



Agenda Date: 1/31/18
Agenda Item: VIB

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/

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGED VIOLATION OF THE)
UNDERGROUND FACILITY PROTECTION ACT,)
N.J.S.A. 48:2-73 ET SEQ. -)
BY KEITH CHRISTOPHER, KEITH CHRISTOPHER)
PLUMBING & HEATING¹)
ORDER ADOPTING)
STIPULATION AND)
SETTLEMENT AGREEMENT)
DOCKET No. GS15101184K)

Party of Record:

Edward F. Christopher, Esq., for Keith Christopher Plumbing & Heating, LLC

BY THE BOARD:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("the Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73 et seq. To resolve the above-captioned matter and the entered docketed Judgment against Keith Christopher, which was docketed as DJ-079142-2016, the Board reviews the Stipulation and Settlement Agreement ("Settlement") between Board Staff ("Staff") and Keith Christopher Plumbing and Heating, LLC (the "Company").

The primary purpose of the Act is to establish the One-Call Damage Prevention System for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid. In declaring its findings and the purpose of the Act, the Legislature stated, in pertinent part:

That damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention

¹ Sometimes the Company is referred to herein as Keith Christopher Plumbing and Heating, LLC or as Christopher Plumbing and Heating.

System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.

[N.J.S.A. 48:2-74.]

The Act defines "excavator" as "any person performing excavation or demolition ..." and "operator" as "a person owning or operating, or controlling the operation of, an underground facility..." N.J.S.A. 48:2-75.

The Act subjects violators of its provisions to civil penalties of not less than \$1,000.00 and not more than \$2,500.00 per violation per day, not to exceed \$25,000.00 for any related series of violations. N.J.S.A. 48:2-88(a); N.J.A.C. 14:2-6.2. Violations relating to natural gas or hazardous liquid underground pipelines or distribution facilities shall subject the violator to civil penalties not to exceed \$100,000.00 per violation per day and not to exceed \$1,000,000.00 for any related series of violations. N.J.S.A. 48:2-86(c); N.J.A.C. 14:7-2.7. In addition, a violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

In June 2014, Staff commenced an investigation following reports of a damaged New Jersey Natural Gas Company ("NJNG") gas line and a failure of the excavator to obtain a valid mark-out prior to excavation. In response to Staff's letter of inquiry, NJNG advised Staff that a gas service line was damaged by the excavator, Christopher Heating and Plumbing, with a hand shovel. NJNG indicated that while there were accurate mark-outs that belonged to By Design Contracting, Christopher Heating and Plumbing had failed to obtain their own mark-out.

Staff also sent a letter of inquiry to the Company regarding the alleged damage. In September 2014, the Company responded to Staff's letter of inquiry and advised that the Company was hired as a sub-contractor to install a new natural gas line at the damage location. The Company confirmed that while the original contractor, By Design Landscaping, obtained a New Jersey One Call ticket, the Company did not obtain its own ticket to excavate.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on October 24, 2014, Staff issued a Notice of Probable Violation ("NOPV") to the Company, which included a blank Answering Certification form. The NOPV advised the Company that failure to file an Answering Certification may result in the issuance of a Final Order of Penalty Assessment ("FOPA"), as required by N.J.A.C. 14:2-6.4(b)(5)(i) and N.J.A.C. 14:7-2.2(b)(5)(i). Pursuant to N.J.A.C. 14:2-6.5(a) and N.J.A.C. 14:7-2.3(a), Respondent must file an Answering Certification within 21 days of receiving the NOPV. Having received the NOPV, Respondent failed to file an Answering Certification.

Pursuant to N.J.A.C. 14:2-6.6(a) and N.J.A.C. 14:7-2.4(a), if an alleged violator "fails to submit the Answering Certification by the deadline...the alleged violator shall be deemed in default." As the Company failed to file an Answering Certification pursuant to N.J.A.C. 14:2-6.6(a) and N.J.A.C. 14:7-2.4(a), it was deemed to be in default. Pursuant to N.J.A.C. 14:2-6.6(b) and N.J.A.C. 14:7-2.4(b), Staff presented the NOPV to the Board in December 2015 and requested that the Board issue a FOPA. By Order dated December 19, 2015, the Board, after having reviewed the record, found the NOPV issued by Staff to be reasonable and in the public interest. As enumerated in the December 2015 Order, the Board issued the FOPA and assessed the Company a civil administrative penalty of \$6,000.

Consistent with the Board's direction in its December 2015 FOPA, Staff docketed the FOPA against the Company as a Judgment with the Superior Court as no payment was received, which was docketed as DJ-079124-2016.

