



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MAMMA MIA PIZZERIA,
Petitioner

v.

SHORELANDS WATER COMPANY,
Respondent

) ORDER ADOPTING INITIAL

) INITIAL DECISION

)

)

) BPU DOCKET NO. WC11010018U

) OAL DOCKET NO. PUC 4192-11

Tod Bretton, on behalf of Petitioner, Mamma Mia Pizzeria, *pro se*
Walter G. Reinhard, Esq., on behalf of Respondent, Shorelands Water Company

BY THE BOARD:

By Petition filed with the Board of Public Utilities ("Board") on January 13, 2011, Tod Bretton on behalf of Mamma Mia Pizzeria, LLC ("Petitioner"), disputed billing charges associated with water services provided by Shorelands Water Company ("Respondent") to 745 Poole Ave., Hazlet, New Jersey, 07730. Petitioner complained of excessive January to May, 2010 charges because of either a defective water meter or improper water meter readings. After receipt of the Answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for a contested case hearing pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52: 14F-1 to 13. This case was assigned to Administrative Law Judge ("ALJ") Ronald W. Reba. A contested case hearing was held on July 27, 2011, and the record comprising P-1 through P-10 and R-1 through R-6 with transcripts was closed on September 28, 2011. On November 4, 2011, ALJ Reba issued an Initial Decision ("ID"), received by the Board on November 17, 2011. The procedural history and the legal analysis, findings and conclusions of ALJ Reba are set forth in the ID. A copy of the ID is attached hereto and made a part hereof. Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, the Board granted a first 45-day extension order dated December 15, 2011 to issue its final decision.

The ALJ found as fact that Respondent had noticed excessive usage and dispatched a technician to check for leaks, that Petitioner had acknowledged a leak, and that the accuracy of the meter had been alleviated to the satisfaction of Petitioner. After considering the established consumption by the customer, the meter test results, and whether the bill was correct and appropriate consistent with N.J.A.C. 14:3-7.6(g), ALJ Reba concluded that Petitioner had failed to prove by a preponderance of competent, credible evidence that the water meter had been

defective or that the meter readings were inaccurate pursuant to Atkinson v. Parsekian, 37 N.J. 143 (1962) and the case was dismissed.

On January 5, 2012, Petitioner filed exceptions. In its exceptions, Petitioner challenges the ALJ's conclusion by arguing there were never any issues or repairs made with its ice machine and no proven issue with its toilet. Petitioner further contends that even if both were malfunctioning, these items could not have caused the water bill discrepancies due to the high volume of water use. The Board would note, however, that the record is clear on two points: (1) that Respondent's employees inspected Petitioner's premises for leaks and, after requesting that Petitioner turn off all items that used water found that the flow finder had shown that water was still being used; further, only after the ice machine was manually turned off did the flow finder stop, thereby indicating a leak; and (2) the on-site meter was tested and found to be accurate pursuant to N.J.A.C. 14:3-4.6(a).

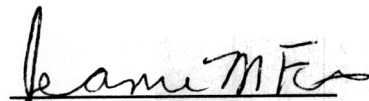
Upon review and consideration of the entire record, the Board HEREBY FINDS the ALJ's findings of facts to be reasonable and the ALJ's conclusions of law to be proper. Accordingly, the Board ACCEPTS these findings and conclusions.

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

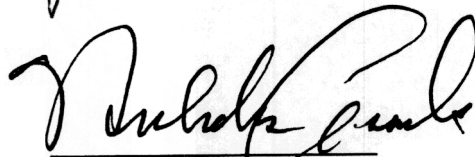
DATED: 3/12/2012

BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT

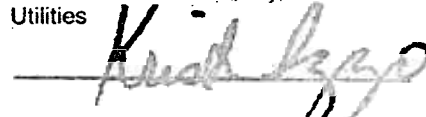

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA 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


MAMMA MIA PIZZERIA

v.

SHORELANDS WATER COMPANY

BPU DOCKET NO. WC11010018U

OAL DOCKET NO. PUC4192-11

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 4192-11

AGENCY DKT. NO. WC11010018U

MAMMA MIA PIZZERIA,

Petitioner,

v.

