Agenda Date: 4/11/12
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

L. GEORGE W. CAMERON, CEO, CAMERON, HAMILTON & ASSOCIATES, P.A., Petitioner	)	ORDER ADOPTING INITIAL DECISION
V.	)	
VERIZON NEW JERSEY INC., Respondent	)	BPU DKT NO TC10060396U OAL DKT NO. PUC 4055-11

Parties of Record:

L. George W. Cameron, Petitioner, appearing *pro se*
William D. Smith, Esq., on behalf of Respondent, Verizon New Jersey Inc.

BY THE BOARD:

On or about June 8, 2010, L. George W. Cameron, CEO, filed a petition on behalf of Cameron, Hamilton & Associates ("Petitioner or CHA, P.A.") requesting reimbursement or credit and seeks damages for expenses allegedly incurred when Verizon New Jersey Inc. ("Respondent) failed to initiate services to Petitioner in a timely manner in accordance with their contract for services. Respondent filed an answer on August 24, 2010 denying the allegations.

After the filing 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") Susan M. Scarola.

On July 7, 2011, Respondent filed a Motion for Summary Judgment. A reply brief was submitted by Petitioner on September 21, 2011. On October 12, 2011, ALJ Scarola issued an Initial Decision granting the Motion. Said Initial Decision was forwarded to the Board and to the parties.

The facts of this matter are not in dispute. In pertinent part, Petitioner sought to have his telephone service transferred to Respondent and expected that his new service would start on June 1, 2007. However, the portability of Respondent's telephone numbers was not finalized

until June 20, 2007. Because of this delay in commencing service, Petitioner alleged that he incurred expenses of $3,507.02 for using cell phones and calling cards to mitigate business losses. Petitioner also claimed expenses of $614.20 as a result of Respondent's inability to successfully install service from June 19-20, 2007. The uncontested facts also indicate that the matter is not a billing dispute as Petitioner is not alleging that the bills presented by Respondent are inaccurate and that Petitioner ceased being Respondent's customer in October 2010.

The legal analysis and conclusions of law of the ALJ are set out in sufficient detail and need not be repeated herein. Suffice it to say that the analysis is well reasoned and is in accordance with current law pertaining to the consideration of motions for summary judgment. There is no question that there are no material issues of fact outstanding and that the record, when viewed in the most favorable light to Petitioner, is so one-sided that Respondent must prevail as a matter of law. The part of the analysis that is most damaging to Petitioner pertains to the Board's longstanding lack of statutory authority to award compensatory damages. Another indication that this matter revolves around a request for damages was set out in Petitioner's memorandum in opposition to Respondent's motion for summary judgment wherein it was stated

> This dispute is about more than Verizon's breach of contract, unreasonable self-deception or, worse, a cynical bait-and-switch scheme to obtain our business. It's about blatant arrogance, negligence, breach of trust and reckless and costly incompetence. The Respondent obviously believes it too big to fail and two (sic.) big to honor its contract to a miniscule corporation in comparison to its multi-billion dollar profitable enterprise. It is also about breach of implied warranty of merchantability; breach of the implied covenant of good faith and fair dealing.

In its submission, Petitioner further argues "...that there is genuine issue as to material fact and that CHA, P.A. is entitled to prevail as a matter of law on all claims that Verizon New Jersey, Inc. ("Respondent") has raised in this proceeding." Although the statements set out in its submission are, in part, inconsistent, the overall gist of Petitioner's arguments is that it suffered damages because of Respondent's failure to provide service in a timely manner. In pertinent part, Petitioner claims that: (1) notwithstanding the agreed installation date of May 31, 2007, Respondent did not provide service until June 20, 2007; (2) Respondent never advised Petitioner not to disconnect existing service until Respondent completed its work; (3) on May 31, 2007, employees of Respondent appeared at Petitioner's premises and advised that the work had been completed and that the equipment of the previous carrier should be removed; (4) after the installation of facilities there was no dial tone or phone services; (5) Petitioner contacted the previous carrier, indicated that it had been a mistake to discontinue service and was informed that it might take some time to restore his service and require a new agreement and a charge of $250.00; (6) Petitioner implemented an emergency service policy to utilize mobile phones to enable contact with customers; (7) Petitioner made requests to Respondent to provide credits to its account or reimburse Petitioner for the costs incurred by Petitioner as a result of the delay in providing service; (8) Petitioner seeks to be reimbursed for funds expended as a result of Respondent's breach of duty; and (9) Petitioner received complaints from customers who could not make telephone contact compelling Petitioner to transfer phone services to another carrier.

As indicated above, the arguments set out by Petitioner in that submission speak exclusively of the damages that it sustained because of the delay in finalizing service to its premises, the

monies that it had to expend to continue its business operations and the fact that its petition seeks reimbursement for funds expended as a result of Respondent's breach of duty. These are precisely the issues that the Board does not have the statutory authority to adjudicate.

