

BEFORE THE SUPREME COURT
STATE OF FLORIDA

CHESTER OSHEYACK

Thursday, August 23, 2001

Appellant

Case No. SC 96439

vs

Lower Tribunal

Case No. 990869-TL

2-pages

JOE GARCIA, etc., et al

Appellee

APPELLANT'S MOTION TO ACCEPT
RESPONSE TO
APPELLEE'S REPLY

THE APPELLANT RESPECTFULLY MOVES THIS COURT to accept the above referenced MOTION on the following grounds:

- 1) The Appellee has misapprehended key elements of the Appellate Rules in its Motion to Deny. The Appellant must be permitted to identify these errors for the Court.
- 2) The Appellee has based its case on errors of submission and omission that have become a part of this Court's final decision. The Appellant must be permitted to identify these errors for the Court.
- 3) The Appellee asks the Court for the same latitude as that which is provided to rapists and murderers in pro se litigation when, as and if, experienced Counsel is their adversary. Due process is a constitutional right and justice requires that inequity be balanced by Court discretion.

Local telephone service is as important to a community as its roads and bridges. For our elderly, it is a part of their support system. For our children, it is access to information and education via the Internet. The integrity of local telephone service must be protected. It is too important to be used as a lever to collect third party debts.

CLERK
 CLERK
 CLERK
 CLERK
 LEG
 OPC
 PAI
 RGO
 SEC
 SER
 OTH

Respectfully submitted by:

 8-23-01

Chester Osheyack, pro se
3750 Williams Landing Circle
Apt 3102
Tampa, Florida 33610
(813) 740-0550

Date

Copies to:

Martha C. Brown, Esq.
Director of Appeals (PSC)
Florida Bar 261866

Blanco S. Bayo, Director
Records & Reporting (PSC)

By mail to: Florida Public Service Commission
Division of Records & Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

**BEFORE THE SUPREME COURT
STATE OF FLORIDA**

CHESTER OSHEYACK
Appellant

Date: Thursday
August 23, 2001

vs

Case No. SC 96439
Lower Tribunal
Case No. 990869-TL
7-pages plus Certificate

JOE GARCIA etc., et al
APPELLEE

**APPELLANT'S RESPONSE
TO
APPELLEE'S REPLY**

With respect to compliance with Appellate Rule 9.330, and other relevant matters, including errors of fact in the Court's Order, note the following:

ON POINTS OF PROCEDURE

(1) The Appellee argues that the Appellant "presented issues not previously raised" and "reargues matters already addressed in the parties briefs". In fact the Appellant has identified "points of law and fact" which in (his)"opinion the court has overlooked or misapprehended". The "rule" does not give recognition to the conflicting "opinion" of the Appellee in this regard. Moreover, while the "rule precludes the introduction of new "issues", it does not limit the introduction of "facts", old or new, in support of the Appellant's opinions, so long as they address "issues" which are a part of the record. All of the facts brought forth by the Appellant relate to issues in the record. This is a fact.

(2) The Appellee challenges the right of the Court to recognize the fact that, in the opinion of the Appellant, the Court did not give proper consideration to the Constitutional issues, and states that "---the fact that the Court did not address every issue and argument raised does not mean that the Court did not consider them". This argument is in direct conflict with the words and intent of the Appellate Rule. There is no empirical evidence of a review of the Constitutional issues raised by the Appellant in the Order. This is a fact.

DOCUMENT NUMBER-DATE

1

10606 AUG 27 2001

FPSC-COMMISSION CLERK

(3) The Appellee finds fault with the Appellant's conviction, that the Court's Order, which accepts the 7th Circuit Whitaker decision as a precedent in support of the definition of "what is a debt collector"?, may create significant unintended consequences in other areas of trade and commerce where regulation is required to afford the consumer protection from unfair debt collection practices. In this regard, the Appellee takes the view that the Court lacks discretion to accept facts not previously in the record, that may discredit that precedent. The Appellant notices the Court to the sole limitation on its discretion, barring exclusion of issues not in the record, as expressed in para (d) of the Rule which is clearly identified as "Exception", and further defined in para (c) id Exception; Bond Validation Proceedings. Since this Court is the court of last resort in the State of Florida, it follows that it must have broad discretion to enable it to seek justice in the public interest while paying homage to the rule of law. Since the limitation of the Court's discretion is specifically defined in the rule, it is reasonable to presume that if it were the intent of legislators to include additional limitations, they would have been just as specific in defining other instances. There are none. This is a fact.

(4) Further to the issue of the Court's discretion. The Appellee challenges the right of the Court to accept arguments on the Motion for Rehearing. Now, it appears that while the limitation [id para (b) of the Rule], does restrict the process to 1 Motion For Rehearing, it does not directly preclude multiple arguments on that 1 Motion. One would have to presume that this indefinite treatment of this subject can easily lead to misunderstanding, and the acceptance of additional arguments then, must be a matter for the Court's discretion.

