

# ORIGINAL

Decision No. 43057

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BEN FINKEL, doing business as  
 CHARLIES BAR AND GRILL,  
  
 Complainant,  
  
 vs.  
  
 THE PACIFIC TELEPHONE AND TELEGRAPH  
 COMPANY, a corporation,  
  
 Defendant.

Case No. 5416<sup>r</sup>

Charles Hollopeter for complainant. Pillsbury, Madison & Sutro by John A. Sutro, and Lawler, Felix & Hall by L. B. Conant, for defendant.

## O P I N I O N

The complainant alleges that Ben Finkel, doing business as Charlies Bar and Grill, at 49 East Colorado Street, Pasadena, California, prior to July 3, 1952, was a subscriber and user of telephone service furnished by defendant telephone company under numbers SYcamore 2-1825 and RYan 1-7922 and that on or about July 3, 1952, these telephone facilities were disconnected by police officers of the City of Pasadena. The complaint further alleges that demand has been made upon the defendant telephone company to restore the said telephone facilities, which demand has been refused. Complainant states that he did not use, and does not now intend to use the telephone facilities in question in violation of the law, and that he has suffered

and will suffer irreparable injury and great hardship if the telephone facilities are not restored.

By Decision No. 47728, dated September 24, 1952, in Case No. 5416, this Commission ordered a temporary restoration of the telephone facilities in question pending a hearing on the matter. Under date of October 3, 1952, the telephone company filed an answer, the principal allegations of which were that the telephone company had reasonable cause to believe that the telephone facilities in question were being used to violate the law and that, accordingly, it disconnected and discontinued these facilities pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles on November 20, 1952, before Examiner Syphers.

At the hearing the complainant testified that the telephone facilities in question were used in connection with a restaurant and bar which he operates on the premises, and that these telephones are necessary in the conduct of his business. He stated that at the time of the disconnection of the telephones on July 3, 1952, he was arrested on suspicion of bookmaking. He further testified that he did not use the telephone facilities in any way to violate the law, and did not intend to so use them.

It was stipulated by the complainant and the telephone company that the telephone company disconnected the service pursuant to a letter received from the Police Department of Pasadena. The letter was received in evidence as Exhibit No. 1.

This letter was dated July 14, 1952, from the Chief of Police of the City of Pasadena and addressed to the Chief Special Agent of the telephone company, and requested that the two telephones here in question be disconnected inasmuch as there was evidence that they were being used for bookmaking.

An officer of the Pasadena City Police Department testified that during the period from June 17, 1952, to July 3, 1952, there was installed in the premises in question a microphone arrangement whereby the officers, located in an adjoining building, were able to listen to conversations which took place in the office of complainant.

One of the police officers described one of the conversations which he heard over the microphone arrangement on June 24, 1952, at approximately 3:05 P.M. He testified that he heard a voice which he identified to be that of Mr. Ben Finkel, the complainant herein, and that this voice talked about the placing of money as a bet on a horse race. The exact conversation was related from notes which the witness made, and it is reasonable to infer that it was a conversation over a telephone inasmuch as Mr. Finkel's voice asked such questions as "where are you now," "why forty minutes to get down here," and "bring the money down." Also on this same date a second conversation was heard by this same officer, when he testified from notes he had made. In this second conversation, in addition to the voice of Mr. Finkel talking about bets on horse races, there was the sound of dialing of a telephone.

A second officer testified as to conversations he heard over the microphone arrangement on June 26, 27, and July 3, 1952. From the wording of these conversations and the sounds of telephone dialing, it is reasonable to infer that they likewise were conversations over the telephone relating to bookmaking. The second officer testified that it was the voice of Ben Finkel, the complainant herein.

On July 3, 1952, the officers entered the premises in question and there they found complainant sitting in his office with the telephone in his hand. They found betting markers pertaining to horses running that day in various races.

After a consideration of this record, we are of the opinion, and hereby find, that the telephone company had reasonable cause to believe that the use made or to be made of the telephone facilities in question was prohibited by law, inasmuch as the letter from the Chief of Police of the City of Pasadena constitutes such reasonable cause, under the terms of Decision No. 41115, supra. We further find that the telephone facilities in question were used for bookmaking purposes.

O R D E R

The complaint of Ben Finkel, doing business as Charlies Bar and Grill, against The Pacific Telephone and Telegraph Company having been filed, public hearings 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 hereby is, dismissed. The temporary interim relief granted by Decision No. 47728, dated September 24, 1952, in Case No. 5416, is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of ninety (90) 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 similar new subscriber.

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

Dated at Los Angeles, California, this 16<sup>th</sup> day of December, 1952

A. Z. Anderson  
President  
Justus J. Casper  
Harold A. Hule  
Frederick F. Patton  
John E. Adell  
Commissioners