

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

RECEIVED - FPSC
93 OCT - 7 AM 10:59
RECORDS AND
REPORTING

MEMORANDUM

October 7, 1999

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY6)
FROM : DIVISION OF APPEALS (BROWN) *OS for MCB*
RE : DOCKET NO. 990869 - PETITION BY CHESTER OSHEYACK FOR
AMENDMENT OF RULE 25-4.113(1)(f), F.A.C., REFUSAL OR
DISCONTINUANCE OF SERVICE

AGENDA: OCTOBER 19, 1999 - REGULAR AGENDA
POST FINAL ORDER MOTION - PARTIES MAY PARTICIPATE

CRITICAL DATE: NONE

SPECIAL INSTRUCTIONS: ITEM SHOULD NOT BE DEFERRED

FILE NAME: I:\PSC\APP\WP\990869.RCM

CASE BACKGROUND

On July 1, 1999, Mr. Chester Osheyack filed a petition with the Commission to amend Rule 25-4.113(1)(f), Florida Administrative Code, the Commission's rule governing local exchange companies' refusal or discontinuance of service. The Commission denied Mr. Osheyack's petition in Order No. PSC-99-1591-FOF-TL, issued August 16, 1999. Mr. Osheyack has appealed the Commission's decision to the Florida Supreme Court, which issued an order informing Mr. Osheyack that if he wished to appear before the Court as an indigent and have filing fees and costs of the appeal waived, he must receive an order certifying indigency from the Commission. Accordingly, Mr. Osheyack filed a letter with the Commission on September 27, 1999, requesting that order. (Attachment A)
This is staff's recommendation to grant that request.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the request for a determination of indigency?

RECOMMENDATION: Yes. Mr. Osheyack's letter and attached affidavit satisfactorily demonstrate that he is entitled to such a determination from the Commission.

DOCUMENT NUMBER-DATE

12135 OCT-7 99

FPSC-RECORDS/REPORTING

Docket No. 990869-TL
October 7, 1999

STAFF ANALYSIS: Mr. Osheyack's letter and affidavit of indigency, satisfy the requirements of the applicable rule of appellate procedure and statute. Rule 9.430, Florida Rules of Appellate Procedure, provides, in pertinent part:

A party who has the right to seek review without payment of costs shall file a motion in the lower tribunal, with an affidavit showing the party's inability either to pay fees and costs or to give security therefor.

This right is governed by substantive law. Committee Notes to Rule 9.430; Amos v. Department of Health and Rehabilitative Services, 416 So. 2d 841 (Fla. 1st DCA 1982).

The applicable substantive law is section 57.081(1), Florida Statutes. The statute provides:

Prepayment of costs to any court, clerk, or sheriff is not required in any action if the party has obtained from the clerk in each proceeding a certificate of indigency, based on an affidavit of the applicant claiming that the applicant is indigent and unable to pay the charges otherwise payable by law to any such officers, providing the details of the applicant's financial condition. . . .

Mr. Osheyack's request meets the requirements of the statute. Although it is permissible for the Commission to inquire further into the applicant's ability to pay the costs of appeal, and even to hold an evidentiary hearing, it is also permissible for the Commission to grant the motion if it is satisfied with the facial sufficiency of the motion and affidavit. Meyer v. Burgess, 19 Fla. L. Weekly D186 (Fla. 1st DCA January 20, 1994); Miller v. Hospitality Care Center, 431 So. 2d 254 (Fla. 1st DCA 1983). Staff recommends that the Commission issue an Order certifying indigency based on the request and supporting information filed.

Docket No. 990869-TL
October 7, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: The docket should remain open pending disposition of the appeal.

MCB/
Attachments

RECEIVED
CHESTER OSHEYACK PUBLIC SERVICE COMMISSION
10410 Zackary Circle
Riverview, Florida 33569-3994
(813) 679-8229
99 SEP 27 AM 9:01

MAIL ROOM

July 24, 1999

Mrs. Blanco S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 990869-TL Osheyack v Public Service Commission
Case No. 96-439 Osheyack v Garcia Florida Supreme Court

Dear Mrs. Bayo:

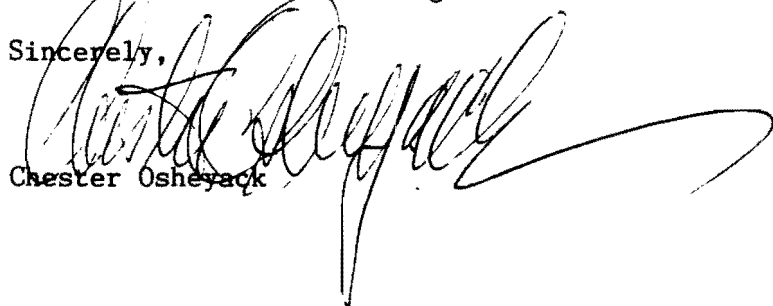
I am advised by the Clerk of the Supreme Court that I must file an order certifying indigency from the Public Service Commission in this case to complete the record. I had filed an order from the DOAH ALJ (Johnson) but it was from the wrong court and the wrong case.

