



Agenda Date: 4/11/12

Agenda Item: 7B

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

EDITH HINTON,)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
V.)	
)	
NEW JERSEY AMERICAN WATER COMPANY,)	BPU DKT NO WC11040230U
Respondent)	OAL DKT NO PUC 06962-11

Parties of Record:

Edith Hinton, Petitioner, appearing *pro se*
Mitchell Waldman, Esq., (Hurvitz & Waldman) on behalf of Respondent, New Jersey American Water Company

BY THE BOARD:

By petition filed with the Board of Public Utilities ("Board") on or about April 21, 2011, Edith Hinton ("Petitioner") disputed billing charges for water service rendered to her premises by New Jersey American Water Company ("Respondent or Company").

After receipt of Respondent's answer on June 16, 2011, this matter was transmitted by the Board to the Office of Administrative Law for hearing as a contested case pursuant to N.J.S.A. 52:14B-2 to -15 and N.J.S.A. 52:14F-1 to -13. It was assigned to Administrative Law Judge ("ALJ") Kimberly A. Moss. A telephone prehearing conference took place on June 28, 2011 followed by an evidentiary hearing on August 18, 2011, at which Petitioner testified and moved exhibits in evidence. On September 9, 2011, ALJ Moss issued her Initial Decision which was submitted to the Board on that date. Exceptions to the Initial Decision were filed with the Board by Petitioner on October 4, 2011. Respondent filed a response to Petitioner's exceptions on February 24, 2012.¹

¹ Respondent notes that Ms. Hinton failed to serve her "exceptions" letter to Respondent and was not advised until February 22, 2012 that she had filed an "exceptions" letter, and therefore, did not file its response to Ms. Hinton's exceptions until February 24, 2012.

In the Initial Decision, ALJ Moss set out the statement of the case, findings of fact, credibility determinations, and conclusions of law in sufficient detail and need not be repeated herein. A copy of the Initial Decision is attached hereto and made a part hereof.

In her exceptions, Petitioner argues that she is a "small person being taken advantage of by a big company..." She alleges that she was misquoted and misrepresented at the hearing and that her testimony was not considered. Petitioner also argues that she was not informed of a meter test and that her bills are not based on actual meter readings. Petitioner basically restated her position which was outlined in her petition and to which she stated at the hearing. Petitioner failed to establish that the ALJ's findings were incorrect and contrary to the evidence in the record.

After review of the record, the Board HEREBY FINDS that the factual determinations and legal conclusions of the ALJ are reasonable and based upon sufficient, competent, and credible evidence. The Board FURTHER FINDS that the exceptions filed by Petitioner are not supported by the record, are basic restatements of her petition and her testimony at the hearing and do not meet the requirements of N.J.A.C. 1:1-18.4(b).

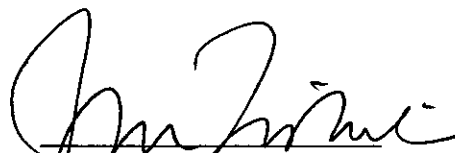
Accordingly, the Board HEREBY ADOPTS the Initial Decision in its entirety as if fully set forth herein. Therefore, the petition in this matter is HEREBY DISMISSED.


DATED: 4/12/12

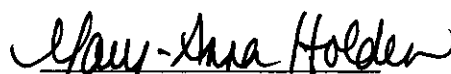
BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT



JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

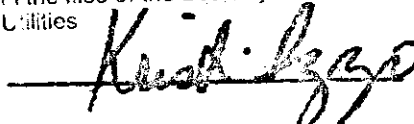

NICHOLAS ASSELTA
COMMISSIONER


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



EDITH HINTON

V.

NEW JERSEY AMERICAN WATER COMPANY

BPU DOCKET NO. WC11040230U

OAL DOCKET NO. PUC06962-11

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BPU MAILROOM

SEP 15 2011

RECEIVED

INITIAL DECISION

OAL DKT. NO. PUC 06962-11

AGENCY DKT NO. WC11040230U

EDITH HINTON,

Petitioner,

v.

NEW JERSEY AMERICAN WATER COMPANY,

Respondent.