(5) The Appellee has expressed concern about the fact that this process has gone on for too long a time and that its continued pursuit is a disservice to the PSC. The Appellant shares their concern about the time that it has taken to come to this point, but the PSC had the option of moving for an expedited process at the time of filing and did not do so. Moreover, the same option was available at any time during the last two years, but they opted not to do so. Now they want the Court to rush to judgement without giving adequate attention to the record. This is unreasonable and unfair. The Court must, in the public interest, give full

consideration to the record, the facts, and the law in this case and take the full time required to perform on its judicial duties despite the sudden rash of impatience expressed by the Appellee.

ON POINTS OF FACT

(1) In its ORDER, the Court refers to FS Ch 364.19 which statute requires that regulation by the Commission should be implemented by "reasonable rules", and empowers the PSC to regulate "telephone service contracts between the companies and their patrons". Now, the Appellant has reviewed for the Court, facts that are in the record which belie the existence of a valid contract that serves to define the rights and responsibilities of the parties with respect to accounts payable in dispute, in arrears or in default. The above referenced statute clearly indicates that it was the expectation of the legislature that there would be a contract between the phone "companies and their patrons". In fact, the local phone companies defer to the Commission rules as the guide for their trade practices. Without question, this mode appears to conflict with the words and intent of the statute as above referenced in the Order. Now therefore, if there is no contract, there is nothing to regulate. This is a fact.

(2) The Court further states in the Order, "Osheyack's claims that disconnect authority is unreasonable because it violates federal and state FDCP laws, is equally without merit". In this regard the Appellant has cited public references showing that this decision conflicts with the Congressional intent as recorded in S. Rep No 382, 95th Congress, 1st Sess., 7, reprinted in 1977, U.S.Code Congr & Ad News 1695, 1698; and, is also in conflict with published opinions and commentary of the Federal Trade Commission staff vis-à-vis FDCPA s803(6) (f)(iii). Both of the above referenced sources reveal intent that there be a contract to guide the relationship between the parties and give credence to the "exemption" status of "debt collector" by defining the rights and responsibilities of the parties to such agreement. There is no such contract. This is a fact.

(3) The Appellant cannot comment as to the view of the Court with respect to the Constitutional issues raised because the Court has not made its position known. However, it should be here noted, that these issues were raised in the record and the facts provided in the record

support the thesis that the practice of arbitrary disconnection of local phone service to collect long distance bills in the manner prescribed, is antithetical to the doctrines set forth in the U.S. Constitution.

Examples relative to this extra-judicial punitive trade practice are apparent. This act is in direct conflict with Amendment VII of the U.S. Constitution, which guarantees the option of trial by a jury of peers, prior to punishment for indebtedness. This act also is in conflict with Amendments V and XIV. Both require that fault be established through due process prior to punishment. The structured "deal" by which the local company allegedly purchases the "debts" with recourse, is fully exposed for what it is, in the record. It does not pass the "smell" test in a competitive marketplace. It is a sham. Moreover, contract details vary from client to client. How then, can one set of regulations fit all conditions?

(4) The Appellee was critical of the Appellant's effort to update the facts regarding changes in the telephone markets. This data relates to the issue of the public interest vs the corporate interests. Without this issue, there would be no need for regulation or the Public Service Commission. This balancing act was very much a part of the record in the briefs previously filed. In fact, the impact of competition on public and corporate interests in the long distance markets was in evidence when the first briefs were filed in 1996, and the issue has been significantly clarified since that time. These updated facts presented now, are a part of the public record, but the Appellee has characterized them as "allegations". The question that was raised both in the record and in the current exchange of documents is that of a possible negative impact on the consumer to be caused by the revocation of "disconnect authority". The Commission predicted dire consequences. The Appellant's briefs identify numerous states throughout the nation that have aborted this abusive trade practice without consequences. The speculative threat that long distance telephone carriers would arbitrarily increase prices in a competitive environment is utter nonsense. The Appellant has proffered facts in support of that portrayal, not the least of which is the experience of Verizon in New York and Pennsylvania.

(5) In its Order (id Proceedings, pg 1), the Court states

that "Osheyack participated in a rulemaking proceeding (ref 1996) in which the PSC considered amendments to the disconnect authority rule---" (which would have abolished it.) "The PSC declined to amend the rule." Later (ref pg 4) the Court indicates that after a similar study in 1999, the PSC denied "Osheyack's petition to amend the disconnect authority rule", and that the decision was "consistent with its staff's recommendation." The Order neglects to state, however, that the 1996 decision of the Commission was a rejection of the PSC staff recommendation, which was to amend the rule, and abort the disconnect authority policy. This oversight is an error in fact.

