**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**[Filed: April 23, 2019]**

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| **JAMES KARNES, JR.,** | **:** | |
| ***Plaintiff-Appellant,*** | **:** | |
| **v.** | **:** | **C.A. No. PC-2018-6360** |
| | **:** | |
| **RHODE ISLAND DIVISION OF** | **:** | |
| **PUBLIC UTILITIES AND CARRIERS;** | **:** | |
| **and NATIONAL GRID,** | **:** | |
| ***Defendants-Appellees.*** | **:** | |

## DECISION

**CARNES, J.** Before the Court is an appeal by Appellant James Karnes, Jr. (Appellant) of an order (Order) of the Rhode Island Division of Public Utilities and Carriers (Division) issued on August 31, 2018, finding Appellant responsible for a past due balance of $1069.88 for utility service from National Grid. Appellant asks this Court to reverse the Division's Order. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

## I

## Facts and Travel

This appeal arose from a dispute for a past due balance for utility service provided to Appellant by National Grid. After being advised that due to an error National Grid had transferred utility service at Appellant's residence into an unrelated company's name, Appellant was told by National Grid that he was responsible for the unpaid balance of $1069.88 due for the time period of August 5, 2017 until May 10, 2018.

Beginning on October 28, 1996 until August 8, 2017, Appellant had an open account with National Grid for electric service provided to his residence located at 2 Saint Theresa

Avenue in Bristol, Rhode Island. (Evidentiary Hr'g Tr. (Hr'g Tr.) at 6:7-10; 8:4-7.) "On August 4, 2017 National Grid received a call from Seterus, Inc. to connect service on August 5, 2017 at 2 Saint Theresa Avenue in Warren, RI but National Grid disconnected [Appellant's] service at 2 Saint Theresa Avenue in Bristol, RI and placed service under Seterus, Inc." (Division's Informal Review Decision at 4.) While National Grid asserts that bills in Seterus, Inc.'s name were mailed to Appellant's address in Bristol during this period of time, Appellant contends he did not receive any bills during the period at issue. (Hr'g Tr. at 10:9-15; 12:3-12.) It is undisputed that Appellant did not reach out to National Grid about the fact that he was no longer receiving bills from National Grid for utility service. *Id.* at 18:19-23.

On May 10, 2018, National Grid discovered the billing error after conducting a field visit at 2 St. Theresa Avenue in Bristol, Rhode Island "because the bills issued under that company name were not being paid." *Id.* at 8:20-22. Upon visiting the address, National Grid discovered Appellant was living, and had been living, at that address for twenty-nine years, and that National Grid had inadvertently transferred service out of Appellant's name and into Seterus, Inc.'s name. *Id.* at 8:22-9:2. As a result of this finding, National Grid transferred the account back into Appellant's name and back billed Appellant for the actual reads from the meter for that address for the time period during which it had accidentally been billing Seterus, Inc. instead of Appellant. *Id.* at 9:15-17; 10:3-15. The amount National Grid asserts it is owed is $1069.88, and Appellant does not dispute that amount except to say that he is not responsible for its payment.

After Appellant was notified that National Grid intended to terminate his utility service due to non-payment, he asked that the Division conduct an "Informal Review" as provided under Rule VI(1)(A) of the Rhode Island Public Utilities Commission's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service. The Division

conducted the Informal Review on July 10, 2018, and issued a written decision. Appellant then requested an evidentiary hearing before a hearing officer, which took place on August 22, 2018. The hearing officer subsequently issued the Order on August 31, 2018, and Appellant timely appealed that Order to this Court on September 5, 2018.

## II

## Standard of Review

Section 42-35-15(a) provides that "[a]ny person . . . who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review." When reviewing an agency decision, "[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g). The court may only:

> "reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
>
> (4) Affected by other error or law;
>
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *Id.*

"When reviewing an agency decision pursuant to § 42-35-15, the Superior Court sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). "The trial justice must not 'substitute [his or her] judgment for that

of the agency as to the weight of the evidence on questions of fact.' Instead, the Superior Court must uphold the agency's decision if it is supported by legally competent evidence." *Endoscopy Assocs., Inc. v. R.I. Dep't of Health*, 183 A.3d 528, 532 (R.I. 2018) (citing *Interstate Navigation Co. v. Div. of Pub. Utils. and Carriers of Rhode Island*, 824 A.2d 1282, 1286 (R.I. 2003)). "Legally competent evidence is defined as 'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.'" *Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review*, 854 A.2d 1008, 1012 (R.I. 2004) (quoting *R.I. Temps, Inc. v. Dep't of Labor and Training, Bd. of Review*, 749 A.2d 1121, 1125 (R.I. 2000)).

## III

## Analysis

The thrust of Appellant's appeal is that he should not be responsible for the past due balance because it was due solely to National Grid's error that those bills were incurred and left unpaid. Since the account was no longer in Appellant's name, Appellant asserts he is not responsible for the costs incurred, despite the fact that Appellant admits he remained on the property and does not dispute that he used the electricity. (Hr'g Tr. at 14:2-5; 14:18-24; 19:13-17.) Both National Grid and the Division contend that Appellant is not relieved of his duty to pay for the utility services he consumed simply because National Grid made a mistake. As such, National Grid and the Division assert that the Order is supported by legally competent evidence and thus should be upheld.

Here, the Order provided that the Termination Rules do not:

> "excuse[] a customer from his or her obligation to pay for the services he or she has received, including any failure by the public utility to exercise its right under the *Termination Rules* to disconnect a customer's service for non-payment; customers

> remain liable for their debt to the public utility for utility services received." (Order at 4) (Emphasis in original.)