The docketed Judgment was intended to be filed against the Company, but was mistakenly entered against Keith Christopher as an individual. Subsequently, the Company contacted Staff in December 2017 to advise them about this error. Since that time, Staff and the Company engaged in settlement negotiations to resolve this matter, and subsequently, entered into a signed Settlement. In relevant part, the Settlement provides that:

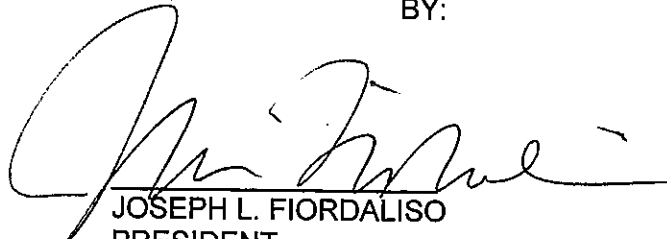
1. The Judgment under docket no. DJ-079142-2016 was entered in error against Keith Christopher as an individual instead of against the Company -- Keith Christopher Plumbing and Heating, LLC.
2. The Company -- Keith Christopher Plumbing and Heating, LLC -- shall make a one-time payment of Four Thousand Dollars 00/100 (\$4,000.00) payable to the Treasurer, the State of New Jersey.
3. Payment of the Four Thousand Dollars 00/100 (\$4,000.00) shall be held by the Office of the Attorney General until the effective date of the Board written Order approving this Settlement.
4. A cancellation of the judgment in error shall be sought upon receipt of guaranteed funds and Board approval of this Settlement at the next available regularly scheduled Board agenda meeting.

After review of the entire record and the Settlement, the Board **HEREBY FINDS** that this Settlement is reasonable and in the public interest, and resolves this matter without the need for further litigation. Accordingly, the Board **HEREBY ADOPTS** the Settlement executed by Staff and the Company in its entirety as if fully set forth herein. The Settlement is attached hereto and made a part hereof.


This Order shall be effective on February 10, 2018.

DATED: 1/31/18

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


RICHARD S. MROZ
COMMISSIONER

ATTEST: 
CARMEN D. DIAZ
ASSISTANT BOARD SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 ET. SEQ. –
BY KEITH CHRISTOPHER, KEITH CHRISTOPHER PLUMBING AND HEATING
DOCKET NO. GS15101184K

SERVICE LIST

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Keith Christopher Plumbing & Heating, LLC
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Beachwood, New Jersey 08722

Board of Public Utilities

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGED)
VIOLATIONS OF THE UNDERGROUND)
FACILITY PROTECTION ACT,)
N.J.S.A. 48:2-73 ET SEQ., BY KEITH)
CHRISTOPHER, KEITH CHRISTOPHER)
PLUMBING AND HEATING)

STIPULATION AND
SETTLEMENT AGREEMENT

BPU Docket No. GS15101184K
Judgment No. DJ-079142-2016

APPEARANCES:

Edward F. Christopher, Esq., on behalf of Keith Christopher Plumbing and Heating, LLC

Renee Greenberg, Deputy Attorney General, on behalf of the Staff of the New Jersey Board of Public Utilities

TO THE HONORABLE NEW JERSEY BOARD OF PUBLIC UTILITIES:

This Stipulation and Agreement of Settlement ("Stipulation") is entered into by and between the Staff of the New Jersey Board of Public Utilities ("Board Staff") and Keith Christopher Plumbing and Heating, LLC ("Company") as of this 5th day of January 2018 to resolve the above captioned matter and the docketed judgment entered against Keith Christopher, which was docketed as DJ-079142-2016.

WHEREAS, the Company has a business office at 551 Foracastle Ave., Beachwood, NJ 08722;¹ and

WHEREAS, in June 2014, Board Staff commenced an investigation following reports of the failure to obtain a valid mark-out prior to commencing excavation and of damage to a New Jersey Natural Gas Company ("NJNG") natural gas pipeline at 400 Bradley Blvd., Bradley Beach, New Jersey 07720 and; and

WHEREAS, Board Staff contacted the Company and NJNG via letters of inquiry, investigated the incident, and subsequently informed the Company of the date and location of the alleged violation; and

WHEREAS, the Company responded to Board Staff's letter of inquiry in September 2014, and advised that the Company was hired as a sub-contractor to install a new natural gas line at the 400 Bradley Blvd., Bradley Beach, New Jersey location. According to the Company, while the original contractor By Design Landscaping obtained a New Jersey One Call ticket, the Company did not obtain its own New Jersey One Call ticket to excavate; and

¹ Sometimes the Company is referred to herein as Keith Christopher Plumbing and Heating or as Christopher Plumbing and Heating.