After review of the record, the Board HEREBY FINDS that the findings of fact and conclusions of law set out by ALJ Scarola in the Initial Decision are reasonable and that the Initial Decision should be adopted in its entirety as if attached hereto. Accordingly, the Board CONCLUDES that the petition in this matter is HEREBY DISMISSED.

DATED: 4/12/12

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

L. GEORGE W. CAMERON, CEO, CAMERON, HAMILTON & ASSOCIATES

V.

VERIZON NEW JERSEY INC.

BPU DOCKET NO. TC10060396U
OAL DOCKET NO. PUC 4055-11

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. PUC 4055-11
AGENCY DKT. NO. TC10060396U

L. GEORGE W. CAMERON, CEO,
CAMERON, HAMILTON & ASSOCIATES,
P.A.,
Petitioner,
v.
VERIZON NEW JERSEY, INC.,
Respondent.

L. George W. Cameron, petitioner, pro se

William D. Smith, Esq., for respondent

Bettina Clark, Esq., member of the Virginia Bar, admitted pro hac vice for respondent, Attorney of Record: Beth A. Sasfai, Esq.

Record Closed: September 21, 2011 Decided: October 12, 2011

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

Petitioner, L. George W. Cameron, CEO, Cameron, Hamilton and Associates, P.A., appeals the denial of his request for reimbursement or credit and seeks damages from respondent, Verizon New Jersey, Inc., (Verizon) for expenses incurred when respondent failed to initiate services in a timely manner in accordance with their contract for services. Respondent contends it has no liability for any corollary expenses incurred prior to the commencement of service.

Respondent moves for summary decision, alleging that there are no material facts in dispute, and that it is entitled to prevail as a matter of law. Petitioner opposes the motion.

PROCEDURAL HISTORY

On or about June 8, 2010, petitioner filed an appeal with the New Jersey Board of Public Utilities (Board), alleging that he was entitled to reimbursement, credit or damages from respondent. Respondent filed an answer on August 24, 2010, denying the allegations. The Board transmitted the matter to the Office of Administrative Law, where it was filed on April 7, 2011. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A motion for summary decision was filed by respondent on July 7, 2011. A reply brief was filed by petitioner on September 21, 2011. The record as to the motion closed on September 21, 2011.

FACTUAL DISCUSSION

The essential facts are not in dispute:

1. Petitioner sought to transfer his telephone service from Vonage to Verizon in 2007, and expected that his Verizon service would commence on June 1, 2007. The portability of his telephone numbers from his prior carrier was not

accomplished as expected by May 31, 2007. As a result, petitioner incurred expenses of $3,507.02 for substituting landline phone service and using cell phones and calling cards to mitigate business losses prior to Verizon commencing service.

2. Petitioner also claimed additional expenses of $614.20 from June 19–20, 2007, incurred when Verizon again unsuccessfully attempted to install service.

3. Verizon successfully completed the service connection on June 20, 2007, and petitioner then received telephone services from respondent.

4. Petitioner alleged that he incurred other expenses as a result of the services rendered to him by Verizon, but has not listed an amount nor otherwise provided statements or an itemization for these expenses.

5. Petitioner is no longer a customer of Verizon, having discontinued service in October 2010.

6. This matter is not a billing dispute. Petitioner has not made any allegation about the accuracy of the bills rendered to him by Verizon. Verizon alleges that petitioner has a balance due to it of $4,587.04.

7. Petitioner is seeking reimbursement of $3,507.02 and $614.20, for a total of $4,121.22, from Verizon (plus an amount which has not been specified for other damages) as the result of expenses incurred by him prior to service being provided by Verizon.

LEGAL ANALYSIS AND CONCLUSION

Summary decision may be granted only "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). These provisions mirror the summary-judgment language

of R. 4:46-2(c) of the New Jersey Court Rules. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

In making a determination on a motion for summary judgment, the judge should consider 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, supra, 142 N.J. at 523. The inquiry essentially is "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)).

If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). An evidentiary hearing is not required if there is no genuine issue of material fact. Contini v. Bd. of Educ., 286 N.J. Super. 106, 121 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996). As the parties in this matter are in accord as to the material facts surrounding the application, and there appears to be no genuine issue as to any of them, no hearing is necessary, and the matter is ripe for summary decision as a matter of law.

Petitioner requests that the Board hold Verizon "liable and [cause Verizon] to honor their responsibilities to make Petitioner whole as a direct and proximate result of their misfeasance." (Petition at 11.) He seeks compensation or damages for expenses he incurred prior to service being rendered by Verizon.

