

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)	
ETIENNE BREWSTER against CONSUMERS)	
ENERGY COMPANY.)	Case No. U-16738
_____)	

At the September 13, 2011 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon Orjiakor N. Isiogu, Chairman
Hon. Greg R. White, Commissioner

ORDER

On March 23, 2011, Etienne Brewster (Complainant), through his attorney Daniel J. Andoni, filed a complaint against Consumers Energy Company (Consumers) alleging that Consumers improperly accused Complainant of fraud and failed to properly bill Complainant according to the Commission’s billing rules. Complainant requested that the Commission order Consumers to remove the fraud accusation and send Complainant a corrected bill.

A prehearing conference was held on May 12, 2011, before Administrative Law Judge Mark D. Eyster (ALJ). In addition to Consumers and the Complainant, the Commission Staff (Staff) also participated in this case.

At the prehearing conference, a settlement agreement was reached and entered into the record. According to the transcript, the parties agreed to a total amount owed, payment arrangements, terms of service restoration, removal of fraud allegations, and that the settlement agreement resolved claims of any type from the complaints by the parties. 1 Tr 3. The parties also stated that

the Complainant would submit a written copy of the settlement agreement, along with a withdrawal of his complaint, to the ALJ by May 20, 2011. The ALJ confirmed with Complainant's attorney that his understanding of the terms of the settlement agreement matched what was entered into the record. The ALJ also confirmed that the Staff had no issues with the terms of the settlement agreement.

On May 25, 2011, the Commission received a letter from Complainant's attorney advising the Commission that the parties did not have a settlement agreement and that the case should be placed on the docket for another prehearing conference.

On May 31, 2011, Consumers filed a motion to enforce settlement agreement. Consumers argues that because the settlement agreement was agreed to by Complainant and his attorney, a description of the terms of the settlement agreement were put on the record, the Staff did not object to the settlement agreement, and the ALJ verbally confirmed Complainant's understanding of the settlement agreement on the record, it is a binding contract and should be enforced. Consumers also requested that the complaint be dismissed.

On June 7, 2011, a second prehearing conference was held to hear arguments regarding Consumers' motion. Complainant's attorney argued that Complainant only entered into the settlement agreement because he was misled to believe that one of the terms of the agreement involved his former employer, Michigan Consolidated Gas Company¹ (Mich Con), rehiring him. Complainant's attorney also argued that because no written copy of settlement agreement was filed with the Commission, there was no settlement agreement. Complainant's attorney then stated that if the case continued beyond Consumers' motion, he would amend the complaint to add Mich Con as a party and include in the amended complaint the details of how Complainant

¹Mich Con is not a party to this case.

believes Consumers' fraud allegations caused Complainant to lose his job with Mich Con. Complainant's attorney argued that if the settlement agreement put on the record at the first prehearing was enforceable, then the ALJ should have dismissed the complaint or issued an order regarding the settlement agreement at that time. According to Complainant, the ALJ not dismissing the complaint and saying a second prehearing would be set if a settlement agreement could not be reached set conditions precedent. Because these conditions were not met, the Complainant argues, there is no settlement agreement and the case should go forward.

Consumers reiterated its argument that the settlement agreement recorded at the first prehearing was binding and enforceable. Consumers also noted that it could not promise Complainant a job with an entity it is not associated with.

The Staff expressed its position that a settlement agreement settling all claims arising from this complaint was reached and entered into the record, and that the complaint should be dismissed. The Staff added that if Complainant has further complaints, he has the opportunity to file another complaint.

The ALJ issued an oral Proposal for Decision (PFD) at the end of the hearing. The ALJ outlined the events that occurred at the prior hearing. He referred to the transcript of that hearing for the language indicating that both parties stated on the record a settlement agreement had been reached and outlining the terms of the settlement agreement. As support for his decision, the ALJ cited Michigan Court Rule 2.507(g), which states that an agreement between parties that is subsequently denied by one party is not binding unless it was made in open court or unless there is evidence of the agreement in writing. The settlement agreement was made in an open administrative hearing, on the record. The ALJ proposed that this was sufficient to meet the

requirements of the rule and a written copy of the settlement agreement need not be filed for the agreement to be binding. The ALJ recommended the Commission dismiss the case.

Exceptions to the PFD were due on July 5, 2011. None were filed.

The Commission finds that the ALJ's recommendation should be adopted, the settlement agreement should be considered binding and enforceable, and the case should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement between Etienne Brewster and Consumers Energy Company reached and entered into the record at the May 12, 2011 prehearing conference is binding and enforceable.

B. The complaint of Etienne Brewster against Consumers Energy Company is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Greg R. White, Commissioner

By its action of September 13, 2011.

Mary Jo Kunkle, Executive Secretary