3. Payment of the Four Thousand Dollars 00/100 (\$4,000.00) through guaranteed fund (i.e. bank check, money order) shall be submitted by January 25, 2018 and held by the Office of the Attorney General until the effective date of the Board written Order approving this Stipulation:

Send to: Renee Greenberg, Deputy Attorney General
Dept. of Law and Public Safety, Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

4. A Cancellation of the Judgment in Error shall be sought upon receipt of guaranteed funds and Board approval of this stipulation at the next available regularly scheduled Board agenda meeting.

5. If payment as set forth in paragraph 2 is not received, by January 25, 2018, Board Staff may recommend to the Board rejection of this Settlement and adoption of a modified FOIA to reflect the Company as the proper party and a new docketed Judgment will be sought with the Clerk's Office against the Company for Six Thousand Dollars 00/100 (\$6,000.00), the original civil penalty assessed by the Board in its December 2015 FOIA.

6. After this Stipulation has been fully executed, it shall be presented to the Board for approval at the next available regularly scheduled Board agenda.

7. Upon written approval of this Stipulation by the Board, it shall then constitute the entire agreement between the Board Staff and the Company with respect to the above referenced matter, and shall operate as a complete and final disposition subject only to the fulfillment of all the provisions of this Stipulation.

8. This Stipulation may not be amended in any way, or any part of its provisions waived, except by writing executed by all the parties to this Stipulation. In the event the Board modifies any provision of this Stipulation, absent express written consent of the parties, the Stipulation shall be void, and the parties shall be restored to their positions prior to the execution of the Stipulation.

9. This Stipulation may be executed in as many counterparts as there are signatures, thereof, each of which shall be an original, but all of which shall constitute one and the same instrument. No amendment or waiver of any substantive provision of this Stipulation shall be effective unless it is agreed to by the authorized representative of each party hereto.

10. This Stipulation shall be governed by, and construed in accordance with the laws of the State of New Jersey.

WHEREAS, NJNG responded to Board Staff's letter of inquiry in September 2014, and advised that NJNG responded to an emergency call at 400 Bradley Blvd., Bradley Beach, New Jersey. NJNG further advised that while NJNG discovered accurate markouts, the markouts belonged to By Design Landscaping and not Christopher Heating and Plumbing.

WHEREAS, Board Staff advised the Company that they found certain probable violations of N.J.S.A. 48:2-73 et seq. - specifically, N.J.S.A. 48:2-82(a), N.J.A.C. 14:2-3.1 and N.J.A.C. 14:2-3.2; and

WHEREAS, on October 24, 2014, Board Staff issued a Notice of Probable Violation ("NOPV") to Christopher Plumbing and Heating, which described the alleged violation; and

WHEREAS, the Company, having received the NOPV, failed to file an Answering Certification in compliance with N.J.A.C. 14:7-2.4(a); and

WHEREAS, the Board of Public Utilities ("Board"), after finding that the Company was in default for failing to file the Answering Certification, issued a Final Order of Penalty Assessment ("FOPA") against Keith Christopher, Keith Christopher Plumbing and Heating in December 2015; and

WHEREAS, in May 2016, the FOPA was filed with the Clerk's Office and a Judgment was docketed in error against Keith Christopher individually, as opposed to Keith Christopher Plumbing and Heating, LLC; and

WHEREAS, since the Judgment was docketed, Board Staff and the Company have engaged in settlement negotiations and have reached an agreement to resolve any and all claims arising from or relating thereto; and

WHEREAS, each party agrees that this Stipulation represents a fair and reasonable settlement of all issues that were or could have been raised in regard to the the above-captioned matter; and

WHEREAS, the resolution of this matter through the adoption of the stipulated positions set forth herein best serves the interests of the parties, supports judicial economy and preservation of valuable judicial, administrative and corporate resources, and is, therefore in the public interest; and

NOW THEREFORE, the parties hereby agree as follows:

1. The Judgment under docket no. DJ-079142-2016 was entered in error against Keith Christopher as an individual instead of against the Company -- Keith Christopher Plumbing and Heating, LLC.
2. As a compromise of civil penalties for the NOPV and judgment DJ-079142-2016, upon execution of this agreement by the Company -- Keith Christopher Plumbing and Heating, LLC -- shall make a one-time payment of Four Thousand Dollars 00/100 (\$4,000.00) payable to the Treasurer, the State of New Jersey.

NOW, THEREFORE, the Parties cause this Stipulation to be executed by their duty authorized officers or officials.

EDWARD F. CHRISTOPHER, P.A.
Attorney for Keith Christopher
Plumbing and Heating, LLC

January 8, 2018
Dated:

By: Edward F. Christopher, Esq.
Edward F. Christopher, Esq.,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF THE
STATE OF NEW JERSEY
Attorney for the Staff of the
New Jersey Board of Public Utilities

January 8th, 2018
Dated:

By: Renee Greenberg
Renee Greenberg
Deputy Attorney General