

ORIGINAL

Decision No. 35129

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

JAY G. LISSNER,

Complainant,

vs.

Case No. 4616

SOUTHERN CALIFORNIA TELEPHONE
COMPANY, a corporation,

Defendant.

B. M. CAEN, for Complainant.

J. G. MARSHALL, for Defendant.

BY THE COMMISSION:

O P I N I O N

This proceeding was initiated by the complaint of Jay G. Lissner which prays that defendant, Southern California Telephone Company, be required to accept his application for telephone service and directory listing under the fictitious name of AAAAAAAAAAAAAA Alterations and Repair Co.

The complaint alleges that Lissner applied for such service on or about October 14, 1941 by requesting installation of a telephone at his place of business, 3417 West First Street, Los Angeles, in the name of AAAAAAAAAAAAAA Alterations and Repair Co. and a listing under such fictitious name in defendant's telephone directory. Complainant alleged further that defendant

unlawfully, and without justification, refused to comply with such requests.

Defendant, by its answer, admitted complainant applied for telephone service and directory listing which was refused, but denied that such refusal was unjustified or unlawful. Reference was made to its Exchange Service Schedule No. A-14, Directory Listings, Conditions 1(a) (2) which reads,

"Business primary listings of individuals, firms, companies, corporations, or associations must be the names under which the subscribers are conducting business."

Defendant averred that Lissner did not furnish satisfactory evidence that he was actually conducting business under the name AAAAAAAAAAAAA Alterations and Repair Co. at the time he sought telephone service. Hence, defendant declined to accede to complainant's demands.

Evidence relating to the issues raised by the pleadings was received at a public hearing held in Los Angeles, February 16, 1942 before Examiner Howard and the matter was submitted on the record made.

Complainant was a witness on his own behalf and testified that at the time he sought the telephone service in question he informed defendant of his intention to do business under the firm name and style of AAAAAAAAAAAAA Alterations and Repair Co. The record shows that he failed to give any substantial evidence that he was actually conducting business in such name. Lissner had no signs advertising the business, neither stationery nor business cards, kept no separate records or books of account in said name, and had not filed a certificate

that he was doing business under such fictitious firm name. Explaining the lack of signs, stationery and cards, complainant said they would be of little or no business value until the telephone number could be printed thereon and that, consequently, he was waiting for defendant to assign him a number before ordering such items. He said it was not necessary to comply with the California Civil Code, sections 2466 et seq., governing use of fictitious names, before engaging in business under such an artificial designation. The only penalty for failure to abide by such statutory provisions results from the restriction imposed on the maintenance of legal actions. Approximately three weeks after complainant applied for telephone service he complied with the above Civil Code sections by filing a certificate with the Los Angeles County Clerk that he was conducting business under the name AAAAAAAAAA Alterations and Repair Co.; publishing such certificate in a newspaper; and filing an affidavit of publication with said County Clerk. However, defendant was not informed of such action on the part of Lissner at that time and apparently learned of it first at the hearing on the complaint.

Witnesses for the telephone company said defendant did not require all potential subscribers using fictitious names to submit proof of actual conduct of business under such names. It was said to be impracticable to do so. The evidence shows the directory listings rule quoted above is not enforced except in an unusual instance, such as is involved in this proceeding, where defendant believes a subscriber is attempting, by the use of "A" prefixes, to gain preferential listing in the telephone directory. When such rule is resorted to, defendant has no definite standards of proof which must be satisfied. Whether,

in a given instance, a subscriber has established as a fact conduct of business under a fictitious name depends entirely upon the discretion of defendant's employees. Defendant's manager, who testified, admitted that if Lissner had applied for service under a name not containing the "A" prefixes he would have received such service without difficulty. This witness said also the evidence produced at the hearing convinced him Lissner was operating in the name of AAAAAAAAAAAAA Alterations and Repair Co. and indicated defendant was willing to install service now for complainant in such name and to list it in the telephone directory.

A review of the evidence compels certain factual conclusions. Lissner offered little, if any, real proof that he was engaged in the conduct of business under the name of AAAAAAAAAAAAA Alterations and Repair Co. Although filing and publishing such name in accordance with the provisions of the California Civil Code may not be necessary before a fictitious name is employed, it would have been some evidence to submit to defendant in satisfaction of its directory listing rule. In fairness to complainant and in criticism of defendant, it should be observed that, as the telephone company has no specific test by which conduct of business is gauged, it would be impossible to prophesy what proof would suffice in a given instance. While defendant's said directory rule may be reasonable, its use to correct defects in the telephone company's alphabetizing practices apparently leads to unfair and discriminatory results. The rule should have impartial application and, if the alphabetizing practices adopted pursuant to it are unworkable, such practices should be revised.

However, it is unnecessary to determine whether complainant or defendant should prevail in this inquiry as the

controversial issues have been set at rest by the statements of defendant's manager. Lissner's purpose in filing this complaint against defendant was to compel installation of telephone service and directory listing under the name AAAAAAAAAAAAA Alterations and Repair Co. Defendant's manager indicated the telephone company's present willingness to comply with complainant's requests due to the fact that the evidence adduced at the hearing showed Lissner to be conducting business in such fictitious name. Therefore, as the parties are in accord, there remains no relief to be granted. Hence the case will be dismissed.

O R D E R

Based upon the evidence of record and the findings and conclusions contained in the opinion,

IT IS ORDERED that Case No. 4616 is dismissed.

Dated at San Francisco, California, this 17th day of March, 1942.

Justus J. Caenen
Roy L. Riley
H. B. B. B.
Francis D. Havener
Richard L. L.
COMMISSIONERS