



Agenda Date: 1/29/14
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

VINCENT P. CARROLL
Petitioner

V.

UNITED WATER NEW JERSEY
Respondent

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ORDER ADOPTING
INITIAL DECISION

BPU Docket No. WC13040270U
OAL Docket No. PUC 09453-13

Parties of Record:

Vincent P. Carroll, petitioner, pro se
John Wallace, Esq., on behalf of Respondent, United Water New Jersey

BY THE BOARD:

STATEMENT OF THE CASE

On April 1, 2013, Vincent P. Carroll ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a billing dispute with United Water New Jersey ("Respondent"). On May 10, 2013, Respondent filed an answer with the Board. For the reasons noted herein, the Board now **ADOPTS** the Initial Decision filed with the Board on December 19, 2013.

PROCEDURAL HISTORY

This matter was transmitted to the Office of Administrative Law ("OAL") and filed on July 2, 2013 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") Kimberly A. Moss.

A prehearing conference was scheduled for August 5, 2013. During the prehearing, the parties agreed to schedule the hearing in the matter for October 25, 2013. On October 16, 2013, the OAL received a notice from Petitioner stating that as of October 7, 2013, his mailing address would change to 3 Legion Place, Paramus, NJ 07952. (Initial Decision at 2). The service list was updated.

Prior to the hearing date, Respondent's counsel advised that the parties had reached a settlement. (Initial Decision at 2). The hearing scheduled for October 25, 2013 was adjourned. Ibid. However, shortly after the parties had reached this settlement agreement, Respondent's counsel could not reach Petitioner for execution of the settlement. Ibid. Respondent's counsel advised that a letter to petitioner had been returned by the United States Postal Service. Ibid. He also advised that he had not been able to reach Petitioner by phone and that whenever he called the Petitioner, he received a message stating that Petitioner was not accepting calls. Ibid.

On November 20, 2013, this matter was scheduled for hearing on December 10, 2013 at 2:00 PM. Petitioner was sent a notice by fax and by regular mail. Ibid. On November 20, 2013, a confirmation was received from Petitioner's fax number at (201) 445-7802. Ibid. However, the notice sent by Petitioner through regular mail was returned by the USPS marked as "Return to Sender, Not Deliverable as Addressed, Unable to Forward." Ibid. The fax number and address of 3 Legion Place, Paramus are both indicated on Petitioner's letterhead dated October 17, 2013. Ibid.

Petitioner failed to appear for the hearing on December 10, 2013. Ibid. An Initial Decision was filed with the Board on December 19, 2013, dismissing the matter for lack of prosecution pursuant to N.J.A.C. 1:1-14.4(a) and N.J.A.C. 1:1-3.3(b) and (c) because the Petitioner failed to appear at the scheduled, December 10 hearing. As of the date of filing of the Initial Decision with the Board, Petitioner did not contact the OAL to give an explanation of why he did not appear at said hearing. Petitioner has not filed exceptions to the Initial Decision or provided an explanation for his non-appearance. No good cause is evident for Petitioner's failure to appear.

DISCUSSION

Pursuant to N.J.A.C. 1:1-14.4(a),

"[i]f, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c)."

The ALJ concluded that there was no good cause for Petitioner's failure to appear because the Petitioner failed to provide any explanation for his failure to appear on December 10, 2013. The ALJ held the matter for one day pursuant to N.J.A.C. 1:1-14.4(a) and issued her decision on December 13, 2013, which was filed with the Board on December 19, 2013. The ALJ dismissed the matter for lack of prosecution and directed the Clerk to return the matter to the Board for appropriate disposition.

Under N.J.A.C. 1:1-3.3(b) and (c),

"(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-

14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties which shall advise the parties of the time limit and requirements for explanations as set forth in (b) above."


To this date, no exceptions have been filed, and no correspondence from Petitioner has been received by the Board explaining his non-appearance.