SHORELANDS WATER COMPANY,

Respondent.

Tod Bretton, petitioner, pro se

Walter G. Reinhard, Esq. for respondent (Norris, McLaughlin & Marcus,
attorneys)

Record Closed: September 28, 2011

Decided: November 4, 2011

BEFORE **RONALD W. REBA**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By letter of December 10, 2010, petitioner Mamma Mia Pizzeria requested a hearing to contest respondent Shorelands Water Company's bills to the petitioner for the months of January 2010 through May 2010 on the basis that either the water meter was defective or there was an improper reading of the water meter. The matter was

transmitted to the Office of Administrative Law (OAL), where it was filed on April 8, 2011. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. I heard the matter on July 27, 2011, and kept the record open for submission of further documentation and briefs by the parties, and for review of the transcript of the proceeding. The record closed on September 28, 2011

ISSUES

The issue is whether there was a defective water meter at Mamma Mia Pizzeria, or, if the meter was not defective, whether the meter was misread by respondent's personnel.

TESTIMONY

Tod Bretton

Tod Bretton and his wife Victoria Bretton are the owners of Mamma Mia Pizzeria in Hazlet, New Jersey. Mr. Bretton testified that he took over the restaurant in December 2009. At that time there was no water usage, and to his knowledge there were no water leaks or broken equipment. Shortly thereafter in December 2009 the water was turned on, and Mr. Bretton and his staff used the water to clean the establishment, which took several days. In January 2010 Shorelands Water Company read the water meter, and petitioner subsequently received a bill for usage of 600 gallons of water. Mamma Mia Pizzeria opened for business on January 15, 2010, and for January the establishment received a bill for usage of over 29,100 gallons of water, at a cost of approximately \$150. Mr. Bretton received estimated monthly bills for usage of 29,100 gallons of water from February 2010 through April 2010, which he did not dispute. In June 2010 he received a water bill for \$950. He contacted Shorelands about the bill and negotiated a payment schedule by which he would pay the bill in two to three months. Mr. Bretton testified that he was then contacted by Marilyn Colas of the Hazlet Township Sewer Authority, who informed him that the Sewer Authority had received a water-usage figure from Shorelands of 814,900 gallons for his

establishment, which was the figure used to calculate sewer charges for the establishment. Such water usage would generate a sewer bill of over \$6,000. Mr. Bretton thereafter contacted Shorelands, and was informed that Shorelands had sent notice to Hazlet Township of usage of 354,900 gallons, not 815,000 gallons, and that a mistake had been made by the Sewer Utility rather than by Shorelands. Because of Mr. Bretton's complaint, Shorelands sent an investigator to the establishment. The investigator checked for leaks and plumbing problems, and, according to Mr. Bretton, there were none. Shorelands thereafter removed the water meter and installed another meter, and Mr. Bretton had no further problems.

On cross-examination Mr. Bretton was shown a letter represented to be sent by respondent dated May 17, 2011, to Mamma Mia Pizzeria offering meter-test options (R-1). The petitioner indicated that had never seen such a letter, and that he had not known that he had the option of requesting that the Board of Public Utilities (BPU) test the meter for a fee of \$5.00. He said that the reason he did not complain sooner was that he was only getting an estimated bill, which he thought was correct, as he did not know the full history of charges to the Pizzeria with prior owners. However, he conceded that he did not contact the BPU until June 2010. He also said he received correspondence in June 2010 from Phyllis Smith, a customer service supervisor with Shorelands Water Company, indicating that the meter was tested to be accurate and that there was perhaps a leak in the plumbing at the establishment. Under cross-examination Mr. Bretton indicated that he had done some repairs to the toilet, but he asserted that at no time did the toilet leak. He also said that a Shorelands investigator suggested that he could have had a leaky ice machine. He indicated, however, that he did not believe that was the case, because there was no water on the floor or anywhere else.

