

Decision No. 40215

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph Geier,

Complainant,

vs.

Case No. 4878

So. Calif. Telephone Co. et al.,

Defendant.

ORDER OF DISMISSAL

The complaint herein alleges that complainant, a licensed real estate and business opportunities broker, on February 6, 1947, applied to defendant for telephone service at a specified address in Los Angeles. Complainant alleges that he was told that service would be installed on February 13, 1947, and was requested to be in his office on that date. It is alleged that as a result of such promise complainant leased office space at that address, purchased furnishings and supplies, and set about opening his office, but that service was not installed on the date promised, and had not been installed up to the time the complaint was filed on March 10, 1947. The balance of the complaint reads as follows:

"That the complainant alleges that it would have been impossible for the defendant company to keep a promise such as they made, and as a result the complainant has an office which cost him time and money to procure, which is apparently doing him no good. That the complainant alleges that it was gross negligence on the part of the defendant company and/or its employees, to set such a date as they could not keep, without first ascertaining the condition of their abilities to keep such promises as they made. That so long as this condition shall exist it will cost the complainant the loss of time and money.

Wherefore, Complainant asks that the Railroad Commission hold a hearing to determine the party or parties at fault, and upon finding fault deal with them accordingly."

Complainant was advised by letter that the Commission is without power to award damages for alleged negligence, or to determine questions relating to the existence of or liability for negligence. He was advised that many service matters are handled informally by the Commission's staff, who aid parties in arriving at an amicable adjustment or understanding thereof. Complainant was also advised that if he desired to proceed formally, he might wish to reconsider the form of complaint.

Respondent replied that he desired to rely upon the present complaint, was not seeking damages, but requested a hearing "to find negligence if any on the part of the Telephone Company, and if they find the same, reprimand the guilty parties," and see to it that defendant cease making promises which it cannot keep.

Pursuant to Rule 13 of the Commission's procedural rules (California Administrative Code, Title 20, Section 13), a copy of the complaint was forwarded to defendant, allowing five days within which to point out in writing such defects in the complaint as, in the opinion of defendant, may require amendment.

Defendant submitted a statement of alleged defects reading in part as follows:

"We are of the opinion that this complaint clearly fails to state a cause of action against the defendant Company. There are no allegations in the complaint which would suggest any legal liability on the part of the Company for damages or otherwise. Even if the complaint could be interpreted as one for damages, which interpretation we believe to be unwarranted, it would be outside the jurisdiction of your Commission. We respectfully request that the complaint be dismissed.

A check of our records indicates that the service desired by the complainant was estab-

lished on March 15, 1947, and it may well be that complainant would prefer to withdraw his complaint without requiring the Commission to rule upon the sufficiency thereof."

A copy of the statement of alleged defects was forwarded to complainant, together with an explanatory letter stating that in the opinion of the Commission's legal staff the complaint in its present form did not state a cause of action and was uncertain as to the relief desired. Complainant was also advised that in order to afford an opportunity to reconsider the pleading, and to indicate whether complainant desired to file an amended complaint, reference to the Commission would be delayed for ten days.

Complainant has now advised that he believes that "the Telephone Company knew that they could not give me and many others in my area service as promised, and that by promising such service as they could not deliver injured us to such an extent that the Commission should issue an order to cease such practices. This is the main substance of my complaint." Complainant states that he desires a hearing "to determine whether or not the Telephone Company is operating for the most common good, and whether or not they are operating as they should under their state franchise."

Although the Commission is not bound by the technical rules of pleading applicable in court proceedings, pleadings must set forth definitely the exact relief which is requested, and must state facts sufficient to constitute a cause of action within the Commission's jurisdiction. The complaint herein does not specify the exact relief desired, but alleges negligence and facts suggesting that complainant deems that he has suffered damages because of such alleged negligence. The Commission is without jurisdiction to determine such matters.

Complainant's explanatory letters suggest a hearing on the general service practices of defendant, a matter not touched upon in

the pleading. Upon consideration of that pleading, it is found that the complaint does not state a cause of action within the Commission's jurisdiction, and for that reason IT IS ORDERED that Case No. 4878 is hereby dismissed.

Dated, San Francisco, California, this 29<sup>th</sup> day of April 1947.

Harold P. Hule  
Justice J. Coe  
Justice Powell  
R. B. Johnson  
Kenneth Potter  
Commissioners