

Supreme Court of Florida

WEDNESDAY, JUNE 13, 2001

CHESTER OSHEYACK,

**

Appellant,

**

vs.

**

CASE NO. SC96439

LOWER TRIBUNAL

JOE GARCIA, etc., et al.,

**

CASE NO. 990869-TL

Appellees.

**

**

ORDER

We have jurisdiction over the instant appeal from the Public Service Commission's (PSC) denial of appellant's petition to amend Rule 25-4.113, Florida Administrative Code, governing the refusal or discontinuance of telephone service (disconnect authority rule) pursuant to article V, section 3(b)(2) of the Florida Constitution. For the reasons that follow, we affirm the PSC's denial of the appellant's petition.

PROCEEDINGS TO DATE

This is not the appellant's first challenge to the disconnect authority rule. In 1996, Osheyack participated in a rulemaking proceeding in which the PSC considered amendments to the disconnect authority rule that, among other things, would have eliminated the authority of local exchange companies to disconnect local service for nonpayment of long distance charges. The PSC declined to

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amend the rule and Osheyack appealed that decision to this Court. The PSC moved to dismiss the appeal, and this Court granted the same on February 18, 1997. Osheyack v. Clark, 689 So. 2d 1071 (Fla. 1997). Osheyack then filed a petition seeking rescission of the disconnect authority rule with the Division of Administrative Hearings (DOAH) on April 4, 1997. In that petition Osheyack raised but later withdrew issues concerning federal and state fair debt collection laws. The Administrative Law Judge (ALJ), following a formal administrative hearing on June 23, 1997, held the PSC's disconnect authority rule a valid exercise of delegated legislative authority, supported by competent substantial evidence. Chester Osheyack v. Public Service Commission, DOAH Case No. 97-1628RX. Osheyack appealed that decision to the Second District which affirmed the ALJ's order, per curiam. Osheyack v. State Division of Administrative Hearings (Public Service Commission), 718 So. 2d 1244 (Fla. 2d DCA 1998).

INSTANT PETITION

Attempting to have the disconnect authority rule reviewed under the Administrative Procedure Act's most recent rulemaking standard, Osheyack filed the instant petition on July 1, 1999.¹ In that petition, Osheyack contended that the

¹ In 1999 the Legislature amended the Administrative Procedure Act, further defining and limiting agency rulemaking authority. See Ch. 99-379, Laws of Fla. The new standard provides:

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the

PSC had exceeded the authority delegated to it under section 364.19, Florida Statutes (1999), because the disconnect authority rule is contrary to federal and state fair debt collection laws. Specifically, Osheyack maintained that although sections 364.03 and 364.19 afford the PSC broad discretionary power to regulate the telecommunications industry, they do not provide the commission the specific power to disregard or override existing state and federal debt collection laws.

Sections 364.03(3) and 364.19 provide:

364.03 Rates to be reasonable; performance of service; maintenance of telecommunications facilities.-

....

(3) Every telecommunications company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper telecommunications services and furnish telecommunications service as demanded upon terms to be approved by the commission.

enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

§ 120.536(1), Fla. Stat. (1999); see also § 120.536(8), Fla. Stat. (1999). The statute did not allow a challenge to existing rules (those adopted before October 1, 1996) as exceeding the agency's rulemaking authority under this new standard until July 1, 1999. See § 120.536(2)(a), Fla. Stat. (1999).

364.19 Telecommunications service contracts; regulation by commission.- The commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

Fla. Stat. (1999).

On August 16, 1999, the PSC, consistent with its staff's recommendation, denied Osheyack's petition to amend the disconnect authority rule. The PSC concluded that the disconnect authority rule was directly and specifically related to the authority granted it under section 364.19, meeting the standard of reasonableness contained therein:

We believe that Rule 25-4.113 meets the standard of reasonableness found in Section 364.19, Florida Statutes. It is directly related to the terms of a telecommunications service contract and the Commission's long-standing policy that telecommunications consumers should not have to absorb the high costs of bad debt through their telecommunications rates.

Nevertheless, the PSC indicated that it would revisit the rule and have its staff include a review of the rule in its current rulemaking projects.

We agree with the PSC's finding and conclude that the disconnect authority rule is directly and specifically related to the authority granted the commission over telecommunications contracts pursuant to section 364.19. See Southwest Florida Water Mgmt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594, 599 (Fla. 1st DCA 2000) (interpreting the 1999 amendments to the Administrative Procedure Act with regards to agency rulemaking authority to require that the authority to adopt an administrative rule be based on an explicit power or duty identified in the enabling statute).

Moreover, Osheyack's claims that the disconnect authority is unreasonable because it violates federal and state fair debt collection laws in that it allows local telephone providers to terminate service for nonpayment of long distance charges is equally without merit.

In Whitaker v. Ameritech Corp., 129 F. 3d 952 (7th Cir. 1997), the Seventh Circuit held that a local telephone service provider which contracted with other long distance service providers, purchasing their accounts receivables with recourse, collecting payments on their behalf and providing one all-inclusive monthly bill to its customers, was not a "debt collector" under federal fair debt collection laws:

By the terms of the statute, Ameritech is not a debt collector. While Ameritech does collect money owed to long distance companies and information providers, it does not acquire those debts after they are in default. It acquires those debts, according to contracts with the long distance and information providers, at the moment each telephone call is placed. Indeed, Ameritech acquires the debts even before the consumer receives a bill. If the customer does default on the debt, the default occurs after Ameritech acquires the debt, not before. The Statute specifically does not apply to entities who acquire a debt "not in default at the time it was obtained." We hold that Ameritech is not a "debt collector" under the FDCPA and therefore affirm the district court's decision to dismiss Whitaker's FDCPA claims.

Id. at 958-59. Such reasoning applies with equal force under Florida's fair debt

collection statutes as a “debt collector” is defined similarly therein.²

CONCLUSION

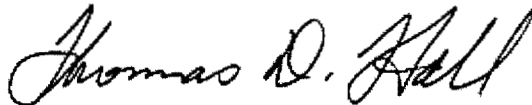
Accordingly, we affirm the PSC’s denial of Osheyack’s petition to amend the disconnect authority rule.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

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TEST:



Thomas D. Hall
Clerk, Supreme Court

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cc: Ms. Blanca S. Bayo, Director
Mr. Chester Osheyack
Ms. Martha Carter Brown
Ms. Catherine Bedell
Mr. Robert D. Vandiver

² The Federal Fair Debt Collection Practices Act excludes from its definition of “debt collector” “any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . concerns a debt which was not in default at the time it was obtained by such person” 15 U.S.C. § 1692a(6)(F)(iii). The Florida Act similarly excludes those collecting debts which were not in default at the time the debt was obtained from its definition of “debt collector.” See § 559.55(6)(f), Fla. Stat. (2000).