(6) In the Court's Order (ref page 1, para 2, Proceedings), the Court states that "This is not the Appellant's first challenge to the disconnect authority rule". This statement is among other direct quotes from the Appellee's prior briefs, although it is not so indicated in the Order. The Court, however, did not also provide recognition to the Appellant's response (ref page 1, Appellant's Motion On Jurisdiction, para 2, filed 12/17/99) to wit: " In its Answer Brief, the Commission appears to have made a conscious effort to characterize the Appellant as a chronic complainer who is making frivolous presentations and should be ignored." and, "I do not come before this Court with guns blazing or bombs strapped to my body. I come, Honorable Justices, with words as befits a civilized and democratic society, and I ask only that these words be heard by this Court in accordance with due process." The omitted portion is available for review in the above referenced brief. The Appellant, over time, learned the time-honored lawyer's code which is, "if you don't have the facts use the law--- if you don't have the facts and the law, attack the process and/or your adversary." Since 1996, the Commission has done both. It was hoped that this Court would repudiate this kind of tactic. The statement in the Court's order in the context used serves no purpose other than to be prejudicial. It has no place in an Order from this Court. In fact, coming from the PSC, it is the wrong message to be sending to the public. Rapists and murderers are entitled to due process with necessary accommodations made for their lack of legal education and experience. An old man with a typewriter and, (now by virtue of the generosity of his granddaughter) a PC), is entitled under constitutional law, to a fair pro se hearing given similar circumstances. Anything less, denigrates the proponent of such suggestions as well as the judicial process.

ON POINTS OF DISCRETION

The Appellee challenges the Court's right to use discretion in the absence of law, while it defends its own use of discretion in conflict with law, on the shallow pretext that such actions are in the public interest. But it has been five (5) years since the PSC has examined the question of "what is in the public interest?"---despite a rapidly changing business environment in telecommunications. This negligence is a fact.

SUMMARY

Honorable Justices, the culture of humankind is guided by a contract identified as the Ten Commandments, which spell out the terms of the relationship among man, his God and his social group. Our nation is guided by a contract called the Constitution, which defines the relationship between our citizens and their government. Our laws are contracts that define our relationship to and within our society. Contracts define our relationship with each other as individuals. Our culture and our history, since mankind came out of the jungles and the deserts to form nations, states, cities and towns, are based in full disclosure through contracts that define and govern our relationships. The exception is the telecommunications industry where, due to Commission regulation, the awful has become the ordinary, "in the public interest".

Honorable Justices, I have store credit cards. With each I have a written agreement which defines the relationship. I have Internet access and long distance telephone service from AT&T. I have a written agreement with them, which serves to define the relationship. With local telephone service, I have only the previously discussed "notice" on the back of the bills, which label the "state regulatory (agency)" as the source of governance, but there is no defining agreement between the parties. Thus the local telephone service provider can effect non-judicial punishment without contingent liability for errors or omissions on the part of its client. Without a contract there is no protection for the consumer. Without a contract, the relationship between the parties is not defined. In the absence of a contract, the contention of the Appellee that the local telephone companies are not "debt collectors",

is unfounded. With all due respect, this Appellant regrets to say that in the halls of the PSC in Tallahassee, the awful is still the ordinary.

CONCLUSION

The Appellant wishes to make a clear distinction between his stand and that of the Appellee in this dispute. During the exchange of a plethora of briefs over several years, there were too many times when the adversaries talked past each other instead of directly addressing the key issues and their supporting facts. Accordingly, the Appellant would like to correct any faulty notions that he might have unintentionally added to the milieu. From the perspective of the Appellant, the Appellee has focused on what the Commission **can** do, while the Appellant has argued for what the Commission **should** do, in the light of current facts and law. One of the main tasks of Courts and Judges is to sort out the issues-----to "cut to the chase", if you will. Therefore, in an attempt to simplify the disputed issues, the Appellant, will herein stipulate that the Commission has proven that it **can** do anything that it pleases, whether it be right or wrong. Accordingly, the Appellant's request of this Court is that it test only the standards that apply to the question of what the Commission **should** do to avert injury to the consumer without limiting countervailing benefits to either the markets or competition therein. It would also be appropriate for the Court to determine if the current abusive practices are reasonably avoidable without causing negative consequences as have been forecast. Standards are what this case is all about---standards that are supported by the facts on the ground and law on the record. Standards that will restrict the Commission's right to be wrong. With this document, the Appellant rests his case. There will be no further submissions to this Court.

Respectfully submitted by:


CHESTER OSHEYACK, pro se

8-23-01
Date

**CERTIFICATE OF SERVICE
AND
AFFIDAVIT**

I HEREBY CERTIFY that copies of the foregoing have been forwarded by U.S Mail on this 23d day of August, 2001, to the below noted parties:

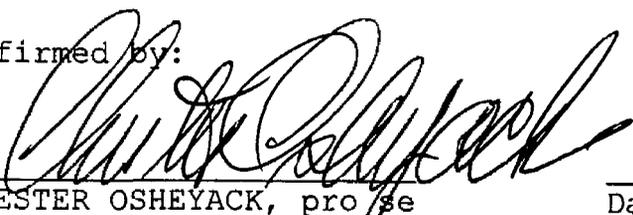
I ALSO AFFIRM that the Appellee's Reply was sent to the wrong address and has just reached me on the 22d day of August. (envelope enclosed).

Martha C. Brown, Esq.
Director of Appeals (PSC)
Florida Bar 261866

Blanco S., Bayo, Director
Records & Reporting (PSC)

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Affirmed by:



CHESTER OSHEYACK, pro se

8-23-01
Date

3750 Williams Landing Circle
Apt. 3102
Tampa, Florida 33610-9281
(813) 740-0550

CERTIFIED TRUE COPY

NOTARIAL PUBLIC