CONCLUSION


Upon careful review and consideration of the record, and based on the foregoing, the Board **HEREBY ADOPTS** the Initial Decision, a copy of which is attached hereto and made a part hereof, in its entirety without modification. In addition, because the Board finds that Petitioner has failed to submit to the Board any explanation regarding his failure to appear for the hearing, the petition in this matter is **HEREBY DISMISSED**.

DATED: 1/29/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

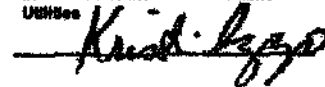

JOSEPH L. FIORDALISO
COMMISSIONER


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



VINCENT P. CARROLL

V.

UNITED WATER NEW JERSEY

BPU DOCKET NO. WC13040270U

OAL DOCKET NO. PUC09453-13

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12/19/13

REC'D

2013 DEC 19 AM 7 44

NJ DW
CASE MANAGEMENT



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. PUC09453-13

AGENCY DKT. NO. WC13040270U

VINCENT CARROLL,

Petitioner,

v.

UNITED WATER NEW JERSEY,

Respondent.

Vincent Carroll, pro se

John Wallace, Esq., for respondent, United Water New Jersey

Record Closed: December 10, 2013

Decided: December 13, 2013

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Vincent Carroll (Carroll or petitioner) disputes bill by respondent, United Water New Jersey (UWNJ). He alleges he was overbilled by UWNJ. Carroll's petition was filed with the Board of Public Utilities (Board) on April 1, 2013. The matter was transmitted to the Office of Administrative Law (OAL) and filed on July 2, 2013. A prehearing conference was scheduled for August 5, 2013. During the prehearing the

parties agreed to schedule the hearing in this matter for October 25, 2013. On September 30, 2013 the undersigned submitted an Order that addressed respondent's motion for petitioner to provide more specific answers to interrogatories. On or about October 16, 2013 the OAL received a notice from petitioner stating that, as of October 7, 2013 his mailing address will change to 3 Legion Place, Paramus, NJ 07652. The service list was updated. Prior to the hearing date respondent's counsel advised that the parties reached a settlement. The hearing scheduled October 25, 2013 was adjourned. However, shortly after the parties reached a settlement agreement respondent's counsel could not reach the petitioner for execution of the settlement. Respondent's counsel advised that a letter to Carroll was returned by the Postal Service. He also advised that he could not reach Carroll by phone. Whenever Mr. Wallace phoned Carroll he received a message that stated he was not accepting calls.

On November 20, 2013 this matter was scheduled for hearing on December 10, 2013 at 2:00p.m. Petitioner was sent a notice by fax and regular mail. A confirmation was received from petitioner's fax number 201-445-7802 on November 20, 2013. However, petitioner's notice sent by regular mail was returned from the Postal Service as "Return to Sender, Not Deliverable as Addressed Unable to Forward". The fax number and address of 3 Legion Place are both indicated on petitioner's letterhead dated October 17, 2013. Petitioner failed to appear for the hearing on December 10, 2013. To date, petitioner has not contacted this office to give an explanation of why he did not appear for hearing.

LEGAL ANALYSIS AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-14.4(a),

If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

Therefore, in accord with N.J.A.C. 1:1-3.3(b) and (c) as mentioned above,

(b) If the non-appearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following

I **CONCLUDE** that there was no good cause for petitioner's failure to appear. Carroll has not provided an explanation for his failure to appear at the hearing on December 10, 2013.

For the above reasons, I **CONCLUDE** that petitioner failed to appear at the hearing and that this matter should be dismissed for lack of prosecution.

ORDER

It is **ORDERED** that Carroll's application for relief be **DISMISSED** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the Board of Public Utilities for appropriate disposition.

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.

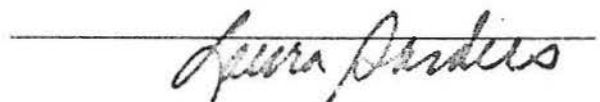
12-13-13

DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:



Date Mailed to Parties:

DEC 16 2013

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb