

ORIGINAL

Decision No. 46741

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I. B. TOUB, RAMONA LAND CO., a
co-partnership,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH
COMPANY,

Defendant.

Case No. 5287

D. A. Hill, 650 South Grand Avenue, Los Angeles 17,
California, for complainant. Pillsbury, Madison and Sutro by
John A. Sutro, and Lawler, Felix and Hall by L. B. Conant, for
respondent.

O P I N I O N

The petition of I. B. Toub alleges that he is one of the co-owners of the Ramona Land Company, a copartnership consisting of himself and one William Zidell, each partner owning 50 per cent of the business. The telephone in question bears the number WEBster 8-9615 and is located at the offices of the Ramona Land Company, 7211 Beverly Boulevard, Los Angeles. The complainant further alleges that all persons now calling the number WEBster 8-9615 are informed, presumably by the telephone company, that said telephone has been disconnected, and further alleges that if the service is not restored immediately complainant will suffer great and irreparable damage. It is also

alleged that the particular telephone in question, WEbster 8-9615, was used by the partnership and that there was a second telephone on the premises, WEbster 8-9434, which was used by William ✓ Zidell, the partner, but was not used by the complainant herein nor by the partnership. The partner, William Zidell, was charged with violation of Section 337a of the Penal Code of the State of California, and, by reason thereof, according to the complainant, a written notice was given to the telephone company by a public official charged with the enforcement of the law which led to the disconnection of both the partnership telephone and the individual telephone of Zidell. It is finally alleged by complainant that the telephone WEbster 8-9615 was not used and will not be used as an instrumentality to violate or aid and abet the violation of the law.

An order granting temporary interim relief was granted by Decision No. 45571, dated April 16, 1951, in Case No. 5287. Subsequently thereto, the telephone company filed an answer denying that the Ramona Land Company was the subscriber or user of telephone service under telephone number WEbster 8-9615, and alleging that William Zidell was the subscriber, according to the telephone company records.

The telephone company, in its answer, further alleges that on March 28, 1951, it received a written notice from an official charged with the enforcement of the law, stating that the telephone service in question was used in violation of the law and requesting its disconnection. Resultantly, the telephone company on about April 5, 1951, did disconnect the services of

both telephones, and the disconnections remained in effect until service was restored as the result of the temporary order in Decision No. 45571, supra.

A public hearing was held in Los Angeles on December 13, 1951, before Examiner Syphers, at which time evidence was adduced and the matter submitted. It is now ready for decision.

At the hearing the complainant testified that he and William Zidell had been partners in the operation of Ramona Land Company for about six years. The principal business of this company is the promotion of a real estate subdivision in Ramona, California. The telephone used in the conduct of this business was WEBster 8-9615, and, according to the complainant, the bills therefor had been paid by the Ramona Land Company and the telephone had not been used for any uses other than the business of the company.

William Zidell, the partner of complainant, presented corroborative testimony as to the business of the partnership and the use of the telephone. He further testified that at the time of the formation of the partnership there was a telephone in his name under WEBster 9615. He arranged with Toub to have this telephone used in the partnership business and the charges therefor to be paid by the Ramona Land Company. The number of this telephone has since been changed to WEBster 8-9615. Zidell stated that he contacted the telephone company and advised them that Ramona Land Company would pay the bill, and further that the telephone was to be listed in the name

of that company. While the name Ramona Land Company was listed in the telephone book, the service remained in the name of Zidell, and he likewise was listed under that telephone number.

Further testimony from this witness disclosed that during the period March 22 to 24, 1951, he made bets on horses but did not conduct bookmaking. In this activity he used telephone WEBster 8-9434, but contended that he did not use WEBster 8-9615. Subsequently, in August 1951, Zidell plead guilty to a charge of violating Section 337a of the Penal Code.

