date of this Order is December 29, 2017.

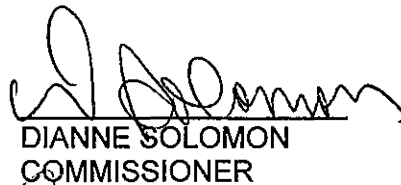
DATED: 12/19/17

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

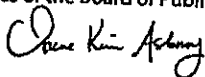

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
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



SUPER 8 MOTEL

V.

**SUEZ WATER NEW JERSEY
BPU DOCKET NO. WC16121151U
OAL DOCKET NO. PUC 08455-17**

SERVICE LIST

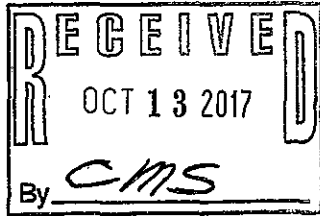
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BOARD OF PUBLIC UTILITIES

OCT 13 2017

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

MAIL RECEIVED

INITIAL DECISION

OAL DKT. NO. PUC 08455-17

AGENCY DKT. NO. WC16121151U

SUPER 8 MOTEL,

Petitioner,

v.

SUEZ WATER NEW JERSEY,

Respondent.

Dan Suratwala, petitioner, pro se

John P. Wallace, Esq., for respondent

Record Closed: September 14, 2017

Decided: October 11, 2017

BEFORE IRENE JONES, ALJ:

CMS
V. Haynes
D. Lee Thomas
E. Hartsfield
J. Ford
R. Lambert
R. Matus
D. Brantley
C. Vachier

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about October 3, 2016, petitioner Dan Suratwala filed a petition with the Board of Public Utilities contesting his water bill from the respondent, Suez Water New Jersey. On January 10, 2017, respondent Suez Water filed an Answer to the petition and requested that the matter be dismissed.

On or about June 2, 2017, the Board transmitted the matter to the Office of Administrative Law for hearing as a contested case. The matter was pre-heard and a hearing was held on September 7, 2017. On September 5, 2017, respondent filed a motion for Summary Judgment.

FACTS

Based on the record, I **FIND** the following **FACTS**:

1. Petitioner is the owner of Super 8 Motel located at 2800 Columbia Avenue, North Bergen, New Jersey 07047
2. Respondent holds the water franchise for the area in which Super 8 Motel is located.
3. On October 6, 2014, respondent removed meter #M8241685 from the petitioner's motel and replaced it with a new meter. Subsequently, it was learned that the old meter had failed to register consumption and thus respondent sent the petitioner a "catch up bill" for the period of December 2013 through October 6, 2014. The methodology used to determine the "catch up" charges were set forth in a letter dated November 24, 2014. (Exhibit B, attached to Motion for Summary Judgment.)
4. On October 15, 2014, respondent billed the petitioner \$9,371.95 for water consumption at the aforementioned address.
5. The petitioner requested that the bill be further discounted because he has a transient customer base.
6. At the September 7 hearing, the parties agree to settle the matter with the petitioner receiving a thirty-five percent discount. The parties also agreed to further reconcile the bill to reflect payment(s) made by the petitioner.

7. The settlement agreement was placed on the record and thereafter reduced to writing. Pursuant to the terms of the agreement, petitioner was to pay the respondent \$8,345.73 by September 30, 2017. Petitioner has failed to abide by the terms of the agreement or more specifically to pay the agreed upon amount.
8. Respondent now seeks summary judgment against the petitioner.

DISCUSSION

A motion for Summary Decision should be granted "if the papers and discovery, 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). To prevail, the adverse party must file an affidavit alleging specific facts that establish "a genuine issue which can only be determined in an evidentiary proceeding." The specific facts must be material to the issue, and "[t]he mere existence of disputed facts is not conclusive." Frank v. Ivy Club, 120 N.J. 73, 98 (1990).

In the instant matter, I **FIND** that this matter is appropriate for summary disposition.

I **FIND** that petitioner does not dispute that the meter failed to record consumption. He only contends that the initial discount offered by the respondent was insufficient. Subsequently, the respondent agreed to a bigger discount and petitioner has failed to pay or otherwise seek relief.

I **FIND** that the petitioner owes the respondent \$8,345.73 for water consumption at the Super 8 Motel. I **CONCLUDE** respondent's motion for summary judgment is appropriate and the motion is hereby **GRANTED**.

ORDER


It is, therefore, **ORDERED** that petitioner shall pay the respondent \$8,345.73 for water service.

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.

October 13, 2017
DATE



IRENE JONES, ALJ

Date Received at Agency:

Date Mailed to Parties:

jb