Accordingly, I am submitting the Affidavit (duly notarized) and a copy of the DOAH Order for your information and file. If this is a sufficient basis for your action, please assist me in completing the record. If a new Affidavit must be filed, or additional information is required, please advise ASAP.

For the record, there have been no changes in financial condition, however I am two (2) years older and have not yet won the lottery.

Best wishes and kindest regards.

Sincerely,



Chester Osheyack

cc: Ms. Debbie Causseaux, Clerk
Florida Supreme Court

AFA _____
APP Brown _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
PAI _____
SEC _____
WAW _____
OTH _____

99 SEP 20 11:19:11

DOCUMENT NUMBER-DATE

11598 SEP 27 99

FPSC-RECORDS/REPORTING

BEFORE THE SECOND DISTRICT COURT OF APPEALS
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

In re: The APPEAL of
CHESTER OSHEYACK, Private Citizen
Appellant

v.

AFFIDAVIT OF INSOLVANCY

DIVISION OF ADMINISTRATIVE HEARINGS
State of Florida
Appellee

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME personally appeared, CHESTER OSHEYACK, who after
being sworn, states:

I, the Appellant, am insolvent and unable to pay charges, costs
or fees otherwise payable by law to any clerk in this appellate
action because:

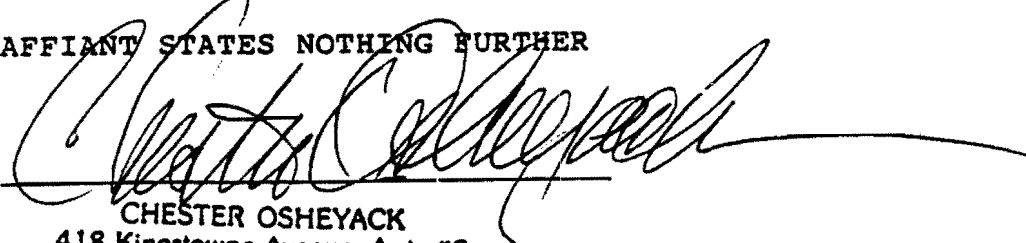
I am 74 plus years of age; my wife is 69 years of age; our
principal income is from Social Security, and our sole source of
healthcare is only available through Medicare. During recent
years we have begun to suffer the ravages of aging and all of
our disposable income is committed to payment for health mainten-
ance and associated requirements for services rendered by Doctors,
Dentists, Medical Laboratories, Pharmacies and Hospitals.

There are no wages, no property of marketable value, no tax refunds,
no negotiable assets, no savings, and little hope of any change in
status, barring, of course, a winning lottery ticket.

My monthly obligations, other than disposable income as noted above,
just about equals my month income.

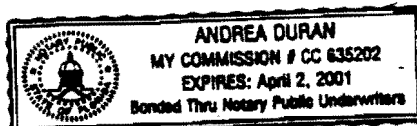
I can provide the numbers if required, but they will do no more than bear
out the information that I have affirmed herein.

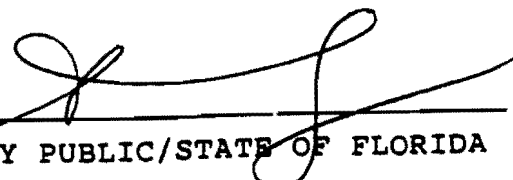
AFFIANT STATES NOTHING FURTHER



CHESTER OSHEYACK
418 Kingstowne Avenue, Apt. #2
Brandon, FL 33511

Date: August 19, 1997





NOTARY PUBLIC/STATE OF FLORIDA

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHESTER OSHEYACK,)	
)	
Petitioner,)	
)	
vs.)	Case No. 97-1628RX
)	
PUBLIC SERVICE COMMISSION,)	
)	
Respondent.)	
)	

ORDER CERTIFYING INDIGENCE

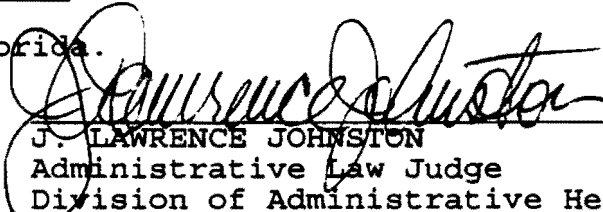
On August 27, 1997, the Petitioner/Appellant, Chester Osheyack, filed an Affidavit of Insolvency [sic]. It appears from the affidavit that the Petitioner/Appellant is unable to pay for the services of the courts, sheriffs, and clerks.

Upon consideration, it is

ORDERED:

Inasmuch as the Petitioner/Appellant appears to be indigent, he is hereby certified as being entitled to receive the services of the courts, sheriffs, and clerks of this state with respect to these proceedings without charge, pursuant to Section 57.081, Florida Statutes.

DONE AND ORDERED this 2nd day of September, 1997, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax FILING (904) 921-6847