Exhibit No. 1 is the telephone company's form Request For Supersedure, showing a request by Zidell to have the Ramona Land Company listed in the telephone directory under WEBster 8-9615. Exhibit No. 2 is a request for listing in the telephone directory for Ramona Land Company, signed by William Zidell, and Exhibit No. 3 is the application for service for this telephone, signed by William Zidell.

The supervising special agent of the telephone company testified that the telephone company had received a letter from the chief of police requesting that both telephones concerned herein be disconnected. A copy of this letter was received as Exhibit No. 4. According to this witness, the telephones were disconnected on April 5, 1951.

An officer of the Los Angeles County Sheriff's Office, Anti Vice Detail, testified that on March 26, 1951, William Zidell was arrested at 7211 Beverly Boulevard as the result of an investigation made during the previous four-day period. During this four-day period from March 22 to 26, 1951, there

was a microphone installed in the premises, and a wire recorder in an adjoining building recorded conversations made. This officer testified that from five to twenty-five times a day he heard the voice of William Zidell and the voice of another party placing bets over the telephones; and at times both of these voices were placing bets at the same time. A detective of the Los Angeles Police Department testified that on March 26, 1951, during the afternoon between the hours of about one and two P.M., he listened to conversations being carried on at 7211 Beverly Boulevard and picked up by the microphone. During this time he heard the telephone ringing and also heard a male voice talking about names of horses, tracks, and other information relating to races.

The position of the telephone company was simply that it had acted upon reasonable cause in removing the telephones.

After a consideration of this record, we now 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, dated April 6, 1948, on Case No. 4930 (47 Cal. P.U.C. 853).

Having made this finding; our problem now is whether or not there is sufficient evidence in this record to justify the setting aside of the temporary restoration of service as ordered by Decision No. 45571, supra, or whether that temporary order should be made permanent.

There is no question from this evidence but that the telephone WEBster 8-9434 was used for bookmaking purposes. As to the telephone used by the partnership, WEBster 8-9615, there

is no evidence that this telephone was used by complainant herein for any unlawful purposes. Furthermore, the evidence shows that during the time of the alleged bookmaking the complainant I. B. Toub was absent from the city of Los Angeles. However, we cannot overlook the fact that this telephone was subscribed for, not by complainant, but by William Zidell, and further that during the period March 22 to 26, 1951, there was considerable bookmaking activity being conducted on the premises. There is some evidence to the effect that both telephones were used for this purpose. We have in mind the testimony of the officer from the Sheriff's Department to the effect that on occasions he heard two telephone conversations relating to bookmaking being conducted simultaneously, which would indicate that both telephones were being used. Furthermore, there is no doubt but that the one partner, who admittedly was engaged in unlawful activities, had unlimited access to this telephone.

In Decision No. 41415, supra, at page 859, we stated as follows:

"It is the conclusion of this Commission that communications instrumentalities and facilities should not be furnished to persons, who will use them for bookmaking or related illegal purposes; nor should they be furnished where there is strong evidence to indicate that the use will be for such illegal purposes. Neither should the furnishing of such instrumentalities and facilities be continued where reasonable cause exists for believing that such facilities are being so used."

In the light of this record we find that the telephone facilities here in question, numbers WEBster 8-9615 and WEBster 8-9434, were used as instrumentalities to aid and abet the violation of the law.

O R D E R

The complaint of I. B. Toub, copartner in the Ramona Land Company, against The Pacific Telephone and Telegraph Company, having been filed, public hearing having been held thereon, the matter now being ready for decision and the Commission being fully advised in the premises and basing its decision upon the evidence of record in this case 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 heroby is, dismissed.

The temporary interim relief granted by Decision No. 45571, dated April 16, 1951, in Case No. 5287, is hereby set aside and vacated.

IT IS FURTHER ORDERED that, upon the expiration of sixty (60) days after the effective 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 shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 13th day of February, 1952.

[Signature]
President
Justin J. Cresser
Harold P. Hule
[Signature]
[Signature]
Commissioners