

ORIGINALDecision No. 47648

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RUDOLPH CONSTANTINO,

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 5369

Rudolph Constantino in propria persona. Pillsbury,
Madison & Sutro by John A. Sutro, and Lawler, Felix &
Hall by L. E. Conant, for defendant.

O P I N I O N

The complaint alleges that Rudolph Constantino, who resides at 3750 East 56th Street, Maywood, California, was a subscriber and user of telephone service furnished by defendant company under number Lafayette 0789. On or about July 15, 1950, the telephone facilities of complainant were disconnected by the Sheriff's Office because a roomer was using the telephone facilities allegedly for bookmaking purposes. The complaint further alleges that demand has been made upon the defendant telephone company to restore these telephone facilities, but defendant has refused to do so. Further allegations are that complainant did not use and does not now intend to use the telephone facilities as an instrumentality to violate the law, nor in aiding or abetting such

violation, and further that complainant has suffered and will suffer irreparable damage if he is deprived of the use of telephone facilities.

Under date of May 7, 1952, the defendant telephone company filed an answer, the principal allegations of which were that it had reasonable cause to believe that the use made or to be made of the telephone service in question was prohibited by law, and that defendant company was required to and did on July 28, 1950, disconnect and discontinue the facilities pursuant to an order of this Commission in Decision No. 41115, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles on August 18, 1952, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

The complainant testified that in July 1950 he rented a room of his residence to a magazine salesman named Sheldon Gold. Subsequently thereto he went on vacation and was gone for about two weeks. Upon returning he found that his tenant was gone and that the telephone had been disconnected. He further testified that he had never used the telephone service illegally and did not now intend so to do. He occupies the residence with his wife and daughter, and at the present time rents a room to a lady with two small children. He further testified that a telephone was necessary inasmuch as he has a bad heart, and also it was desired to be used for regular residential use.

The supervising special agent of the telephone company testified that under date of July 24, 1950, the company received

a letter from the Sheriff's Office requesting that the facilities in question be disconnected. This letter was received in evidence as Exhibit No. 1. As a result, the telephone facilities were disconnected on July 28, 1950. A deputy sheriff of the Los Angeles County Sheriff's Office testified that on July 22, 1950, at about 2:30 p.m., he and two other deputies went to 3750 East 56th Street, and there observed one Sheldon Gold seated in a bedroom talking on the telephone and making notations on pieces of paper. Upon investigation it was discovered that these notations were betting markers. He further testified that at the time Sheldon Gold admitted he was engaged in bookmaking, that this was his first day in such activities, and that he was being paid \$60 per week for so doing. The officers arrested him.

The position of the telephone company was that it had acted upon reasonable cause in removing the telephone inasmuch as it had received the letter designated as Exhibit No. 1. After consideration of this record we now find that the telephone company exercised due care in taking the action it did, and that this action was based upon reasonable cause as such term is used in Decision No. 41415, supra. We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law. However, there is no evidence in the record to indicate that complainant knew of or had any part in this illegal use. Furthermore, there is no evidence to indicate that the telephone facilities, if restored, will be used in the future for any unlawful purposes.

O R D E R

The above-entitled complaint 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 Pacific Telephone and Telegraph Company 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 2nd day of September, 1952.

[Signature]
 President

[Signature]
 Justice F. Coe

[Signature]
 Attorney General

[Signature]
 Commissioner

Commissioners