Petitioner's request must be denied because, as a matter of law, the Board is not a court of general jurisdiction and lacks jurisdiction to award compensatory damages as sought by the petitioner. In In re the Petition of David and Elizabeth Nikel v. Public Service Electric and Gas Co., Dkt. No. EC02040250, 2002 N.J. PUC LEXIS 357 (November 19, 2002) (citations omitted), a case where the petitioners sought monetary damages due to the respondent's tree-trimming activities, the Board stated that "[i]n

prior matters, the Board has not exercised jurisdiction as to damages. The Board likewise will not exercise jurisdiction over damages at this time in this matter."

In fact, it is clear that "absent an express grant, administrative agencies such as the Board do not have the power to exercise or perform a judicial function and may not determine damages, award a personal money judgment or promulgate an order requiring a pecuniary reparation or refund." Slowinski v. City of Trenton, 92 N.J.A.R.2d (BRC) 71, 72–73, Final Decision; see also Muise v. GPU, Inc., 332 N.J. Super. 140, 165 (App. Div. 2000) ("Indeed, the Board lack[s] authority to consider the remedy of damages at all.")

In Integrated Telephone Services v. Bell Atlantic New Jersey, PUC 5737-97, Initial Decision (December 29, 1999) <http://lawlibrary.rutgers.edu/oal/search.shtml>, ALJ Mumtaz Bari-Brown summarized the law regarding the Board's power to award damages as follows:

> The assertion . . . that the BPU has implied incidental jurisdiction over claims involving money damages is misplaced. The BPU has general supervisory, regulatory and jurisdictional power and control over all public utilities and their assets. N.J.S.A. 48:2-13. This sweeping grant of power includes all incidental powers needed to fulfill the statutory mandate. In re Valley Road Sewerage Co., 154 N.J. 224, 235 (1998). However, there is no express statutory authority permitting the BPU to award money damages. Moreover, the BPU has taken the long-standing position that it lacks the authority to award money damages. Slowinski v. City of Trenton, 92 N.J.A.R.2d (BRC) 71, 73; see also Sheeran v. Progressive Life Ins. Co., 182 N.J. Super. 237, 259 (App. Div. 1981) (citing Swede v. Clifton, 22 N.J. 303, 312 (1956) (when there is reasonable doubt as to whether an administrative agency has a particular power, the power should be denied).
>
> [See also PUC 5737-97, BPU Final Decision, 2001 N.J. PUC LEXIS 164 (August 30, 2011) (rejecting Summary Decision as moot after parties settled their claims).]

Although the petitioner does not specify an amount in his prayer for relief, the petition itself claims $3,507.02 and $614.20 as the amounts he had to pay to "make

[him] whole" for Verizon's alleged misfeasance in failing to start service on June 1, 2007. Petitioner claims those expenses represent "substituting land line phone services and having to purchase (6) six non-contracted cell phones and calling cards." (Petition at 4.) Petitioner has not alleged that he was improperly billed by Verizon or that the content of his bills is incorrect.

Furthermore, petitioner is not the first customer to seek consequential damages as a result of a delay in moving telephone service. In Howley v. Verizon New Jersey, Inc., PUC 03376-08, Initial Decision (June 24, 2008) <http://lawlibrary.rutgers.edu/oal/search.shtml>, a customer filed a petition against Verizon seeking to recover expenses she incurred while trying to move her services from Verizon to another provider, AT&T. At the time she disconnected service from Verizon she had an outstanding balance in the amount of $457.00. After informing Verizon she wished to port her service to AT&T, there was a three-week delay before she was able to establish service with AT&T. She asked Verizon to pay her outstanding balance to compensate her for the delay. Like petitioner herein, Howley's complaint was about a delay in moving service, not about the service she received as a Verizon customer. The judge held, "[a]s for the issue of monetary damages, Ms. Howley has failed to connect the amount sought in her petition to any outstanding bill that was in dispute." The judge concluded that "based on the fact that this matter clearly goes beyond a mere billing dispute, and that the amount sought is for consequential damages, the OAL does not have jurisdiction to hear this issue."

Applying the law to the facts presented by petitioner, it appears petitioner is not unlike Howley. Petitioner is not disputing the accuracy of the bills related to the services provided by Verizon, but rather is seeking to recover damages he claims he incurred in the period of time before he received telephone service from Verizon. Because petitioner seeks consequential and money damages, I **CONCLUDE** that his complaint must be dismissed as a matter of law, and that the motion for summary decision should be granted. Petitioner may, of course, pursue any other remedies he may be entitled to as a matter of law in the appropriate forum.

ORDER

Respondent's motion for summary decision is hereby **GRANTED** and the petition 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, Suite 801, Newark, NJ 07102,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Susan Scarola

October 12, 2011
DATE

SUSAN M. SCAROLA, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____
mph

EXHIBITS

For petitioner:

Petitioner's brief

For respondent:

Respondent's brief