Edith Hinton, pro se

Mitchell Waldman, Esq., appearing on behalf of respondent (Hurvitz & Waldman, attorneys)

Record Closed: August 18, 2011

Decided: September 9, 2011

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Edith Hinton (Hinton or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of New Jersey American Water Company (NJAW) for water service provided to 92 Headley Terrace, Irvington, New Jersey.

On June 16, 2011, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to-13. A telephone prehearing was conducted on June 28, 2011, at which time a hearing was scheduled. The hearing was held on August 18, 2011, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

As the following is undisputed, I **FIND** it to be the **FACTS** of this case:

NJAW provided service to Hinton at 92 Headley Terrace, Irvington, New Jersey. On January 21, 2006, petitioner requested that the water service to her property be turned off. The water to her property was not turned off, resulting in the pipes freezing and exploding causing property damage. Repair work was performed.

Hinton brought suit in Superior Court against NJAW, among others, under docket number L-8084-07 for breach of contract, breach of duty, creating a dangerous condition by negligent use of defective materials, negligent workmanship and negligently failing to protect Hinton's property from damage. All of the counts except negligently failing to protect Hinton's property were dismissed on a motion for summary judgment before Judge James Rothschild on March 23, 2010. The count of negligently failing to protect Hinton's property was tried without a jury before Judge Claude Coleman. Judge Coleman dismissed the complaint with prejudice.

Hinton had a prior case against NJAW with docket no PUC-10887-10 at OAL that was settled.

Testimony

Edith Hinton

On February 10, 2011, a representative of NJAW came to the premises. The representative did not tell her that there was a leak on her side of the meter. On that date, Hinton states that she was told by Grover Hansford, an employee of NJAW, that the meter was not working properly. She did not see anyone pump water out of the meter. A second representative of NJAW came to the premises later that day. She asked this representative to check the meter. She was told that he could not keep checking the meter. He also stated that he was not allowed to talk to her plumber. The second representative did not shut off the valve or open the meter.

Hinton stated that she lived in Kansas and returned to New Jersey on June 28, 2011. She testified that she was not in Irvington, New Jersey in January 2011; then subsequently testified that she was in she was in Irvington from January 2011 thru March 2011. She later testified that she left Irvington at the end of April 2011.

Hinton requested that a meter test be done and that she be present for the meter test on June 28, 2011. She told Douglas Ziemba of the Board of Public Utilities when she arrived in New Jersey.

On August 4, 2011, the day the meter was scheduled to be tested, she stated that no one came to 92 Headley Terrace to test the meter. Sharlene Parnell (Parnell), her tenant at that time, was not home that date. Hinton was not present for the meter test. Hinton later testified that Parnell moved out in June 2011.

Hinton did not have a plumbing or meter test done on her own and did not receive the results of the meter test at her Irvington address.

Selina Kearney-Rogers

Selina Kearney-Rogers (Kearney-Rogers) is a service delivery specialist for NJAW. She handles BPU complaints, legal affairs issues, customer complaints, customer concerns, and billing issues. She has worked for NJAW for four years. She is familiar with the business records of NJAW. Kearney-Rogers is also familiar with Hinton's account. Hinton's account number is 1485427-7.

NJAW received an emergency service order from Hinton on February 10, 2011. A representative of NJAW went to the premises, took a reading and found a water leak on the customer side and pumped out the chamber.

NJAW received a second service call from Hinton on February 10, 2011. Representatives, again, went to Hinton's residence that day. The customer wanted the meter checked again. The customer was shown that the meter had movement and when the valve was turned off inside, the meter stopped spinning. As the representatives were explaining to Hinton's plumber what they had done, Hinton called them "liars," demanded they not speak to her plumber, and asked them to leave the premises.

The meter has a large metal cover. Once it is removed, the meter, radio-reading device, if present, and connections are inside. The meter chamber is built into the ground. A meter is inspected before it is put into service. It is tested by the meter shop prior to adding it to inventory. Hinton's meter is a five-eighths-inch meter. Five-eighths-inch meters are required to be tested every ten years. Hinton's meter was installed on March 20, 2009. Her meter's number is 86967938. Hinton's meter is read by radio monthly. The readings are actual readings.

