

Decision No. _____

ORIGINAL

Decision No.

5457

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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JAMES B. HERSHEY,

Complainant,

vs.

CASE NO. 1180.

OCEAN SHORE DEVELOPMENT COMPANY
and WILLIAM H. GROSSKURTH, Manager,

Defendants.

ARTURO ANDREONI and D. KENNEDY,

Complainants,

vs.

CASE NO. 1205.

MOSS BEACH REALTY COMPANY,

Defendants.

In the matter of the application of
OCEAN SHORE DEVELOPMENT COMPANY, a
corporation, for an order permitting
the applicant to discontinue service.

APPLICATION NO.
3689.

James B. Hershey in propria persona.
Arturo Andreoni in propria persona.
D. Kennedy in propria persona.
Byrne & Lamson by J. S. Lamson for
defendants, Ocean Shore Development
Company and W. H. Grosskurth.
C. B. Smith for Moss Beach Realty Company.

BY THE COMMISSION:

O P I N I O N

The complaints in the above cases al-
lege failure to furnish water. The Moss Beach Realty
Company answers that it does not serve consumers in the

district where complainants in Case No. 1205 reside. Defendants in Case No. 1180 allege in their answer that neither of the defendants is a public utility nor engaged in the business of furnishing water for public use and neither of them has agreed to furnish water to complainant Hershy.

The principal question as between defendants is which one is under obligation to serve.

A public hearing was held in both cases by Examiner Westover at San Francisco, April 18, 1918. Both cases were consolidated for hearing and decision. It was stipulated that the application for leave to discontinue service to be later filed, might be submitted on the evidence presented at the hearing.

Defendant, Ocean Shore Development Company, subdivided and marketed several real estate subdivisions near Moss Beach, San Mateo County, which will be referred to herein as Marine View, laid water pipes therein about 1909 and installed about 17 services, in two groups. One group of 9 services, located in the vicinity of the well and pumping plant, installed by it about that time near the hotel on the beach, has usually been served from said pumping plant. The other group of 8 services, mostly east of the railroad tracks of the Ocean Shore Railroad, has usually been served with water purchased from Moss Beach Realty Company. The services of complainants, Hershy and Kennedy, are in the latter group. Littlepage, Horigan and Cohen, a co-partnership, subdivided and marketed a tract of six blocks adjoining, called the Civic Center Tract, and laid a pipe about three blocks long through which complainant

Andreoni is served.

Moss Beach Realty Company, which serves about 35 consumers in and about Moss Beach also serves one residence in the Marine View properties from its own mains, at a point about where the properties join. Very near that point there is also a connection and meter in the Civic Center pipe through which complainant Andreoni is served.

Marine View and several subdivisions marketed and served by Moss Beach Realty Company, and herein referred to as Moss Beach, lying to the west of Marine View, can be served with water supplied by Montara Realty Development. Water is now delivered by it to the pipe line of the Moss Beach Realty Company at the edge of Montara Tract, and conveyed a distance of about a mile to Moss Beach, and thence to a connection at the corner of Vermont and Buena Vista Streets with the pipes of the Ocean Shore Company.

October 8th last the Moss Beach water was cut off at the Buena Vista Street connection by direction of the Ocean Shore Development Company. Since then the three complainants have had interrupted service from the pumping plant, and complainant Hershey, whose residence is at a higher elevation than the others, has been without water for considerable intervals when water is low in the tank near the hotel. Water will not flow into his house until it is about four feet deep in the tank. Prior to October 8th there was no complaint of service. Complainants prefer service from Moss Beach Realty Company and have applied for service from that company, which has been declined by it.

