

ORIGINAL

Decision No. 46410

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN STUPIN, <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> PACIFIC TELEPHONE & TELEGRAPH COMPANY, a corporation, <p style="text-align: center;">Respondent.</p>	}
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Case No. 5310

O P I N I O N

The complaint herein alleges that, on or about the 23d day of May, 1951, the telephone facilities of complainant were disconnected by respondent telephone company upon a representation by respondent that it had information to the effect that the telephone facilities concerned were being put to uses prohibited by law. The complainant further alleges that the telephone facilities were not used in violation of the law, and that he will suffer irreparable injury, hardship and financial loss by being deprived of these telephone facilities.

An order granting temporary interim relief was granted by this Commission on July 10, 1951, Decision No. 45935, directing respondent telephone company to restore the facilities in question pending a hearing on the complaint. This restoration

was effected, and subsequently the telephone company filed an answer to the complaint, the principal allegation of which was that the respondent telephone company had reasonable cause to believe that the use made, and to be made, of the telephone facilities concerned was prohibited by law and that, accordingly, it was required to discontinue service to the subscriber under the provisions of this Commission's order contained in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

Public hearings were held in this matter before Examiner Syphers in Los Angeles on September 24 and October 23, 1951, during which time evidence was adduced, and on the last-named date the matter was submitted.

This record discloses that, on May 12, 1951, at about 12:30 P.M., two members of the County Vice Squad and an investigator from the District Attorney's Office of Los Angeles County went to complainant's place of business at 3988 East Third Street, Los Angeles. As the officers entered the place of business, which was a beer parlor and cafe, they found complainant John F. Stupin using the telephone, and one of the officers overheard him say "Greek Ship. O.K., sweetheart, you're on", whereupon Stupin wrote the following notation on a pad of paper at the back of the bar, "5 S Sky Miracle Greek Ship".

The investigator from the District Attorney's Office took this slip of paper, initialed it and dated it, and had Stupin do the same. This slip of paper was received in

evidence as Exhibit No. 2.

The officers further testified that, while they were in Stupin's place of business, the telephone rang several times and each time some one asked for Stupin. Scratch sheets and a racing form were found on the bar and at the back of it. Exhibit No. 3 is a copy of the Daily Reporter for May 12, 1951, a scratch sheet which was found on the bar. Exhibit No. 4 is a copy of the National Daily Sports for May 12, 1951, and Exhibit No. 5 is a copy of the Daily Racing Form for May 12, 1951. Both of these last exhibits were found at the back of the bar.

The investigator for the District Attorney's Office pointed out that, on the scratch sheet designated as Exhibit No. 3, there is a listing of the races at Jamaica for May 12, 1951. One of the horses running in the fifth race is Sky Miracle and one in the sixth race is Greek Ship.

The complainant testified that he had signed the slip which is now designated as Exhibit No. 2, and also that on the particular day in question he was arrested for bookmaking, but no charges were filed against him and he was released about 11:00 P.M. of the same day.

It was pointed out that the scratch sheets, Exhibits Nos. 3 to 5, inclusive, are the type that can be bought on the newsstands.

Exhibit No. 1 is a copy of a letter addressed to The Pacific Telephone and Telegraph Company from E. W. Biscailuz, Sheriff, Los Angeles County, requesting that the telephone service in question be disconnected.

In the light of this record we find that the telephone company exercised due care in taking the action it did, and we further find that this action was based upon reasonable cause as such term is used in Decision No. 41415, supra.

Our specific problem, therefore, is whether or not there is sufficient evidence of unlawful activities to justify the termination of the order granting temporary interim relief issued by Decision No. 45935 on July 10, 1951, or whether there is insufficient evidence on this point, and, accordingly, that the aforesaid temporary order should be made permanent.

A careful review of this record compels the conclusion that the complaint should be dismissed. The evidence shows that the conversation of complainant on the telephone, as overheard by the officers, was connected with horse racing at Jamaica Race Track on May 12, 1951, inasmuch as the names which complainant wrote on the sheet of paper are names of horses which were running in the fifth and sixth races at Jamaica on that particular day. Furthermore, the conversation overheard by the officers clearly indicates that it was related to betting activities. Therefore, we find it reasonable to infer, and we now find, that the telephone of complainant was used in a bookmaking transaction in violation of law and, accordingly, that the service should be disconnected (Millstone vs. Pacific Telephone and Telegraph Company, Decision No. 43458, dated October 25, 1949, on Cases 5023 and 5024, 49 Cal. P.U.C. 178).

ORDER

The complaint of John F. Stupin against Pacific Telephone and Telegraph Company having been filed, public hearings having been held thereon, the case now being ready for decision, the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

IT IS ORDERED that the complainant's request for restoration of telephone service be denied, and that the said complaint be, and it hereby is, dismissed.

The temporary interim relief granted by Decision No. 45935, dated July 10, 1951, on Case No. 5310, is hereby set aside and terminated.

IT IS FURTHER ORDERED that, upon the expiration of sixty (60) days after the date of this order, the Pacific Telephone and Telegraph Company may consider an application for telephone service from the complainant herein on the same basis as the application of any new subscriber.

The effective date of this order is twenty (20) days after the date hereof.

Dated at San Francisco, California, this 13th day of November, 1951.

[Signature]
PRESIDENT
Harold P. Hill

[Signature]
[Signature]

COMMISSIONERS