

ORIGINAL

Decision No. 50862

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HERMAN A. BERKLEY,
)
 Complainant,)
 vs.)
 THE PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY, a corporation,)
 Defendant.)

Case No. 5591

Pillsbury, Madison and Sutro, and Lawler, Felix and Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint, filed on November 8, 1954, alleges that Herman A. Berkley, who resides at 440 N. Hayworth Street, Los Angeles, California, prior to November 1, 1954 was a subscriber and user of telephone service furnished by defendant under number WHitney 2230 at 440 North Hayworth Street, Los Angeles, California; that on October 12, 1954 these telephone facilities were disconnected by defendant after the Los Angeles Police Department advised them (sic) that the complainant was using the telephone to violate or aid and abet the violation of the law; that the telephone was registered in the name of Marie Berkley, the complainant's wife; that complainant has made demand upon the defendant telephone company to restore said service but it has refused to do so; that the complainant has suffered and will

suffer business loss and injury to his reputation, and great hardship as a result of being deprived of the telephone facilities referred to; and that he did not use and does not intend to use said telephone facilities as an instrumentality to violate the law, nor in aiding or abetting such violation. Marie Berkley did not join in the complaint.

On November 24, 1954 the telephone company filed an answer which, among other things, denies that defendant disconnected the telephone facilities of complainant, and alleges on information and belief that the telephone facilities were disconnected by the Los Angeles Police Department. The answer further states that defendant had reasonable cause, pursuant to the order of the Public Utilities Commission of the State of California, dated April 6, 1948, Decision No. 41415, to believe that the use made or to be made of the telephone service furnished by defendant to complainant (sic) under number WHitney 2230, at 440 North Hayworth Street, Los Angeles, California, was prohibited by law, and that said service was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law.

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on December 21, 1954, at which time evidence was presented and the matter was submitted.

At the hearing there was no appearance for the complainant. The file discloses that notice of the hearing was sent to complainant at 440 North Hayworth Street, Los Angeles, California, by registered mail on December 8, 1954.

The defendant telephone company introduced in evidence Exhibit No. 1, a copy of a letter from the Los Angeles City Chief of Police to the defendant telephone company, dated October 13, 1954. This letter advised the defendant that the telephone at 440 North Hayworth Street, Apartment 8, telephone number WHitney 2230, furnished to Marie Berkley, was being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the Penal Code, and requested that the service be disconnected. The defendant's witness testified that subsequently the defendant did effect a central office disconnection. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After a full consideration of the record we now find that the action of the telephone company was based upon reasonable cause, as such term is used in Decision No. 41415, supra. Inasmuch as there was no appearance by the complainant, the complaint herein will be dismissed.

O R D E R

The complaint of Herman A. Berkley against The Pacific Telephone and Telegraph Company having been filed, a 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 on the evidence of record and the findings herein,

IT IS ORDERED that the complaint filed herein be, and it hereby is, dismissed.

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

Dated at San Francisco, California,
this 10th day of January, 1955

John E. Mitchell
President

Justin D. Caswell

Ronald L. Luterer

Richard D. Doherty

Commissioners