When a customer requests a meter test, the BPU is contacted. Once the application is complete, the BPU contacts NJAW to test the meter. BPU notifies the customer of the meter test. There was a meter test done on Hinton's meter on August 4, 2011. Kearney-Rogers was not present for the meter test. Meter test results are business records of NJAW. The test showed the intermediate flow rate was 100

percent. The full flow rate was 99.5 percent. According to the BPU, if a meter is found to be less than one and one-half percent fast, no adjustment needs to be made. The leak test result was satisfactory. Hinton was sent the results of the meter test on August 9, 2011, at her address in Leawood, Kansas, by the BPU.

FINDINGS OF FACT

In light of the contradictory testimony presented by respondent's witness and petitioner, the resolution of this matter requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** that Kearney- Rogers was credible. She testified honestly and truthfully as to the business records of NJAW. Her testimony was direct and concise. I do not **FIND** Hinton to be credible. Her testimony was inconsistent as to when she was in New Jersey. She testified that she lived in Kansas from August 2010 thru June 28, 2011. Subsequently she testified that lived in New Jersey from January 2011 thru April 2011. She also testified that she was not in New Jersey in January 2011. She stated that on August 4, 2011, her first-floor tenant was Parnell. Yet she also testified that Parnell moved out of

the apartment in June 2011. This testimony is clearly contradictory. She stated that no one came to test the meter on August 4, 2011. The letter she submitted as Exhibit A from the BPU states that the meter would be tested on August 4, 2011, but removed before August 4, 2011. In addition Hinton repeatedly would answer questions in a non-responsive manner.

I FIND the following additional FACTS:

On February 10, 2011, NJAW received a call from Hinton. NJAW responded to 92 Headley Terrace, took a reading and found a water leak on the customer side and pumped out the chamber. Hinton requested a meter test with the BPU on June 28, 2011. The meter test was conducted on August 4, 2011. Hinton was not present at the meter test. Hinton has a five-eighths-inch meter. Her meter number is 86967938. The meter test showed that the meter was operating at 100 percent with intermediate flow rate and 99.5 percent at full-flow rate. It also showed that the leak test was satisfactory.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 14:3-4.5 provides:

(a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.

(b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with N.J.A.C. 14:3-4.9, meter records.

(c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.

(d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to,

unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.

(e) Upon application by any customer to the Board, a Board inspector shall test the customer's meter. Such test shall be made as soon as practicable after receipt of the application for the test, and Board staff shall notify the customer and the utility as to the time and place of such test.

(f) The Board shall charge a fee of \$5 for a meter test, payable at the time application is made for the test. This fee is to be retained by the Board if the meter is found to be slow or correct within the allowable limits. If the meter is found to be fast beyond the allowable limits, that is, more than two percent, or in the case of water meters, more than one and one half percent, the utility shall reimburse the customer for the test fee paid.

Hinton requested a meter test with the BPU. Her meter was tested within six weeks of her application. There is no requirement for the customer to be present while the meter is being tested.

N.J.A.C. 14:3-4.6(a) states:

Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one-half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

In this case the meter was registering at 100 percent at intermediate flow and 99.5 percent at full flow. This is not more than one and one-half percent; therefore there is no need for an adjustment. I **CONCLUDE** that the meter was accurate.

ORDER


It is therefore **ORDERED** that the petition in this matter be and 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.

September 9, 2011
DATE


KIMBERLY A. MOSS, ALJ

Date Received at Agency:


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties: **SEP 12 2011**
ljb

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

Selina Kearney-Rogers

EXHIBITS

For Petitioner:

- P-1 Letter from the Board of Public Utilities
- P-2 New Jersey American Water Company business card of Grover Hansford
- P-3 Bill of New Jersey American Water Company for June 27, 2011, to July 28, 2011
- P-4 Bill of New Jersey American Water Company for May 27, 2011, to June 27, 2011

For Respondent:

- R-1 Not in Evidence
- R-2 New Jersey American Water Company Customer Service/Maintenance records from February 2, 2011, to May 11, 2011
- R-3 New Jersey American Water Company of meter number 86967938
- R-4 New Jersey American Water Company Usage Information Report for August 27, 2010, to June 29, 2011
- R-5 Letter from the Board of Public Utilities dated August 5, 2011
- R-6 Letter from New Jersey American Water Company dated August 9, 2011

BPU MAILROOM

SEP 15 2011

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on SEP 12 2011**