Furthermore, the Termination Rules provide "[n]on-termination for any reason does not in any way relieve the customer of liability incurred for utility services." (Division's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Service, 810-RICR-10-00-1 § 1.4(E)). Moreover, it is well-settled that "one shall not be permitted to enrich himself at the expense of another by receiving property or benefits without making compensation for them." *Narragansett Elec. Co. v. Carbone*, 898 A.2d 87, 99 (R.I. 2006) (citing *R & B Elec. Co., Inc. v. Amco Constr. Co., Inc.*, 471 A.2d 1351, 1355 (R.I. 1984)). As such, "[i]f the plaintiff can prove the reasonable value of services rendered without payment, the defendant justly may be compelled to pay for those services." *Id.* at 100 (finding defendants financially responsible for electricity they were using but not paying for) (citing *Best v. McAuslan*, 27 R.I. 107, 111, 60 A. 774, 775 (1905); *Sullivan v. Dist. of Columbia Paper Mills, Inc.*, 67 R.I. 330, 334-35, 23 A.2d 765, 767-68 (1941)).

After finding that "[u]nfortunately, a mistake was made by National Grid, but that mistake does not absolve the customer, [Appellant], from paying for electric services he used[,]" the Division developed a monthly payment plan for Appellant to pay his past due balance to National Grid for the usage from August 5, 2017 to May 10, 2018 in the amount of $1069.88. (Order at 8.) The past due balance was based on "the actual meter reads" for Appellant's residence during the time period that the account was mistakenly in the name of Seterus, Inc. *Id.* at 7. National Grid was able to accurately demonstrate the value of the utility services rendered to Appellant, and thus the Division properly found that Appellant was not excused from his obligation to pay for those services simply due to National Grid's mistake. *Id.* at 8; *see Narragansett Elec. Co.*, 898 A.2d at 100.

G.L. 1956 § 39-3-13.1 provides, in pertinent part, that "[t]he division shall have the power, when deemed by it necessary, *to provide . . . any [ ] form of relief which the division may devise to do equity to the parties*." Sec. 39-3-13.1 (emphasis added). The Rhode Island Supreme Court has held that this section gives the Division "broad powers." *Narragansett Elec. Co. v. Burke*, 505 A.2d 1147, 1148 (R.I. 1986) (upholding the Public Utility Commission's decision to prospectively adjust utility rates because the decision was fair and reasonable). "Findings of the commission are presumed reasonable unless they are 'shown to be clearly, palpably, and grossly unreasonable by clear and convincing evidence.'" *Town of New Shoreham v. Burke*, 519 A.2d 1127, 1131 (R.I. 1987) (quoting *Block Island Power Co. v. Pub. Utils. Comm'n*, 505 A.2d 652, 655 (R.I. 1986)). '"In reviewing a decision and order of the [Public Utility] commission, this court will consider the fairness and reasonableness of the end result achieved by the commission, and not the methodology by which that decision was reached."' *Narragansett Elec. Co.*, 505 A.2d at 1149 (quoting *S. Cty. Gas Co. v. Burke*, 486 A.2d 606, 607 (R.I. 1985)). [1]

Here, the Division concluded that Appellant was not absolved "from paying for electric services he used" because "a mistake was made by National Grid," and that since "Mr. Karnes didn't pay for his electric usage from August 5, 2017 to May 10, 2018," that he "need[s] to pay

[1] In a similar case heard by this Court, a utility customer was being under billed by the utility company for over ten years due to a billing error made by the company. *Providence Water Supply Bd. of Providence, R.I. v. Div. of Pub. Utils. and Carriers of Rhode Island*, No. PC 09-5913, 2010 WL 5433925, at *1 (R.I. Super. Dec. 28, 2010). The Division of Public Utilities and Carriers in that case "delineate[d] responsibility for the error and fashion[ed] an equitable remedy." *Id.* at *11. This Court determined the "order was not arbitrary and capricious because it was rational, logical, and supported by substantial evidence," and while the division's conclusion was not the only possible conclusion given the evidence, the Court refused to "substitute its judgment for that of the Division as its decision was not 'completely bereft of any competent evidence.'" *Id.* (citing *Rocha v. State Pub. Utils. Comm'n*, 694 A.2d 722, 726 (R.I. 1997)).

back National Grid." (Order at 8.) The Division then devised a payment plan to ensure the Appellant would pay off the outstanding balance over the course of twelve months, and directed National Grid to terminate Appellant's service if he failed to enter into and/or maintain said plan. *Id.* While "more than one inference may be drawn from the record evidence," the Division's decision was not "completely bereft of any competent evidentiary support." *Rocha*, 694 A.2d at 726 (citing *Sartor v. Coastal Res. Mgmt. Council*, 542 A.2d 1077, 1083 (R.I. 1988)). Therefore, since the Division's decision was supported by legally competent evidence, the decision shall be upheld. *See Endoscopy Assocs., Inc.*, 183 A.3d at 532.

## IV

## Conclusion

After review of the entire record, this Court finds that the Division's Order was not in excess of its statutory authority, affected by error or law, arbitrary or capricious, or clearly erroneous. Substantial rights of the Appellant were not prejudiced. Accordingly, this Court affirms the Division's Order and denies Appellant's appeal. Counsel shall submit an appropriate Order for entry.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **TITLE OF CASE:** | James Karnes, Jr. v. Rhode Island Division of Public Utilities and Carriers and National Grid |
| **CASE NO:** | PC-2018-6360 |
| **COURT:** | Providence County Superior Court |
| **DATE DECISION FILED:** | April 23, 2019 |
| **JUSTICE/MAGISTRATE:** | Carnes, J. |
| **ATTORNEYS:** | |
| For Plaintiff: | James Karnes, Jr. (*pro se*) |
| For Defendant: | John P. McCoy, Esq.; Casey J. Lee, Esq. |