Kenneth Sullivan

Kenneth Sullivan is employed by Shorelands Water Company as its controller. He testified that on May 17, 2010, his office sent a letter to Mr. Bretton informing him that he had the option to have the establishment's meter tested by Shorelands for free

or by the BPU for a fee of \$5.00. He said at the hearing that he did not have Mr. Bretton's response to the letter; however, he said he would be going back to the office to review the file, and if he located Mr. Bretton's written response to Shorelands' letter he would forward copies of the document to this judge and to Mr. Bretton. Mr. Sullivan explained that the meters are read from outside the buildings using an electronic gun, which allows the Shorelands representative to obtain a reading without disturbing the customer. He testified that there was an actual meter reading at Mamma Mia Pizzeria in December 2010 showing consumption of 600 gallons, and another actual reading in January 2010 showing consumption of 29,100 gallons (P-8; P-9). He testified that in February 2010 respondent attempted to get another meter reading, but could not, and instead submitted estimated readings which corresponded to the average of the prior readings. He said that on March 16, 2010, workers attempted to get another reading, but could not, and were unable to gain access to the area of the meter. He submitted a work order, and a worker went to the establishment and informed Mr. Bretton that he must remove items that were blocking the meter, and that is why the meter could not be read at that point in time. He further testified that on May 11, 2010, he received another actual reading showing usage of 354,900 for the period December 2009 through May 2010. Mr. Sullivan believed that there was likely a leak in the plumbing in the establishment, and he sent a Shorelands worker to check for leaks.

On cross-examination Mr. Sullivan conceded that a worker typically does not enter the building where he is checking the meter, because most of the reading is done with the outside "hand gun," and the workers don't have time to enter every establishment they check. Mr. Sullivan stated that the BPU approved the remote meter read utilized by Shorelands. He also said that the reading could jump from one amount to a larger amount because of leaks at the site. The petitioner's meter was pulled out and tested, and the testing showed that there was no problem with the meter. Mr. Sullivan and Mr. Bretton subsequently had a discussion about leaking toilets. Mr. Sullivan testified that a leaking toilet can generate 200 gallons of water an hour, which was disputed by Mr. Bretton.

Daniel Shearer

Daniel Shearer is employed by Shorelands Water Company as a superintendent in field services. He visited Mamma Mia Pizzeria on May 13, 2010, in order to check for leaks at that location. He prepared a memorandum describing what took place during his visit (R-5). The memorandum notes that a Shorelands service technician accompanied Mr. Shearer on this visit. Mr. Shearer stated that there was a pallet with products on it blocking the water meter that had to be moved so he could inspect the meter. He asked Mr. Bretton to turn off all items that use water, and after Mr. Bretton turned off those items the Shorelands employees observed that the flow finder was still moving. They told Mr. Bretton that he had a leak somewhere, and Mr. Bretton said that he had replaced a leaking toilet two weeks prior to this visit. Mr. Shearer then asked Mr. Bretton to manually turn off the ice maker, and once the ice maker was turned off, the flow finder stopped spinning. Shearer concluded that the ice maker was leaking. He also testified that he had the meter tested, and the meter was found to be in proper working order (P-6). He explained that the meter test is very simple. They set the meter up on a bench and it measures flow rates, different flow rates to different volumes. He testified that the volume is set by weights and measures; once they fill the volume to the weight measuring mark, he shuts down and reads the meter again and they calculate how accurate it is. He indicated that the test is conducted pursuant to the rules and regulations of the BPU, and there is no flexibility on how the testing is to be done. He had the testing results certified by the Bureau of Weights and Measures.

On cross-examination, Mr. Bretton asked Mr. Shearer how he could be so sure that the ice maker had been causing the problem. Mr. Shearer explained that after he asked that the items that use water be turned off, the flow finder showed that there was still water being used. At that point he asked Mr. Bretton to manually turn the ice maker off, because he had not specifically seen him turn that device off. I asked Mr. Shearer if the flow finder stopped after the ice maker was turned off, and he said that it did.