Ocean Shore Development Company during the period when it was improving its property with sidewalks, etc. used large quantities of water purchased from Moss Beach Realty Company, settlement being made at intervals of a few months on meter readings. Large amounts of this water were

also used by private consumers on the Marine View properties. The custom was for the Ocean Shore to prorate each bill between the various private consumers and itself and collect and remit to the Moss Beach Company. After several years, when the Ocean Shore no longer used water, the custom of collecting and remitting continued, though the company always failed to collect sufficient to cover the full bill. No bills were charged to individual consumers, the Moss Beach Company declining to serve them at their request or at the request of the Ocean Shore because there were no meters installed on the Ocean Shore services.

Ocean Shore Development Company finally declined to be further responsible for water charges and upon its direction water was finally turned off about October 8, 1917. Thereafter the Commission informally directed the Ocean Shore people to furnish water from its pumping plant or otherwise until the matter could be brought formally to the attention of the Commission. To this end the company caused formal applications to be made to the Moss Beach Company for service and caused the complaint in Case No. 1205 to be filed.

The position of Ocean Shore Development Company is that for several years it has acted only as a collecting agency for Moss Beach Company. It is conceded, however, that it never was formally appointed agent or requested to act in that capacity. Moss Beach Company has treated it merely as a patron using a large amount of water, and has declined to attempt to serve water to individual consumers on the Ocean Shore system.

Ocean Shore Development Company owns the only pipes and facilities through which complainants Hershey and Kennedy can be served, and has had free use of the pipe in

Civic Center Tract, leading to the service of complainant Andreoni. Complainants have dealt only with it. Complaint in Case No. 1205 against Moss Beach Realty Company must be dismissed, as that company has no facilities for serving complainants therein, and has not offered to do so, but has only served the Ocean Shore. Ocean Shore Development Company has been serving water in the past for compensation to complainants and others in Marine View, under the circumstances above described, and it necessarily follows that it is a public utility selling water for compensation. It is under obligation to serve all three complainants.

The order will provide for adequate service by Ocean Shore Development Company for patrons on its lines.

Moss Beach Realty Company charges the Ocean Shore company its regular rate of \$1.00 for the first 300 cu. ft. per month and 30¢ each additional 100 cu. ft. It expressed a willingness at the hearing to establish a rate which would be available to the Ocean Shore people of 22.5 cents per 100 cu. ft. for all water in excess of 1000 cu. ft. per month. We understand schedule showing such rate will be promptly filed, which the Moss Beach company may do without hearing or special authority.

Several attempts were made by defendants at the suggestion of the Examiner during the course of the hearing, to reach an agreement by which the Moss Beach people take over the pipes in the Marine View properties and supply water, but without success.

The Ocean Shore people offered their distributing system as a gift but it was declined. Mr. Littlepage also offered the Civic Center pipe as a gift to either defendant who would operate it. The Commission

is without authority to compel any transfer with or without compensation.

It must therefore require Ocean Shore Development Company to further discharge its obligations to its patrons, including complainant Andreoni and Kennedy, and deny its application for authority to discontinue service.

Complaint against William H. Grosskurth should be dismissed as he is not a proper party defendant.

Complainant Hershy can be best served by Moss Beach Realty Company with the aid of a small amount of pipe, now part of the Ocean Shore System, and which that company should under the circumstances donate for the purpose. We suggest that this course be followed by the parties. The matter cannot well be covered by the order in either of the present proceedings, ^{as} Moss Beach Realty Company is not a party to Case No. 1180, in which Mr. Hershy is complainant.

O R D E R

A public hearing having been held upon the above entitled cases and application, the matters having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that Ocean Shore Development Company serve water to complainants Andreoni and Kennedy at its established schedule of rates under its usual rules and regulations, without discrimination and that it provide adequate service to said complainants and to its other patrons.

Application of said Ocean Shore Develop-

ment Company to discontinue service of water is hereby denied.

Complaint against Moss Beach Realty Company in Case No. 1205 is hereby dismissed, and complaint of James G. Hershey in Case No. 1180 is dismissed as to William H. Grosskurth only.

Dated at San Francisco, California, this 4th day of June 1918.

H. H. [Signature]

Edwin O. Edgerton

Frank R. [Signature]
Commissioners.