FINDINGS OF FACT

After reviewing all the documents submitted and hearing the testimony of the witnesses, I **FIND** the following as **FACT**. Tod Bretton and his wife took over Mamma Mia Pizzeria in December 2009, at which time the establishment was closed for business. They did some cleanup work, generating usage of 600 gallons of water. The restaurant opened for business in January 2010, and for the month of January the actual-usage meter reading was 29,100 gallons. For the months of February through April 2010 estimated bills for 29,100 gallons per month were sent to the petitioner. Mr. Bretton did not question this usage until sometime in May, when he received a bill for a meter reading of 237,900 gallons of water used, which was a recalculated bill from the estimates billed from February through April 2010 after an actual reading was performed on May 13, 2010. Shorelands noticed excessive usage and dispatched a technician to check for leaks. Mr. Bretton told the Shorelands representative who made the site visit, and he acknowledged in a June 2010 complaint, that the establishment had a leaky toilet when he took control of the lease on December 15, 2009, but that problem had been corrected. During the site visit all appliances that use water were turned off and then back on while watching the meter, and the ice machine was found to be the source of a leak. The gallons billed to the customer from December 2009 through May 2010 totaled 354,900 gallons. Because of a dispute with the customer, Shorelands sent the petitioner a letter dated May 17, 2010, that acknowledged the customer's request for a meter test, and informed him that he could have Shorelands do a meter test free of charge, or have the BPU do a meter test for a fee of \$5.00. Mr. Bretton asserted that he did not receive that letter, but on August 1, 2011, I received from the respondent, with a copy sent to the petitioner, an acknowledgement signed by the petitioner indicating that he did in fact receive the May 17, 2010, letter. Mr. Bretton chose to have the meter tested by Shorelands, and the meter was tested by Shorelands on May 21, 2010, in conformance with the BPU's rules and regulations for testing.

There is nothing in the record that evidences that the water meter was faulty or that the respondent's personnel would purposely give false readings. The petitioner

acknowledged that there had been a leaky toilet on the premises, and the ice machine was found to have a leak, which both could have led to the excessive water usage. The toilet has been fixed, the meter has been changed, and the problem of the accuracy of the meter has been alleviated to the satisfaction of the petitioner.

LEGAL ANALYSIS

A consumer may dispute a utility charge before the Board of Public Utilities. N.J.A.C. 14:3-7.6. When the amount of an electric, gas, water or wastewater bill is significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in the evaluation of whether the bill is correct and appropriate. N.J.A.C. 14:3-7.6(g). The petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962).

Based on the findings above, I **CONCLUDE** that the petitioner has not proven by a preponderance of the credible evidence that the water meter was defective or that inaccurate readings of the meter were taken by the respondent's personnel.

ORDER

Based on the foregoing facts and conclusion, I **GRANT** respondent's motion to dismiss, and **ORDER** that the matter should be and hereby is **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, Suite 801, Newark, NJ 07102**, marked "Attention Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

NOVEMBER 4, 2011
DATE



RONALD W. REBA, ALJ

Date Received at Agency:

11/4/11

Date Mailed to Parties:

NOV - 9 2011

/cad

WITNESSES

For Petitioner:

Tod Bretton
Victoria Bretton

For Respondent:

Kenneth Sullivan
Daniel Shearer

EXHIBITS

For Petitioner:

Printout from sewer department
Letter dated June 14, 2010, from Phyllis Smith
Letter dated June 7, 2010, from Kenneth Sullivan
Letter dated June 21, 2010, from Phyllis Smith
Complaint, June 15, 2010
P-6 Letter dated May 27, 2010, from Kenneth Sullivan
P-7 Shorelands Meter Accuracy Report, dated January 1, 2011
Shorelands bill for services
WaterSense guide from EPA website
Instructions on Reading a Water Meter and Using the Meter to Detect a
Possible Leak

For Respondent:

Letter dated May 17, 2010, from Shorelands requesting testing
Letter dated November 9, 2010, from BPU to Brettons
Shorelands' response to Complaint
R-4 Work Order No. 36764
Shearer Memorandum Mamma Mia Pizzeria